ADMINISTRATIVE PROCEEDINGS
FILE NO. 3-15259

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
May 28, 2013

In the Matter of the Application of CAPWEST SECURITIES, INC. For Review of Action Taken by FINRA in case No. 2007010158001	BRIEF IN SUPPORT OF CAPWEST SECURITIES, INC.'s APPLICATION FOR REVIEW

CAPWEST SECURITIES, INC. ("CapWest") appeals the Decision of the National Adjudicatory Council ("NAC") on the following grounds.

I.

INTRODUCTION

Based upon a de novo review, the NAC found that CapWest violated the content standards of FINRA Rules 2110 and 2210 which it applied to FINRA member communications with the public. This appeal is based on the idea that the NAC failed to interpret and apply those standards in the context of a total mix of information available to the prospective investor. [1]

NAC found that 166 (out of 268) of CapWest's communications violated the content standards. Every one of those 268 communications was designed directly or indirectly to arouse in potential investors an interest in acquiring more information about how tenant-in-common securities might be used to fulfill the like kind purchase-side requirement of an Internal Revenue Code Section 1031 exchange. None of the communications offered a particular security. All were generic in nature (Hearing Transcript ("HT) pg. 189). As the NAC notes, "these communications included seminar invitations, flyers, slides and hand outs, newspaper and magazine advertisements, newsletters, brochures, form letters, radio scripts, website materials and postcards." (Decision page 4, section C)

II.

FACTS

In order to bring comprehension to the NAC's analysis, we will attempt to isolate the operative sections of its decision. In the Section II FACTS portion of its Decision, the NAC finds four categories of facts, lettered A through D. We deal only with C because it is the section in which the NAC attempts to catalog the various offending communications. Section D deals with supervisory activities. We do not treat Section D, because if the communications discussed

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1 *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976); *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988); These cases develop the concept of materiality under the Federal Securities Laws.

in Section C are not violative, supervision is not relevant.[2]

In Section C, the NAC notes that although there are 166 communications spotlighted in this case, they are duplicative and repetitive in nature. However, they share several characteristics, assertions and claims about the use and utility of Section 1031 exchanges and the potential investment appeal of TIC ownership. The NAC goes on to list what we count to be seven separate categories of assertions which the NAC later concludes violate the content standards. Thus, there are seven violations, not 166. They are:

- 1031 exchanges unlock trapped equity
- 1031 exchanges defer capital gains
- 1031 exchanges can utilize TICs
- 1031 exchanges are the best kept secret in the Internal Revenue Code
- TICs produce management-free passive income
- TICs invest in large investment-grade properties
- TICs have professional management

Of the seven allegedly violative categories, four relate solely to 1031 exchanges and the other three to tenant-in-common securities. It must be noted that 1031 exchanges are not a security (HT pg. 201), not a service, and not a product offered by the securities industry. They are a tax deferral technique. More importantly, all seven categories are true statements and NAC does not conclude otherwise.

The Division of Enforcement produced only one witness, Mr. Levine, who is an

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2 Section A identifies the firm and Section B provides a generic description of Section 1031 exchanges and TIC interests.

employee of FINRA's advertising review department. On cross-examination, Mr. Levine revealed that he is not a lawyer, not an accountant, not a real estate licensee, not securities licensed and had never testified before! (HT pg. 46) Instead, he is a former paralegal who has never owned an interest in commercial real estate. How Mr. Levine was qualified to testify about the intricacies of TICs or 1031 exchanges was not explained. As if to illustrate its reliance upon incompetent evidence, in Footnote 9, the NAC cites Mr. Levine's incorrect definition of "cash on cash" return with respect to a TIC. (HT pg. 154) A correct definition of cash on cash return is the amount of cash distributions expressed as a percentage of cash invested by the customer. It is not a percentage of the purchase price of the property as suggested by the unqualified witness. Since the NAC relied solely upon the "expert testimony" of a witness who was not qualified to provide any expert opinion (Mr. Levine testified repeatedly that what he said was "only my opinion"), its decision is not supported by any substantial evidence in the record. In placing reliance on an unqualified expert, the NAC highlighted its own lack of sophistication.

III.

DISCUSSION

In Section III, DISCUSSION, the NAC analyzes some of the facts it found in the previous section and concludes for various reasons, that the communications violate the content standards. This section is divided into subsections A and B. Subsection A, under four numbered headings discusses the nature of the communications. We treat only Subsection A, 1 and 2 (containing paragraphs introduced with the labels First, Second and Lastly).

First In beginning its analysis in this section, the NAC states that member communications must (1) be based upon principles of fair dealing and good faith, (2) must be fair and balanced,[3] and (3) must provide a sound basis for evaluating the facts. Providing investors with full and true disclosure satisfies all three. In its evaluation of whether or not CapWest's communications met those three standards, the NAC abandons rationality and common sense, because it isolates each communication from the context in which it is made. This concept is best expressed by the cases cited in footnote 1 above, dealing with the definition of materiality in the federal securities laws. For example, the NAC observes that the communications routinely refer to Section 1031 exchanges without providing an explanation of how those exchanges work. The NAC would have you believe, for example, that in communicating anything about a Section 1031 exchange, it is "incumbent upon CapWest to consistently provide <u>some</u> sense of the factors to be considered" [before engaging in a 1031 exchange transaction]. Decision pg. 7, section 1. The NAC fails to explain what "some" sense would include,[4] or how much would be less than "some." NAC apparently does not understand that by the end of the disclosure process CapWest provided investors with <u>all</u> the factors, not just some. NAC also does not understand that there is no particular risk involved in a 1031 exchange. (HT pg. 202)

As NAC observed quite correctly, because 1031 exchanges can be complex, it is impossible to provide a full explanation in the confines of a brief advertising communication. Instead, the industry relies on the overall mix of information made available to the prospective

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3 (1) and (2) are the same functionally. It is almost impossible to distinguish between these two elements and the NAC does not attempt to do so.

4 The full logical extension of this view would require a member inviting customers to a seminar to disclose that food and liquor would be served, and warning that overeating and impairment might be possible.

investor before an investment can be made. All three of the characteristics required by the NAC for a communication with the public are more than fulfilled by the presentation of industry-conventional private placement memoranda such as the one attached as Exhibit "A." This disclosure includes a comprehensive explanation of all factors related to 1031 exchanges and TICs themselves, and all investors who proceed to purchase a TIC would be required to review it.[5] See, pages 8-23.

Second In this analysis, the NAC faults some of the communications because in some cases they do not include many of the potential risks. However, the same argument that applies to the 1031 statements applies here. Each and every one of these risk factors and many more are fully disclosed in the routinely-used private placement memoranda. It would be impossible to include a discussion of all these features in every one of the 166 allegedly violative communications.

Third and lastly, the NAC highlights five more factors which it apparently does not consider in the same category as those treated in Second; they are:

- The "management-free" traits of TIC ownership;
- Representations not balanced with statements concerning certain restraints accompanying TIC ownership;
- Investor's loss of day-to-day control over management decisions;
- Voting by other tenants in common regarding significant issues that can result in substantial expenses affecting the investment; and

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5 There is no suggestion by the NAC that CapWest failed to make all proper disclosures to investors receiving an offer to invest in a TIC.

- Potentially significant related fees that come with professional management of the TIC property.

No explanation of why these factors are different from those treated under caption Second is provided. Once again, each of these features is completely described in the conventional private placement memorandum. It should be noted that practice in the industry prohibits any accredited investor from purchasing a TIC security without executing numerous documents as a part of the subscription process. All of those documents contain recitals that the investor has reviewed and understands all of the factors that the NAC mentions. See Exhibit "A," Purchase Agreement and Escrow Instructions, Section 7 (pgs. A-5 to A-6).

2. In Section 1, the NAC devoted its attention to the lack of a fair and balanced perspective in communications. In this sub-section 2, it develops the position that some of those communications contain improper performance projections. NAC categorizes as "performance projections" statements such as "TICs typically generate cash flow of 6% to 9%" and "investments may yield 10% or higher." The NAC fails to recognize that these historical statements are not promissory. More importantly, based on the industry-wide performance of TIC investments in the period 2002-2006, those suggestions appear to be true (See Exhibit B). Nonetheless, the NAC calls them exaggerated performance predictions and unwarranted performance claims and forecasts. It cites no authority for that position and simply assumes - one wonders on the basis of what facts contained in the record - that its description is accurate.

3. The NAC treats separately in paragraph No. 3 a new concept used in at least two (of 166) of the communications, which it titles "Exaggerated TIC Investment Protections." See Exhibit B, page 46. It concludes that some of these communications gratuitously imply that the

regulation and oversight of TIC offerings by the SEC[6] and others provide additional investor protection and increased likelihood of a successful investment (Decision pg. 9). The NAC does not explain how it draws this inference which, on its face, is problematic.[7] Although the communications did offer the observation (as expressed in Kathy Heshelow's book attached as Exhibit "B", page 46), these communications in no way imply an increased likelihood of a successful investment. They simply make the observation that the securities industry is well regulated. Regulation has a tendency to inspire its participants to behave properly. The entire rationale for the existence of regulatory institutions is to provide investor protection. For the NAC to imply that such a representation is false, is positively mystifying.[8]

Finally, in paragraph 4, the NAC reviews the use of customer testimonials in one of the 166 communications. The NAC provides no analysis of the content of the testimonial, but simply recites that the use of testimonials concerning a member's investment advice or performance of the product it offers must contain caveats. However, it must be remembered that all of the 166 allegedly violative communications are generic in nature and do not relate to particular products or services.

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6 Many TIC offerings were the subject of 33 Act registrations.

7 IM 2210-4 cited by NAC does not apply.

8 Nothing in the communications falsely suggests that the investments have been approved by any regulatory authority, and a typical offering memorandum read by the investor will disclaim any such approval.

IV.

CONCLUSION

Simply put, the NAC has failed to evaluate the communications in the context of the total mix of information available to the investor at the point of sale. Abstractions such as "fair and balanced" "good faith" and "sound basis" simply cannot be useful without context.

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Gregory J. Sherwin, Esq.
Orly Davidi, Esq.
FIELDS, FEHN & SHERWIN
11755 Wilshire Blvd., 15th Floor
Los Angeles, CA 90025

Dated: May 28, 2013

By: H Thomas Fehn /tk
H Thomas Fehn, Attorney for
CapWest Securities, Inc.

EXHIBIT "A"

Name:______________________ Number:____________________

CABOT INVESTMENT PROPERTIES

CABOT TURFWAY RIDGE ACQUISITION LLC

Tenant in Common Interests
1% Interest Equals: $117,500 of equity and $180,000 of estimated debt
Minimum Purchase: 3.00% Interest ($352,500 of equity and $540,000 of estimated debt)
Minimum Offering Amount: $2,350,000
Maximum Offering Amount: $11,750,000

Cabot Acquisition

- Cabot Turfway Ridge Acquisition LLC ("Cabot Acquisition"), a wholly owned subsidiary of Cabot Investment Properties, LLC (the "Sponsor"), is offering the Interests described in this Confidential Offering Memorandum (the "Memorandum"). The Sponsor is a privately-held real estate investment manager that focuses on stabilized commercial real estate investments. The managers of the Sponsor have been involved in the acquisition of over $1.5 billion of commercial real estate over the past 15 years. In addition, these managers have been involved in twelve other tenant-in-common transactions since 2003.

The Interests and the Property

- Cabot Acquisition is offering undivided tenant-in-common interests (each an "Interest" and collectively, the "Interests") in a 218,223 net rentable square foot, multi-tenant office property situated on 14.57 acres, commonly known as "Turfway Ridge Office Park", which consists of (i) one five-story, 108,975 square foot office building, situated on 8.06 acres ("Turfway I") and (ii) one five-story, 109,248 square foot office building situated on 6.51 acres ("Turfway II") (Turfway I and Turfway II, together, the "Property"). The address of the Property is 7300 and 7310 Turfway Road, Florence, Kentucky 41042.
- Each purchaser will hold its Interest through a bankruptcy-remote, single member Delaware limited liability company (a "Single Purpose Entity" and, as the holder of an Interest, a "Tenant in Common") to be formed by Cabot Acquisition on behalf of the purchaser.
- On October 30, 2006, the Sponsor entered into a contract to purchase the Property from BH Turfway LLC (the "Seller") for aggregate consideration of $23,750,000. In addition, $237,750 will be paid to an unaffiliated third-party broker at closing as a result of the sale of the Property. The acquisition of the Property is expected to close on or before February 9, 2007. See "The Property."
- Cabot Turfway Ridge LeaseCo LLC (the "Master Lessee"), a wholly owned subsidiary of the Sponsor, will lease the Property from the Tenants in Common under a master lease agreement (the "Master Lease") and will sub-lease the Property to the occupying tenants.

Cabot Turfway Ridge Investment LLC

- Cabot Turfway Ridge Investment LLC (the "Company"), an affiliate of Cabot Acquisition and the Sponsor and a potential purchaser of Interests, reserves the right to offer to accredited investors units of membership interest in the Company pursuant to an Addendum to this Memorandum.

- Investing in Interests involves risks. You should carefully consider the risk factors beginning on page 8 of this Memorandum. Neither the U.S. Securities Exchange Commission nor any state securities commission has reviewed, approved or disapproved of the Memorandum or the Interests, nor have they passed upon the accuracy or adequacy of the information set forth in this Memorandum. Any representation to the contrary is a criminal offense.

The date of this Memorandum is January 9, 2007

Financing of the Property

- Cabot Acquisition intends to finance the acquisition of the Property with an $18,000,000 loan (the "Mortgage Loan"), secured by a first priority, nonrecourse mortgage from Wachovia Securities or its affiliate (the "Mortgage Lender"). The Mortgage Loan amount is anticipated to include a hold-back of approximately $2,545,000 to fund tenant improvement and leasing commission reserves, capital repairs and replacements to the Property and insurance and real estate tax reserves.
- Cabot Acquisition may, at its discretion, obtain bridge financing in connection with the acquisition of the Property from such lenders and upon such terms as it deems necessary or appropriate. Any such bridge loan would be loaned to the Sponsor or the owner of Cabot Acquisition. The bridge financing would be secured by the ownership interests in Cabot Acquisition and would be repaid out of the proceeds of the Offering and cash flow attributable to unsold Interests held by Cabot Acquisition. The bridge financing would not encumber the Property and the Tenants in Common would not be directly responsible for repayment of the bridge financing. All costs associated with such bridge financing would be borne by Cabot Acquisition, and not the investors.
- Although, in general, each purchaser's liability under the Mortgage Loan will be limited to the amount of his or her investment, purchasers will be subject to greater liability, including personal liability, with respect to certain actions of the purchaser or the purchaser's Single Purpose Entity. **Before investing, you should carefully consider the potential liabilities described under "Acquisition Terms and Financing."**

The Offering

- This offering of Interests (the "Offering") is being made through Orchard Securities, Inc. (the "Managing Broker-Dealer") and through other broker-dealers ("Broker-Dealers") who are members of the National Association of Securities Dealers, Inc. ("NASD"). The Broker-Dealers are collectively referred to as the "Selling Group."
- Cabot Acquisition may cancel or modify this Offering, reject purchases of Interests in whole or in part, waive conditions to the purchase of Interests and allow investments below the minimum purchase price.
- The Offering will continue until all of the Interests are sold or, if earlier, until June 30, 2007. However, Cabot Acquisition may extend the Offering until December 31, 2007, in its absolute and sole discretion.

	Cash Price To Investors(1)	**Sales Commissions and Expenses(2)**	**Proceeds to Cabot Acquisition(3)**
Per 3.00% Interest (minimum purchase amount)(4)	**$352,500**	**$31,725**	**$320,775**
Minimum Offering Amount(5)	**$2,350,000**	**$211,500**	**$2,138,500**
Maximum Offering Amount	**$11,750,000**	**$1,057,500**	**$10,692,500**

(1) The Cash Price to Investors includes expenses related to acquiring an Interest, including sales commissions and expenses, organization and marketing expenses, closing costs and entity formation and qualification expenses for Cabot Acquisition and the Master Lessee. In addition to the cash purchase price, purchasers will pay a fixed fee of $2,500 to cover individual tenant-in-common entity formation costs, charges and related legal fees. Purchasers will be responsible for the fees associated with their own legal, tax and other advisors and ongoing costs of maintaining their tenant-in-common entity, which may include the maintenance of an independent director.

(2) The Selling Group members will receive sales commissions of up to 7.0% of the gross cash proceeds ("Gross Proceeds") of the Offering. The Managing Broker-Dealer will receive a non-accountable marketing and due diligence allowance in the amount of 2.0% of the Gross Proceeds, up to 1.0% of which it may reallow to other members of the Selling Group on an accountable basis. The total aggregate amount of sales commissions and expenses reimbursements to the Selling Group (collectively "Sales Commissions and Expenses") will not exceed 9.0% of the Gross Proceeds.

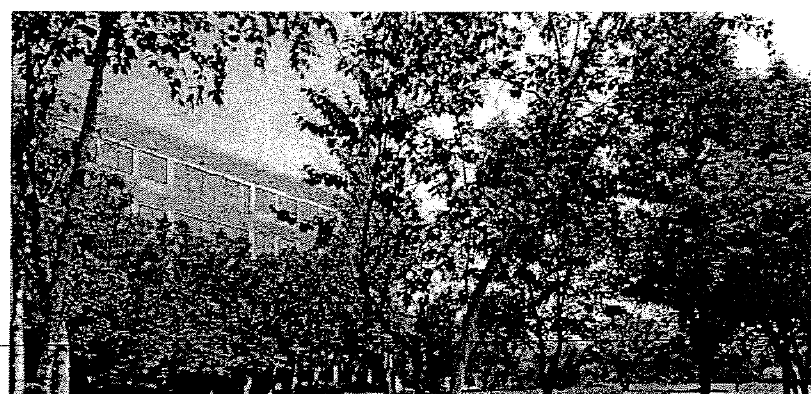
(3) The proceeds shown are prior to deduction of the organizational and other fees described in "Compensation and Fees." In the event that the Maximum Offering Amount is not sold, Cabot Acquisition may, in its sole discretion, obtain any acquisition and bridge financing Cabot Acquisition deems necessary or appropriate. Cabot Acquisition will not borrow from or sell interests to its affiliates to attain the Minimum Offering Amount and Interests Cabot Acquisition or its affiliates may acquire will not be included in the Minimum Offering Amount.

(4) The minimum purchase is a 3.00% Interest for a cash purchase price of $352,500 and the assumption of $540,000 of the Mortgage Loan. Cabot Acquisition may waive the minimum purchase requirement for certain purchasers, in its sole discretion.

(5) Payments received prior to receipt of the Minimum Offering Amount of $2,350,000 in cash from the sale of Interests will be held in an escrow account (the "Escrow Account") at JPMorgan Chase by Lawyers Title Insurance Corporation (the "Escrow Agent").

TURFWAY RIDGE OFFICE PARK

7300 and 7310 Turfway Road
Florence, Boone County, Kentucky, 41042



POTENTIAL INVESTORS SHOULD CAREFULLY CONSIDER THE FOLLOWING:

Do not construe the contents of this Memorandum as legal or tax advice. Consult your own independent counsel, accountant or business advisor as to legal, tax and related matters concerning an investment in Interests. Neither the Sponsor nor Cabot Acquisition makes any representation or warranty of any kind with respect to the acceptance by the Internal Revenue Service ("IRS") or any state taxing authority of your treatment of any item on your tax return or the tax consequences if you are investing in Interests as part of a like-kind exchange (a "Section 1031 Exchange") under Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code").

Cabot Acquisition has not authorized any person to make any representations or furnish any information with respect to the Interests or the Property, other than as set forth in this Memorandum or other documents or information Cabot Acquisition may furnish to you upon request. You are encouraged to ask Cabot Acquisition questions concerning the terms and conditions of this Offering and the Property.

This Memorandum constitutes an offer of Interests only to the person whose name appears in the appropriate space on the cover page of this Memorandum. Furthermore, the delivery of this Memorandum to you will not constitute an offer, or solicitation of an offer, to purchase an Interest to anyone in any jurisdiction in which such an offer or solicitation is not authorized.

Cabot Acquisition has prepared this Memorandum solely for the benefit of persons interested in acquiring Interests in the Property. You may not reproduce or distribute this Memorandum, in whole or in part, or disclose any of its contents without Cabot Acquisition's prior written consent. You agree, by accepting delivery of this Memorandum, that, upon Cabot Acquisition's request, you will immediately return it to Cabot Acquisition along with all other documents provided to you in connection with the Offering if you do not purchase any of the Interests or if the Offering of the Interests is withdrawn or terminated.

This Memorandum contains summaries of certain agreements and other documents. While Cabot Acquisition believes these summaries are accurate, you should refer to the actual agreements and documents for more complete information about the rights, obligations and other matters in the agreements and documents. Cabot Acquisition will make the agreements and documents relating to this investment available to you and/or your advisors upon request, if such requested agreements and documents are readily available to Cabot Acquisition.

A WARNING ABOUT FORWARD LOOKING STATEMENTS

This Memorandum contains statements about operating and financial plans, terms and performance of the Property and other projections of future results. Forward-looking statements may be identified by the use of words such as "expects," "anticipates," "intends," "plans," "will," "may" and similar expressions. The "forward-looking" statements are based on various assumptions, for example, the growth and expansion of the economy, projected financing environment and real property market value trends, and these assumptions may prove to be incorrect. Accordingly, such forward-looking statements might not accurately predict future events or the actual performance of an investment in the Interests. In addition, you must disregard any projections and representations, written or oral, which do not conform to those contained in this Memorandum.

MARKET DATA

The market data and forecasts used in this Memorandum were obtained from independent industry sources as well as from research reports prepared for other purposes. Cabot Acquisition has not independently verified the data obtained from these sources and Cabot Acquisition cannot assure you of the accuracy or completeness of the data. Forecasts and other forward-looking information obtained from these sources are subject to the same qualifications and the additional uncertainties regarding the other forward-looking statements in this Memorandum.

An investment in Interests involves substantial risks. Cabot Acquisition is offering the Interests only to persons who are "accredited investors" as that term is defined in Rule 501 promulgated under the Securities Act of 1933, as amended (the "Securities Act") and applicable state securities laws.

Cabot Acquisition will not register the Interests under the Securities Act or the securities laws of any state. Cabot Acquisition will offer and sell the Interests in reliance on exemptions from the registration requirements of these laws. The Interests will be subject to restrictions on transferability and resale and you will not be able to transfer or resell Interests or any beneficial interest therein unless the Interests are registered pursuant to or exempted from such registration requirements. You must be prepared to bear the economic risk of an investment in the Interests for an indefinite period of time and be able to withstand a total loss of your investment.

The securities laws of certain jurisdictions grant purchasers of securities sold in violation of the registration or qualification provisions of such laws the right to rescind their purchase of such securities and to receive back the consideration paid. Cabot Acquisition believes that the Offering described in this Memorandum is not required to be registered or qualified. Many of these laws granting the right of rescission also provide that suits for such violations must be brought within a specified time, usually one year from discovery of facts constituting such violation. Should any purchaser institute an action claiming that the Offering conducted as described herein was required to be registered or qualified, the contents of this Memorandum will be deemed to constitute notice of the facts of the alleged violation.

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TABLE OF CONTENTS

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SUMMARY OF THE OFFERING

The following summary highlights information contained elsewhere in this Memorandum. This summary does not contain all of the information that you should consider before investing in the Interests. Read the entire Memorandum, including "Risk Factors," before making a decision to invest in an Interest.

The Property

The Property is a 218,223 net rentable square foot, multi-tenant office property situated on 14.57 acres located at 7300 and 7310 Turfway Road in Florence, Kentucky 41042. The Property consists of (i) one five-story, 108,975 square foot office building, situated on 8.06 acres ("Turfway I") and (ii) one five-story, 109,248 square foot office building situated on 6.51 acres ("Turfway II").

Each of Turfway I and Turfway II is referred to herein as a "Parcel" and collectively, as the "Property." Each Investor will acquire the same *pro rata* interest in each Parcel and no Investor may sell its Interest in either Parcel separate and apart from its Interest in the other Parcel (except as part of the sale of an entire Parcel by all Investors).

As of the date of this Memorandum, the Property was approximately 84.2% leased to 26 tenants. Under their respective subleases with the Master Lessee, office tenants will be responsible for paying their pro-rata share of operating expenses, real estate taxes, special assessments, sales and use taxes, utilities and insurance, above a base year stop. The Master Lessee, as landlord, will generally be responsible for capital repairs and improvements related to the Property. See "The Property."

On October 30, 2006, the Sponsor entered into a contract to purchase the Property from BH Turfway LLC (the "Seller") for aggregate consideration of $23,750,000. In addition, $237,750 will be paid to an unaffiliated third-party broker at closing as a result of the sale of the Property. The acquisition of the Property is expected to close on or before February 9, 2007. See "The Property."

The Offering

Cabot Acquisition will sell to no more than 35 accredited investors up to $11,750,000 in equity and $18,000,000 in debt in undivided tenant-in-common Interests in the Property. The minimum purchase is a 3.00% Interest for $352,500 in cash and the assumption of a *pro rata* portion of the Mortgage Loan equal to $540,000. Any additional purchase will be in the same ratio of cash to debt ($1.00 of cash to approximately $1.53 of debt). In addition to the acquisition cost of the Property, the price of an Interest will include a *pro rata* portion of the sales commissions, organizational and offering expenses allowance, marketing and due diligence expenses allowance, the closing and carrying costs allowance, the Mortgage Loan fees and acquisition fees.

The only cost to you in excess of the purchase price per Interest is a fixed charge of $2,500 to cover individual tenant-in-common entity formation costs, charges and related legal fees. You will also be required to pay the fees and costs of your advisors and legal counsel and the fees and expenses associated with the continued maintenance of the limited liability company formed to hold your interest, including the costs of maintaining an independent director, if required by the Mortgage Lender.

The Interests will be offered until all Interests are sold, but no later than June 30, 2007, which date may be extended until December 31, 2007, in Cabot Acquisition's sole discretion. Cabot Acquisition may cancel or modify the Offering, reject purchases of Interests in whole or in part, waive conditions to the purchase of Interests and accept purchases of less than the required minimum purchase.

Cabot Acquisition will sell all Interests held by it or its affiliates to persons unrelated to the Master Lessee within one year of the initial sale of Interests.

The Sponsor and Master Lessee

Cabot Investment Properties, LLC, a Massachusetts limited liability company, will act as Sponsor of the Offering. The Sponsor is a privately-held real estate investment manager that focuses on commercial real estate investments. The managers of the Sponsor have been involved in the acquisition of over $1.5 billion of commercial real estate over the past 15 years. In addition, these managers have been involved in twelve other tenant-in-common transactions since 2003.

Cabot Turfway Ridge LeaseCo LLC, a Delaware limited liability company and wholly owned subsidiary of the Sponsor, will be formed to serve as the Master Lessee of the Property pursuant to the terms of a Master Lease.

The Sponsor, Cabot Acquisition and the Master Lessee have relied on and benefited from, and will continue to rely on and benefit from, the extensive experience of their senior managers. See "Management."

Property Ownership

As is anticipated to be required by the Mortgage Loan, you must form a bankruptcy-remote, single-member limited liability company, the sole asset and activity of which will be to acquire and hold your Interest (a "Single Purpose Entity"). You will own membership interests in your respective Single Purpose Entity. In addition to the purchase price of the Interests, you will bear the costs of formation and maintenance of your Single Purpose Entity and fees payable to your own legal, tax or other advisors. See "Summary of Agreements to be Entered Into by Purchasers – Single Purpose Entity Operating Agreement."

Tenants in Common Agreement & Call Agreement

The Tenants in Common Agreement and Call Agreement will govern the rights and obligations of the Tenants in Common with respect to the Property.

Under the Tenants in Common Agreement, all of the Tenants in Common of the Property must approve any lease, sale, financing, refinancing, exchange or transfer of the Property, but need not approve any sub-lease of the Property by the Master Lessee during the term of the Master Lease.

Upon termination of the Master Lease, all leases of the Property or any portion thereof will require the unanimous approval of the Tenants in Common. A majority of the Tenants in Common must approve the annual renewal of the consulting agreement between the Tenants in Common and the Sponsor (the "Consulting Agreement") pursuant to which the Sponsor will assist the Tenants in Common with the sale of the Property. All other actions or decisions of the Tenants in Common will require the approval of the Tenants in Common who together own a majority of the Interests in the Property.

If Tenants in Common collectively owning 80% or more of the Interests in the Property consent to a sale or refinancing of the Property, any other action requiring the unanimous consent of the Tenants in Common or to any action to prevent or cure an event of default under the Mortgage Loan, then pursuant to the Call Agreement, the Master Lessee and consenting Tenants in Common have the right, but not the obligation, to purchase any Interests of Tenants in Common who do not approve such sale, refinancing or action.

In the event any Tenant in Common desires to exercise its right of partition or any Tenant in Common becomes bankrupt, under the Tenants in Common Agreement, the Master Lessee and other Tenants in Common will have the first right to purchase the Interest at its then fair market value.

In addition, the Tenants in Common Agreement will require all Tenants in Common to pay their pro rata share of any future cash advances required in connection with the ownership, operation, management and maintenance of the Property. Should any Tenant in Common fail to pay its pro rata share, the other Tenants in Common will have the right to advance such payments and collect such amounts from the non-paying Tenant in Common or from disbursements otherwise payable to the nonpaying Tenant in Common with interest. In the absence of such advance, the other Tenants in Common and the Master Lessee will have the right (but not the obligation) under the Call Agreement to purchase the Interest of any nonpaying Tenant in Common who defaults on its obligation to pay its pro rata share unless the default is cured or dismissed within the applicable period. See "Summary of Agreements to be Entered Into by Purchasers – Tenants in Common Agreement" and " – Call Agreement."

Master Lease

The Tenants in Common will enter into the Master Lease for the entire Property with the Master Lessee on an absolute net basis. The Master Lease has a term of 20 years. During the term of the Master Lease, the Master Lessee anticipates that it will pay annual base rent (payable in equal monthly installments) as follows:

Year	% of Equity	Annual Payment	Monthly Payment
1-2	7.50%	$881,250	$73,438
3-5	8.00%	$940,000	$78,330
6	8.50%	$998,750	$83,229
7-9	9.00%	$1,057,500	$88,125
10-13	10.00%	$1,175,000	$97,917
14-16	11.00%	$1,292,500	$107,708
17-20	12.00%	$1,410,000	$117,500

In addition, the Master Lessee will make payments, on behalf of the Tenants in Common, of additional rent, which include interest and principal payments under the Mortgage Loan, and amounts payable into Mortgage Lender-required reserve accounts. The Master Lessee will be responsible for all other costs of operating, managing and maintaining the Property during the term of the Master Lease, including the payment of all leasing and capital expenses to the extent the reserves required by the Mortgage Lender for these purposes are exhausted. If the principal and interest components of additional rent are increased during the term of the Master Lease, other than as a result of (i) the anticipated increase in Mortgage Loan debt service beginning in the fourth year after closing or (ii) the Master Lessee's default under the Master Lease, base rent will be reduced by a corresponding amount, and if the increase exceeds the amount of the corresponding base rent installment, any excess will be payable solely by the Tenants in Common. Similarly, if the principal and interest components are decreased, base rent will be increased by a corresponding amount. See "Summary of Master Lease and Management Agreements – Master Lease" and "Acquisition Terms and Financing." At closing, the Master Lessee will fund a cash reserve of $200,000 (the "Master Lessee Reserve"), which will serve as a supplement to cash flow from the Property in satisfying the Master Lessee's obligations under the Master Lease. The Master Lessee will maintain the Master Lessee Reserve throughout the term of the Master Lease. If drawn upon, the Master Lessee will replenish the Master Lessee Reserve only to the extent it receives cash flow from the Property in excess of its obligations under the Master Lease. Upon termination of the Master Lease, any remaining portion of the Master Lessee Reserve will be retained by the Master Lessee.

The Master Lease will automatically terminate upon a sale of the Property. In addition, the Master Lessee may terminate the Master Lease (i) at any time following the tenth anniversary of the Master Lease, in its sole discretion, with or without cause; or (ii) if the Tenants in Common terminate or fail to renew the Consulting Agreement. Termination of the Master Lease without the appointment of a Master Lessee acceptable to the Mortgage Lender will constitute an event of default under the Mortgage Loan. Furthermore, the written consent of the Master Lessee will be required in connection with any modification or amendment of the Mortgage Loan or any new financing of the Property that adversely affects the rights of the Master Lessee. A summary of the Master Lease is set forth below in "Summary of Master Lease and Management Agreements – Master Lease" and a copy of the form of Master Lease is attached as Exhibit D.

Consulting Agreement

The Tenants in Common will enter into the Consulting Agreement with the Sponsor, pursuant to which the Sponsor will be entitled to a consulting fee ("Consulting Fee") of 4.0% of the gross sales price of the Property in a sale to a third party as a result of offers received (i) during the 270-day period provided in the Consulting Agreement or (ii) at any time as a result of the Sponsor's negotiation with, and submission of offers from, a prospective purchaser. In connection with a sale described under (i) or (ii) above, the Sponsor will be responsible for paying outside consulting and broker fees up to an amount of 1.5% of the gross sales price of the Property, and the Tenants in Common will be responsible for paying outside consulting and broker fees in excess of 1.5% of the gross sales price of the Property. Each of the Tenants in Common will be required to pay its *pro rata* share of such Consulting Fee. The Consulting Agreement is for a term of one year and renewable annually with the consent of a majority of the Tenants in Common. In the event the Tenants in Common do not renew the Consulting Agreement, the Master Lessee will have the right to terminate the Master Lease.

Property Management Agreement

The Master Lessee will enter into a property management agreement (the "Property Management Agreement") with Neyer Management, a regional commercial real estate management firm (the "Property Manager"), pursuant to which the Property Manager will manage the day-to-day operations of the Property. Neyer Management manages more than 8 million square feet in over 75 properties in the Cincinnati area. The Master Lessee will be responsible for paying the Property Manager's fees, which will be equal to 3.0% of the gross revenue from the Property. The Property Management Agreement will terminate twelve months after closing, unless extended by mutual agreement of the parties. See "Management – The Property Manager" and "Summary of Master Lease and Management Agreements – Property Management Agreement." In addition, it is anticipated that the Property Manager may, in its sole discretion, hire one or more employees to provide on-site management or subcontract on-site management.

Accession Agreement

Purchasers who purchase an Interest after the initial closing of the Offering will be required to enter into an Accession Agreement, under which they will agree to be bound to the terms of the Tenants in Common Agreement, the Call Agreement, the Master Lease, and the Consulting Agreement.

Financing

Cabot Acquisition anticipates financing the acquisition of the Property with a $8,532,500 cash down payment from the proceeds of the Offering and a $18,000,000 Mortgage Loan secured by a first priority mortgage on the Property, as well as an assignment of leases and rents. Cabot Acquisition has been involved in negotiations with the Mortgage Lender regarding the terms of the Mortgage Loan. The Mortgage Loan may or may not be obtained from the Mortgage Lender, may be obtained from another lender or may be obtained on terms substantially different from those described in this Memorandum.

If the Mortgage Loan is obtained from the Mortgage Lender on the terms that are currently anticipated, the Property will be leveraged with a loan to total capitalization ratio of 60.5%, based on the $29,750,000 aggregate amount of the cash purchase price for the Interests and the amount of the Mortgage Loan (including the reserves that the Mortgage Lender will hold back from the Mortgage Loan). The loan to appraised value ratio is 74.69%, based on the prospective, "as is" market value of the Property of $24,100,000 according to the Appraisal.

Mortgage Loan

Cabot Acquisition anticipates that the Mortgage Loan will have a 10-year term. The Mortgage Loan is expected be interest-only for the first five years, and thereafter amortized over a 30-year period. Pursuant to a rate lock agreement with the Mortgage Lender which expires on February 10, 2007, the annual interest rate of the Mortgage Loan is locked at 5.67%. Assuming the interest rate of 5.67%, the interest-only payment on the Mortgage Loan would be payable in equal monthly payments of approximately $86,231 during the first five years, and principal and interest would be payable in equal monthly payments of approximately

$105,029 during the last five years.

The Mortgage Loan will be made to the Tenants in Common on a joint and several basis, so that upon an uncured event of default on the Mortgage Loan, the Mortgage Lender may exercise its remedies against one, more or all of the Tenants in Common. Although, in general, each purchaser's liability under the Mortgage Loan will be limited to the amount of its investment, purchasers will be subject to greater liability, including personal liability, with respect to certain actions of the purchaser or the purchaser's Single Purpose Entity. In addition, if Cabot Acquisition does not obtain environmental liability insurance for the Property, the Mortgage Lender may require each Tenant in Common, one or more individual direct or indirect principal of each Tenant in Common, and the Master Lessee to indemnify the Mortgage Lender and its affiliates against environmental liabilities arising from ownership and operation of the Property pursuant to a separate environmental indemnification agreement. **Before investing, you should carefully consider the potential liabilities described under "Acquisition Terms and Financing — Limited Recourse" and the risk factors set forth under "The Property will be Subject to Risks Associated with Debt Financing."**

The Mortgage Loan documents will require the Tenants in Common to make debt service payments to the Mortgage Lender without regard to the rental income received from the Property.

It is anticipated that the Mortgage Lender will require the Tenants in Common to fund, on a *pro rata* basis, from the proceeds of the Mortgage Loan, certain reserve accounts with the Mortgage Lender including:

- approximately $2,000,000 for tenant improvement and leasing commission reserves.
- approximately $500,000 to fund capital repairs and replacements to the Property, of which $200,000 will be reserved for capital items related to the replacement and repair of the roofs at the Property; and
- approximately $45,000 for insurance and real estate tax reserves.

In addition, it is anticipated that the Mortgage Lender will require the Tenants in Common to place into an escrow account $163,026 per year (or $13,585 per month), on a monthly basis, if the tenant improvement and leasing commission reserves drop below a floor of $250,000. The Mortgage Lender will also likely require the Tenants in Common to place into an escrow account, on a monthly basis, an amount equal to 1/12 of the annual replacement reserve amount of $0.15 per square foot of gross leasable square footage at the Property (i.e., $2,728).

Reserves may also be required at closing for estimated taxes and insurance policy premiums to the extent such costs are not paid by the tenants of the Property.

Mezzanine Lender SPE

The Sponsor may, at its discretion, form a new special purpose entity organized as a Delaware limited liability company ("Mezzco"), to act as a mezzanine lender to the Tenants in Common in covering costs associated with the Property in excess of reserves. The Sponsor or an affiliate of the Sponsor may own up to 49.0% of the membership interests in Mezzco. The remaining interests will be owned by an unrelated party. Subject to limitations imposed by the Mortgage Loan documents, and to the extent additional funds are required in excess of reserves available from time to time, the Master Lessee will have the right, but not the obligation, to obtain one or more mezzanine loans to the extent the Tenants in Common require additional funds for operations, tenant improvements, leasing commissions or other purposes deemed appropriate by the Master Lessee (each individually a "Mezzanine Loan" and collectively, the "Mezzanine Loans"). The terms of each Mezzanine Loan will be subject to the unanimous approval of the Tenants in Common.

Any Mezzanine Loan will be made to the Tenants in Common on a joint and several basis, so that in the event of a default under the Mezzanine Loan, Mezzco may exercise its remedies against one, more or all of the other Tenants in Common. If Mezzco were to foreclose, a

Tenant in Common would likely lose its entire investment.

Each Mezzanine Loan will be subordinate to the interest of the Mortgage Lender (or any other lender whose loan is secured by an interest in the Property) and Mezzco will likely be required to execute a subordination and standstill agreement in a form approved by the Mortgage Lender. The Mezzanine Loan will not be secured by the Property or any of the other collateral for the Mortgage Loan directly. Instead, each Mezzanine Loan will be secured by a pledge of the equity interests in the Tenants in Common. Accordingly, each purchaser will be required to pledge his or her equity interest in the Tenant in Common owned by that purchaser.

Cabot Acquisition will negotiate with the Mortgage Lender with respect to certain terms in the Mortgage Loan documents relating to Mezzco and the Mezzanine Loan. It is anticipated that the terms of the Mortgage Loan documents will allow for a pledge of the equity interests in the Tenants in Common as security for a Mezzanine Loan from Mezzco, which pledge will not constitute an event of default and will be subordinate to the Mortgage Loan, provided that certain conditions are satisfied. See "Acquisition Terms and Financing".

Property Sale or Refinancing

The Master Lessee and the Sponsor intend to seek to arrange for the sale or refinancing of the Property within approximately seven years (i.e., 2014) under terms advantageous to the Tenants in Common. Subject to the Call Agreement, all Tenants in Common must approve a sale of the Property and any refinancing of the Mortgage Loan. Pursuant to the Consulting Agreement, the Master Lessee will be entitled to a transaction fee of 4.0% of the gross sale price of the Property in connection with any sale to a third party, of which up to 1.5% may be used to pay an outside broker.

Pursuant to the Consulting Agreement, the Master Lessee will be entitled to a refinancing fee of 1% of the amount of any loan obtained to refinance the Property. If an outside loan broker is used, the Master Lessee will be responsible for the payment of any broker's fees that may be due up to a maximum of 1% of the loan amount. See "Summary of Agreements to be Entered into by Purchasers – Tenants in Common Agreement."

Purchaser Suitability Requirements

You should purchase Interests only if you have substantial financial means and you have no need for liquidity in your investment. Only Accredited Investors who meet certain minimum financial and other requirements may acquire Interests in this Offering, including a minimum net worth requirement ($1 million for individual investors, including spouse) or a minimum annual income requirement for the past two years ($200,000 per year for an individual; $300,000 per year, including spouse). Prospective purchasers of an Interest who are not individuals will be required to meet other accreditation tests. Each purchaser's investment in the Interests will be limited to 25% of the net worth of the respective purchaser. See "Plan of Distribution." Interests are not suitable investments for qualified plans or individual retirement accounts. See "Who May Invest."

Plan of Distribution

Members of the Selling Group will make offers and sales of Interests on a "best efforts" basis. The commissions and expense reimbursements to the Selling Group are described in "Plan of Distribution" and "Estimated Use of Funds" below.

Compensation to Cabot Acquisition and its Affiliates

Cabot Acquisition and its affiliates will receive substantial fees from the Offering and sale of Interests, as well as from supervising the management, financing and sale of the Property, including placement fees, appearance fees, disposition fees, financing fees and transfer fees. The Master Lessee, which is an affiliate of Cabot Acquisition, will be entitled to retain any rents collected under the leases with the tenants of the Property in excess of the amounts payable to the Tenants in Common and the Mortgage Lender under the Master Lease. See "Compensation and Fees."

Offers to Purchase Interests

To offer to buy an Interest, you must wire to the Escrow Agent the amount of $15,000 as a good faith deposit and follow the instructions set forth in "How to Subscribe" below.

Cabot Acquisition may accept or reject your investment at any time within 30 days after delivery of the executed documents to the Escrow Agent with your good faith deposit.

Furthermore, the Mortgage Lender may accept or reject your investment at any time before the close of escrow.

Federal Income Tax Consequences

In connection with the Offering, Cabot Acquisition will obtain from its special tax counsel, Baker & McKenzie LLP ("Tax Counsel"), a legal opinion stating that:

- the Interests should be treated as interests in real property and not as partnership interests or as securities for purposes of Section 1031; and
- the description of federal income tax consequences in this Memorandum is correct in all material respects.

A copy of the tax opinion is attached as an exhibit to this Memorandum.

Each Tenant in Common must report its allocable share of taxable income or loss on its own federal income tax return. See "Federal Income Tax Consequences."

There are substantial risks associated with the federal taxation of the purchase of an Interest, particularly where the purchase is intended to be part of a Section 1031 Exchange. You should carefully read "Risk Factors – Tax Risks" and "Federal Income Tax Consequences" and consult with your personal tax advisor before making an investment in the Interests.

The opinion of Tax Counsel is not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code. The opinion was written to support the promotion or marketing of the Offering and each prospective purchaser of an Interest should seek advice based on the prospective purchaser's particular circumstances from an independent tax advisor.

Risk Factors

An investment in the Interests involves substantial risks. See "Risk Factors."

RISK FACTORS

Set forth below are the risks that Cabot Acquisition believes are material to the purchase of an Interest. You should not acquire Interests if you cannot afford to lose your entire investment. Prospective purchasers are advised to carefully consider the risks described below, as well as the other information in this Memorandum, before making a decision to purchase an Interest. Consult with your own legal, tax and financial advisors about an investment in Interests. The risks described below are not the only risks that may affect an investment in an Interest. Additional risks and uncertainties that Cabot Acquisition does not presently know or has not identified may also materially and adversely affect the value of the Property or the performance of your investment.

Risks Related to an Investment in Real Estate

General. Real property investments are subject to varying degrees of risk and are relatively illiquid. Several factors may adversely affect the economic performance and value of the Property. These factors include:

- changes in the national, regional and local economic climate;
- local conditions such as an oversupply of similar properties or a reduction in demand for the Property;
- the attractiveness of the Property to tenants;
- the ability to collect rent from tenants;
- changes in availability and costs of financing, which may affect the sale or refinancing of the Property;
- eminent domain or condemnation actions against the Property;
- risks associated with construction activity at the Property, including delays, the imposition of mechanics' and materialmen's liens and defects in workmanship;
- covenants, conditions, restrictions and easements relating to the Property;
- governmental regulations, including financing, environmental usage and tax laws, regulations and insurance;
- the ability of the Master Lessee to pay for adequate maintenance, insurance and other operating costs, including real estate taxes, which could increase over time; and
- acts of nature, such as earthquakes, tornadoes and floods, that may damage the Property.

Any negative change in the factors listed above could adversely affect the financial condition and operating results of the Property. The profitability of an investment in an Interest will depend on factors such as these.

The Property may experience significant lease turnover in the short term; Master Lessee may be unable to renew leases or relet space as leases expire. The Property will be leased to the Master Lessee pursuant to the Master Lease. The Master Lessee will sublease portions of the Property to tenants pursuant to existing leases with the tenants. Currently, 84.2% of the Property is leased to 26 tenants. Approximately 71.72% of the existing leases (based on occupied space) expire within the next seven years (i.e., prior to the end of the projected seven year holding period). In addition, the lease for one tenant, Xanodyne Pharmacal, will expire in October 2007 and will not be renewed by the tenant. Further, several tenants have termination rights in their leases permitting early termination.

Although the building appears to have been constructed within industry standards and adequately maintained, existing and potential tenants may perceive the Property to be less attractive as a result of its age, or such tenants may require additional capital expenditures with respect to the Property. Other buildings in the area surrounding the Property may have more attractive locations, spaces, rental rates and concessions than the Property. Tenants may move to existing or new buildings upon the expiration or early termination of their leases (to the extent permitted under the respective lease). If tenants decide not to renew their leases upon expiration or exercise their termination rights, the Master Lessee may not be able to relet their space. Even if the tenants do renew or the Master Lessee can relet the space, the terms of renewal or reletting may be less favorable than current lease terms. The Master Lessee may need to expend significant time and money to attract a replacement tenant. If the Master Lessee cannot promptly renew the leases or re-lease the space, or if the rental rates upon renewal or re-leasing are significantly lower than expected rates, then the Property's results of operations and financial condition will be adversely affected. Although the Master Lessee is responsible for the cash shortfalls between the operating cash flow and the Master Lease payments due to the Tenants in Common, prospective investors should be aware that the Master Lessee is a newly formed entity with no substantial assets other than its lease interest in the Property under the Master Lease and the Master Lessee Reserve. Accordingly, developments that negatively impact the Property's results of operations could adversely affect the ability of the Master Lessee to make payments to the Tenants in Common. Consequently, the Property's cash flow and ability to service debt and support distributions to the Tenants in Common would be reduced. If the Master Lessee has one or more vacancies, it may be at a competitive disadvantage compared to other buildings in attracting replacement tenants. See "The Property – Description of Tenant Leases.

The financial performance of the Property will depend upon the financial stability of its tenants. The financial stability of the tenants of the Property may affect the ability of the Master Lessee to meet its obligations to the Tenants in Common under the Master Lease. Tenant defaults could result in a significant reduction in rental revenues, which could require the Tenants in Common to advance additional cash or obtain alternative financing to meet obligations under the Mortgage Loan. Also, a tenant's termination of a tenant lease (to the extent permitted under such tenant lease) or a tenant's cessation of operations could have a negative impact on the business of other tenants and their ability to continue to make rent and expense payments. Furthermore, a tenant in bankruptcy could reject its lease, reduce or delay payment of its shared operating expenses and taxes and delay the Master Lessee's receipt of rent payments. In addition, the costs and time involved in enforcing rights under the lease with a tenant, including eviction and re-leasing costs, may be significant. The financial stability of tenants may change over time. Any downgrading of a tenant's credit rating or adverse change in its financial condition may negatively affect the value of the Property in which it leases space.

The Property is subject to risks relating to its local real estate market. The Northern Kentucky submarket has experienced declining occupancies over the past several years after the strong occupancies of the 1990's. This decline was due to the combination of new product coming on-line simultaneously with the slowdown in growth due to the national recession. The Northern Kentucky submarket had a vacancy rate of 27.9% as of the 4th Quarter of 2006. Although it is believed that conditions for the office rental markets in the Northern Kentucky submarket should continue recent improvement in the near future, declines in the economy and real estate market could cause vacancy rates to increase and could adversely affect the ability of the Tenants in Common to sell or refinance the Property under favorable terms. The factors which could affect economic conditions in the market generally include business layoffs, industry slowdowns, relocations of businesses, changing demographics, increased telecommuting, infrastructure quality and any oversupply of or reduced demand for real estate. Declines in the condition of the market could diminish the performance of your investment and value of the Property.

Because real estate investments are illiquid, the Tenants in Common may not be able to sell or refinance the Property when appropriate. Real estate investments generally cannot be sold or refinanced quickly. The Tenants in Common may not be able to sell the Property promptly in response to economic or other conditions. The Master Lessee may not have an incentive to cause the Property to be sold or refinanced, and the presence of the Master Lease may limit the ability of the Tenants in Common to sell or refinance the Property. In addition, the Tenants in Common Agreement requires the unanimous approval of the Tenants in Common for a sale or refinancing of the Property to occur, which may be either delayed or unlikely. This inability to respond promptly to changes in the performance of investments could adversely affect the Property' financial condition and disbursements to the Tenants in Common.

If reserve amounts prove insufficient, the Tenants in Common may have to advance additional cash. The Tenants in Common will likely fund Mortgage Lender-required reserves and escrows relating to the capital repairs, tenant improvements, taxes and insurance of the Property, whereas the Master Lessee will be responsible for all costs and expenses relating to the operation and management of the Property. If these reserves are not sufficient, then the Tenants in Common would be required to either make additional cash payments or obtain additional funds through borrowing, if available and permitted under the applicable Mortgage Loan. Accordingly, the Tenants in Common should have adequate liquid assets available to fund future cash advances. If the Master Lessee is unable to service the Mortgage Loan due to inadequate cash flow, the Mortgage Lender could foreclose on the Property and the Tenants in Common could lose their entire investment.

The Tenants in Common have limited recourse under the Purchase Agreement and Master Lease. The Seller of the Property is selling the Property in "as is" condition on a "where is" basis and "with all faults," without any warranties of merchantability or fitness for a particular use or purpose. In addition, the Interest Purchase Agreement and Escrow Instructions (the "Purchase Agreement") contains only limited warranties, representations and indemnifications that will only survive for a limited period after the closing. Also, the Master Lessee has no assets other than its interests in the Master Lease, the underlying leases with the tenants of the Property and the Master Lessee Reserve. If drawn upon, the Master Lessee will replenish the Master Lessee Reserve only to the extent it receives cash flow from the Property in excess of its obligations under the Master Lease. As such, Tenants in Common have little or no recourse for any deficiencies in the Property that could adversely affect its value or any liabilities resulting from a failure of the Master Lessee to perform under the Master Lease.

Changes in laws could adversely affect the Property. Various federal, state and local regulations, such as fire and safety requirements, environmental regulations, the Americans with Disabilities Act of 1990 (the "ADA"), land use restrictions and taxes affect the Property. If the Property does not comply with these requirements, the Tenants in Common may incur governmental fines or private damage awards. New, or amendments to existing, laws, rules, regulations or ordinances could require significant unanticipated expenditures or impose restrictions on the development, construction or sale of the Property. The November 20, 2006 Property Condition Report (the "Property Condition Report") prepared by EBI Consulting, an independent real estate research and consulting firm ("EBI Consulting"), indicates that the Property was constructed prior to the enactment of the ADA and was not likely in full conformance with the ADA when first occupied. The report indicates, however, that subsequent renovations and more recent construction at the Property that included ADA modifications appear to have mitigated original ADA deficiencies. Although the Property Condition Report indicates that the Property generally appears to be in general conformance with ADA guidelines for buildings constructed prior to the enactment of the ADA based upon visual observation of the Property's public areas, the Property was not subjected to a comprehensive review for ADA compliance. As such, no assurance can be given that the Property is in full compliance with ADA requirements. Portions of the Property that are renovated in the future will be required to comply with ADA and other laws, rules, regulations and ordinances and amendments thereto promulgated after the building on the Property was constructed, which could substantially increase the costs of such renovations. Such laws, rules, regulations or ordinances may adversely affect the ability of the Tenants in Common to operate or re-sell the Property or Interests.

Environmental problems are possible and can be costly. Federal, state and local laws and regulations relating to the protection of the environment may require a current or previous owner or operator of real estate to investigate and clean up hazardous or toxic substances or petroleum product releases at or affecting the Property. The owner or operator may have to pay a governmental entity or third parties for property damage and for investigation and clean-up costs incurred by such parties in connection with any such contamination. These laws typically impose clean-up responsibility and liability without regard to whether the owner or operator knew of or caused the presence of the contaminants. Even if more than one person may have been responsible for the contamination, each person covered by the environmental laws may be held responsible for all of the clean-up costs incurred. In addition, third parties may sue the owner or operator of a site for damages and costs resulting from environmental contamination emanating from that site.

Recently there have been an increasing number of lawsuits against property owners and managers alleging personal injury and property damage caused by the presence of toxic molds. Some of these lawsuits have resulted in substantial monetary judgments or settlements. Insurance carriers exclude mold related claims from standard policies and price mold endorsements at prohibitively high rates. No assurance can be given either that an undetected mold condition does not exist at the Property or that a mold condition will not arise in the future.

The Phase I Environmental Site Assessment report identified no existing environmental conditions at the Property but may not reveal all environmental liabilities at or potentially affecting the Property. The Phase I Environmental Site Assessment report ("Phase I"), dated November 22, 2006, for the Property prepared by EBI Consulting of Burlington, Massachusetts ("EBI Consulting") did not not uncover any recognized environmental conditions at the Property. However, the Phase I identified a "Historical Recognized Environmental Condition" ("HREC"). Toluene contamination was discovered at the Property in 1990 related to a spill caused from the cleaning of paving equipment following the paving of the parking lot area. On August 22, 1990, soil was excavated from the site and placed in sealed roll-off dumpsters and removed from the Property. The Phase I reports that Foppe Thelen Group concluded that removal of the toluene contaminated soil from the Property is complete and therefore, the Phase I states that no further action is recommended. However, the Phase I may not reveal all environmental liabilities at or potentially affecting the Property. The Tenants in Common and one or more individual direct or indirect principals thereof may be required to agree to perform all required remedial work, and indemnify the Mortgage Lender for losses that may occur as a result of the presence of hazardous materials on the Property or any violation of environmental laws, regulations, rules or other requirements of any governmental agency or authority relating to public health or the environment, with a possible exception for pre-existing environmental conditions. As such, you could have personal liability for the costs of remediating environmental contamination at or emanating from the Property.

Insurance may not cover all losses relating to the Property. The Master Lessee will arrange for comprehensive insurance for the Property, which is customarily obtained for similar properties in the area, including insurance covering floods, hurricanes and earthquakes. Due to recent events, including Hurricane Katrina, the costs of obtaining such insurance have increased and may negatively affect the cash flow from the Property and, potentially, the value of the Interests. Cabot Acquisition believes that the increased costs of insurance have been reflected in the purchase price for the Property and accounted for in the financial projections for the Property. However, there are certain types of losses, generally of a catastrophic nature (such as wars and certain acts of terrorism), which are either uninsurable or not economically insurable. If a loss occurs that is partially or completely uninsured, you may lose all or a part of your investment. The Tenants in Common may be liable for any uninsured or underinsured personal injury, death or property damage claims.

In addition, the occurrence of a casualty resulting in damage to the Property could decrease or interrupt the payment of tenant rentals. Tenant leases generally permit the tenants to partially or completely abate rental payments during the time needed to rebuild or restore damaged premises, and the tenants may have the right to terminate their leases altogether in the event of a casualty occurring at the Property. Even if business interruption insurance covers lost rental income, a significant delay could substantially damage the tenants' business or allow them to terminate their leases, thereby diminishing the value of the Property. These events may also result in a reduction in cash flows or in the value of Interests.

As a result of the terrorist attacks of September 11, 2001, insurance carriers have created exclusions for losses relating to terrorism from "all risk" insurance policies. While separate terrorism insurance coverage is available in certain instances, premiums for such coverage are generally very expensive, with very high deductibles. Moreover, the terrorism insurance coverage that is available typically excludes coverage for losses from acts of foreign governments as well as nuclear, biological and chemical attacks. Accordingly, it is unlikely that the Property will be insured against all types of terrorist attacks.

The appraised value of the Property is lower than the investment cost of the Tenants in Common. According to the Appraisal, the "as is" market value for the Property was determined to be $24,100,000, which is lower than the $29,750,000 aggregate of the cash purchase price for the Interests and the amount of the Mortgage Loan (including upfront reserves of 2,545,000). As such, the Interests of the Tenants in Common will be subject to immediate dilution and the Tenants in Common may recover less than their invested capital upon any eventual sale or refinancing of the Property. There can be no assurance that the value of the Property will appreciate or, if it does, that it will appreciate at a rate sufficient to provide a positive return on investment.

The purchase price of the Property includes fees and other charges. Cabot Acquisition will increase the aggregate purchase price of Interests above Cabot Acquisition's acquisition cost with respect to the Property to cover selling and real estate commissions, loan fees, transfer taxes, legal and accounting expenses and other costs associated with the acquisition and the Offering. These additional costs could cause the cost of your investment in an Interest to exceed your *pro rata* share of the market value of the Property. In order to make a profit on a sale of the Property or any Interest, the Tenants in Common will need to receive sufficient proceeds to recover the added acquisition costs included in the original purchase price as well as any costs related to the disposition of the Property or Interest.

Legal Counsel to Cabot Acquisition and the Master Lessee does not represent the Purchaser. Each Purchaser must acknowledge and agree in the Purchase Agreement and Escrow Instructions that legal counsel, including Tax Counsel, represent Cabot Acquisition, the Sponsor, the Master Lessee and their Affiliates and does not represent, and shall not be deemed under the applicable codes of professional responsibility, to have represented or to be representing, any or all of the Purchasers.

The Property will be Subject to Risks Associated with Debt Financing

General. The Tenants in Common will assume the Mortgage Loan in the amount of $18,000,000, representing a loan to total capitalization ratio of 60.50%, based on the $29,750,000 aggregate amount of the cash purchase price for the Interests and the amount of the Mortgage Loan (including the reserves that the Mortgage Lender will hold back from the Mortgage Loan). The loan to appraised value ratio is 74.69% based on the appraised "as is" value for the Property of $24,100,000.

Initial interest-only payments during the first five years of the Mortgage Loan. Cabot Acquisition anticipates that the Mortgage Loan will be interest-only for the first five years, and thereafter require also principal payments amortized over a 30-year period. Pursuant to a rate lock agreement with the Mortgage Lender, the annual interest rate of the Mortgage Loan has been locked at 5.67% until February 10, 2007. Assuming an interest rate of 5.67%, the interest-only payment on the Mortgage Loan would be payable in equal monthly payments of approximately $86,231 during the first five years, and principal and interest would be payable in equal monthly payments of approximately $105,029 during the last five years of the Mortgage Loan. There can be no assurance that the income from the Property will be sufficient to support these increased payments. As a result of any shortfall, the Master Lessee may be forced to postpone capital expenditures necessary for the maintenance of the Property. Alternatively, the Tenants in Common may have to dispose of the Property or refinance the Mortgage Loan. As it is expected that under the Mortgage Loan principal payments will only be made during the last two years of the seven-year holding period, any sale of the Property will have to reflect a significant appreciation in the value of the Property for the Tenants in Common to receive a positive return on their investment as a result of such sale. There can be no assurance that the Tenants in Common will be able to sell the Property upon acceptable terms, if at all. In addition, even if refinancing is available, the terms of such refinancing might not be as favorable as the terms of the Mortgage Loan.

Re-sale or re-financing risks. The ability of the Tenants in Common to repay the Mortgage Loan will depend in part upon the sale, refinancing or other disposition of the Property prior to the date such amounts become due. There can be no assurance that any such sale or refinancing can be accomplished at any specific time, if at all. In addition, it may not be possible to consummate any sale, refinancing or disposition on such terms and conditions as will permit the Tenants in Common to repay the outstanding principal amount of any indebtedness. Capital market conditions in the future may affect the availability and cost of real estate loans, making real estate financing difficult or costly to obtain, and such loans may not be available at all. In the event the Tenants in Common are unable to sell or refinance the Property prior to the anticipated repayment date of any indebtedness, the Tenants in Common will be required to obtain the necessary funds through additional borrowings, if available. If additional funds are not available from any source, the Tenants in Common may be subject to the risk of losing the Property through foreclosure.

Joint and several obligation. Cabot Acquisition expects that any Mortgage Loan will be made on a joint and several basis to the Tenants in Common. This means that, upon an uncured event of default on the Mortgage Loan, the Mortgage Lender may exercise its remedies against one, several or all of the Tenants in Common. While the use of bankruptcy-remote Single Purpose Entities should limit your general liability to the value of your Interest, if you are unwilling to assume the risks associated with joint and several liability, you should not invest in Interests.

Carve-outs to nonrecourse liability on the Mortgage Loan. Cabot Acquisition anticipates that the Mortgage Loan will be nonrecourse, meaning that the Mortgage Lender may only seek recovery from the liquidation of the Property for any amounts which remain due under the Mortgage Loan after a default. However, it is anticipated that the Mortgage Loan will contain the following "carve-outs", among others, to the nonrecourse provisions allowing the Mortgage Lender to proceed, under certain circumstances, against the assets of a Tenant in Common, in addition to foreclosing on the Property, to recover any loss, cost, expense, damage, claim or other obligation to the Mortgage Lender in the event of any of the following actions or inactions, among others, taken by such particular Tenant in Common, or its owners or affiliates:

- entering into subordinate financing or encumbering the Property or their Interest;
- failing to comply with the provisions of the Mortgage Loan related to the maintenance of their Single Purpose Entity as a separate, bankruptcy remote entity with adequate capital;
- misapplication of funds derived from the Property;
- taking any action to delay or impair the Mortgage Lender's ability to preserve, enforce or foreclose on its lien on the Property;
- transfer of an Interest or a majority of the membership interests in the Tenant in Common without the Mortgage Lender's approval;
- material waste of the Property;
- criminal wrongdoing leading to a seizure of the Property or any interest of the Mortgage Lender therein; or
- violations of environmental laws on or pertaining to the Property.

It is also anticipated that the Mortgage Loan will provide for certain springing liabilities pursuant to which a Tenant in Common would incur liability for repayment of the full amount of the Mortgage Loan as a result of the following actions or inactions, among others, taken by such Tenant in Common, or its owners or affiliates:

- fraud or material misrepresentation in connection with the Mortgage Loan;
- commencement of a partition action against the Property;
- entering into any amendment or termination of the Tenants in Common Agreement or Master Lease without the prior consent of the Mortgage Lender; or
- bankruptcy, insolvency, receivership, liquidation, winding up or similar type of proceeding of such Tenant in Common, or consenting to, acquiescing in, arranging or otherwise participating in bringing about the institution of such petition or proceeding against such Tenant in Common.

While the use of a Single Purpose Entity to hold the Interests will generally limit the liability for these carve-outs and springing liabilities to the assets of the Single Purpose Entity (i.e. the Interest itself), if a purchaser fails to maintain formalities required for formation and operation of its bankruptcy-remote, Single Purpose Entity under state law, with a distinct identity from that of its owners, then the purchaser would have personal liability for the liability accruing as a result of the aforementioned non-recourse carve-outs and springing liabilities.

The Mortgage Lender will also likely require at least one individual that is a direct or indirect principal of a Tenant in Common purchaser of an Interest to execute a Guaranty Agreement (the "Guaranty Agreement") pursuant to which such individual will guaranty repayment of all losses incurred by the Mortgage Lender as a result of any of the following circumstances, among others, occurring as a result of their own or their Single Purpose Entity's actions or inactions:

- encumbrance on the Property in violation of the Mortgage Loan documents;

- material breach or default of the requirement that the Single Purpose Entity be properly maintained as a bankruptcy remote Single Purpose Entity;
- misapplication of any funds received from the Property in violation of the Mortgage Loan documents;
- filing of any action that delays or impairs the Mortgage Lender's ability to foreclose on the Property or otherwise preserve or enforce its lien;
- transfer of an Interest or a majority of the membership interests of the Single Purpose Entity without the Mortgage Lender's approval;
- material waste of the Property;
- criminal wrongdoing that results in seizure or forfeiture of the Property; or
- removal or disposal of any portion of the Property after an event of default.

It is also anticipated that the Guaranty Agreement will provide for certain springing liabilities pursuant to which the individual guarantor would incur personal liability for repayment of the full amount of the Mortgage Loan as a result of the following actions or inactions, among others, taken by such individual, its Special Purpose Entity or their affiliates:

- fraud or material misrepresentation in connection with the Mortgage Loan;
- commencement of a partition action against the Property;
- entering into any amendment or termination of the Tenants in Common Agreement or the Master Lease without the prior consent of the Mortgage Lender; or
- bankruptcy, insolvency, receivership, liquidation, winding up or similar type of proceeding of the purchaser's Special Purpose Entity, or consenting to, acquiescing in, arranging or otherwise participating in bringing about the institution of such petition or proceeding against such Special Purpose Entity.

Investors should review carefully the Mortgage Loan documents, the Note and the Guaranty Agreement for further clarification of these potential obligations.

If an environmental insurance policy is not obtained on the Property, each Tenant in Common and one or more of its principals may be required to agree to perform all remedial work required by, and indemnify the Mortgage Lender for losses that may occur as a result of, the presence of hazardous materials on the Property or any violation of environmental laws, regulations, rules or other requirements of any governmental agency or authority relating to health, the environment or hazardous substances. The Master Lessee will indemnify the Tenants in Common for losses caused by the conduct of the Master Lessee under the Master Lease.

Mortgage Loan assignment, prepayment, defeasement and anticipated holding period. At the time of any sale of the Property or any portion thereof, the Mortgage Loan must be either assumed, defeased or prepaid. The Mortgage Lender must approve any Mortgage Loan assumption and may prohibit assumption in its sole discretion. If an assumption of the entire Mortgage Loan by a single purchaser of the Property is approved, the Mortgage Lender will charge a 1% loan assumption fee. The Mortgage Loan cannot be prepaid prior to the four months prior to the maturity date of the Mortgage Loan. Provided that no default under the Mortgage Loan has occurred, the Tenants in Common can elect to defease the Mortgage Loan and obtain the release of the Property from the Mortgage Lender's security interest at any time after the earlier of four years after closing of the Mortgage Loan or two years after the date on which the Mortgage Loan is securitized. The costs of defeasance may be prohibitive. To defease the Mortgage Loan, the Tenants in Common would have to provide substitute collateral in the form of a defeasance account consisting of government securities which would provide income sufficient to pay principal and interest to the Mortgage Lender under the Mortgage Loan as such becomes due through maturity. If interest rates declined prior to the establishment of the defeasance account, government securities of greater value would have to be included in the defeasance account; if interest rates increased, the required initial value of the government securities generally would be lower. Finally, if assumption of the Mortgage Loan is not possible, the ability of the Tenants in Common to prepay the Mortgage Loan likely will depend on the availability of financing to a prospective purchaser, and there can be no assurance that such financing will be available on favorable economic terms, if at all. All of these factors may adversely impact the ability of the Tenants in Common to sell the Property.

The Tenants in Common may be subject to additional risks upon the sale of the Property. Upon the sale of the Property, the Tenants in Common may have to take as partial payment, purchase money obligations in the form of a note and deed of trust, a note and mortgage or an agreement of sale or other form of security instrument. To that extent, the receipt of the sales proceeds by the Tenants in Common may be delayed until the maturity of such obligations. The Tenants in Common also would be subject to the risk that the purchaser may default in the payment or satisfaction of any such obligation to the Tenants in Common and to the necessity of cooperating in the process of enforcing their collective rights under the purchase money note and security instruments. In addition, the Tenants in Common may be required to report taxable gain on the disposition of the Property without receiving sales proceeds in the form of cash sufficient to satisfy any tax liabilities. Any sale of the Property must be consented to by all of the Tenants in Common (subject to the rights of 80% or more of the Tenants in Common to purchase the Interest of any dissenting Tenant in Common under the Call Agreement, as described in the section entitled "Summary of the Agreement to be Entered into by the Investors – Call Agreement").

Mortgage Loan covenants could adversely affect the value of Interests. Cabot Acquisition anticipates that the Mortgage Loan will contain customary negative covenants that, among other things, limit the ability of the Tenants in Common, without the prior consent of the Mortgage Lender, to further mortgage the Property, or to sell, prepay or refinance the Property. Additional restrictions may include the following.

- *Mortgage loan restrictions on transfer.* The Mortgage Lender may have the right to approve any transfer or encumbrance of an Interest or any membership interest in a Single Purpose Entity. The Mortgage Loan documents may impose further restrictions or transfers, including the payment of transfer fees. Any non-approved transfer or encumbrance, including an involuntary transfer or encumbrance, may result in a default under the terms of the Mortgage Loan.

- *Cash flow sweep.* The Mortgage Loan may contain a hyperamortization or cash flow sweep clause that requires all rents and profits to be applied to amounts due under the Mortgage Loan in the event of a default under the Mortgage Loan. If triggered, the Tenants in Common would not receive direct cash flow from the Property until such default is cured.

Availability of financing and market conditions. It is possible that the Mortgage Lender may not close the Mortgage Loan prior to the expiration of the rate lock agreement with the Mortgage Lender or at all, in which case Cabot Acquisition would have to secure an acquisition loan from another lender, or the Mortgage Loan may be obtained on terms substantially different from those described in this Memorandum. Market fluctuations in real estate financing also may affect the availability and cost of funds needed in the future for the Property. In addition, credit availability has been restricted in the past and may become restricted again in the future. Restrictions upon the availability of real estate financing or high interest rates for real estate loans could adversely affect the Property and the ability of the Tenants in Common to refinance or to sell the Property at a profit or at any price.

~~Risks Related to Mezzanine Lender SPE~~

Additional Cost of Capital. A Mezzanine Loan is a source of leverage. While leverage may increase the return on invested capital, it increases risk in the event that the cash receipts from the operation of the Property are insufficient to meet the principal and interest payments on the indebtedness. In addition, the cost of borrowing, in the form of interest charges and other expenses, might significantly reduce the profits or increase losses resulting from operation of the Property.

Adequacy of Funds for Operations or Capital Expenditures. There can be no assurance that the aggregate amount of reserves and any Mezzanine Loans will be sufficient to cover the costs of operating the Property. To the extent that expenses increase, unanticipated expenses arise, or additional capital expenditures are necessary, and accumulated reserves and the amount of Mezzanine Loans are insufficient to meet such expenses, the Tenants in Common would be required to make cash advances or obtain additional funds through borrowing from other sources, if available. Therefore, purchasers of Interests will need to have adequate liquid assets available to make such additional cash advances, or, if available, borrow from other sources.

No Obligation to Fund Mezzanine Loan. Even if formed, Mezzco will have no obligation to fund a Mezzanine Loan. It is anticipated that Mezzco will seek to obtain a loan that would enable it to lend the Tenants in Common a certain fixed amount on a Property, but will have no obligation to do so. There can be no assurance that Mezzco will be able to obtain any such loan on terms satisfactory to Mezzco and the Tenants in Common. In addition, because the decision to obtain a Mezzanine Loan is made by the Master Lessee (subject to the unanimous approval of the Tenants in Common), the Tenants in Common cannot require Mezzco to make a Mezzanine Loan. To the extent that the Master Lessee does not seek a Mezzanine Loan or to the extent that reserves and any Mezzanine Loan are insufficient to cover costs associated with the Property, the Tenants in Common will be required to make cash advances or obtain additional funds through borrowing from other sources, if available, to cover unexpected costs. Therefore, purchasers of Interests will need to have adequate liquid assets available to make such additional cash advances, or, if available, borrow from other sources.

Conditions to Mortgage Lender Consent to Mezzanine Loan. It is anticipated that the Mortgage Lender's consent to a Mezzanine Loan will be subject to a number of conditions. If these conditions are not satisfied, Mezzco will be unable to make a Mezzanine Loan. In addition, even if the conditions are satisfied, the Mortgage Lender may only approve a Mezzanine Loan from Mezzco. In the event that the Tenants in Common sought to obtain a Mezzanine Loan from any other party, a separate consent from the Mortgage Lender would need to be obtained.

Joint and Several Obligation. We expect that the Tenants in Common will be jointly and severally liable for any Mezzanine Loan, so that, upon an uncured event of default, Mezzco could exercise its remedies against one, several or all of the Tenants in Common. However, because each purchaser will hold his or her Interest through a Single Purpose Entity, the purchaser's liability under the Mezzanine Loan will generally be limited to the value of the purchaser's Interest.

Mezzco Not Controlled by Sponsor or an Affiliate. The Sponsor or its affiliate will own no more than 49% of the membership interests in Mezzco. As a result, the Sponsor or its affiliate will not have the ability to direct and control the actions Mezzco without the consent of the other members of Mezzco.

Mezzco Becomes Related to Sponsor. If you intend to acquire an Interest pursuant to a Section 1031 Exchange, you should be aware that the Interest must be treated as an interest in real property and not as an interest in a partnership in order for you to be eligible to use the Interest as part of a Section 1031 Exchange. If the Sponsor were to own more than 50% of the membership interests in Mezzco, the Sponsor would be a related person with respect to Mezzco, and the risk that the IRS could successfully characterize Interests in the Property as partnership interests would significantly increase. The opinion of Tax Counsel that the Interests should be treated as interests in real estate and not as interests in a partnership is based, in part, on the assumption that no lender with respect to any debt that encumbers the Property or with respect to any debt incurred to acquire an undivided interest in the Property is a related person to any co-owner, the sponsor, the manager, or any lessee of the Property within the meaning of Sections 267(b) and 707(b) of the Code. For this reason, the operating agreement of Mezzco will prohibit Sponsor or its affiliates from owning more than a 49% interest in the capital or profits of Mezzco at any time. In the event, however, that Sponsor or its affiliate were to acquire more than a 50% interest in Mezzco for any other reason, this could cause them to become a related person with respect to Mezzco. In addition, because the Sponsor and its affiliates are prohibited from owning more than a 49% interest in Mezzco, one or more third parties would have to be identified that would be able to provide 51% of Mezzco's capital. At the current time, the Sponsor has not identified any such third party. In the event suitable third parties cannot be found, Mezzco would be unable to make any Mezzanine Loan.

Risks Related to Ownership and Operation of the Property as Tenants in Common

Control over Property management. An affiliate of Cabot Acquisition will act as Master Lessee for the Property. The Master Lessee will have the right to oversee and supervise the management and operation of the Property on behalf of the Tenants in Common, including the timing and amount of cash flow payments to the Tenants in Common, if any. There can be no assurance that the Master Lessee will be able to retain its key employees or that its manager will be able to provide it with sufficient support to manage the Property effectively. If the Master Lessee is unable to manage the Property effectively due to a deterioration in the financial condition of its manager, the resignation, death or incapacity of any key employees or other factors, the value of the Property could be adversely affected. In addition, the Master Lessee will not have substantial assets, which may limit its ability to meet its financial obligations and to oversee the management of the Property. There can be no assurance that any established reserves will be sufficient to cover any losses incurred by excess cash flow demands upon the Master Lessee. You should not purchase Interests unless you are willing to entrust the Master Lessee and its affiliates with the management of the Property.

The Master Lease will have a term of 20 years and will not be renewable. If the Master Lease is terminated, the Master Lessee would no longer control the day-to-day operations of the Property and the Tenants in Common would need to appoint another Master Lessee. Under the terms of the Mortgage Loan, it is anticipated that the failure of the Tenants in Common to appoint a master lessee acceptable to the Mortgage Lender will be an event of default. The Tenants in Common may not be able to arrange for another acceptable master lessee, and any successor master lessee may not be successful in managing the Property.

Investors will be subject to risks relating to their ownership of the Property as tenants in common. Ownership of the Property by multiple Tenants in Common creates risks related to shared control of the Property, including the following:

- Inability to make independent decisions regarding the Property. The Tenants in Common Agreement requires unanimous approval of the Tenants in Common for certain actions, including a sale or refinancing of the Property or the lease of the Property but not any sub-lease of the Property while the Master Lease is in effect. Because major decisions relating to the Property require unanimous consent of the Tenants in Common, a single Tenant in Common would be able to block the intended actions of the other Tenants in Common. While the Call Agreement and the Tenants in Common Agreement provide limited opportunities to the Tenants in Common and Master Lessee to acquire the Interests from dissenting Tenants in Common, they do not eliminate all of the difficulties of making decisions regarding the Property by unanimous consent.

- Other Tenants in Common may not properly perform their obligations. Other Tenants in Common may breach their obligations under the agreements relating to the Property, which may cause a default under the Mortgage Loan, violate applicable securities laws or have other adverse consequences. In addition, if a Tenant in Common fails to make required additional cash advances, the resulting cash shortfall may cause Mortgage Loan defaults or otherwise adversely affect the Property. Although the Tenants in Common have the right to fund the additional cash advances of a nonpaying Tenant in Common under the Tenants in Common Agreement and the right to acquire the Interest of a nonpaying Tenant in Common under the Call Agreement, there is no assurance that the nonpaying Tenant in Common will meet its obligation to fund additional cash advances.

- Actions for partition of the Property. Each Tenant in Common will have the right to bring an action to partition the Property, subject to loan and other restrictions. If any Tenant in Common brings a permissible partition action, the subject court may order a sale of the Property, a division of the Property among the Tenants in Common or other relief; however, the Tenants in Common Agreement provides that the other Tenants in Common and then the Master Lessee may buy at fair market value the undivided Interest of the Tenant in Common bringing the partition action. Cabot Acquisition anticipates that the bringing of a partition action will constitute an event of default under the Mortgage Loan that would thereby subject the Tenant in Common bringing such action and its owner(s) to full recourse liability with respect to the Mortgage Loan, and, potentially, this liability would include the full amount due under the Mortgage Loan.

- Bankruptcy of a Tenant in Common. The bankruptcy or insolvency of a Tenant in Common may adversely affect the Interests of the other Tenants in Common. For example, a Tenant in Common or its trustee in a bankruptcy proceeding may try to reject and terminate the Tenants in Common

Agreement, the Master Lease or other agreements. In addition, a bankruptcy or insolvency will likely constitute an event of default under the Mortgage Loan, in which case the Mortgage Lender would have the right to accelerate the Mortgage Loan and to seek foreclosure and other remedies. It is unlikely that any claims against a bankrupt Tenant in Common would be paid in full, if at all. The Tenants in Common Agreement allows the other Tenants in Common and the Master Lessee to acquire their proportionate shares of the Interest of any bankrupt Tenant in Common. However, because the ability of the other Tenants in Common to enforce these rights against a Tenant in Common in bankruptcy is questionable, they may not be able to acquire such Interest.

- Failure to Provide Additional Funds. In the event that the Master Lease is terminated or the Tenants in Common otherwise become obligated to make any payments with respect to the ownership, operation, management and maintenance of the Property, as a result of the Master Lessee's default or otherwise, the Tenants in Common Agreement requires each Tenant in Common to pay its *pro rata* share of all funds needed to cover any such expenditures and to indemnify each other for any failure to pay their *pro rata* share, with interest thereon at a rate of 10%. Failure to make required cash payments may also result in a reimbursement obligation to the other Tenants in Common, withholding of disbursements and liens against the undivided interest of the nonpaying Tenant in Common. Any failure by a Tenant in Common to pay its *pro rata* share to cover excess capital expenditures and operating expenses may require the other Tenants in Common to fund more than their *pro rata* share of such expenditures to protect their investment and, in extreme cases, the Tenants in Common could lose their entire investment in the Property. The Call Agreement grants a purchase right with respect to the Interest of a Tenant in Common that fails to make its required payments under the Tenants in Common Agreement following notice of such delinquency and the expiration of a cure period.

The difficulties and risks relating to tenant-in-common ownership may negatively impact the value of the Interests so that the amount derived from a sale of an Interest in the Property would be less than the *pro rata* amount derived from a sale of the Property as a whole.

The Tenants in Common may not have any fiduciary duties to each other and the Master Lessee and Sponsor will not have any fiduciary duties to the Tenants in Common. It is unclear under applicable law whether and to what extent a Tenant in Common will owe a fiduciary duty to the other Tenants in Common. As a result, one or more Tenants in Common may take actions that would not be in the best interests of the other Tenants in Common. Neither the Master Lessee nor the Sponsor will have a fiduciary duty to the Tenants in Common (as would be applicable in the case of a limited liability company or partnership) and, therefore, the Sponsor and the Master Lessee may take actions that would not be in the best interests of one or more of the Tenants in Common.

Cabot Acquisition and the Master Lessee may be subject to conflicts of interest. Cabot Acquisition and its affiliates, including the Master Lessee, may have conflicting interests between their activities, roles and duties for other entities and their activities, roles and duties on behalf of the Tenants in Common. For instance, conflicts exist in allocating management time, services and functions among the Property and other entities. In addition, Cabot Acquisition and its affiliates do not necessarily have an incentive to put the needs of the Tenants in Common first because they will receive compensation from the Tenants in Common, including significant fees and other payments and reimbursements in connection with the acquisition, operation, refinancing and sale of the Property, regardless of whether the Property or an investment in the Interests is profitable. In addition, Cabot Acquisition, the Master Lessee and their affiliates may make decisions regarding the operation of the Property that are intended to increase current net revenues, such as deferring maintenance and repair costs or entering into short term or higher risk leases which may produce higher rents per square foot, at the expense of a more stable tenant base because the Master Lessee's compensation is based upon receipt of net rental revenues from the Property while its obligations under the Master Lease are fixed. Such decisions may be inconsistent with the long-term goals of the Tenants in Common as they may decrease the disposition value of the Property or increase the risk associated with the tenants or the Property. Accordingly, the interests of Cabot Acquisition and its affiliates may differ from those of the Tenants in Common. None of the arrangements or agreements described herein, including those relating to compensation, is the result of arm's-length negotiations.

Offering Risks

If you default on your Purchase Agreement obligations, Cabot Acquisition may retain your good faith deposit as liquidated damages. In the event that you default under the Purchase Agreement, Cabot Acquisition may retain the amount of your good faith deposit (together with interest thereon) as liquidated damages. As a result, you must carefully consider your ability to complete the purchase of an Interest and your financial ability to incur the losses associated with a failure to complete such purchase.

Your ability to transfer Interests will be restricted. The Mortgage Loan documents will likely contain significant restrictions on the transfer of Interests. In addition, any transfer would be subject to the restrictions on transfer contained in federal and state securities laws, and a transfer may result in adverse tax consequences. It is not anticipated that any market for Interests will develop, so the Tenants in Common may not be able to find a willing purchaser for their Interests. Consequently, you may not be able to liquidate your investment in the event of emergency or for any other reason, and Interests may not be readily accepted as collateral for a loan. You should consider the purchase of Interests only as a long-term investment.

The Offering and the Interests are not registered with any governmental authority. Cabot Acquisition will not register the Offering or the Interests with the Securities and Exchange Commission (the "Commission") or the securities agency of any state. Accordingly, the Offering and the Interests have not been reviewed or approved by the Commission or any other securities regulatory authority. In addition, the laws relating to the offering of tenant in common interests is unsettled. State agencies may claim that the Offering and the Interests are covered by regulations established for real estate programs and investments, including laws regulating the activities of real estate brokers or the offering of other real estate interests, such as condominiums, co-operatives and time-shares.

The Tenants in Common will not receive audited financial statements. Cabot Acquisition and the Master Lessee will not obtain audited financial statements in connection with the acquisition of the Property. In the absence of such audited financial statements, there will be no independent review or testing of the accounting practices and procedures used by the Seller. Additionally, Cabot Acquisition does not anticipate that the Tenants in Common will choose to obtain audited financial statements during their ownership of the Property. Accordingly, there can be no assurance that the financial statements for the Property during the time it is owned by the Tenants in Common will be substantially similar to statements completed on an audited basis.

The Property may not achieve projected results. The projections included in this Memorandum are based upon current estimates of income and expenses relating to the operation of the Property. If the assumptions with respect to demand for the Property do not prove correct, the actual results achieved from an investment in the Property may vary materially from those anticipated.

Information obtained from third parties may not be accurate or complete – Inability to rely on third party reports. Some of the data and information provided in this Memorandum has been obtained from independent industry sources and from research reports prepared for other purposes. The Sponsor, Cabot Acquisition, the Master Lessee and their affiliates have not independently verified the information obtained from these sources and cannot ensure the accuracy or completeness of the information. If one of these third parties fails to identify and disclose a risk in its report, the Tenants in Common could suffer a decrease in the value of their Interests. In addition, the Appraisal, Property Condition Report and Phase I were prepared for and addressed to the Sponsor. As such, you will not have the right to rely on the contents of such reports and, to the extent such reports contain inaccuracies, you will not have a direct cause of action against the experts who prepared such reports.

Additional information not contained in this Memorandum. This Memorandum does not contain all of the information that you should review prior to identifying the Property as a replacement property or investing in an Interest. Additional diligence documentation, including a copy of the Appraisal, rent roll, loan documents, title report, survey, market studies and reports and other important diligence documentation will be made available to you after we receive your completed Purchaser Questionnaire and good faith deposit. You should not identify the Property as a replacement property or invest in an Interest until you have reviewed all of such additional documents and information.

Inability to meet Minimum Offering Amount. Cabot Acquisition must complete the sale of the Minimum Offering Amount of Interests on or before June 30, 2007, which date may be extended to December 31, 2007, in the sole discretion of Cabot Acquisition. If Cabot Acquisition fails to complete the sale of the Minimum Offering Amount of Interests and is unable to obtain bridge financing upon acceptable terms, the Offering will be terminated and the good faith deposits received from Investors will be returned, without interest.

Cabot Acquisition may retain ownership of Interests. Cabot Acquisition may close this Offering with only 20% of the Interests having been sold to third parties. If this should occur, or if less than all of the Interests offered are sold, Cabot Acquisition will retain the unsold Interests at the close of the Offering. Cabot Acquisition may sell or transfer such Interests to its affiliates or other related persons. Such ownership may result in significant control by Cabot Acquisition and its affiliates over decisions related to the Property, including any decision to terminate the Master Lease or Consulting Agreement.

Tax Risks

General. There are substantial risks associated with the federal taxation of the purchase of an Interest, particularly where the purchase is intended to be part of a Section 1031 Exchange. Prospective investors should carefully read "Federal Income Tax Consequences" before making an investment in the Interests.

Your purchase of an Interest may not qualify as a Section 1031 Exchange. Because the taxation of an investment in the Interests depends on each investor's particular circumstances, you must consult with and rely on the advice of your own tax advisor with respect to the taxation of your investment. In addition, the opinions of Tax Counsel set forth in its opinion only represent Tax Counsel's best legal judgment as to the current status of the law. It does not address the tax treatment of any individual investor or the effect of state tax laws. In addition, the facts or assumptions in the opinion may prove incorrect, which would affect the conclusions stated in the opinion, and there is no guaranty that the IRS will agree with the opinion. **Accordingly, neither Cabot Acquisition nor Tax Counsel makes any representation or warranty of any kind with respect to the acceptance by the IRS of your treatment of any item on your tax return or of the tax consequences of a Section 1031 Exchange.**

Code Section 1031 permits the identification of multiple replacement properties. The Treasury Regulations promulgated under Code Section 1031 permit taxpayers to identify alternative and multiple replacement properties within 45 days after disposing of their relinquished property. Taxpayers are permitted to identify three properties without regard to the fair market value of the properties (the "three-property rule"), multiple properties with a total fair market value not in excess of 200% of the value of the relinquished property (the "200% rule"), or any number of properties if it acquires at least 95% of the identified properties (the "95% rule"). The Property consists of two adjacent buildings and the land on which they are situated. Cabot Acquisition believes after consulting with Tax Counsel that the Property should be treated as a single property for purposes of the three property rule. However, Tax Counsel will not render an opinion on this issue. Prospective investors should seek the advice of their tax advisors prior to subscribing for Interests or identifying the Property. In general, the identification requirement also can be satisfied if replacement property is actually acquired by the last day of the identification period. Because the identification rules of Code Section 1031 are strictly construed, a purchaser's exchange will not qualify for deferral of gain under Code Section 1031 if too many properties are identified or if the deadlines for identification are not met. Prospective purchasers should seek the advice of their tax advisors prior to subscribing for the Interests or identifying the Property.

Certain personal property that will be conveyed to the co-owners in connection with their acquisition of the Property may not qualify as like kind property for purposes of Code Section 1031. Certain items of personal property may be conveyed to the co-owners in connection with their acquisition of Interests in the Property. For purposes of the identification requirements, items that are not like-kind to the primary property being exchanged will be considered incidental to and not separate from the primary property being exchanged if, in standard commercial transactions, the incidental property is typically transferred together with the primary property, and the fair market value of the incidental property does not exceed 15% of the value of the primary property being exchanged. Therefore, in such a case, a separate identification of the incidental personal property is not necessary. However, because the purchase price for the Property has not been allocated between the real and personal property, there is no assurance that the value of the personal property being conveyed does not exceed 15% of the value of the remainder of the Property. Furthermore, regardless of whether a separate identification is necessary, the rules governing multiple property exchanges still apply and the receipt of the personal property may trigger tax on the value thereof. Because the amount of purchase price that may be allocable to personal or intangible property (if any) is unclear and may vary depending upon the circumstances, Tax Counsel will not render an opinion regarding the tax treatment of such amounts. Any portion of the purchase price of an Interest that may be allocable to personal or intangible property may be taxable as "boot" to the Investors. Therefore, each prospective investor must seek the advice of a qualified tax adviser as to the proper treatment of such items.

If you are unable to acquire an Interest in the Property for any reason, your ability to effect a Section 1031 Exchange may be impaired. Your acquisition of an Interest in a Section 1031 Exchange is subject to a number of uncertainties, including the following:

(i) Cabot Acquisition may not have acquired the Property at the time you identify an investment in an Interest as replacement property. The timing of the ultimate purchase of the Property may be uncertain and Cabot Acquisition may not be able to acquire the Property at all due to the failure of closing conditions, the inability to fund the purchase under the Mortgage Loan or for other reasons; and

(ii) Cabot Acquisition may choose not to accept your investment or your investment may be rejected for other reasons.

Code Section 1031 requires that closing on replacement property must occur before the earlier of 180 days after a taxpayer transferred its relinquished property or the due date of the taxpayer's tax return for the tax year in which the transfer of relinquished property occurred. Your acquisition of an Interest in a Section 1031 Exchange is subject to a number of uncertainties, including those described above. Because of these uncertainties, you should confer with your tax advisors to identify the maximum number of alternative replacement properties and to ensure compliance with the applicable reinvestment deadlines of Code Section 1031. You should not identify only the Property for your Section 1031 Exchange.

Funds from a Section 1031 Exchange may not be used for certain costs associated with the Property. Each purchaser of an Interest will be obligated to pay its *pro rata* share of closing costs, financing expenses and Mortgage Loan reserves. Each purchaser will also be required to pay $2,500 to cover costs of formation of its Single Purpose Entity. Under certain conditions, these costs and reserves may not constitute property that is like-kind to real property for purposes of Code Section 1031. You may elect to pay these costs with personal funds separate from your Section 1031 Exchange funds or to designate a portion of the Mortgage Loan proceeds to be used to pay such items. In some circumstances, however, paying such costs or funding reserves out of Mortgage Loan proceeds may still result in the recognition of gain, depending on the particular facts and circumstances surrounding a taxpayer's Section 1031 Exchange. You must consult your own tax advisor regarding these costs and reserves and their impact on any Section 1031 Exchange.

Tax consequences under state law. Some states adopt Code Section 1031 in whole, other states adopt it in part, and still other states impose their own requirements to qualify for tax-deferred treatment under state law. In addition, while many states follow federal tax law by treating single purpose limited liability companies as disregarded entities, other state laws may differ and could result in the imposition of income or other taxes on such entities and an obligation to file a state tax or information return. Therefore, each Investor must consult his own tax advisor as to the tax consequences of an Interest under state law.

Your tax liability may exceed your cash flow from an Interest. It is possible that your tax liability attributed to an Interest may exceed the cash flow you receive with respect to your Interest. This may occur, for example, where revenue from the Property is used for nondeductible operating or capital expenses of the Property or to satisfy hyper-amortization requirements, if any, pursuant to any loan encumbering the Property. If your tax liability exceeds your share of cash from the Property, the excess will be an out-of-pocket expense to you. The same tax consequences may result from the voluntary or involuntary sale or transfer of an Interest and may produce ordinary income or capital gain or loss.

The IRS may disallow various deductions. The availability, timing and amount of deductions or income will depend not only on general legal principles but also on various determinations by the IRS that are subject to potential controversy on factual and other grounds. These determinations could include, among others, whether the fees paid to the Master Lessee are deductible if the payments are deemed excessive or whether the allocation of tax basis to buildings, land, leaseholds and personal property is appropriate. Because the deductibility of expenses is a factual matter, Tax Counsel will not deliver any opinion concerning the timing or amount of deductions that may be available to purchasers of Interests.

The IRS could assess penalties and interest in connection with the disallowance of deductions. In connection with an audit that disallows any of your deductions, the IRS could assess significant penalties and interest on tax deficiencies. The Code provides for penalties relating to the accuracy of tax returns equal to 20% of the portion of the underpayment that is attributable to:

(i) negligence or disregard of rules or regulations;

(ii) any substantial understatement of income tax; or

(iii) any substantial valuation misstatement in which the value of any property (or the adjusted basis) is 200% or more of the amount determined to be the proper valuation or adjusted basis.

The accuracy related penalties generally double if the property's valuation is overstated by 400% or more.

In addition to these provisions, a 20% accuracy related penalty applies to listed or reportable transactions having a significant tax avoidance purpose. This penalty is increased to 30% if the transaction is not properly disclosed on the taxpayer's federal income tax return. Failure to disclose such a transaction can also prevent the applicable statute of limitations from tolling in certain circumstances and can subject the taxpayer to additional disclosure penalties ranging from $10,000 to $200,000, depending on the facts of the transaction. Similarly, any interest attributable to unpaid taxes associated with a non-disclosed reportable transaction may not be deductible for federal income tax purposes.

Losses and credits from the Property will be subject to IRS limitations. The IRS treats income from "passive activities" (i.e. trade or business activities in which the taxpayer does not materially participate) differently from income from interest, dividends, salary or other active business income, referred to as "active" or "portfolio income." Investing in the Interests is a rental activity, which may generate passive income. Taxpayers may generally use deductions, including interest deductions, from passive activities only to offset income from passive trade or business activities, and not to offset active income. Similarly, tax credits from passive activities generally are limited to the tax attributable to the income from passive activities.

A member of the Single Purpose Entity holding an Interest who is an individual or a closely-held corporation will be unable to deduct losses, if any, from the Property to the extent that such losses from the Property exceed the amount that the Tenant in Common has "at risk." The initial amount at risk will equal the sum of the cash paid for the Interest and the amount of recourse or qualified non-recourse financing used by the Tenant in Common to acquire the Interest. The amount at risk will be reduced by the amount of cash received by the Tenant in Common with respect to its investment in the Interest and any loss incurred with respect to the Interest and will be increased by all income recognized with respect to the Interest. You must consult your tax advisor as to the applicability of the at-risk rules to your investment.

Changes in federal income tax law. The discussion of federal income tax consequences contained in this Memorandum is based on law presently in effect and certain proposed U.S. Treasury Regulations as appropriate. Investors should be aware that new administrative, legislative or judicial action could significantly change the federal income tax consequences of an investment in an Interest. Any such change may or may not be retroactive with respect to transactions entered into or contemplated before the effective date of such change and could have a material adverse effect on an investment in an Interest.

Tax shelter and reportable transactions. A taxpayer's ability to claim privilege on any communication with a federally authorized tax preparer involving a tax shelter. In addition, it requires taxpayers and material advisors to comply with disclosure and list maintenance requirements for reportable transactions. Cabot Acquisition and Tax Counsel have concluded that the sale of an Interest should not constitute a reportable transaction. Accordingly, Cabot Acquisition and Tax Counsel do not intend to make any filings under these disclosure or list maintenance requirements. The IRS may not agree with this determination by Cabot Acquisition and Tax Counsel, in which case significant penalties could apply to Cabot Acquisition if such rules are ultimately determined to be applicable.

Alternative minimum tax. The alternative minimum tax applies to designated items of tax preference. The limitations on the deduction of passive losses also apply for purposes of computing alternative minimum taxable income. Prospective investors should consult with their own tax advisors concerning the applicability of the alternative minimum tax.

Risk of audit. The Sponsor's federal information returns (reporting the activities of Cabot Acquisition) may be audited by the IRS. An audit of the Sponsor's federal information return could lead to an audit of an investor's tax return. Such audit may result in the challenge and disallowance of some of the deductions claimed in such returns or adjustments to items other than those relating to the investor's Interests. No assurance or warranty of any kind can be made with respect to the deductibility of any such items in the event of either an audit or any litigation resulting from an audit.

The opinion of Tax Counsel is not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code. The opinion was written to support the promotion or marketing of the Offering and each prospective purchaser of an Interest should seek advice based on the prospective purchaser's particular circumstances from an independent tax advisor

ESTIMATED USE OF FUNDS

This table addresses our Estimated Use of Funds for purposes of informing potential investors concerning the compensation and fees that we will receive from this Offering and the expenses that we have incurred in this Offering. This table does not address the allocation for federal income tax purposes of the amount paid by a Tenant in Common for its Interest. Potential investors should discuss with their own tax advisors the tax treatment of the purchase of an Interest.

The following table sets forth the estimated use of proceeds from the Offering made pursuant to this Memorandum.

	Minimum Offering		Maximum Offering	
	Amount	Percentage of Gross Proceeds	Amount	Percentage of Gross Proceeds
Estimated Gross Offering Proceeds	**$2,350,000**	**100.00%**	**$11,750,000**	**100.00%**
Organization and Offering Expenses Allowance[1]	(58,750)	2.50%	(293,750)	2.50%
Sales Commissions [2]	(164,500)	7.00%	(822,500)	7.00%
Marketing and Due Diligence[3]	(47,000)	2.00%	(235,000)	2.00%
Proceeds Available for Investment	**$2,079,750**	**88.50%**	**$10,398,750**	**88.50%**
Down Payment for Purchase of Property [4]	(1,706,500)	72.62%	(8,532,500)	72.62%
Mortgage Loan Fees and Costs [5]	(94,000)	4.00%	(470,000)	4.00%
Acquisition Fee [6]	(150,000)	6.38%	(750,000)	6.38%
Closing and Carrying Costs [7]	(129,250)	5.50%	(646,250)	5.50%
Use of Proceeds Available for Investment	**$2,079,750**	**88.50%**	**$10,398,750**	**88.50%**
Total Offering Expenses and Commissions [8]	270,250	11.50%	1,351,250	11.50%
Estimated Gross Offering Proceeds	**$2,350,000**	**100.00%**	**$11,750,000**	**100.00%**

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(1) Cabot Acquisition will be entitled to reimbursement for expenses incurred in connection with the Offering, which includes the costs of organizing Cabot Acquisition, estimated legal and accounting fees and printing costs incurred in connection with printing and distributing this Memorandum ("Organization and Offering Expenses"). Cabot Acquisition has agreed to a fixed fee for the Organization and Offering Expenses in the amount shown herein. Cabot Acquisition will be responsible for any such Organization and Offering Expenses in excess of the sum shown above and will be entitled to retain any unused funds on a non-accountable basis. See "Compensation and Fees." If purchasers acquire only the Minimum Offering Amount, Cabot Acquisition will fund the Organization and Offering Expenses and be reimbursed from the purchase price of Interests sold in subsequent closings.

(2) The Selling Group members will make offers and sales of Interests on a "best efforts" basis. Sales Commissions will be paid to Selling Group members in an amount not to exceed 7.0% of the Gross Offering Proceeds. See "Plan of Distribution."

(3) The Managing Broker-Dealer will receive a non-accountable marketing and due diligence allowance in the amount of 2.0% of the Gross Offering Proceeds, of which it may reallow up to 1.0 % to other members of the Selling Group on an accountable basis. See "Plan of Distribution."

(4) Cabot Acquisition will acquire the Property for total consideration of $23,750,000 exclusive of closing costs, which are included in the Closing and Carrying Costs. See "Acquisition Terms and Financing." In addition, $237,750 will be paid to an unaffiliated third-party broker at closing as a result of the sale of the Property.

(5) Cabot Acquisition will receive a Mortgage Loan fee in the amount of $135,000 (assuming the Maximum Offering Amount is sold), which equals 0.75% of the principal amount of the Mortgage Loan. Cabot Acquisition estimates additional costs related to the Mortgage Loan of $335,000, including legal counsel for the Mortgage Lender. Cabot Acquisition has agreed to receive a fixed fee as payment of the Mortgage Loan fee and to cover related costs in the amount shown herein. Cabot Acquisition will be responsible for paying any related costs that exceed $335,000 and will be entitled to retain any unused funds on a non-accountable basis. See "Compensation and Fees." If Cabot Acquisition sells only the Minimum Offering Amount of Interests, it may advance a portion of the related costs and be reimbursed from the sale of additional Interests at a later date.

(6) Cabot Acquisition will receive an acquisition fee of $750,000, which equals 6.38% of the Gross Offering Proceeds (assuming the Maximum Offering Amount is sold) or 3.16% of the purchase price of the Property, for its services in the identification, negotiation and acquisition of the Property. The amount of the acquisition fee that Cabot Acquisition will receive will increase or decrease to the extent that the actual amounts of other fees that are budgeted for in the purchase price for the Interests and the $2,500 fee to establish your Single Purpose Entity are less than or greater than the budgeted amounts. You will be responsible for the fees associated with your own legal, tax and other advisors and ongoing costs of maintaining your tenant-in-common entity which may include the appointment of an independent director, if required by the Mortgage Lender.

(7) Closing costs include, if applicable, transfer taxes, title charges, escrow fees, prorations, document preparation fees, legal fees, third party costs, recording fees and entity formation costs, in addition to related costs. Carrying costs include estimated bridge financing costs, including any fees that may be payable to an unaffiliated third party lender that provides bridge financing for the acquisition of the Property. See "Acquisition Terms and Financing." Cabot Acquisition has agreed to a fixed amount for the closing costs in the amount shown herein. In addition, Cabot Acquisition will be responsible for any such closing costs in excess of the sum shown above and will be entitled to retain any unused funds on a non-accountable basis. See "Compensation and Fees."

(8) The aggregate of Organization and Offering Expenses, Sales Commissions, and Marketing and Due Diligence Expenses.

For a description of the fees the Sponsor and its affiliated entities will receive in connection with the Property, see "Compensation and Fees."

THE PROPERTY

The Property is comprised of two Class A, five-story office buildings totaling 218,223 net rentable square feet situated on 14.57 acres of land. The buildings were constructed in 1986 (Turfway I) and 1988 (Turfway II) The address of the Property is 7300 and 7310 Turfway Road in Florence, Kentucky 41042. The Property is 84.2% leased to 26 tenants with a combination of single-tenant and multi-tenant floor configurations.

The information in this section, except as stated otherwise in the text, is summarized from the following documents prepared for the Sponsor: (i) the Appraisal; (ii) the Phase I; and (iii) the Property Condition Report. At your request, Cabot Acquisition will provide you with a copy of the Appraisal, the Phase I and the Property Condition Report and you should review each in its entirety before purchasing an Interest. However, because the reports were prepared for the Sponsor, no party other than the Mortgage Lender will be entitled to rely on the contents of such reports.

Building Features & Specifications

Turfway Ridge

General Specifications

Property Address:	7300 and 7310 Turfway Road Florence, Boone County, Kentucky, 41042
Market Location:	The Property is located in the suburban Cincinnati real estate market, specifically in the Northern Kentucky submarket
Year Completed:	Turfway I was constructed in 1986 and Turfway II was constructed in 1988
Gross Building Area:	The subject is comprised of two five-story suburban office buildings totaling 234,380 square feet
Rentable Building Area:	The rentable building area equals 218,223-square feet (Turfway I - 108,975 square feet and Turfway II – 109,248 square feet)
Site Area:	Approximately 14.57 acres
Parking:	1,090 parking spaces (5.0 spaces per 1,000 square feet)

Construction

Foundation:	Cast-in-place, reinforced, concrete, foundations and footings supporting the exterior walls and load-bearing interior walls and columns. Each substructure includes a slab-on-grade.
Structure:	Cast-in-place, concrete, columns and beams and concrete floor decks and roof slabs.
Ceilings	The ceilings are a combination textured and painted sheetrock and suspended acoustical tile.
Façade:	Precast concrete panels and glass curtain walls, with alternating levels of reflective glass. The front facades are convexly curved and are highlighted by full-glass entrances that open to a two-story lobby. The exterior doors consist of commercial-grade, aluminum and glass doors accessing the lobbies at each building. Service and access doors are hollow metal. The ribbon windows have insulating, reflective glass and are aluminum-framed, fixed units.
Roof:	Low-slope, ballasted, single-ply, EPDM membrane roofs. The roofs are approximately 20 and 18 years old and pitch to internal drains and leaders.

Mechanical Systems

Elevators:	Each building at the Property has two, 3,500 lb capacity, overhead-traction, passenger elevators and one, 4,000 lb capacity, hydraulic, freight elevator. The passenger elevator cabs consist of marble floor covering and wood and mirrored wall panels. The freight elevators cabs consist of plastic laminate wall finishes and rubber floor coverings.
Electrical:	The incoming services are 2,500-Amp, three-phase, four-wire, 277/480 volt mains feeding the main distribution panels. The MDPs are located in an electric room located on the first floor of each building. Breaker boxes for each tenant space are fed off the main service. A 2-kVA, diesel-fired, emergency generator with a self-contained tank serves one tenant in Turfway II. The generator is owned by the tenant. Turfway I also contains an energy management system, installed in 2002, which controls the lighting and HVAC systems.
Plumbing:	Supply piping is copper and the waste lines are PVC and cast iron. The plumbing fixtures are a combination of vitreous china and composite material with chrome fittings. Eighty-gallon, electric, water heaters with circulating pumps in each building penthouse supply hot water.
HVAC:	The buildings are each heated and cooled by one, 350-ton, central, chilled water system with a water-cooled chiller, cooling towers, plate and frame heat exchangers and circulating pumps. The plate and frame heat exchangers were installed in 2003. Air handling units are located on each floor and pneumatic variable air volume (VAV) boxes provide zone control in the tenant areas. The chiller motors in both buildings were rebuilt in 2004 and the Turfway I cooling tower was built in 2002. Turfway I's chiller uses R-123 refrigerant and Turfway II's chiller uses R-11.
Fire/Life Safety:	Multiple-zone fire alarm control panel, an auto-dialer, tying the system to a 24-hour monitoring service, hardwired smoke and heat detectors, pull stations, illuminated exit lights with battery back-up, emergency battery lighting units, horn/light annunciators, fire extinguishers and a full-coverage, wet-pipe, sprinkler system with check valves and tamper and flow switches. A fire pump augments the sprinkler system in Turfway I. Standpipes with hose connections are located in the stair towers. Fire department siamese connections are located adjacent to the buildings. Fire hydrants are located throughout the buildings and along the adjacent municipal right-of-way.

Insurance Coverage

The Master Lessee will obtain and keep in force adequate insurance against physical damage (such as fire with extended coverage endorsement, flooding, boiler and machinery) for the full replacement value of the Property and against liability for loss, damage or injury to property or persons which might arise out of the occupancy, management, operation or maintenance of the Property, as contemplated by the operating plan and to the extent available at commercially reasonable rates. In addition to standard property and liability insurance, the Master Lessee may insure the Property against losses that may result from terrorist activity, hurricanes, flooding and earthquakes and from future adverse environmental conditions affecting the Property. To the extent that the Master Lessee does not or is unable to insure the Property for such adverse conditions, the Tenants in Common remain exposed to liability for such. See "Risk Factors – Risks Related to an Investment in Real Estate – Insurance may not cover all losses relating to the Property."

Property Condition Report

According to the November 20, 2006 Property Condition Report prepared by EBI Consulting, the Property is in good condition. The remaining useful life of the Property is estimated to be not less than 35 years, based on their current condition and maintenance status. The report estimates that there are no required immediate or short term repairs.

The Property Condition Report recommends establishing the following replacement reserves for the seven year holding period:

- $76,518 for patching, crack sealing, sealing and striping of pavement and parking area;
- $130,934 for EPDM roof replacement;
- $1,500 for three van-accessible parking spaces in order to comply with the ADA;
- $152,756 for common area refurbishment, including painting the walls or trim, vinyl wall covering replacement and carpet replacement;
- $56,000 for HVAC unit replacement/repairs and cooling tower recoring; and
- $50,000 for replacement of the fire alarm panels.

At your request, Cabot Acquisition will provide you with a copy of the Property Condition Report.

Environmental Site Assessment

The Company has received a Phase I Environmental Site Assessment report ("Phase I") for the Property, dated November 12, 2006 prepared by EBI Consulting. The Phase I identified no current "Recognized Environmental Conditions" at the Property. However, the Phase I identified a "Historical Recognized Environmental Condition". Toluene contamination was discovered at the Property in 1990 related to a spill caused from the cleaning of paving equipment following the paving of the parking lot area. On August 22, 1990, soil was excavated from the site and placed in sealed roll-off dumpsters and removed from the Property. The Phase I reports that Foppe Thelen Group concluded that removal of the toluene contaminated soil from the Property is complete and therefore, the Phase I states that no further action is recommended. The Phase I may not reveal all environmental liabilities at or potentially affecting the Property. At your request, Cabot Acquisition will provide you with a copy of the Phase I.

Zoning

According to the Property Condition Report, the Property appears to be located within a O-2, Office District and appears to be a conforming use.

Summary of Title Commitment & Survey

Cabot Acquisition has obtained an ALTA survey of the Property from a surveyor licensed in the State of Kentucky and commitment for title insurance to become effective upon closing from Lawyers Title Insurance Corporation, a division of LandAmerica, for the full insurable value of the Property in connection with the purchase of the Property. Such commitment and survey only contain such exceptions to title for easements and covenants of record, existing leaseholds, taxes not yet due and payable, encroachments and other title and survey matters as are customarily accepted by a prudent purchaser of commercial real estate. Cabot Acquisition believes that the title exceptions at the Property are typical for a property of its type and do not adversely affect the operation of the Property. At your request, Cabot Acquisition will provide you with a copy of any title and survey materials in its possession.

Description of Tenant Leases

The Property is approximately 84.2% leased to 26 tenants. Six tenants lease approximately 116,001 square feet, or 53.2% of the rentable space. Four tenants each occupy between 20,000 square feet and 32,000 square feet, two tenants each occupy between 10,000 square feet and 20,000 square feet, and the remaining tenants occupy less than 10,000 square feet. Xanodyne Pharmacal, which leases 23,565 square feet under a lease expiring October 2007, has vacated its space, but remains current in its rent. All but one tenant lease are full-service gross leases with a base year stop. This generally means that the tenants reimburse the landlord for their pro rata share of increases in operating expenses and real estate taxes above the operating expenses in the first year of the tenant's lease. The building currently has eight vacant spaces.

The leases that the current landlord has entered into with the tenants at the Property are summarized in the table below. For information regarding how the rents under these leases compare to other rents in the Northern Kentucky submarket, see "—Office Market Overview-Comparable Office Rentals".

Summary of Tenant Leases

Tenant	Current Term	Rentable Square Feet	Renewal and Other Options/Rights	Base Rent (per square foot / per annum)
Presidion LLC	09/01/2005 – 10/31/2010	3,791	None	09/01/05-09/30/06: $16.50 10/01/06-09/30/07: $17.00 10/01/07-09/30/08: $17.50 10/01/08-09/30/09: $18.03 10/01/09-07/31/10: $18.57 08/01/10-10/31/10: $0.0
Kelly Services Inc	05/01/2004 – 04/30/2009	1,819	None	05/01/04-04/30/05: $17.50 05/01/05-04/30/06: $18.00 05/01/06-04/30/07: $18.50 05/01/07-04/30/08: $19.00 05/01/08-04/30/09: $19.50
MPBH Asset Management	11/01/2006 – 10/31/2008	1,014	None	11/01/06-10/31/08: $18.00
Premiere Mortgage Funding, Inc.	04/01/2006 – 06/30/2011	1,836	None	04/01/06-06/30/06: $0.0 07/01/06-03/31/07: $18.00 04/01/07-03/31/08: $18.50 04/01/08-03/31/09: $19.00 04/01/09-03/31/10: $19.50 04/01/10-03/31/11: $20.00 04/01/11-06/30/11: $20.50
Toyota Boshuku	07/01/2006 – 06/30/2009	1,997	None	07/01/06-10/31/06: $0.0 11/01/06-06/30/07: $17.50 07/01/07-06/30/08: $18.00 07/01/08-06/30/09: $18.50
Premier Recovery	11/01/2006 – 01/31/2010	10,387	None	11/01/06-10/31/07: $17.75 11/01/07-10/31/08: $18.00 11/01/08-10/31/09: $18.25
Xanodyne Pharmacal, Inc.	10/15/2002 – 10/31/2007	23,565	Tenant has vacated the space and is current on rent	10/15/02-09/30/03: $17.34 10/01/03-09/30/04: $17.77 10/01/04-09/30/05: $18.26 10/01/05-09/30/06: $18.81 10/01/06-10/31/03: $19.37
Post, Buckley, Schuh, and Jernigan, Inc	03/17/2003 – 03/31/2008	4,598	One three-year renewal option at $20.00 psf with 3% annual bumps with 180 days written notice	03/17/03-07/31/03: $0.0 08/01/03-03/31/04: $17.50 04/01/04-03/31/05: $18.00 04/01/05-03/31/06: $18.50 04/01/06-03/31/07: $19.00 04/01/07-03/31/08: $19.50

Tenant	Current Term	Rentable Square Feet	Renewal and Other Options/Rights	Base Rent (per square foot / per annum)
Seed Strategy	01/01/2007 – 01/31/2010	8,123	One option to extend for one three-year period by providing written notice on or before 07/31/2009 Renewal Terms: 02/01/10-01/31/11: $19.80 02/01/11-01/31/12: $20.30 02/01/12-01/31/13: $20.81	01/01/07-12/31/07: $18.00 01/01/08-12/31/08: $18.45 01/01/08-12/31/09: $18.91
UFJ Bank (Tokai Bank Limited)	01/01/2006 – 03/31/2007	1,918	None	01/01/06-03/31/07: $18.50
DFDS Transport, Inc	03/01/2005 – 08/31/2010	3,200	One five- year renewal option to at 95% of Fair Market Value by providing 120 days written notice	03/01/05-07/31/05: $0.0 08/01/05-02/28/06: $17.50 03/01/06-02/28/07: $17.89 03/01/07-02/28/08: $18.29 03/01/08-02/28/09: $18.70 03/01/09-02/28/10: $19.12 03/01/10-08/31/10: $19.55
Toyota Tsusho	09/01/2003 – 08/31/2007	5,851	None	09/01/03-08/31/04: $18.00 09/01/04-08/31/05: $18.25 09/01/05-08/31/06: $18.50 09/01/06-08/31/07: $18.75
Central Leasing, Inc	01/01/2005 – 06/30/2008	2,106	None	01/01/05-12/31/05: $18.70 01/01/06-12/31/06: $19.17 01/01/07-12/31/07: $19.65 01/01/08-06/30/08: $20.14
AIOI Insurance Company	06/01/2005 – 05/31/2008	855	Expansion out for 1,293 sf For a term of 08/01/2006 – 05/31/2011 at a starting rate of $18.50 psf increasing $0.50 each year	06/01/05-05/31/06: $19.00 06/01/06-05/31/07: $19.57 06/01/07-05/31/08: $20.16
Fujitsu Consulting, Inc	12/01/2004 – 11/31/2007	1,307	One three-year renewal option at Fair Market Value with 180 days written notice	12/01/04-11/31/07: $18.50

Tenant	Current Term	Rentable Square Feet	Renewal and Other Options/Rights	Base Rent (per square foot / per annum)
Shikoku Kakoki Company Limited	08/01/2005 – 07/31/2008	847	None	08/01/05-07/31/06: $17.80 08/01/06-07/31/07: $18.25 08/01/07-07/31/08: $18.70
Mutual of America	09/01/2000 – 08/31/2008	2,949	A lease expansion letter of intent is out for signature for a 10 year lease renewal for 3,862 sf with a rental rate of $22.25 psf for the first 5 years and $24.10 psf for the remaining 5 years One five-year renewal option at Fair Market Value with 180 days written notice	09/01/00-08/31/01: $19.00 09/01/01-08/31/02: $19.76 09/01/02-08/31/03: $20.55 09/01/03-08/31/04: $21.37 09/01/04-08/31/05: $22.23 09/01/05-08/31/06: $23.12 09/01/06-08/31/07: $24.04 09/01/07-08/31/08: $25.00
Sumitomo Electric Wiring Systems, Inc	05/01/2006 – 06/30/2011	1,429	None	05/01/06-06/30/06: $0.0 07/01/06-04/30/07: $17.90 05/01/07-04/30/09: $17.90 05/01/09-06/30/11: $18.40
Intraglobe, Inc	04/01/2005 – 03/31/2008	1,219	None	04/01/05-03/31/06: $17.50 04/01/06-03/31/07: $18.03 04/01/07-03/31/08: $18.57
Aisin World Corp of America	01/01/2005 – 07/31/2008	2,448	None	01/01/05-12/31/05: $18.25 01/01/06-12/31/06: $18.80 01/01/07-12/31/07: $19.36 01/01/08-07/31/08: $19.94
Commonwealth of Kentucky (Department of Revenue)	07/01/2004 – 06/30/2007	7,081	Proposal for 3 year extension at the same rate has been sent to Commonwealth of Kentucky at the State's request The tenant may terminate at any time with 30 days notice (typical in state leases)	07/01/04-06/30/07: $16.37
Central Bank	02/01/2006 – 02/31/2016	26,458	Four five-year renewal options at Fair Market Value with 120 days written notice period.	02/01/06-05/31/06: $0.00 06/01/06-01/31/08: $11.41 02/01/08-02/31/16: $18.75

Tenant	Current Term	Rentable Square Feet	Renewal and Other Options/Rights	Base Rent (per square foot / per annum)
DBA Direct, Inc	10/01/2006 – 06/30/2009	11,168	None	10/01/06-06/30/07: $17.50 07/01/07-06/30/08: $18.00 07/01/08-06/30/09: $18.50
PediaMed Pharmaceuticals	10/14/2002 – 10/31/2007	12,771	Two five-year renewal options at 95% of Fair Market Value with 3% annual increases and 6 month renewal notice Tenant has sub-leased additional space from ZF Lemdorfer (10,084 sf) through 10/31/08	10/14/02-10/31/04: $17.00 11/01/04-10/31/05: $18.00 11/01/05-10/31/06: $19.00 11/01/06-10/31/07: $19.50
ZF Lemdorfer	11/01/2003 – 10/31/2008	10,084	Tenant has vacated the space. Sub-leased to PediaMed Pharmaceuticals.	11/01/03-04/30/04: $0.0 05/01/04-10/31/04: $16.60 11/01/04-10/31/05: $16.90 11/01/05-10/31/06: $17.21 11/01/06-10/31/07: $17.53 11/01/07-10/31/08: $17.86
Square D	09/03/2006 – 03/31/20011	31,956	None	09/03/06-11/30/06: $17.75 12/01/06-11/30/07: $18.28 12/01/07-11/30/08: $18.83 12/01/08-11/30/09: $19.39 12/01/09-11/30/10: $19.98 12/01/10-11/30/11: $20.57

Description of Major Tenants

All tenant descriptions have been obtained from tenant websites unless otherwise stated. This information has not been independently verified.

Square D Company

Square D Company, the largest tenant at the Property, is a global brand of Schneider Electric for NEMA type electrical distribution and industrial control products, systems and services. Square D products are found in residential, commercial and industrial construction, in a wide range of manufacturing and processing facilities, and in or on the products of other manufacturers. Square D Company, formerly known as the Detroit Fuse and Manufacturing Company, has been in operation for over 100 years. Its office at the Property serves as the headquarters for its customer service and product information departments.

Square D Company has been a tenant of the Property since 1996 and currently occupies 31,956 square feet at the Property under a lease that expires in March 2011. Schneider Electric has an "A+" rating from Standard & Poor's.

Central Bank

Central Bank, the second largest tenant at the Property, is Kentucky's largest privately held bank, with more than $1.6 billion in assets as of year end 2005. Central Bancshares, the holding company of Central Bank operates 22 full service banking offices, ATMs, a mortgage office, an investment brokerage subsidiary and an insurance subsidiary in Kentucky. Central Bank provides such services as personal banking, mortgage, commercial and real estate loans, and wealth management.

Central Bank currently occupies 26,458 square feet at the Property under a lease that expires in February 2016.

Xanodyne Pharmacal, Inc.

Xanodyne Pharmacal, Inc., is a specialty pharmaceutical firm that focuses its research and products in oncology, pain management, and hematology, as well as in the area of therapeutic women's health. The lease with Xanodyne expires in October 2007 and will not be renewed by the tenant. Xanodyne has consolidated its operations at the Property into another of Xanodyne's properties and has already vacated the 23,565 square feet of space it occupied on a full floor in Turfway I. However, the tenant continues to pay rent through the end of its term in October 2007. The current landlord is currently actively marketing this space, along with the rights to signage on the Turfway I building.

PediaMed Pharmaceuticals

Founded in 1999, PediaMed Pharmaceuticals began as a five person pharmaceutical sales team direct selling KLOUT, an over-the-counter lice treatment. Over the next three years PediaMed grew in sales product and work force, relocating their offices to the Property in 2002. According to the Cincinnati Business Courier, PediaMed is the 15th fastest growing company in Greater Cincinnati. Its business has expanded into the area of drug research as well as gaining contracts and co-promotional agreements to sell treatments for a variety of childhood aliments from acne to bacterial conjunctivitis.

PediaMed, the fourth largest tenant at the Property, currently occupies 12,771 square feet at the Property under a lease that expires in October 2007. In addition, PediaMed is currently sub-leasing an additional 10,084 of space at the Property from another tenant, ZF Lemforder, under a sublease agreement that expires in October 2008.

LOCATION OVERVIEW

Greater Cincinnati

The Property is located in Greater Cincinnati, a 13-county region that encompasses northern Kentucky, southern Ohio, and eastern Indiana, with a population of over 2.2 million people.

Greater Cincinnati has a diverse economy and its major employers are in the professional business services, transportation, trade and manufacturing remain industries. Five Fortune 500 companies are headquartered in the Greater Cincinnati, including Kroger Company (14,000 employees); Procter and Gamble (12,000 employees); Federated Department Stores, Inc.; Fifth Third Bankcorp (8,964 employees); and American Financial Group. In addition, approximately 370 of the Fortune 500 companies have operations in Greater Cincinnati. The area has also attracted foreign investment and serves as U.S. headquarters for several foreign companies including Toyota and Mubea. Cincinnati's unemployment rate of 5.2% is above the national average of 4.7%. Approximately 35,000 jobs were added in Greater Cincinnati area over the past five years, and Economy.com projects another 18,000 jobs will be added by the end of 2008.

Boone County

The Property is located in Boone County, Kentucky, which is experiencing population and job growth, with population increasing from 85,991 in 2000 to 106,272 in 2005 (4.2% annual growth). From 1990 to 2005, the population in Boone County grew by 80%. The United States census predicts that Boone County's population will continue to grow by 17% over the next five years, outpacing the national average.

Boone County's combination of access, location and demographics has attracted major corporations to the area. FedEx recently completed a 335,000 square foot distribution hub in Boone County. Mubea, a leading auto parts manufacturer has investing more than $100 million to upgrade its two area facilities; and Toyota, in addition to having its U.S. manufacturing headquarters in the area, recently moved its center for quality control into a brand new 98,000 square foot facility in Erlanger, Kentucky. Along with the new additions to northern Kentucky, large national and global corporations continue to house their regional operations in this area. Major northern Kentucky employers include Comair and Delta, with a combined 8,400 employees, Fidelity Investments (3,530 employees), CitiGroup (2,500 employees) and Schwan's Foods (1,050 employees). Each of these employers is based within a few miles of Turfway Ridge Office Park.

In particular, the local presence of Toyota's U.S. manufacturing headquarters, which is located approximately 1.5 miles from the Property, has been very beneficial to the region. Toyota's presence has encouraged local employment growth through ancillary business relationships, as seen at the Property with tenants such as The Tokai Bank, Toyota Tshusho America, Fujitsu Consulting, Shikoku Kakoki, Toyota Boshuka Shikoku Kakoki Company Limited, Sumitomo Electric Wiring Systems, and Aisin World Corp of America.

. Toyota has publicly announced that it aims to produce in North America two-thirds of the overall number of vehicles it sells in North America. In 2006, Toyota's North American production ratio of 54% was lower than its target, due to rising imports caused by increased sales in the U.S. for Toyota automobiles. However, Toyota is expected to increase its US production of automobiles through expansion and is currently selecting a site for an eighth North American vehicle assembly plant. These additional manufacturing sites are expected to be managed from Toyota's headquarters in Boone County. It is expected that Toyota's expansion plans will have a positive impact in the Northern Kentucky Submarket.

Local Area

The Property is located in a primary commercial corridor in northern Kentucky eight miles southwest of the Cincinnati Central Business District (Cincinnati CBD). The Property is accessible to executive housing, commercial and residential trade areas, hotel, retail, and restaurant facilities. The Property is located three miles from the Cincinnati/North Kentucky International Airport. The Property has immediate access to Interstate 71/75 (I-71 is northeast/southwest through Ohio and Kentucky and I-75 is north/south through Michigan, Ohio, Kentucky, and Tennessee). Access to the Property is provided by an entrance on the north side of Turfway Road and by an entrance on the west side of Curtis Avenue. Turfway Road is currently being expanded to a five lane road (two lanes in either direction and a turning lane), which will greatly enhance access to the property.

The Property has access to amenities that are normally found at buildings located in central business districts, including shopping. Several shopping centers are located near the Property, including the 856,000 square foot Florence Mall, an enclosed regional mall owned by General Growth and anchored by Macy's, Sears, and JC Penny's. Florence Mall is located one mile from the Property. Other nearby retail developments include Crestview Hills Town Center and The Buttermilk Town Center.

OFFICE MARKET OVERVIEW

Greater Cincinnati Market and Northern Kentucky Submarket

The information provided in this section has been taken from statistics that were compiled in the Appraisal and other third party reports including CB Richard Ellis from 4th Quarter 2006. Although Cabot Acquisition believes that the information cited in these reports is reliable, it has not independently verified the information. You should review the Appraisal and the market reports in their entirety prior to investing in the Interests.

The office market in Greater Cincinnati is comprised of approximately 34,674,479 square feet of space and includes offices of all classes and all sizes, and both multi-tenant and single-tenant buildings, including owner-occupied buildings. Twelve office buildings are currently under construction in this market and will add over 1,035,111 square feet of space by 2007. This market is divided into nine submarkets.

The Property is located in the Northern Kentucky submarket. This submarket is estimated to contain 3,785,935 square feet of office and business flex space.

Vacancy Rates

The overall vacancy rate for the Greater Cincinnati office market was 18.2% as of the 4th Quarter of 2006.

The Northern Kentucky submarket has experienced declining occupancies over the past several years after the strong occupancies of the 1990's. This decline was due to the combination of new product coming on-line simultaneously with the slowdown in growth due to the national recession. The Northern Kentucky submarket has a vacancy rate of 27.9%.

Asking Rental Rates

The average asking lease rate per square foot in the Greater Cincinnati office market for all office classes was $18.26 per square foot as of the 4th Quarter of 2006. The Northern Kentucky submarket average asking office lease rate of $17.82 per square foot was at a slight discount to the overall Greater Cincinnati market.

Absorption Levels

The net direct absorption level was positive 261,724 square feet for the Greater Cincinnati office market, and positive 49,774 square feet for the Northern Kentucky submarket year in 4th Quarter of 2006. The Greater Cincinnati office market has strengthened over this period with positive 189,598 square feet absorbed in 2006.

Northern Kentucky Class A Submarket

The Northern Kentucky submarket does not adequately describe the office market environment as it relates to the Property. As one of the premier Class A multi-story office buildings in Northern Kentucky, the Property competes with only Class A multi-story office product. One-story flex space product comprises a significant portion of the Northern Kentucky office market. These buildings are generally one-story offices for the major warehouse facilities and distribution centers nearby. They generally have large floor plates and are not conducive to multi-tenant occupancy. Although these buildings are counted in the Class A market, their build outs and tenant spaces are rarely as well finished.

The Northern Kentucky market also includes the Riverfront office market just south of Cincinnati on the Kentucky side of the Ohio River. This market is essentially an extension of the downtown office market and does not compete for the same tenants as suburban office buildings. For these reasons, one must look at a more narrow Property comparison to understand the trends relevant to the Property.

The suburban Class A office category, which includes the Property, consists of approximately 22 mid-rise buildings with Class A quality build-outs and floor plates that suit small, medium and full floor tenants. These properties total 1,181,000 square feet and contain an average 54,000 square feet of rentable building area. The general vacancy of this subcategory of buildings is 19.4%.

Comparable Office Rentals

Comparable office rentals are chosen based on size, configuration, tenant class and proximity to the Property. The following table sets forth rental rate information with respect to the Property, as well as five Class A office buildings that are in good condition and are located in the Northern Kentucky submarket. The office buildings below cater to tenants that are professional service firms, including those engaged in finance, insurance, real estate and banking.

Name and Address	**Year Built**	**Stories/ Class**	**Building Size (rentable square feet)**	**Asking Base Rent (per square foot)**	**Lease Type**	**Occupancy**
The Property	1986, 1988	5/A	218,223	$18.50 ($12.64 Net)	Full Service	84.2%
Olympic Corporate Center I 3940 Olympic Boulevard, Erlanger, KY	1988	5/A	87,988	$12.50	NNN	59%
Olympic Corporate Center II 3900 Olympic Boulevard, Erlanger, KY	2000	5/A	93,000	$13.00	NNN	92%
Florence Executive Center I 600 Meijer Drive, Florence, KY	2001	3/A	52,349	$12.75	NNN	75%
Florence Executive Center II 500 Meijer Drive, Florence, KY	2004	3/A	52,320	$12.75	NNN	36%
Ewing Drive Professional Building 7766 Ewing Boulevard, Florence, KY	2004	3/A	43,000	$13.50	NNN	50%

Source: The Appraisal (other than the occupancy rate for the Property)

Comparable Office Building Sales

The subject market for comparable sales is considered to be all of the suburban Cincinnati market. Set forth below is a table showing sales information for the Property, as well as four office buildings that are considered by the appraiser to be good quality multi-tenant office buildings similar to the Property.

Name and Address	Year Built	Sale Date	Sales Price	Building Size (rentable square feet)	Occupancy	Unit Price (per square foot)
The Property	1986, 1988	December 2006	$23,750,000	218,223	84.2%	$108.82
One Waterstone Place 9435 Waterstone Boulevard, Mason, OH	1997	January 2006	$8,275,558	73,789	91%	$112.15
Plaza I and II at Hurstbourne Green, 9510 Ormsby Station Road, Louisville, KY	2000, 2003	January 2006	$19,050,000	135,171	97%	$140.93
One Penn Mark Plaza 11595 North Meridian Street, Carmel, IN	1986	January 2006	$17,250,000	145,041	90%	$118.93
Princeton Hill Park Office Building 30 Merchant Street Springdale, OH	1988	September 2005	$13,321,500	95,910	100%	$138.90
Executive Plaza I, II, III 134,135, and 144 Merchant Street, Springdale, OH	1981, 1998	August 2005	$30,400,000	269,496	95%	$112.80

Source: The Appraisal (other than the occupancy rate for the Property)

MANAGEMENT

Cabot Investment Properties, LLC

Cabot Investment Properties, LLC (the "Sponsor"), is a privately held investment manager formed specifically to focus on commercial real estate investments. Cabot Acquisition and the Master Lessee are affiliated with the Sponsor. We believe that this focus allows the Sponsor to leverage the related experience of its principals in the commercial real estate market. The managers of the Sponsor have been involved in the acquisition of over $1.5 billion of commercial real estate over the past 15 years. In addition, the managers of the Sponsor have been involved in twelve tenant-in-common transactions since 2003. The senior managers of the Sponsor are:

Carlton P. Cabot, Chief Executive Officer and President, has more than 17 years of commercial real estate experience in brokerage, syndication, acquisition, debt and equity financings, asset management, joint ventures, and development and rehabilitation of commercial and multi-tenant residential real estate. Over his career, Mr. Cabot has been involved in the acquisition of over $500 million of commercial real estate. Mr. Cabot has held senior management positions with both institutional and privately held companies. Prior to founding the Sponsor, Mr. Cabot was Managing Director of the Private Capital Division of Cabot Partners LP, an institutional real estate investment advisor specializing in Class-A industrial and office property. During his tenure at Cabot Partners LP, Mr. Cabot served on the Investment Committee and oversaw the firm's new business development activities. Mr. Cabot left Cabot Partners LP upon its conversion to an industrial properties REIT. Prior to Cabot Partners LP, Mr. Cabot was the founder and President of C. Cabot Inc. C. Cabot Inc. acquired a number of value-added properties from its inception in 1990 through 1995, when Mr. Cabot joined Cabot Partners LP. Prior to forming C. Cabot Inc., Mr. Cabot worked in the commercial real estate investment sales group of Otis and Ahearn in Boston. Mr. Cabot is an associate member of the Urban Land Institute, the Boston Museum of Fine Arts, and Junior Council of the Boston Museum of Science, a Trustee and member of the Nominating Committee of the Boys and Girls Club of Boston, a member of the Board of Directors of the Old North Church Foundation, and a member of the Finance Committee of the Virginia Wellington Cabot Foundation. Mr. Cabot attended Boston University and Northeastern University.

Timothy J. Kroll, Chief Operating Officer, has more than 11 years of commercial real estate experience in acquisitions, asset management, financings, asset-backed securitization, dispositions, research, development and rehabilitation. Before joining the Sponsor, Mr. Kroll served as Senior Economic Advisor to the Assistant Secretary for Policy Development & Research at the U.S. Department of Housing and Urban Development. Previously, Mr. Kroll worked at Fortress Investment Group, a New York-based private equity firm and REIT, focusing on credit- and government-leased real estate acquisitions, asset-backed securitizations and mergers and acquisitions. At Fortress, Mr. Kroll was involved in the acquisition of over $650 million in commercial real estate on behalf of major institutional investors. Prior to Fortress, Mr. Kroll worked in the Retail Management Group of The Rubin Organization, a Philadelphia-based retail and commercial real estate company, where he was involved in acquisitions, development, and asset management. Mr. Kroll is a graduate of the University of Pennsylvania and holds a B.S. from the Wharton School in Economics and Real Estate Finance and a B.A. from the College of Arts and Sciences with double majors in Urban Studies and Art History.

James Taussig, Senior Vice President of Portfolio Management, has more than 16 years of commercial real estate experience in both the debt and equity markets. Prior to joining the Sponsor in December 2005, Mr. Taussig was a principal with Greenstreet Capital Partners, LLC ("GCP"). Mr. Taussig's responsibilities at GCP included management of the firm's real estate investments, including ongoing operating performance and dispositions. Prior to working at GCP, Mr. Taussig was a Vice President of Citigroup Investments. His responsibilities at Citigroup included developing real estate investment opportunities tailored to the investment objectives of Citigroup and its global clientele within the Citigroup Private Bank. Mr. Taussig originated loans, performed loan management and managed portfolio exposure for The Citigroup Private Bank in Southeast Asia. Prior to joining Citigroup, Mr. Taussig worked for seven years for Chemical Bank in New York and its subsidiary Texas Commerce Bank in Houston in a variety of real estate related capacities. Mr. Taussig holds an M.B.A. with a concentration in Finance from Tulane University in New Orleans and a B.B.A. in Petroleum Land Management from the University of Texas at Austin.

Prior Performance

Affiliates of the Sponsor currently manage twelve tenant-in-common investments. The following sections analyze revenue, operating expenses and net operating income results (i) by overall portfolio and (ii) by individual property.

Portfolio Performance

The following table highlights, by property, the performance along three key operating metrics: (i) revenue, (ii) operating expenses, and (iii) net operating income. The table compares actual operating performance to PPM projections made in connection with each property investment from January 1, 2006 to June 30, 2006. Please note that the eleventh and twelfth most recent syndications, Cabot Addison Corporate Center and Cabot Oak Grove Plaza, are not included in the following results due to the fact that they were acquired after June 30, 2006.

Cabot Investment Properties
Property Results
as of 6/30/2006

	BB&T	570 Polaris	Dadeland	465 Cleveland	North University	550 Polaris	Cypress Creek	20 North Orange	Trafalgar	East Broward	Totals
Total Revenue	$2,301,090	$1,315,715	$2,560,753	$472,666	$2,325,649	$1,280,316	$544,342	$3,202,431	$1,640,796	$2,598,475	$18,242,233
Total Projected Revenue	$2,242,746	$1,284,343	$2,461,283	$422,805	$2,211,019	$1,258,208	$662,175	$3,219,186	$1,617,893	$2,499,779	$17,879,437
Revenue Variance	$58,344	$31,372	$99,470	$49,861	$114,630	$22,108	($117,833)	($16,755)	$22,903	$98,696	$362,796
	BB&T	570 Polaris	Dadeland	465 Cleveland	North University	550 Polaris	Cypress Creek	20 North Orange	Trafalgar	East Broward	Totals
Total Op Ex	$911,567	$374,861	$1,294,352	$149,700	$1,071,761	$323,125	$392,167	$1,381,299	$624,937	$1,645,454	$8,169,223
Projected Op Ex	$910,489	$381,665	$1,168,741	$128,265	$898,304	$358,243	$301,715	$1,320,285	$646,598	$1,469,707	$7,584,012
Op Ex Variance	$1,078	($6,804)	$125,611	$21,435	$173,457	($35,118)	$90,452	$61,014	($21,661)	$175,747	$585,211
	BB&T	570 Polaris	Dadeland	465 Cleveland	North University	550 Polaris	Cypress Creek	20 North Orange	Trafalgar	East Broward	Totals
Total NOI	$1,389,523	$940,854	$1,266,401	$322,966	$1,253,888	$957,191	$152,175	$1,821,132	$1,015,859	$953,021	$10,073,010
Projected NOI	$1,332,257	$902,678	$1,292,542	$294,540	$1,312,715	$899,965	$360,460	$1,898,901	$971,295	$1,030,072	$10,295,425
NOI Variance	$57,266	$38,176	($26,141)	$28,426	($58,827)	$57,226	($208,285)	($77,769)	$44,564	($77,051)	-$222,415

Total revenue for the above portfolio of tenant-in-common investments (the "TIC Portfolio") from January 1, 2006 through June 30, 2006 came in $362,796, or 2.0%, higher than projections detailed in the private placement memoranda with respect to such property investments, (the "Prior Memoranda"). Increased revenue has been generated from lease-up of vacant space, favorable lease renewals, and increases in other income categories.

Total operating expenses for the TIC Portfolio from January 1, 2006 through June 30, 2006 were $585,211, or 7.7%, higher than projections detailed in the Prior Memoranda. Higher than projected operating expenses have been driven primarily by increased insurance costs in south Florida, where Cabot owns six properties, and higher than projected costs for energy across the entire portfolio.

Net operating income for the TIC Portfolio from January 1, 2006 through June 30, 2006 was $222,415 or 2.2%, below projections detailed in the Prior Memoranda. This slight variance is due primarily to higher than expected operating expenses, as detailed in the paragraph above.

Individual Property Performance

The first investment was acquired on August 1, 2003 on behalf of 31 tenant-in-common investors, and is known as BB&T Financial Center. The property is a 20-story, Class A office building consisting of 238,919 rentable square feet and located in Winston-Salem, North Carolina. The tenant-in-common investors purchased the property and, at closing, entered into a twenty-year master lease with Cabot BB&T Financial Center LeaseCo LLC, which is wholly owned by the Sponsor. Total revenue for BB&T Financial Center for January 1, 2006 through June 30, 2006 was $58,345, or 2.6% higher than projections outlined in the PPM. Total operating expenses over that same period were $1,078, or 0.1%, higher than projections, with overall net operating income $57,267, or 4.3%, higher than PPM projections. The master lessee is required to pay rent to the tenant-in-common investors at an annual yield of 8.5% on invested equity in years one through four. To our knowledge, our affiliated master lessee has complied with all material legal and financial obligations to the investors as set forth in the master lease and mortgage loan documents

The second investment was acquired on May 20, 2004 on behalf of 23 tenant-in-common investors, and is known as 570 Polaris Parkway. The property is a five-story, Class A office building consisting of 140,006 rentable square feet and located in Westerville, Ohio. The tenant-in-common investors purchased the property and, at closing, entered into a property management agreement with Cabot 570 Polaris Parkway Property Manager LLC, which is wholly owned by the Sponsor. Total revenue for 570 Polaris Parkway for January 1, 2006 through June 30, 2006 was $31,372, or 2.4%, higher than projections outlined in the PPM. Total operating expenses over that same period were $6,085, or 1.8%, lower than projections with overall net operating income $38,177, or 4.2%, higher than PPM projections. To our knowledge, our affiliated property manager has complied with all material legal and financial obligations to the investors as set forth in the offering and mortgage loan documents, and all distributions to investors have met or exceeded projections.

The third investment was acquired on November 24, 2004 on behalf of 33 tenant-in-common investors, and is known as Dadeland Towers North. The property is comprised of three buildings consisting of 242,445 rentable square feet of Class B office space and located in Miami, Florida. The tenant-in-common investors purchased the property and, at closing, entered into a twenty-year master lease with Cabot Dadeland Towers North LeaseCo LLC, which is wholly owned by the Sponsor. Total revenue for Dadeland Towers North for January 1, 2006 through June 30, 2006 was $99,471, or 4.0%, ahead of projections outlined in the PPM. Total operating expenses over that same period were $125,612, or 10.8%, higher than projections with overall net operating income $26,141, or 2.0%, lower than PPM projections. The master lessee is required to pay rent to the tenant-in-common investors at an annual yield of 7.75% on invested equity in year two. To our knowledge, our affiliated master lessee has complied with all material legal and financial obligations to the investors as set forth in the offering and mortgage loan documents.

The fourth investment was acquired on December 24, 2004 on behalf of 14 tenant-in-common investors, and is known as 465 Cleveland Avenue. The property is a two-story, Class A office building consisting of 44,797 rentable square feet and is located in Westerville, Ohio. The tenant-in-common investors purchased the property and, at closing, entered into an asset management agreement with Cabot 465 Cleveland Avenue Asset Manager LLC, which is wholly owned by the Sponsor. Total revenue for 465 Cleveland Avenue for January 1, 2006 through June 30, 2006 was $49,861, or 11.8%, ahead of projections outlined in the PPM. Total operating expenses over that same period were $21,435, or 16.7%, higher than projections with overall net operating income $28,426, or 9.7%, higher than PPM projections. To our knowledge, our affiliated asset manager has complied with all material legal and financial obligations to the investors as set forth in the offering and mortgage loan documents, and all distributions to investors have met or exceeded projections.

The fifth investment was acquired on March 14, 2005 on behalf of 29 tenant-in-common investors, and is known as Preferred Exchange Tower. The property is a 10-story, Class A office building consisting of 203,159 rentable square feet and is located in Coral Springs, Florida, within the Fort Lauderdale metropolitan area. The tenant-in-common investors purchased the property and, at closing, entered into a twenty-year master lease with Cabot North University Drive LeaseCo LLC, which is wholly owned by the Sponsor. Total revenue for Preferred Exchange Tower for January 1, 2006 through June 30, 2006 was $114,630, or 5.2%, ahead of projections outlined in the PPM. Total operating expenses over that same period were $173,457, or 19.1%, higher than projections. The increase in operating expenses was due to higher than anticipated electrical and insurance costs as well as an earlier than expected tax re-assessment. Overall net operating income was $58,827 or 4.5%, lower than PPM projections. ~~The master lessee is required to pay rent to the tenant-in-common investors at an annual yield of 7.25% on invested~~ equity in year two. To our knowledge, our affiliated master lessee has complied with all material legal and financial obligations to the investors as set forth in the master lease and mortgage loan documents.

The sixth investment was acquired on May 26, 2005 on behalf of 26 tenant-in-common investors, and is known as 550 Polaris Parkway. The property is a five-story, Class A suburban office building consisting of 139,900 square feet and is located in Westerville, Ohio, within the Columbus metropolitan area. The 550 Polaris Parkway property is located adjacent to 570 Polaris Parkway, which is the second tenant-in-common investment described above. The tenant-in-common investors purchased the property and, at closing, entered into an asset management agreement with Cabot 550 Polaris Parkway Asset Manager LLC, which is wholly owned by the Sponsor. Total revenue for 550 Polaris Parkway for January 1, 2006 through June 30, 2006 was $22,108, or 1.8%, ahead of projections outlined in the PPM. Total operating expenses over that same period were $35,118, or 9.8%, lower than projections with overall net operating income $57,226 or 6.4%, higher than PPM projections. To our knowledge, our affiliated asset manager has complied with all material legal and financial obligations to the investors as set forth in the offering and mortgage loan documents, and all distributions to investors have met or exceeded projections.

The seventh investment was acquired on July 14, 2005 on behalf of 18 tenant-in-common investors, and is known as Cypress Creek Tower. The property is a five-story, Class B suburban office building consisting of 62,476 square feet and is located in Fort Lauderdale, Florida, within the Cypress Creek submarket. The tenant-in-common investors purchased the property and, at closing, entered into a twenty-year master lease with Cabot Cypress Creek Tower LeaseCo LLC, which is wholly owned by the Sponsor. Total revenue for Cypress Creek Tower for January 1, 2006 through June 30, 2006 was $117,833, or 17.8%, below projections outlined in the PPM. The reasons for this shortfall relate primarily to two tenant defaults and a decision by the owner of a tenant to retire instead of renew his lease. Total operating expenses over that same period were $90,452, or 29.9%, higher than projections due to higher than anticipated repairs and maintenance costs, energy costs, and landscaping costs. Overall net operating income was $208,285 or 57.8%, lower than PPM projections. The master lessee is required to pay rent to the tenant-in-common investors at an annual yield of 7.25% on invested equity in year two. At present, the Sponsor is funding and will continue to fund any shortfalls to cover master lease rent and operating expenses. It is anticipated that the property will meet projections in 2007, after additional lease-up of approximately 6,000 square feet, or 10% of the building, occurs in the remainder of 2006. To our knowledge, our affiliated master lessee has complied with all material legal and financial obligations to the investors as set forth in the master lease and mortgage loan documents.

The eighth investment was acquired on October 7, 2005 on behalf of 35 tenant-in-common investors, and is known as 20 North Orange. The property is a 16-story, multi-tenant, Class B+ office building consisting of 272,714 rentable square feet and is located in Orlando, Florida. The tenant-in-common investors purchased the property and, at closing, entered into a twenty-year master lease with Cabot North Orange LeaseCo LLC, which is wholly owned by Sponsor. Total revenue for 20 North Orange for January 1, 2006 through June 30, 2006 was $16,755, or 0.5%, below projections outlined in the PPM. Total operating expenses over that same period were $61,015, or 4.6%, higher than projections with overall net operating income $77,770 or 4.1%, lower than PPM projections. The master lessee is required to pay rent to the tenant-in-common investors at an annual yield of 7.00% on invested equity in year one. To our knowledge, our affiliated master lessee has complied with all material legal and financial obligations to the investors as set forth in the master lease and mortgage loan documents.

The ninth investment was acquired on December 7, 2005 on behalf of 35 tenant-in-common investors, and is known as Cabot Trafalgar/Avion. The property consists of (i) two, Class B, two-story office buildings totaling approximately 98,631 rentable square feet and (ii) an approximately 68,903 rentable square foot, Class B, three-story, multi-tenant commercial office building that are located in Fort Lauderdale, Florida. The tenant-in-common investors purchased the property and, at closing, entered into a twenty-year master lease with Cabot Trafalgar/Avion Leaseco LLC, which is wholly owned by Sponsor. Total revenue for Trafalgar Avion for January 1, 2006 through June 30, 2006 was $22,903, or 1.4%, ahead of projections outlined in the PPM. Total operating expenses over that same period were $21,661, or 3.4% lower than projections with overall net operating income of $44,564, or 4.6%, higher than PPM projections. The master lessee is required to pay rent to the tenant-in-common investors at an annual yield of 7.00% on invested equity in year one. To our knowledge, our affiliated master lessee has compiled with all material legal and financial obligations to the investors as set forth in the master lease and mortgage loan documents.

The tenth investment was acquired on March 10, 2006 on behalf of 35 tenant-in-common investors, and is known as Cabot East Broward. The property consists of (i) an approximately 342,686 rentable square foot commercial property, consisting of (a) an approximately 304,861 rentable square foot Class A, 24-story multi-tenant office building, and (b) an adjacent approximately 37,825 rentable square foot 2-story retail and office building; and (ii) a 99-year ground lease. The address of the property is 100 and 110 East Broward Boulevard, Fort Lauderdale, Florida. The tenant-in-common investors purchased the property and, at closing, entered into a twenty-year master lease with Cabot East Broward LeaseCo LLC, which is wholly owned by Sponsor. Total revenue for Cabot East Broward for January 1, 2006 through June 30, 2006 was $98,696, or 3.9%, ahead of projections outlined in the PPM. Total operating expenses over that same period were $175,747, or 11.9% higher than projections with overall net operating income of $44,564, or 7.0%, lower than PPM projections. The master lessee is required to pay rent to the tenant-in-common investors at an annual yield of 6.50% on invested equity in year one. To our knowledge, our affiliated master lessee has complied with all material legal and financial obligations to the investors as set forth in the offering and mortgage loan documents.

The eleventh investment was acquired on October 19, 2006 on behalf of 33 tenant-in-common investors, and is known as Addison Corporate Center. The property is a 585,222 net rentable square foot, multi-tenant office and industrial complex, which consists of a 194,613 square foot, four-story office building and a 390,609 square foot, one-story office/industrial building, situated on a 75-acre lot. The address of the property is 175 Addison Road, Windsor, Hartford County, Connecticut 06095. The tenant-in-common investors purchased the property and, at closing, entered into a twenty-year master lease with Cabot Addison LeaseCo LLC, as master lessee and which is wholly owned by Sponsor. The master lessee is required to pay rent to the tenant-in-common investors at an annual yield of 7.00% on invested equity in year one. As of November 30, 2006, the property was performing pursuant to offering projections, and, to our knowledge, our affiliated master lessee has complied with all material legal and financial obligations to the investors as set forth in the master lease and mortgage loan documents.

The twelfth investment was acquired on December 29, 2006 on behalf of 27 tenant-in-common investors, and is known as Oak Grove Plaza. The property is a 230,812 net rentable square foot, multi-tenant office and industrial complex, which consists of (i) two, two-story office buildings with a total of 95,812 rentable square feet and (ii) two, one-story light industrial buildings with a total of 135,000 rentable square feet, situated on 26.4-acres. The address of the property is 7575, 7585 and 7595 Baymeadows Way, Deerwood Center Business Park, Jacksonville, Florida 32256. The tenant-in-common investors purchased the property and, at closing, entered into an asset management agreement with Cabot Oak Grove Asset Manager LLC, which is wholly owned by the Sponsor. To our knowledge, our affiliated asset manager has complied with all material legal and financial obligations to the investors as set forth in the offering and mortgage loan documents, and all distributions to investors have met or exceeded projections.

IN CONSIDERING THE PRIOR PERFORMANCE INFORMATION CONTAINED HEREIN, PROSPECTIVE INVESTORS SHOULD BEAR IN MIND THAT PAST PERFORMANCE IS NOT INDICATIVE OF FUTURE RESULTS, AND THERE CAN BE NO ASSURANCE THAT WE WILL ACHIEVE COMPARABLE RESULTS IN THE FUTURE.

The Property Manager

The Master Lessee will enter into a property management agreement (the "Property Management Agreement") with Neyer Management, a regional commercial real estate management firm (the "Property Manager"), pursuant to which the Property Manager will manage the day-to-day operations of the Property. Neyer Management currently manages more than 8 million square feet in over 75 properties in the Cincinnati area. The Master Lessee will be responsible for paying the Property Manager's fees. The Property Management Agreement will terminate twelve months after closing, unless extended by mutual agreement of the parties. "Summary of Master Lease and Management Agreements – Property Management Agreement."

Subject to the terms of the Property Management Agreement and upon approval of the Mortgage Lender, Master Lessee reserves the right to replace the Property Manager at any time with another qualified property manager. Upon approval of the Mortgage Lender, Master Lessee may designate an affiliate of Cabot Investment Properties as property manager.

COMPENSATION AND FEES

The Sponsor, the Master Lessee and their affiliated entities will earn fees in connection with the acquisition, organization, sale, management, leasing, financing, re-financing and disposition of the Property. The following table sets forth estimates of such compensation, fees and other distributions. Actual amounts may vary depending upon the timing and amount of Interests sold, the performance of the Property and timing and proceeds of any sale, refinancing or re-leasing of the Property.

Type of Compensation or Reimbursement	Method of Computation
Offering:	
Organizational and Offering Expenses Allowance	Cabot Acquisition will receive a fixed percentage fee of 2.50% of the Gross Proceeds to pay for organizational and offering costs and expenses. This allowance does not include amounts payable to members of the Selling Group for Sales Commissions and Expenses. The Organizational and Offering Expense Allowance will be $58,750 for the Minimum Offering and $293,750 for the Maximum Offering. Cabot Acquisition will be responsible for any organizational and offering costs in excess of these sums and will be entitled to retain any unused funds on a non-accountable basis.
Closing and Carrying Costs Allowance	Cabot Acquisition will receive a fixed percentage fee of 5.50% of the Gross Proceeds to pay for legal, closing and carrying costs relating to the purchase of the Property, including estimated bridge financing costs. The Closing and Carrying Costs Allowance will be $129,250 for the Minimum Offering and $646,250 for the Maximum Offering. Cabot Acquisition will be responsible for any legal, closing and carrying costs in excess of these sums and will be entitled to retain any unused funds on a non-accountable basis.
Mortgage Loan Fees and Costs	Cabot Acquisition will receive a Mortgage Loan Fee for arranging the Mortgage Loan in the amount of $135,000, representing 0.75% of the principal amount of the Mortgage Loan. Cabot Acquisition estimates additional costs of $335,000, including legal counsel for the Mortgage Lender. Cabot Acquisition has agreed to receive a fixed fee of 4.0% of the Gross Proceeds as payment of the Mortgage Loan Fee and to cover estimated additional costs related to the Mortgage Loan. The Mortgage Loan Fee and related costs will be $94,000 for the Minimum Offering and $470,000 for the Maximum Offering. Cabot Acquisition will be responsible for paying any related costs in excess of these sums (less the Mortgage Loan Fee) and will be entitled to retain any unused funds on a non-accountable basis.
Acquisition Fee	Cabot Acquisition will receive an Acquisition Fee of 6.38% of the Gross Proceeds at settlement for negotiating the acquisition of the Property from the Seller. The Acquisition Fee will be $150,000 for the Minimum Offering and $750,000 for the Maximum Offering. The Acquisition Fee will be paid out of the proceeds of the Offering. The amount of the Acquisition Fee that Cabot Acquisition will receive will increase or decrease to the extent that the actual amounts of other fees that are budgeted for in the purchase price for the Interests and the $2,500 fee, to establish your Single Purpose Entity are less than or greater than the budgeted amounts.

Operations:

Rental Income	The Master Lessee will retain the excess of the rental income received from the tenants after payment of all amounts owed to the Tenants in Common under the Master Lease and other capital and operating expenses associated with the maintenance and operation of the Property and the establishment or increase of loan or maintenance reserves. At closing, the Master Lessee will fund a cash reserve of $200,000 (the "Master Lessee Reserve"), which will serve as a supplement to cash flow from the Property in satisfying the Master Lessee's obligations under the Master Lease. If drawn upon, the Master Lessee will replenish the Master Lessee Reserve only to the extent it receives cash flow from the Property in excess of its obligations under the Master Lease. Upon termination of the Master Lease, any remaining portion of the Master Lessee Reserve will be retained by the Master Lessee.
Refinancing Fee	In addition to any fees or commissions payable to a third-party mortgage broker, the Master Lessee will receive a refinancing fee of 1.0% of the amount of any loan obtained to refinance the Property. If an outside loan broker is used, the Master Lessee will be responsible for the payment of any broker's fees that may be due up to a maximum of 1.0% of the loan amount.
Tenant In Common Transfer Fees	Tenants in Common who wish to transfer their interests will be required to pay to the Master Lessee a transfer fee of $3,500 per transfer and reimburse the Master Lessee or its affiliate for actual costs incurred in connection with the transfer.
Appearance Fee	In addition to actual out of pocket expenses, the Master Lessee will receive an appearance fee equal to $3,750 for each unlawful detainer or tax abatement appearance and each small claims court action appearance to collect rents under any lease for the Property.

Liquidation:

Consulting Fee	The Sponsor will be entitled to a Consulting Fee of 4.0% of the gross sales price of the Property in connection with a sale to a third party as a result of offers received (i) during the 270-day period provided in the Consulting Agreement or (ii) at any time as a result of the Sponsor's negotiation with, and submission of offers from, a prospective purchaser, and provided the Consulting Agreement is in effect at the time of sale. In connection with a sale described under (i) or (ii) above, the Sponsor will be responsible for paying outside consulting and broker fees up to an amount of 1.5% of the gross sales price of the Property, and the Tenants in Common will be responsible for paying outside consulting and broker fees in excess of 1.5% of the gross sales price of the Property. The Tenants in Common will be required to pay their *pro rata* share of such Consulting Fee.

The Sponsor, the Master Lessee and their affiliated entities may receive additional compensation for any additional services performed on behalf of the Tenants in Common so long as such services are provided on terms and conditions no less favorable to the Tenants in Common than can be obtained from independent third parties for comparable services in the same location.

NO FIDUCIARY DUTY

None of the Sponsor, Cabot Acquisition, the Master Lessee, their affiliates or the Tenants in Common will have any fiduciary duty to any Tenant in Common, as may be applicable to other investments, such as in a partnership, limited liability company or corporation.

CONFLICTS OF INTEREST

The Offering of Interests and management of the Property create certain conflicts of interest between the Tenants in Common and the Sponsor, the Master Lessee and their affiliates. Notwithstanding the foregoing, the Sponsor, the Master Lessee and their affiliates will be subject to various conflicts of interest arising out of its relationships with the Tenants in Common.

Competition with Affiliates

The Sponsor is involved in the investment in and development and financing of real property and facilitates Section 1031 Exchanges. Any affiliated entity, whether or not currently existing, could compete with the Tenants in Common in the sale or operation of the Property. For example, the Sponsor may own, finance or represent properties in the same market as the Property or nearby markets. Affiliates of the Sponsor currently own or manage properties in Connecticut, Florida, North Carolina and Ohio. These properties or subsequent investments may compete for tenants with and take-out purchasers for the Property.

Provisions by Affiliates of Services to the Tenants in Common or to Persons Dealing With the Tenants in Common

The Sponsor, the Master Lessee and their affiliates will not be prohibited from providing services to, and otherwise dealing or doing business with, the Tenants in Common or persons that deal with the Tenants in Common, although no such services or activities (other than the services and activities disclosed in this Memorandum) are contemplated.

Competition by the Tenants in Common With Other Tenants in Common and Activities for Management Services

The Sponsor and the Master Lessee believe that their managers will have sufficient time to discharge fully their responsibilities to the Tenants in Common and to other business activities (including other tenants in common) in which the Sponsor or the Master Lessee is or may become involved. However, the Sponsor, the Master Lessee and their affiliates are engaged in substantial other activities apart from the management of the Property. Accordingly, the Sponsor and the Master Lessee will devote only so much of its time to the business of the Tenants in Common as is reasonably required in the judgment of the Sponsor or the Master Lessee The Sponsor, the Master Lessee and their affiliates will have conflicts of interest in allocating management time, services and functions among the Property and the other properties held through another program they may sponsor, as well as with other business ventures in which the Sponsor, the Master Lessee and their affiliates or the Tenants in Common are or may become involved.

Compensation and Reimbursements Irrespective of Property Profitability

The Sponsor, the Master Lessee and their affiliated entities will receive certain compensation from the Tenants in Common for services rendered regardless of whether any sums are distributed to the Tenants in Common. See "Estimated Use of Funds" and "Compensation and Fees."

Master Lease

The Master Lessee will lease the Property from the Tenants in Common and will endeavor to earn profits by subleasing portions of the Property to active tenants and maintaining full occupancy of the Property. The Tenants in Common will not share in any increased rental income the Master Lessee earns as a result of tenant leases. As such, the Master Lessee may make decisions regarding the operation of the Property intended to increase current net revenues such as deferring maintenance and repair costs or entering into short term or higher risk leases which may produce higher rents per square foot at the expense of a more stable tenant base. Such decisions may be inconsistent with the long-term goals of the Tenants in Common as they may decrease the disposition value of the Property or increase the risk associated with the tenants or Property. In addition, any bridge lender, to the extent it acquires the Interests and rights as the Master Lessee upon a default under such bridge loan, would have a similar conflict of interest. None of the agreements or arrangements, including those relating to compensation, between the Sponsor, Cabot Acquisition, the Master Lessee or their affiliates, are the result of arm's-length negotiations.

Sale or Refinancing of the Property

If the Tenants in Common decide to sell the Property at a time when the Consulting Agreement with the Sponsor is in effect, the Sponsor will be paid a fee in connection with such sale. Similarly, if the Tenants in Common decide to refinance the Property, the Master Lessee will be paid a fee in connection with such refinancing under the Master Lease. As such, the Sponsor and Master Lessee, as applicable, may have an incentive to sell or refinance the Property at a time that is not optimal for, or on terms that are not advantageous to, the Tenants in Common. In addition, the Sponsor's affiliates provide mortgage financing and conflicts may arise if the Sponsor prefers financing provided by or arranged by its affiliates or if a default occurred on a Mortgage Loan provided or arranged by one of its affiliates.

Legal Representation

Baker & McKenzie LLP has served as counsel to Cabot Acquisition, the Sponsor, the Master Lessee and their respective affiliates with respect to the offering of Interests. As a result, conflicts may arise in the future and, if those conflicts cannot be resolved or the consent of the respective parties to the continuation of the multiple representation cannot be obtained after full disclosure of any such conflict, Baker & McKenzie LLP will withdraw from representing one or more of the conflicting interests with respect to the specific matter involved. In such event, additional counsel may be retained by one or more of the parties to assure their interests are adequately protected.

Resolution of Conflicts of Interest

The Sponsor, the Master Lessee and their affiliates have not developed, and do not expect to develop, any formal process for resolving conflicts of interest. While the foregoing conflicts could materially adversely affect the Property and the Tenants in Common, each of the Sponsor, the Master Lessee and their affiliates, in its sole judgment and discretion, will try to mitigate such potential adversity by the exercise of its business judgment in an attempt to fulfill its obligations. There can be no assurance that such an attempt will prevent adverse consequences resulting from the numerous conflicts of interest.

ACQUISITION TERMS AND FINANCING

On October 30, 2006, the Sponsor entered into a contract to purchase the Property from BH Turfway LLC (the "Seller") for aggregate consideration of $23,750,000. In addition, $237,750 will be paid to an unaffiliated third-party broker at closing as a result of the sale of the Property. The acquisition of the Property is expected to close on or before February 9, 2007. Cabot Acquisition is acquiring the Property based on its "as is" condition and on a "where is" basis with limited warranties. Cabot Acquisition will not receive or give any representations or warranties as to the condition of the Property including the presence of hazardous materials or environmental liabilities.

Cabot Acquisition is offering the Interests as a "turn-key" investment, which means that substantially all costs of investing in the Property are included in the purchase price of the Interests. The only investment costs to you in excess of the purchase price per Interest is a fixed charge of $2,500 to cover individual Tenant-in-Common entity formation costs, charges and related legal fees, plus any fees for the maintenance of your Single Purpose Entity (which may include the maintenance of an independent director, if required by the Mortgage Lender) or payable to your own legal, tax or other advisors. Furthermore, Cabot Acquisition has agreed to a fixed price for your investment, which means that it will be responsible for all expenses included in the Offering that are in excess of those shown herein, and will keep any proceeds from the sale of Interests in excess of actual expenses.

Cabot Acquisition intends to finance the acquisition of the Property with a $8,532,500 cash down payment from the proceeds of the offering and a $18,000,000 Mortgage Loan secured by a first priority mortgage on the Property and an assignment of leases and rents. It is anticipated that the Mortgage Lender will hold back approximately $2,545,000 in proceeds from the Mortgage Loan to fund tenant improvement and leasing commission reserves, capital repairs and replacements to the Property and insurance and real estate tax reserves.

Cabot Acquisition may, at its discretion, obtain bridge financing in connection with the acquisition of the Property from such lenders and upon such terms as it deems necessary or appropriate. Any such bridge loan would be loaned to the Sponsor or the owner of Cabot Acquisition. The bridge financing would be secured by the ownership interests in Cabot Acquisition and would be repaid out of the proceeds of the Offering and cash flow attributable to unsold Interests held by Cabot Acquisition. The bridge financing would not encumber the Property and the Tenants in Common would not be directly responsible for repayment of the bridge financing. All costs associated with such bridge financing would be borne by Cabot Acquisition, and not the investors.

Cabot Acquisition has been in negotiations with the Mortgage Lender regarding the terms of the Mortgage Loan. However, there is no guarantee that the Mortgage Loan will be obtained from the Mortgage Lender. The following summary of the anticipated material terms of the Mortgage Loan is qualified by reference to the respective definitive loan documents that are entered into with respect to the Property. The Mortgage Loan may be obtained on terms substantially different from those described below. Cabot Acquisition will make copies of the Mortgage Loan documents available to you at the time such documents are executed. You should read such documents in their entirety prior to acquiring an Interest.

Mortgage Loan:

Amount	$18,000,000
Maturity Date	10 years
Lender	Wachovia Securities or its affiliate
Borrowers	The Tenants in Common
Interest Rate	The annual interest rate of the Mortgage Loan is anticipated to be 5.67%, subject to a rate lock agreement with the Mortgage Lender, which rate lock expires on February 10, 2007.
Fees	It is anticipated that the Tenants in Common will be responsible for the payment of the following costs:

- a late charge of 5% of any payment not made on or before the due date; and

- all legal fees incurred by the Mortgage Lender in the negotiation, documentation, renegotiation and enforcement of the Mortgage Loan and related agreements.

Repayment

It is anticipated that the principal and interest due under the Mortgage Loan will be payable as follows:

- a payment of interest only on the date the Mortgage Loan is funded for interest through the end of the first calendar month in which the Mortgage Loan is funded;

- a payment of interest only, in arrears, due on the first day of the month following the first full month after that month in which the Mortgage Loan is funded and on the first day of each calendar month thereafter for the following 59 months;

- a constant payment of principal and interest, based on a 30-year amortization schedule, on the first day of the month following the 60th full month following the month in which the Mortgage Loan is funded and on the first day of each calendar month thereafter for the following 59 months; and

- a final payment of principal and interest on the Maturity Date.

Payments under the Mortgage Loan will first be applied toward the payment of interest and other costs and charges due and the balance will be applied toward the reduction of principal.

Prepayment and Defeasance

It is anticipated that the Mortgage Loan will not be prepayable until the last four months prior to the maturity date of the Mortgage Loan. If the Mortgage Loan is accelerated following a default prior to the last four months prior to the maturity date, in addition to principal, interest, costs and charges, the borrower may be required to pay a "yield maintenance" prepayment premium in an amount equal to the greater of (i) 1% of the outstanding principal amount of the Mortgage Loan; or (ii) an amount, calculated based upon the formula contained in the Mortgage Loan documents, intended to represent the difference between the present value of the remaining payments of principal and interest with respect to such prepaid amount through the maturity of the Mortgage Loan and the present value of payments accruing interest at the same rate as a U.S. Treasury bill of comparable maturity. No prepayment penalty will apply during the final 120 days of the Mortgage Loan.

Provided that no Event of Default (or any event which with the passage of time or the giving of notice, or both, could become an Event of Default) has occurred, it is anticipated that the Tenants in Common will have the right to elect to defease the Mortgage Loan and obtain the release of the Property from the Mortgage Lender's security interest at any time after the earlier of (i) the date which is two years after the Mortgage Loan is securitized and (ii) a regularly scheduled payment date that is at least four years following the closing of the Mortgage Loan (the "Defeasance Period"). To defease the Mortgage Loan, the Tenants in Common must replace the Property as security for the Mortgage Loan with U.S. government securities in amounts and maturities sufficient to match and pay all of the remaining scheduled principal and interest payments under the Mortgage Loan. To elect such defeasance, the Tenants in Common must satisfy certain conditions, including payment to the Mortgage Lender of accrued interest under the Mortgage Loan and a defeasance deposit plus a yield maintenance premium used to purchase the U.S. Treasury obligations which will serve as the defeasance collateral and generate income to meet scheduled payments under the Mortgage Loan.

Assumption

It is anticipated that the Mortgage Lender must approve any Mortgage Loan assumption and may prohibit assumption in its sole discretion. If an assumption of the entire Mortgage Loan by a single purchaser of the Property is approved, the Mortgage Lender will charge a 1% loan assumption fee.

Collateral

It is anticipated that the Mortgage Loan will be secured by a first priority mortgage on the Property, an Assignment of Leases and Rents, a first priority interest in all fixtures and personal property constituting the Property and all proceeds thereof. In addition, the Mortgage Loan will be further secured by a first priority mortgage executed by the Tenants in Common and an Assignment of Leases. The Mortgage Loan will be made on a non-recourse basis, meaning that with certain exceptions, upon an event of default, the Mortgage Lender will have recourse only to the collateral securing the Mortgage Loan.

It is anticipated that the Tenants in Common may have to obtain the Mortgage Lender's approval with respect to material new leases and any modification, termination or renewal of existing material leases. In addition, the Mortgage Lender may require that all future leases be on a form which has been approved by the Mortgage Lender.

It is also anticipated that the Tenants in Common will be required to establish a clearing account into which all receipts from the Property, including all rents, will be deposited. The Mortgage Lender will have a first priority security interest in the clearing account. The funds in the clearing account will be applied toward the payment of principal and interest and establishment of reserves under the Mortgage Loan. Prior to an Event of Default, funds in excess of those necessary to service the Mortgage Loan and establish reserves will be transferred from the clearing account to an account established by the Master Lessee on behalf of the Tenants in Common. After an Event of Default, all funds in the clearing account will be transferred to the Mortgage Lender until the Event of Default is cured. This cash flow sweep could have adverse tax consequences to the Tenants in Common.

Reserves

It is anticipated that the Mortgage Lender will require the Tenants in Common to fund, on a *pro rata basis*, certain reserve escrow accounts with the Mortgage Lender. The deposited funds will accrue interest, which will be added to the deposited funds. In connection with these accounts, the Mortgage Lender may receive a servicing fee. It is anticipated that the reserves will include the following accounts:

Tenant Improvements and Leasing Commissions Reserve

It is anticipated that the Mortgage Lender will hold back approximately $2,000,000 to fund a reserve to cover tenant improvement and leasing commission reserves.

In addition, it is anticipated that the Mortgage Lender will require the Tenants in Common to place into an escrow account $163,026 per year, on a monthly basis (or $13,585 per month), if the tenant improvement and leasing commission reserves drop below a floor of $250,000.

Capital Repairs and Replacements Reserve

It is anticipated that the Mortgage Lender will hold back approximately $500,000 to fund capital repairs and replacements to the Property, of which $200,000 will be reserved for capital items related to the replacement and repair of the roofs at the Property.

In addition, the Mortgage Lender will likely require the Tenants in Common to place into an escrow account, on a monthly basis, an amount equal to 1/12 of the annual replacement reserve amount of $0.15 per square foot of gross leasable square footage at the Property (i.e., $2,728).

Insurance and Tax Reserves

It is anticipated that the Mortgage Lender will hold back $45,000 of the Mortgage Loan proceeds to fund insurance and real estate tax reserves.

Title Insurance

Cabot Acquisition has obtained an ALTA survey of the Property and a title commitment with an effective date of November 2, 2006 issued by Lawyers Title Insurance Corporation, a division of LandAmerica, for the full insurable value of the Property in connection with the purchase of the Property. In addition to standard title exceptions, such as taxes and parties in possession, other anticipated title exceptions include, but are not limited to, those exceptions, if any, stated in materials available to the purchasers of Interests. Cabot Acquisition believes that the title exceptions at the Property are typical for a property of its type and do not adversely affect the operation of the Property. As the amount of the title policy will be less than the $29,750,000 aggregate sales price for Interests in the Property, any losses due to defects in the Property's title in excess of the amount insured would result in a commensurate *pro rata* reduction in the value of the Interests.

Commercial Insurance

The Mortgage Lender will require and the Master Lessee will procure and maintain on behalf of the Tenants in Common, at the sole cost and expense of the Tenants in Common, customary insurance coverage, which will likely include the following insurance:

- "All risk" or "special perils" policies against risks of physical loss, including fire, extended coverage, vandalism, malicious mischief, earthquake, flood, riot and civil commotion and collapse, but without any exclusion for terrorism, for the full replacement cost of the Property, without co-insurance requirements or with an agreed amount endorsement attached naming the Mortgage Lender as mortgagee;

- Public liability insurance covering all liabilities incident to the ownership, possession, occupancy and operation of the Property and naming the Mortgage Lender as an additional insured, having limits of not less than $1,000,000 for each occurrence, $2,000,000 in the aggregate and umbrella coverage of $10,000,000; provided that the Mortgage Lender reserves the right to require increased coverage;

- Business income insurance (i) with loss payable to the Mortgage Lender; (ii) containing an extended period of indemnity endorsement until such income either returns to the same level it was prior to the loss, or the expiration of 18 months from the date of the loss, if earlier, and (iii) in an amount equal to 100% of the projected gross income from the Property (on an actual loss sustained basis) for a period from the date of such casualty and continuing until the restoration of the Property is completed, but not to exceed 18 months; and

- Such other insurance with respect to the Property, in such amounts as may from time to time be required by the Mortgage Lender, or be prudent in the judgment of the Master Lessee, against other insurable casualties which at the time are commonly insured against in the case of properties of similar character to the Property.

Events of Default

The "Events of Default" under the Mortgage Loan documents are expected to include, but not be limited to, the following:

- ~~nonpayment of any portion of the Mortgage Loan after the payment is due;~~

- noncompliance with the express obligations contained in the Mortgage Loan documents, including indemnification obligations and obligations relating to any operations and maintenance program;

- failure to perform any covenant, agreement, obligation, term or condition set forth in the Mortgage Loan documents;

- default under any of the Mortgage Loan documents, where such default continues following the expiration of any applicable notice and cure period;

- default under the Master Lease, and such default continues beyond any notice or cure period;

- if any representation or warranty made in any Mortgage Loan document was false or misleading in any material respect when made;

- the holder of any lien against the Property declares a default which is not cured within applicable grace and cure periods;

- the bankruptcy or insolvency of a Tenant in Common or its owner or a general assignment for the benefit of creditors by any of them;

- failure to cure properly any violations of laws or ordinances affecting the Property;

- the lien of the Mortgage shall cease to constitute a first-priority lien against the Property;

- the liquidation, dissolution, consolidation or merger of any of the Tenants in Common;

- the imposition of any mechanic's, materialman's or other lien on the Property (other than a lien for local real estate taxes and assessments not then due and payable) which lien remains undischarged for a specified number of days;

- the actual or threatened waste, alteration, improvement, demolition or removal of any of the improvements on the Property without the prior consent of the Mortgage Lender;

- damage to the Property in any manner which is not covered by insurance as a result of the Master Lessee's failure to maintain required insurance;

- failure to maintain required policies of insurance;

- termination or modification of the Tenants in Common Agreement without the consent and approval of the Mortgage Lender;

- modification of the Master Lease without the consent and approval of the Mortgage Lender;

- termination of the Master Lessee without appointing a replacement master lessee acceptable to the Mortgage Lender;

- seizure or forfeiture of the Property, or an Interest, resulting from criminal wrongdoing or other unlawful action;

- the occurrence of any default under the Tenants in Common Agreement;

- the transfer or encumbrance of any Interest without the consent of the Mortgage Lender;

- the commencement of any action or proceeding for the partition of all or any portion of the Property;

- failure to pay taxes; and

- abandonment or failure to operate all or any material part of the Property.

The Mortgage Lender shall have the right to accelerate the Mortgage Loan in the event of a default under any of the Mortgage Loan documents that is not cured within the applicable notice and/or grace period, if any.

Remedies

The Mortgage Loan will be made to the Tenants in Common on a joint and several basis, so that upon an uncured Event of Default on the Mortgage Loan, the Mortgage Lender may exercise its remedies against one, more or all of the other Tenants in Common. However, because each purchaser will hold his or her Interest through a bankruptcy-remote single purpose limited liability company, the purchaser's liability under the Mortgage Loan will, except as described under "Limited Recourse" below, generally be limited to the value of the purchaser's Interest. The Mortgage Loan documents will require the Tenants in Common to make debt service payments to the Mortgage Lender without regard to the rental income received from the Property.

Upon the occurrence of an Event of Default, the Mortgage Lender may exercise all remedies available under the Mortgage Loan documents at law or in equity, including but not limited to:

- accelerating the Mortgage Loan;
- entering the Property and performing work necessary to preserve the value, marketability or rentability of the Property;
- collecting rent;
- applying for a receiver, trustee, liquidator or conservator of the Property;
- foreclosing on the Property and applying of the proceeds from a sale of the Property;
- proceeding by law suit to enforce the payment of any debt under the Mortgage Loan documents;
- exercising any other right available to the Mortgage Lender under the Mortgage Loan documents; and
- applying amounts held in the reserve accounts and all cash proceeds from the operation of the Property.

Indemnification

The Tenants in Common will indemnify the Mortgage Lender against losses in connection with the Mortgage Loan or the security arrangements, except for losses resulting from the Mortgage Lender's willful misconduct or gross negligence. In addition, if Cabot Acquisition does not obtain environmental liability insurance for the Property, each Tenant in Common and one or more individual direct or indirect principal of each Tenant in Common may be required to indemnify the Mortgage Lender and its affiliates against environmental liabilities arising from ownership and operation of the Property pursuant to a separate environmental indemnification agreement.

Limited Recourse

Cabot Acquisition anticipates that the Mortgage Loan will be nonrecourse, meaning that the Mortgage Lender may only seek recovery from the liquidation of the Property for any amounts which remain due under the Mortgage Loan after a default. However, the Mortgage Loan is expected to contain the following "carve-outs", among others, to the nonrecourse provisions allowing the Mortgage Lender to proceed, under certain circumstances, against the assets of a Tenant in Common, in addition to foreclosing on the Property, to recover any loss, cost, expense, damage, claim or other obligation to the Mortgage Lender in the event of any of the following actions or inactions, among others, taken by such particular Tenant in Common, or its owners or affiliates:

- entering into subordinate financing or encumbering the Property or their Interest;
- failing to comply with the provisions of the Mortgage Loan related to the maintenance of their Single Purpose Entity as a separate, bankruptcy remote entity with adequate capital;
- misapplication of funds derived from the Property;
- taking any action to delay or impair the Mortgage Lender's ability to preserve, enforce or foreclose on its lien on the Property;
- transfer of an Interest or a majority of the membership interests in the Tenant in Common without the Mortgage Lender's approval;
- material waste of the Property;
- criminal wrongdoing leading to a seizure of the Property or any interest of the Mortgage Lender therein; or
- violations of environmental laws on or pertaining to the Property.

It is also anticipated that the Mortgage Loan will provide for certain springing liabilities pursuant to which a Tenant in Common would incur personal liability for repayment of the full amount of the Mortgage Loan as a result of the following actions or inactions, among others, taken by such Tenant in Common, or its owners or affiliates:

- fraud or material misrepresentation in connection with the Mortgage Loan;
- commencement of a partition action against the Property;
- entering into any amendment or termination of the Tenants in Common Agreement or the Master Lease without the prior consent of the Mortgage Lender; or
- bankruptcy, insolvency, receivership, liquidation, winding up or similar type of proceeding of such Tenant in Common, or consenting to, acquiescing in, arranging or otherwise participating in bringing about the institution of such petition or proceeding against such Tenant in Common.

While the use of a Single Purpose Entity to hold the Interests will generally limit the liability for these carve-outs and springing liabilities to the assets of the Single Purpose Entity (i.e. the Interest itself), if a purchaser fails to maintain formalities required for formation and operation of its bankruptcy-remote, Single Purpose Entity under state law, with a distinct identity from that of its owners, then the purchaser would have personal liability for the liability accruing as a result of the aforementioned non-recourse carve-outs and springing liabilities.

The Mortgage Lender will also require at least one individual direct or indirect principal of each Tenant in Common to execute a Guaranty Agreement (the "Guaranty Agreement") pursuant to which the individual will guaranty repayment of all losses incurred by the Mortgage Lender as a result of any of the following circumstances, among others, occurring as a result of their own or their Single Purpose Entity's actions or inactions:

- encumbrance on the Property in violation of the Mortgage Loan documents;
- material breach or default of the requirement that the Single Purpose Entity be

properly maintained as a bankruptcy remote Single Purpose Entity;

- misapplication of any funds received from the Property in violation of the Mortgage Loan documents;
- filing of any action that delays or impairs the Mortgage Lender's ability to foreclose on the Property or otherwise preserve or enforce its lien;
- transfer of an Interest or a majority of the membership interests of the Single Purpose Entity without the Mortgage Lender's approval;
- material waste of the Property;
- criminal wrongdoing that results in seizure or forfeiture of the Property; or
- removal or disposal of any portion of the Property after an event of default.

It is also anticipated that the Guaranty Agreement will provide for certain springing liabilities pursuant to which a principal guarantor would incur personal liability for repayment of the full amount of the Mortgage Loan as a result of the following actions or inactions, among others, taken by such purchaser, its Special Purpose Entity or their affiliates:

- fraud or material misrepresentation in connection with the Mortgage Loan;
- commencement of a partition action against the Property;
- entering into any amendment or termination of the Tenants in Common Agreement or the Master Lease without the prior consent of the Mortgage Lender; or
- bankruptcy, insolvency, receivership, liquidation, winding up or similar type of proceeding of the purchaser's Special Purpose Entity, or consenting to, acquiescing in, arranging or otherwise participating in bringing about the institution of such petition or proceeding against such Special Purpose Entity.

Investors should review carefully the Mortgage, the Note and the Guaranty Agreement for further clarification of these potential obligations.

If an environmental insurance policy is not obtained on the Property, each Tenant in Common and one or more principals thereof may be required to agree to perform all remedial work required by, and indemnify the Mortgage Lender for losses that may occur as a result of, the presence of hazardous materials on the Property or any violation of environmental laws, regulations, rules or other requirements of any governmental agency or authority relating to the health, environment or hazardous substances. With the exception of the management fees paid to the Property Manager by the Master Lessee, the Tenants in Common will be responsible for and the Master Lessee will be reimbursed for any expenses or losses arising from the Property other than costs attributable to losses arising from the gross negligence or willful misconduct of the Master Lessee or its associates or employees and costs of insurance purchased by the Master Lessee for its own account.

Mezzanine Lender SPE

The Sponsor may elect to form a new special purpose entity, which will be a Delaware limited liability company ("Mezzco"), to act as a mezzanine lender to the Tenants in Common in covering costs associated with the Property in excess of reserves. The Sponsor or an affiliate of the Sponsor may own up to 49% of the membership interests in Mezzco.

As with any tenancy-in-common structure, costs that are the responsibility of the Tenants in Common in excess of reserves have to be funded (i) through additional capital contributions by the Tenants in Common, (ii) out of cash flow from the property (which would restrict the amount of cash flow available for distribution to the Tenants in Common), or (iii) through additional borrowing.

Subject to limitations imposed by the Mortgage Loan documents, and to the extent additional funds are required in excess of reserves available from time to time, the Master Lessee will have the right, but not the obligation, to obtain one or more mezzanine loans to the extent the Tenants in Common require additional funds for operations, tenant improvements, leasing commissions or other purposes deemed appropriate by the Master Lessee (each individually a "Mezzanine Loan" and collectively, the "Mezzanine Loans"). The terms of each Mezzanine Loan will be subject to the unanimous approval of the Tenants in Common. The Call Agreement, however, provides that if the Tenants in Common owning 80% or more of the Interests in the Property vote in favor of obtaining the Mezzanine Loan, then the Master Lessee and consenting Tenants in Common have the right, but not the obligation, to purchase any Interests of Tenants in Common who do not vote in favor of obtaining a Mezzanine Loan.

Mezzco will have no obligation to fund Mezzanine Loans. It is anticipated that Mezzco will seek to obtain a loan that would enable it to lend the Tenants in Common a certain fixed amount on a Property, but will have no obligation to do so. There can be no assurance that Mezzco will be able to obtain any such loan on terms satisfactory to Mezzco and the Tenants in Common.

It is anticipated that each Mezzanine Loan would bear interest at the then prevailing market rate for similarly sized mezzanine loans at the time such Mezzanine Loan is made. Interest accrued under the Mezzanine Loan normally would be payable only to the extent that the cash flow from the Property exceeds all amounts due and payable with respect to the Mortgage Loan and the amounts required to fund any Mortgage Lender required reserves. Each Mezzanine Loan may also contain such other customary terms and conditions as may be found in similarly sized mezzanine loans at the time such Mezzanine Loan is made.

Any Mezzanine Loan will be made to the Tenants in Common on a joint and several basis, so that in the event of a default under the Mezzanine Loan, Mezzco may exercise its remedies against one, more or all of the other Tenants in Common. If Mezzco were to foreclose, a Tenant in Common would likely lose its entire investment.

Each Mezzanine Loan will be subordinate to the interest of the Mortgage Lender (or any other lender whose loan is secured by an interest in the Property) and Mezzco will likely be required to execute a subordination and standstill agreement in a form as initially approved by the Mortgage Lender. The Mezzanine Loan will not be secured by the Property or any of the other collateral for the Mortgage Loan directly. Instead, each Mezzanine Loan will be secured by a pledge of the equity interests in the Tenants in Common. Accordingly, each purchaser will be required to pledge his or her equity interest in the Tenant in Common owned by that purchaser.

Cabot Acquisition plans to negotiate with the Mortgage Lender with respect to certain terms in the Mortgage Loan documents relating to Mezzco and the Mezzanine Loan. It is anticipated that the terms of the Mortgage Loan documents will allow for a pledge of the equity interests in the Tenants in Common as security for a Mezzanine Loan from Mezzco, which pledge will not constitute an event of default and will be subordinate to the Mortgage Loan, provided that certain conditions are satisfied. We anticipate that these terms will include the following:

- Mezzco will execute a subordination and standstill agreement for the benefit of the Mortgage Lender. It is anticipated that the subordination and standstill agreement will provide that Mezzco will not enforce its rights to foreclose the Mezzanine Loan until after the Mortgage Loan has been repaid.

- The Mortgage Lender's approval of additional borrowing applies only to a Mezzanine Loan from Mezzco.

- So long as the Mortgage Loan is outstanding, monthly debt service on the Mezzanine Loan will be payable only from excess cash flow as permitted under the Mortgage Loan documents.

- The Mezzanine Loan may not exceed a certain amount as stipulated by the Mortgage Lender in the Mortgage Loan documents (the "Mezzanine Loan Cap"). In the event that a Mezzanine Loan in excess the Mezzanine Loan Cap is needed, the Master Lessee may request approval from the Mortgage Lender for a larger Mezzanine Loan.

- No Event of Default, nor any event which with notice or the passage of time or both would constitute an Event of Default, will have occurred and be then continuing under any of the Mortgage Loan documents.

- All proceeds of the Mezzanine Loan will be used to pay operating expenses of the Property and costs of tenant improvements and leasing commissions in connection with reletting the Property.

- The Mortgage Lender will have received (a) evidence satisfactory to the Mortgage Lender that the Mezzanine Loan will have no adverse effect on the bankruptcy remote status of the Tenants in Common, and (b) a legal opinion regarding substantive consolidation issues.

- All of the Mortgage Lender's costs and expenses associated with the Mezzanine Loan (including reasonable attorneys' fees and rating agency fees) will be paid by the Tenants in Common *pro rata* in accordance with their Interests in the Property.

SUMMARY OF MASTER LEASE AND MANAGEMENT AGREEMENTS

The Property will be leased to the Master Lessee pursuant to the terms of the Master Lease. Each Tenant in Common will acquire a pro rata interest as lessor under the Master Lease. The Master Lease is a net lease incorporating, with certain exceptions, all expenses and debt service associated with the operation of the Property. The Master Lessee will operate the Property for its own benefit and will be entitled to retain any positive difference between the Property's operating cash flow and Master Lease payments due to the Tenants in Common and the Mortgage Lender. Likewise, the Master Lessee is liable for the cash shortfalls between the operating cash flow and Master Lease payments due to the Tenants in Common and the Mortgage Lender. Prospective investors should be aware that the Master Lessee is a newly formed entity with no substantial assets other than its lease interest in the Property under the Master Lease and the Master Lessee Reserve. The management of the Property is conducted pursuant to the terms of the following agreements:

- The Master Lease, pursuant to which the Master Lessee operates the Property; and
- The Property Management Agreement, pursuant to which the Property Manager manages the day-to-day operations of the Property.

Summaries of the anticipated terms of these agreements follow. These summaries are qualified by reference to the full text of the agreements actually executed. You should review these agreements in their entirety prior to acquiring an Interest.

Master Lease

The Master Lessee will lease the Property pursuant to the terms of the Master Lease. The following is a summary of some of the significant provisions of the Master Lease. This summary is qualified in its entirety by reference to the full text of the agreement, a form of which is attached as an exhibit hereto.

Rent and Expenses

The Tenants in Common will enter into the Master Lease for the entire Property with the Master Lessee on an absolute net basis. The Master Lease has a term of 20 years. During the term of the Master Lease, the Master Lessee anticipates that it will pay annual base rent (payable in equal monthly installments) as follows:

Year	% of Equity	Annual Payment	Monthly Payment
1-2	7.50%	$881,250	$73,438
3-5	8.00%	$940,000	$78,330
6	8.50%	$998,750	$83,229
7-9	9.00%	$1,057,500	$88,125
10-13	10.00%	$1,175,000	$97,917
14-16	11.00%	$1,292,500	$107,708
17-20	12.00%	$1,410,000	$117,500

In addition to the base rent, the Master Lessee will make payments, on behalf of the Tenants in Common to cover interest and principal payments under the Mortgage Loan and amounts payable into Mortgage Lender-required reserve accounts. The amounts will be paid from cash flow from the Property and deemed additional rent paid by the Master Lessee. The Master Lessee will be responsible for all other costs of operating, managing and maintaining the Property during the term of the Master Lease, including the payment of all leasing and capital expenses to the extent the reserves required by the Mortgage Lender for these purposes are exhausted. If the principal and interest components of additional rent are increased during the term of the Master Lease, other than as a result of (i) the anticipated increase in Mortgage Loan debt service beginning in the fifth year after closing or (ii) the Master Lessee's default under the Master Lease, base rent will be reduced by a corresponding amount, and if the increase exceeds the amount of the corresponding base rent installment, any excess will be payable solely by the Tenants in

Common. Similarly, if the principal and interest components are decreased, base rent will be increased by a corresponding amount. See "Summary of Master Lease and Management Agreements – Master Lease" and "Acquisition Terms and Financing."

Term

20 years.

Termination

The Master Lease will automatically terminate upon a sale of the Property. In addition, the Master Lessee has the right to terminate the Master Lease (i) at any time following the tenth anniversary of the commencement date of the Master Lease, in its sole discretion, with or without cause, upon 90 days written notice to the Tenants in Common and (ii) if the Tenants in Common terminate or fail to renew the Consulting Agreement. The Master Lease will automatically terminate upon the sale of the Property, provided that the Mortgage Lender's approval for such sale has been obtained. The Tenants in Common generally do not have the right to terminate the Master Lease during the term absent a default by the Master Lessee.

Responsibilities of the Master Lessee

The Master Lessee will have the obligation to:

- manage, lease and operate the Property,
- ensure that the Property and any use thereof is in conformity with all legal requirements, including zoning ordinances, building and fire codes, environmental laws and the Americans with Disabilities Act,
- provide utilities and building services,
- maintain the interior and exterior of the property in good condition and repair,
- procure and maintain property/casualty, commercial, loss-of-rent and other types of insurance on the Property required under the Mortgage Loan, and
- repair and rebuild any property damage.

The Master Lessee may cause the Property Manager or others to provide such services. The Tenants in Common and the Mortgage Lender will be named as additional insured or loss payees, as the case may be, on the insurance policies obtained by the Master Lessee. Provided that the Master Lessee is not in default under the Master Lease, proceeds from insurance policies in excess of those required for repairs and/or rebuilding will be retained by the Master Lessee, subject to any applicable requirements under the Mortgage Loan.

Compensation

As compensation for its services, the Master Lessee will receive the compensation described under "Compensation and Fees." The Master Lessee will be entitled to certain reimbursements for its out-of-pocket costs and expenses.

Indemnification

The Master Lessee is obligated to indemnify the Tenants in Common against all losses, damages, expenses, costs and liabilities arising from: (i) personal injury, damage, theft or loss of property claims relating to the Property, (ii) the occupancy of the Property by, through or under the Master Lessee, (iii) any failure of the Master Lessee to comply with any of the covenants, terms, conditions, representations or warranties contained in the Master Lease, and (iv) the use, storage disposal, generation or discharge of hazardous materials on the Property or violations of environmental laws at the Property; provided, however, the Master Lessee will have no obligation to indemnify the Tenants in Common for any such losses, expenses, costs or liabilities caused by the negligence or willful misconduct of the Tenants in Common.

Loan Issues

Under the Master Lease, the prior written approval of the Master Lessee is required in connection with any amendments to or modification of the Mortgage Loan and any new financing relating to the Property. The Master Lessee will pledge its assets, as required by the Mortgage Lender, to ensure performance of its obligation under the Master Lease and the Mortgage Loan documents. The Master Lessee will not, however be obligated as a co-borrower under the Mortgage Loan. The Master Lease will be subordinated to the Mortgage Loan. Termination of the Master Lease without the appointment of a Master Lessee acceptable to the Mortgage Lender will constitute an event of default under the Mortgage Loan.

Reserves

The Master Lease provides that various reserves required by the Mortgage Lender will be available to the Master Lessee for purposes of funding tenant improvement costs, leasing commission expenses and related capital expenses associated with the Property. In addition, at closing, the Master Lessee will fund a Master Lessee Reserve of $200,000, which will serve as a supplement to cash flow from the Property in satisfying the Master Lessee's obligations under the Master Lease. If drawn upon, the Master Lessee will replenish the Master Lessee Reserve only to the extent it receives cash flow from the Property in excess of its obligations under the Master Lease. Upon termination of the Master Lease, any remaining portion of the Master Lessee Reserve will be retained by the Master Lessee.

Assignment

Master Lessee may not assign its interest under the Master Lease or permit any change of control of the Master Lessee without the prior consent of the Tenants in Common and the Mortgage Lender.

Default

The following matters, among others, will constitute an event of default by the Master Lessee under the Master Lease:

- failure to pay rent or other amounts due to or to be paid on behalf of the Tenants in Common within 10 days of notice of failure to pay;
- failure to observe or perform any other terms of the Master Lease, and the failure to cure such non-performance within 30 days of notice of such failure (subject to extension if the cure has been diligently undertaken and pursued during such period);
- the leasehold interest of the Master Lessee shall be taken on execution or other process of law in any action against the Master Lessee;
- failure to comply with covenants, or to remedy inaccuracies in material representations or warranties, in the Master Lease within any applicable cure or remedy period;
- the Master Lessee or its general partner or manager shall institute any proceeding, or a final order shall be entered, for the dissolution of the Master Lessee or its general partner or manager;
- any levy upon, attachment or filing of any lien against the leasehold interest of the Master Lessee which is not discharged within 120 days of filing;
- the taking of or the failure to take any action which is in violation of the Mortgage Loan and which is not cured within any applicable cure or remedy period under the Mortgage Loan; or
- insolvency or bankruptcy of, or appointment of a trustee or receiver for, the Master Lessee.

Upon the occurrence of any event of default, the Master Lease provides that the Tenants in Common may:

- terminate the Master Lease and/or the Master Lessee's possessory rights under

Master Lease, on five days' notice;

- enter the Property and perform the Master Lessee's obligations under the Master Lease (in which case the Tenants in Common will be entitled to reimbursement from the Master Lessee); and
- receive all rent accrued through the date of termination plus all out of pocket costs incurred in obtaining possession of the Property, all out of pocket costs incurred in repairing the Property and any costs incurred in collecting such amounts, subject, in all cases, to reasonable mitigation by the Tenants in Common.

Further, in the event of any such event of default by the Master Lessee, the Tenants in Common, after retaking possession of the Property without terminating the Master Lessee, may collect either (i) any deficiency between the rents collected by the Tenants in Common from the lease of the Property and the rent due under the Master Lease or (ii) the present value, discounted at 10%, of the difference between the rent and the fair market rental of the Property, for the balance of the term of the Master Lease.

In spite of the foregoing remedial rights, the Tenants in Common will be subject to the rights and requirements of the Mortgage Lender under the Mortgage Loan. If the Master Lessee defaults under the Master Lease, such default is likely to constitute a default under the Mortgage Loan and the exercise of any such rights shall likely only be available, if at all, following consultation with the Mortgage Lender.

Refinancing — The Master Lessee will have the right to obtain on behalf of the Tenants in Common a non-recourse loan secured by a mortgage on the Property for the purpose of refinancing any existing loan on the Property, or if unencumbered, leveraging the Property, provided that all of the Tenants in Common consent to the refinancing or leveraging of the Property. The Master Lessee will receive a fee in connection with the refinancing or leveraging of the Property.

Sale of Property — The Master Lease will automatically terminate upon the sale of the Property, provided that the Mortgage Lender's approval for such sale has been obtained.

Arbitration — Any dispute arising under the Master Lease with respect to rents payable thereunder will be subject to arbitration in Massachusetts. All other actions shall be brought in and the terms of the Master Lease will be construed in accordance with the laws of the State of Kentucky.

Consulting Agreement

The Tenants in Common will enter into a separate Consulting Agreement with the Sponsor under which the Sponsor will have the right to provide services in connection with the remarketing and sale of the Property and receive a fee for such services upon a sale of the Property.

Term — A one-year period which will be renewed with the consent of the Tenants in Common holding a majority of the Interests.

Consulting Fee — 4.0% of the gross sales price of the Property in a sale to a third party as a result of offers received (i) during the 270-day period following the decision of the Tenants in Common to sell or exchange the Property or (ii) at any time as a result of the Sponsor's negotiation with, and submission of offers from, a prospective purchaser, and provided the Consulting Agreement is in effect at the time of sale.

Third Party Consulting and — In the event the Sponsor receives the Consulting Fee as a result of a sale or exchange of the Property, the Sponsor will be responsible for the payment of any third party brokerage or

Broker Fees consulting commissions up to 1.5% of the gross sales price of the Property. The Tenants in Common will be responsible for third party brokerage or consulting commissions in excess of 1.5% of the gross sales price.

Arbitration Any dispute arising under the Consulting Agreement will be subject to arbitration in Massachusetts.

Property Management

The Master Lessee will enter into a property management agreement with Neyer Management (the "Property Manager"), under which the Property Manager will act as the property manager (the "Property Management Agreement"). Subject to the terms of the Property Management Agreement and upon approval of the Mortgage Lender, Master Lessee reserves the right to replace the Property Manager at any time with another qualified property manager. Upon approval of Mortgage Lender, Master Lessee may designate an affiliate of Cabot Investment Properties as property manager.

The following is a summary of the anticipated material provisions of the Property Management Agreement. It is qualified in its entirety by reference to the full text of the agreements entered into with the Property Manager.

Property Management Agreement

Property Manager Neyer Management

See "Management – The Property Manager" for a description of the Property Manager.

Property Management Fee The Master Lessee will pay the Property Manager a monthly property management fee equal to 3.0% of the gross revenue from the Property. Gross revenue includes all gross receipts received from the operation of the Property, including, without limitation, all rent, percentage rent, and reimbursements for operating expenses, insurance premiums and real estate taxes actually received from tenants. Gross revenue excludes payments which constitute reimbursements for construction costs, payments from tenants made in consideration of the modification, cancellation or surrender of any lease (or made by reason of any default thereunder), sales taxes received in connection with tenant rent payments, security deposits, condemnation awards, insurance proceeds, owner's advances, proceeds from the sale of the Property and proceeds of any financing of the Property. The Master Lessee will also reimburse the Property Manager for certain expenses or costs incurred in connection with the operation and management of the Property to the extent they are within the approved budget or approved in writing by Master Lessee, including costs of employment, telecommunications and other expenses. The Property Management Fee and expenses will not reduce the rent due to the Tenants in Common under the Master Lease. The monthly property management fee will likely include the following services:

- day-to-day management and operation of the Property, including operational management and tenant relations;
- income and expense budgeting, monthly financial reporting, operating expense reconciliations, fiscal management, tenant relations, technical operations, property inspections and all property management functions relating to the Property;
- collection of all rent or other payments due;
- maintenance of full and accurate books of account and other records reflecting the results of operations at the Property;
- on-site general maintenance and tenant response;
- provide monthly financial statements, requested supporting data, descriptions of

work performed on the premises, an annual budget for the Master Lessee's approval and other reports reasonably requested by the Master Lessee from time to time including operating expense reconciliation;

- evaluation, supervision and management of all service contracts in accordance with the approved annual budget.

Term

Agreement will terminate twelve months after closing, unless extended by mutual agreement of the parties.

Termination

The Master Lessee may terminate the Property Management Agreement immediately upon giving written notice to the Property Manager in the event of: (i) the Property Manager's uncured negligence, default or breach in the performance of its duties under the Property Management Agreement, (ii) a petition in bankruptcy is filed by or against the Property Manager or the Property Manager makes an assignment for the benefit of creditors or takes advantage of any insolvency act or proceeding. (iii) failure by the Property Manager to comply with the applicable provisions of the Mortgage Loan or which relate to the collection and disbursement of funds derived from the Property or the management operation of the Property, or (vi) gross negligence or intentional or willful misconduct by the Property Manager.

Further, the Property Management Agreement will terminate automatically if (i) the Property is sold in a third party arms length transaction, (ii) a mortgage foreclosure occurs, (iii) the mortgagee of the Property directs the Master Lessee to discharge the Property Manager, or (iv) there is substantial damage to the Property caused by condemnation, fire or other casualty and the Tenants in Common or the Master Lessee decides not to restore the Property.

Liability of Master Lessee

It is anticipated that the Master Lessee will agree to hold the Property Manager harmless from liability associated with the Property and its proper provision of services under the Property Management Agreement, except for the items for which the Property Manager is obligated to indemnify Master Lessee under the Property Management Agreement. The Property Manager will indemnify the Master Lessee for: (i) the negligence or willful or intentional misconduct of the Property Manager or its agents, or employees, (ii) any action beyond the scope of Property Manager's authority as set forth in the Property Management Agreement or, (iii) any claim or action for which there is not adequate insurance coverage in effect; provided the Property Manager will not be liable for (a) any negligent and/or omission or willful or intentional misconduct of the Master Lessee, the Tenants in Common or any agent or employees (other than the Property Manager) of Master Lessee or the Tenants in Common or (b) any claim or action for which there is adequate insurance coverage in effect.

SUMMARY OF THE AGREEMENTS TO BE ENTERED INTO BY THE PURCHASERS

If you desire to acquire an Interest, you will be required to enter into a number of agreements which set forth the relative rights and obligations of each purchaser with respect to their acquisition and ownership of an Interest. These agreements include:

- The Purchase Agreement which governs your acquisition of an Interest and the accession to the Tenants in Common Agreement, Call Agreement, Master Lease and Consulting Agreement;

- The Tenants in Common Agreement and Call Agreement which govern the ownership, transfer and management of the Property by the Tenants in Common;

- The Single Purpose Entity operating agreement, which contains certain provisions necessary to maintain your Single Purpose Entity as an entity with a distinct identity from you;

- The Guaranty Agreement and Environmental Indemnity Agreement, which set forth the extent to which you and your Single Purpose Entity will be liable under the Mortgage Loan; and

- The Accession Agreement, pursuant to which purchasers who purchase after the initial closing of the Offering will agree to be bound to the terms of the Tenants in Common Agreement, Call Agreement, Master Lease and Consulting Agreement.

Summaries of the anticipated terms of these agreements follow. These summaries are qualified by reference to the full text of the agreements actually executed. You should review these agreements in their entirety prior to acquiring an Interest.

Purchase Agreement

If you are interested in acquiring an Interest, you must execute a Purchase Agreement in the form attached hereto. You should review the entire Purchase Agreement with your own independent legal counsel before submitting an offer to buy an Interest. The following is merely a summary of some of the significant provisions of the Purchase Agreement and is qualified in its entirety by the full text thereof.

Purchase of the Interests

To buy an Interest, you must initially complete and deliver to the Managing Broker-Dealer or your broker-dealer the Purchase Agreement, Purchaser Questionnaire, credit check authorization with a current financial statement, tax returns for the past two years, and any other item required by the Mortgage Lender in connection with your entry into the Mortgage Loan documents. In addition, because transfer of the Property must comply with the Connecticut Property Transfer Act, each Tenant in Common will need to complete certain property transfer forms within 10 days of purchasing an Interest.

Within 72 hours of submitting the Purchase Agreement, you must wire a good faith deposit in the amount of $25,000 into the Escrow Account as specified in the Purchase Agreement. Your good faith deposit will be returned to you, without interest, at the close of escrow or applied toward the purchase price for your Interest, provided, however, in the event that you default under the Purchase Agreement, Cabot Acquisition may retain your good faith deposit as liquidated damages. Upon review of your suitability, Cabot Acquisition will provide you with a due diligence package.

"As-is purchase"

The Purchase Agreement provides that the purchasers of Interests must accept their Interests in the Property in an "as-is" condition. You will receive limited representations or warranties regarding matters affecting the operation and ownership of the Property. Consequently, you must rely on your own investigation and analysis of the Property and you are encouraged to seek the advice of your own independent legal counsel, accountants or real estate advisors.

Termination of Purchase Agreement

The Purchase Agreement may be terminated (by the party in whose favor the closing conditions have been established) if the closing conditions are not satisfied as set forth in the Purchase Agreement. The conditions will include the purchaser's approval of the preliminary title report, environmental assessment and engineering reports, appraisal and survey regarding the Property, the issuance of a title insurance policy to, or for the benefit of, the purchaser and the Mortgage Lender's approval of the purchaser's assumption of a portion of the Mortgage Loan, if any. Certain ;lenders may impose additional closing conditions. If your Purchase Agreement is terminated, you will have no right to acquire any portion of the Property and will have no claims against Cabot Acquisition for damages, expenses, lost profits or otherwise. Cabot Acquisition will return your good faith deposit to you, however, without interest, if the Purchase Agreement is terminated for any reason other than your default.

Rescission Rights

The Purchase Agreement contains a provision allowing you to terminate the Purchase Agreement and obtain a return of your good faith deposit if, after the date you submit the Purchase Agreement, Cabot Acquisition provides you with a preliminary title report, environmental assessment and engineering reports, appraisal, survey or Mortgage Loan documents for the financing of the Property or modifications or amendments of any of such documents that, in your discretion, contains information indicating that the purchase of Interests is no longer appropriate. You must give any such rescission notice to Cabot Acquisition in writing within three business days after receipt of the applicable document or you will be deemed to have waived your right.

Closing Costs

The purchase price of the Interests includes each purchaser's *pro rata* share of all closing and related costs in connection with the transaction, including, but not limited to, the fees set forth in this Memorandum, the escrow holder's fee, the cost of the owner's title policy to be issued to each purchaser, and Mortgage Loan assumption charges, if any. Cabot Acquisition will be responsible for such costs in excess of the portion of the purchase price for the Interests allocated for such costs and will be entitled to retain any unused funds. However, each purchaser will be responsible for paying Cabot Acquisition $2,500 for the formation of its Special Purpose Entity, as well as the fees of its own legal, tax or other advisors and the ongoing maintenance of its Special Purpose Entity (which may including the maintenance of an independent director).

Pre-Closing Representations and Warranties

You must represent and warrant that:

- you are relying on your own inspections, investigations and analyses of the Property in entering into the Purchase Agreement and not relying on the representations, warranties, studies, reports descriptions, guidelines or other material furnished by Cabot Acquisition or its representatives, that the purchase is in an "as is" condition and that you are a sophisticated, experienced investor who will rely entirely on your own review;
- you have received, read and fully understand the Memorandum and all attachments and exhibits thereto and are basing your decision to invest on the Memorandum and any exhibits and attachments thereto and have relied only on the information contained in such materials and has not relied upon any representations made by any other person;
- you recognize that an investment involves substantial risk and are fully cognizant of and understand all of the risk factors related to the purchase of an Interest, including, but not limited to, those risks set forth in "Risk Factors";
- your overall commitment to investments that are not readily marketable is not disproportionate to your net worth, and your investment in an Interest will not cause such overall commitment to become excessive;
- you have adequate means of providing for your financial requirements, both current and anticipated, have no need for liquidity in this investment and can bear and are

willing to accept the economic risk of losing your entire investment in an Interest;

- your purchase of an Interest has not been preceded or accompanied by the publication of any advertisement or by any general solicitation;
- all information that you have provided to Cabot Acquisition concerning your suitability to invest in an Interest is complete, accurate and correct as of the date of the Purchase Agreement and to update any changes in information occurring prior to the closing date of your purchase of an Interest;
- you have had the opportunity to ask questions of, and receive answers from, the Sponsor and its officers, directors and employees concerning the Property and the terms and conditions of the Offering, and to obtain any additional information deemed necessary to verify the accuracy of the information contained in the Memorandum;
- you are purchasing your Interest for your own account and for investment purposes only and have no present intention, agreement or arrangement for the distribution, transfer, assignment, resale or subdivision of your Interest and understand your investment will be highly illiquid and may have to be held indefinitely;
- you understand that legends will be placed on the Tenants in Common Agreement with respect to restrictions on distribution, transfer, resale, assignment or subdivision of your Interest imposed by applicable federal and state securities laws and are fully aware that your Interest has not been and will not be registered with the Securities and Exchange Commission in reliance on the exemption from registration promulgated under Rule 506 of Regulation D of the Securities Act of 1933, as amended, which reliance is based in part upon your representations and that your Interest has not been and will not be registered under applicable state securities laws and is being offered and sold pursuant to the exemptions specified in such laws, and, unless it is registered, it may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws and that the specific approval of such resales by the state securities administrator may be required in some states;
- you understand that neither Cabot Acquisition, its officers, directors, employees, managers or members or affiliates nor their legal counsel or advisors represent you in any way in connection with the purchase of your Interest;
- you understand and are aware that there are uncertainties regarding the treatment of an Interest as an interest in real property for federal income tax purposes;
- you have read the entire Memorandum and fully understand that there is a risk that an Interest will not be treated as an interest in real property for federal income tax purposes;
- you have independently obtained advice from legal counsel and/or an accountant regarding any tax-deferred exchange under Code Section 1031, including, without limitation, whether the acquisition of your Interest may qualify as part of a tax-deferred exchange, and are relying on such advice and not on the opinion of Tax Counsel;
- you are aware that the IRS has issued Revenue Procedure 2002-22 specifically addressing tenant-in-common arrangements; that the Revenue Procedure is merely guidance and is not a "safe-harbor" for taxpayers or sponsors, so that, without the issuance of a Private Letter Ruling on a specific offering, there is no assurance that an Interest will not be treated as a partnership interest for federal income tax purposes;
- you understand that Cabot Acquisition has not obtained, and will not request, a private letter ruling from the IRS that the Interests will be treated as an undivided

interest in real property as opposed to an interest in a partnership;

- you understand that the tax consequences of an investment in an Interest, especially the treatment of the transaction described herein under Code Section 1031 and the related Section 1031 Exchange rules, are complex and vary with the facts and circumstances of each individual Purchaser;
- you understand that the opinion of Tax Counsel states that an Interest "should" be treated as an interest in real property and not a partnership interest for federal income tax purposes, and that no assurance can be given that the IRS will agree with this opinion;
- you agree to indemnify, defend and hold harmless Cabot Acquisition and all of its limited partners, general partners, officers, directors, affiliates and advisors from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) that they may incur by reason of your failure to fulfill all of the terms and conditions of the Purchase Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained therein or in any other documents you furnish in connection with the acquisition of an Interest;
- you agree to provide such information and to execute and deliver such documents as may be reasonably necessary to comply with any and all laws and regulations to which Cabot Acquisition or the tenancy in common formed by the Tenants in Common Agreement is subject;
- you and all of your beneficial owners, are in compliance with all laws, statutes, rules and regulations of any federal, state or local governmental authority in the United States of America applicable to each, including, without limitation, the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders (the "Orders") in respect thereof.
- neither you nor any of your beneficial owners:

  (a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists");

  (b) has been indicted or arrested for money laundering or for predicate crimes to money laundering, convicted or pled nolo contendere to charges involving money laundering or predicate crimes to money laundering;

  (c) has been determined by competent authority to be subject to the prohibitions contained in the Orders;

  (d) is owned or controlled by, nor acts for or on behalf of, any Person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders;

  (e) shall transfer or permit the transfer of any interest in the Tenant in Common formed to hold your Interest to any person or entity who is, or whose beneficial owners are, listed on the Lists; or

  (f) shall assign this Agreement or any interest herein, to any Person who is listed on the Lists or who is engaged in illegal activities.

Title Policy — The Purchase Agreement provides that the purchasers will receive an owner's policy of title insurance insuring the purchasers' undivided interest in the Property.

Indemnity — The Purchase Agreement contains an indemnity provision whereby each purchaser will be required to indemnify, defend and hold Cabot Acquisition and certain of its affiliates harmless from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that Cabot Acquisition or its affiliates may incur by reason of a purchaser's failure to fulfill all of the terms and conditions of the Purchase Agreement or the untruth or inaccuracy of any of the representations, warranties, covenants or agreements contained therein or in any other document furnished by the purchaser in connection with the purchase of an Interest. You should review the Purchase Agreement prior to subscribing for the Interests.

Liquidated Damages — The Purchase Agreement contains a liquidated damages provision. This provision allows Cabot Acquisition to retain your good faith deposit as liquidated damages if the sale does not close due to your default. Events of default may include the failure to execute and deliver documents and agreements required by the Purchase Agreement. Cabot Acquisition may retain such deposits even if it did not incur any actual damages as a result of your default.

Arbitration — Any dispute arising under the Purchase Agreement will be subject to binding arbitration in Massachusetts.

Tenants in Common Agreement

The Tenants in Common Agreement governs the relationship among the Tenants in Common and their common ownership of the Property. The Tenants in Common Agreement provides mechanisms for: voting on matters to be decided by the Tenants in Common, funding additional cash advances, exercising partition rights and transferring Interests. Please note however, that the rights of the Tenants in Common will also be affected by the Call Agreement, Master Lease and the terms of the Mortgage Loan documentation. You should review carefully the Tenants in Common Agreement along with the other documents governing the relationship among the Tenants in Common and the acquisition and financing of the Property and Interests therein to understand the rights and obligations associated with an acquisition of an Interest.

Term — The Tenants in Common Agreement will remain in effect until such time as all of the Tenants in Common or their successors-in-interest no longer own the Property as tenants in common. In no event will a Tenants in Common Agreement continue beyond December 31, 2055.

Cash Advances — Each Tenant in Common will be obligated to pay its *pro rata* share of any future cash advances required in connection with the ownership, operation, management and maintenance of the Property to the extent not paid by the Master Lessee. If any Tenant in Common fails to pay any required cash advance, any other Tenant in Common may fund such advance for a period not exceeding 31 days. The Tenants in Common Agreement requires the nonpaying Tenant in Common to reimburse the paying Tenant(s) in Common upon demand, together with interest at a rate of 10%. The Master Lessee may also withhold future cash disbursements otherwise payable to the nonpaying Tenant in Common and pay these amounts to the paying Tenants in Common until the reimbursement is paid in full. In addition, the paying Tenant(s) in Common may exercise any other legal remedies available to them. Each nonpaying Tenant in Common will also indemnify the other Tenants in Common to the extent such other Tenants in Common suffer a cost, liability or expense on account of such nonpaying Tenant in Common. Pursuant to the Call Agreement, the Master Lessee and other Tenants in Common will have the right to purchase the Interest of a nonpaying Tenant in Common who fails to satisfy its obligation to make additional cash advances.

Income and — Except as provided in the Master Lease, all benefits and obligations of ownership of the Property, including, without limitation, income, operating expenses and cash proceeds from any sale, exchange or refinancing of the Property, and all liabilities of the Property (except for

Liabilities

items separately determined such as real estate taxes and management fees), will be allocated to the Tenants in Common in proportion to their undivided interests in the Property.

Property Decisions

All of the Tenants in Common must unanimously approve any future sale, exchange, lease, transfer, financing or refinancing of the Property. All other actions or decisions of the Tenants in Common will require the approval of Tenants in Common collectively owning a majority of the Interests in the Property. Annual renewal of the Consulting Agreement requires the approval of Tenants in Common holding a majority of the Interests. In the event Tenants in Common collectively owning 80% or more of the Interests in the Property agree to sell or refinance the Property, to take any other action requiring unanimous consent of the Tenants in Common or to take an action to prevent or cure a Mortgage Loan default, Interests of Tenants in Common not in agreement are subject to the call rights provided in the Call Agreement described below.

Transfer Rights

Each Tenant in Common may sell, transfer, convey, pledge, encumber or hypothecate its undivided Interest in the Property, subject to the terms of any loan and provided that any transferee will take such interest subject to the Tenants in Common Agreement, the Call Agreement, the Master Lease, and the Consulting Agreement, and provided further that the selling Tenant in Common must allow the other Tenants in Common and the Master Lessee to make an offer for the Interest. Any transfer of an Interest is subject to any required consents or other requirements of any lender. Each Tenant in Common will be responsible for compliance with applicable securities laws with respect to any sale of its Interest.

Each Investor will acquire the same *pro rata* interest in each Parcel and no Investor may sell its Interest in either Parcel separate and apart from its Interest in the other Parcel (except as part of the sale of an entire Parcel by all Investors).

Property Rights

The Tenants in Common have no right to possess the Property. However, any Tenant in Common may partition the Property subject to the right of the other Tenants in Common to buy the Interest of the partitioning Tenant in Common at fair market value (as defined in the Tenants in Common Agreement) upon the filing of an action for partition and subject to any restrictions imposed by the Mortgage Lender. Subject to certain conditions and limitations in the Tenants in Common Agreement and to applicable bankruptcy or other laws, the other Tenants in Common may acquire the Interest of any Tenant in Common that is bankrupt or insolvent. If the other Tenants in Common elect not to purchase their proportionate share of such bankrupt Tenant in Common's interest in the Property, the Master Lessee will have the right to acquire such proportionate share of the Interest.

Tax Election

The Tenants in Common Agreement provides that each Tenant in Common elects to be excluded from the provisions of Subchapter K of Chapter 1 of the Code with respect to joint ownership of the Property. See "Federal Income Tax Consequences–Other Tax Consequences of Ownership of an Interest–Election Out of Partnership Provisions."

Right of First Offer

If any Tenant in Common desires to sell all or any portion of its Interest, then each other Tenant in Common and the Master Lessee will have a right for 14 days to make an offer to acquire the Interest proposed to be sold.

Right of First Refusal

In the event that any Tenant in Common desires to maintain an action for the partition of the Property, such action may be undertaken only if: (i) the action is not a violation of the Mortgage Loan documents, and (ii) the Tenant in Common first offers to sell to each other Tenant in Common and the Master Lessee its Interest for a price equal to the fair market value of such interest.

Bankruptcy of a

If a Tenant in Common is bankrupt, then the bankrupt Tenant in Common will be obligated to sell and the other Tenants in Common may, and the Master Lessee will be obligated to, buy

Tenant in Common	the bankrupt Tenant in Common's entire Interest at fair market value.
Authority to Act as Agent	By executing the Tenants in Common Agreement, each Tenant in Common authorizes and directs the Master Lessee to act as the agent for the Tenant in Common to: (A) receive any notice or other communication from the Mortgage Lender, provided that timely notice of such communication shall be given by the Master Lessee to each Tenant in Common; (B) receive service of process from the Mortgage Lender under the Mortgage Loan, provided that timely notice of such service of process shall be given by the Master Lessee to each Tenant in Common; and (C) sign or execute documents and negotiate any changes to the Mortgage Loan documents on behalf of each Tenant in Common with respect to any transaction relating to the Loan, provided the unanimous consent of the Tenants in Common has been received, or deemed to have been received pursuant to the terms of the Master Lease prior to execution.
Arbitration	Any dispute arising under the Tenants in Common Agreement will be subject to binding arbitration in Massachusetts.

Call Agreement

The Call Agreement provides a mechanism for the Master Lessee and Tenants in Common to: (i) facilitate a sale or refinancing of the Property or the taking of an action requiring unanimous consent of the Tenants in Common, (ii) cure a default under the Mortgage Loan, or (iii) acquire the interest of a Tenant in Common defaulting on its obligation to pay Property Expenses. The following is a summary of some of the significant provisions of the Call Agreement. It is qualified in its entirety by reference to the full text of the agreement, the form of which is attached as an exhibit to this Memorandum.

Call Right

The Call Agreement provides that the Master Lessee may exercise, on behalf of the Tenants in Common, the right to acquire the Interest of a Tenant in Common (a "Selling Co-Tenant") if:

- the Tenant in Common is in default of its obligations to pay its *pro rata* share of Property Expenses, or
- the Tenant in Common does not consent: (i) to a sale, financing or refinancing of the Property, (ii) to take any other action requiring unanimous consent of the Tenants in Common or (iii) to take action to prevent or cure an event of default under secured loan documents relating to the Property, and Tenants in Common collectively owning 80% or more of the Property do consent to such sale, financing, refinancing or action.

Exercise of Rights	Only the Master Lessee may exercise the call rights under the Call Agreement, but the other Tenants in Common may purchase their *pro rata* portion of the Interest of the Selling Co-Tenant. The other Tenants in Common may purchase the Interests under the Call Agreement by giving the Master Lessee or its designee written notice within 30 days of the exercise of the call rights. Any such Interests not purchased by the other Tenants in Common will be purchased by the Master Lessee.
Determination and Payment of Purchase Price	The purchase price will be the greater of: (i) the appraised fair market value of the Property (without any discounts) as determined by an independent third party appraiser selected by the Master Lessee and (ii) the value of the Property determined by any bona fide written offer from a party unrelated to the Selling Co-Tenant to buy the Property in existence at the time of exercise, in each case multiplied by the percentage of the Property represented by such Interest and reduced by the same percentage of any debt encumbering the Property and further reduced by commissions, transfer taxes and other customary costs that are or would be incurred in connection with a sale of the Property. Proceeds from the purchase price, net of any pro rata portion of loans encumbering title to the Property and all outstanding costs and expenses of the Property, will be paid to the Selling Co-Tenant in proportion to its Interest. Payment of the purchase price to a Selling Co-Tenant will occur as provided in the Call Agreement or at the earlier of (i) the closing of the sale or refinancing of the Property by the

other Tenants in Common, or (ii) 180 days after exercise of the call rights. The Call Agreement contains a grant of a limited power of attorney from each Tenant in Common to the Master Lessee for the purpose of executing any necessary documentation to effect the sale of an Interest pursuant to the terms of the Call Agreement.

Arbitration Any dispute arising under the Call Agreement will be subject to binding arbitration in Massachusetts.

Single Purpose Entity Operating Agreement

Each Investor will be required to adopt an operating agreement for the Single Purpose Entity formed for the purpose of holding the Interest on such Investor's behalf. The following summary is qualified in its entirety by reference to the agreement, the form of which is attached to as an exhibit to this Memorandum.

Management Pursuant to the terms of the Single Purpose Entity operating agreement, the member of each Single Purpose Entity will also act as the manager under Delaware law.

Special Member An independent third party will be designated as a special member of the Single Purpose Entity for the purpose of maintaining the company upon the death, dissolution or bankruptcy of its member.

Limitation on Actions The provisions of the Mortgage Loan and the Single Purpose Entity operating agreement will require the Single Purpose Entity and its member or members to take and refrain from taking certain actions that would cause the Single Purpose Entity to qualify as a special purpose entity under the terms of the Mortgage Loan. These actions are expected to include:

- preserving the Single Purpose Entity's existence, rights (charter and statutory) and franchises;
- maintaining separate books and records and bank accounts;
- holding the Single Purpose Entity out as a legal entity separate from its member;
- to the extent required, filing separate tax returns for the Single Purpose Entity and paying any taxes on behalf of the Single Purpose Entity;
- not commingling the Single Purpose Entity's assets with assets of any other person or entity;
- conducting the Single Purpose Entity's business and holding its assets in its own name;
- strictly complying with all organizational formalities to maintain the Single Purpose Entity's separate existence;
- maintaining separate financial statements for the Single Purpose Entity;
- paying the Single Purpose Entity's liabilities only out of its own funds;
- maintaining an arm's length relationship between the Single Purpose Entity and its member and affiliates and entering into transactions with its member and affiliates on a commercially reasonable basis;
- paying any salaries of Single Purpose Entity's employees out of its own assets;
- not holding out the Single Purpose Entity's credit or assets as being available to satisfy the obligations of others besides the obligations to the Mortgage Lender;

- allocating fairly and reasonably any overhead for shared office space;
- using separate stationery, invoices and checks;
- not pledging the Single Purpose Entity's assets for the benefit of any other person or entity;
- correcting any known misunderstanding regarding the Single Purpose Entity's separate identity;
- maintaining adequate capital in light of the Single Purpose Entity's contemplated business purpose, transactions and liabilities;
- not acquiring any securities or obligations of its members or affiliates;
- maintaining its books, records, resolutions and agreements as official records;
- not declaring bankruptcy or making an assignment for the benefit of creditors engage, directly or indirectly;
- not making or permitting to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any person or entity;
- not engaging in any dissolution, liquidation, consolidation, merger, asset sale or transfer of ownership interests other than such activities as are expressly permitted pursuant to any provision of the Mortgage Loan;
- not forming or acquiring any subsidiary; and
- failing to have one independent manager and one special member. The vote of the independent manager must be required for the Single Purpose Entity to file a petition under any bankruptcy, insolvency or receivership laws.

Special Member

The Mortgage Lender may require the appointment of a special member or independent director of each Single Purpose Entity acceptable to the Mortgage Lender for the purpose of maintaining the Single Purpose Entity upon the death, dissolution or bankruptcy of its member or members.

Maintenance

Each purchaser will be responsible for the maintenance of its Single Purpose Entity as a Delaware limited liability company in good standing and to qualify its Single Purpose Entity to do business as a foreign limited liability company in the state in which the Property is located. Pursuant to the Delaware Limited Liability Company Act, each Single Purpose Entity must designate and maintain an agent for service of process within Delaware. Typically this is accomplished by engaging the services of a professional registered agent within such state.

Cabot Acquisition maintains a relationship with and will use National Corporate Research to form the Single Purpose Entities under Delaware law and register them in the state in which the Property is located. National Corporate Research will be named as the initial registered agent in Delaware and the state in which the Property is located for each Single Purpose Entity unless otherwise directed by the purchaser.

The purchasers will pay $2,500, in addition to the purchase price for the Interests, for the costs of forming their Single Purpose Entity, which includes formation fees and the fees payable to National Corporate Research. In addition, the Master Lessee will pay, on behalf of each purchaser, any annual taxes or fees required by Delaware and the state in which the Property is located to maintain the existence and qualification of their Single Purpose Entity as well as the annual registered agent fees for each state where the Single Purpose Entity is registered and will deduct the costs of such taxes and fees from monthly rents. See "Plan of Distribution."

The Mortgage Lender requires that each Single Purpose Entity have an independent manager whose vote is required for dissolving the entity, filing bankruptcy and filing a partition action. Cabot Acquisition will provide an unaffiliated individual as the independent manager.

Guaranty Agreement and Environmental Indemnification

Each purchaser will be required to execute a Guaranty Agreement as more fully described under "Acquisition Terms and Financing – Mortgage Loan – Limited Recourse." In addition, If Cabot Acquisition does not obtain environmental insurance coverage for the Property, each Tenant in Common and at least one individual who is direct or indirect principal thereof will be required to agree to perform all remedial work required by, and indemnify the Mortgage Lender for losses that may occur as a result of, the presence of hazardous materials on the Property or any violation of environmental laws, regulations, rules or other requirements of any governmental agency o.· authority relating to the health, environment or hazardous substances.

Accession Agreement

Each purchaser who purchases an Interest after the initial closing of the Offering will be required to enter into an Accession Agreement, under which they will agree to be bound to the terms of the Tenants in Common Agreement, the Call Agreement, the Master Lease, and the Consulting Agreement.

FEDERAL INCOME TAX CONSEQUENCES

The following discussion applies only if a purchaser buys an Interest directly from us. You should not view the following analysis as a substitute for careful tax planning, particularly since the income tax consequences of an investment in an Interest are uncertain and complex. Also, the tax consequences will not be the same for all taxpayers. You should be aware that the following discussion necessarily condenses or eliminates many details that might adversely affect you significantly and does not address the tax issues that may be important to you if you are subject to special tax treatment such as a foreigner or tax-exempt entity. Except where otherwise noted, this discussion does not discuss aspects of state and local taxation relating to an investment. Each prospective purchaser should consult its own tax advisor about the specific tax consequences to him before investing.

The following discussion of tax consequences is based on laws and regulations presently in effect and, except where noted, does not address state, local or foreign tax laws. You should be aware that new administrative, legislative, or judicial action could significantly change the tax aspects associated with an Interest.

There is uncertainty concerning certain tax aspects discussed herein, and there can be no assurance that the IRS may not challenge some of the deductions you may claim or positions you may take. Should the IRS challenge the tax treatment of an investment in an Interest, even if the challenge is unsuccessful, you could be faced with substantial legal and accounting costs in resisting the challenge.

You should not buy an Interest solely for the purpose of obtaining a tax shelter for income from other sources. An Interest is unlikely to provide any such tax shelter.

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The opinion of Tax Counsel is not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code. The opinion was written to support the promotion or marketing of the Offering and each prospective purchaser of an Interest should seek advice based on the prospective purchaser's particular circumstances from an independent tax advisor.

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Before buying an Interest, you must represent and warrant that you:

(i) **have independently obtained advice from your legal counsel and/or accountant about any tax-deferred exchange under Code Section 1031 and applicable state laws, including, without limitation, whether the acquisition of an Interest may qualify as part of a tax-deferred exchange, and you are relying on such advice;**

(ii) **understand that Cabot Acquisition has not obtained a ruling from the IRS that an Interest will be treated as an undivided interest in real property as opposed to a partnership;**

(iii) **understand that the tax consequences of an investment in an Interest, especially the treatment of the transaction under Code Section 1031 and the related Section 1031 Exchange rules, are complex and vary with the facts and circumstances of each individual purchaser, and**

(iv) **understand the opinion of Tax Counsel is only Tax Counsel's view of the anticipated tax treatment and there is no guaranty that the IRS will agree with such opinion.**

Status as Tenants in Common

The Sponsor has tried to structure the Tenants in Common Agreement, the Call Agreement and the Master Lease to allow each Investor to be treated as acquiring an undivided interest in real estate as opposed to an interest in a partnership for Federal income tax purposes. However, Cabot Acquisition will not obtain a ruling from the IRS that the Interests will be treated as undivided interests in real estate as opposed to a partnership for Federal income tax purposes. In the absence of a ruling, there can be no assurance that the IRS will treat the Interests as interests in real estate for Federal income tax purposes. If a prospective Investor intends to acquire an Interest pursuant to a Code Section 1031 Exchange, it should be aware that the Interest must be treated as an interest in real estate and not as an interest in a partnership in order for a prospective Investor to be eligible to use the Interest as part of a Code Section 1031 Exchange. Consequently, if a prospective Investor is acquiring an Interest as part of a Code Section 1031 Exchange, it should, and is required to represent in the Purchase Agreement that it has or will have, consulted its own tax advisor about the tax consequences of any like-kind exchange under Code Section 1031 and its potential risks.

Tax Counsel has issued an opinion that: (i) the Interests should be treated as interests in real estate (except to the extent some of the Interest is attributable to incidental personal property at the Property) and not as partnership interests, (ii) the Interests should not be treated as "securities" for purposes of Code Section 1031 and (iii) the description of Federal income tax consequences in this Memorandum is correct in all material respects. The opinion has been attached as Exhibit F hereto. Tax Counsel has based its opinion upon existing cases and rulings as well as the ruling guidelines that were published by the IRS in Rev. Proc. 2002-22, 2002-1 C.B. 733, which specifies the conditions under which the IRS will consider a request for a ruling that an undivided fractional interest in rental real property is not an interest in a business entity.

Cabot Acquisition has not sought, and does not expect to request, a ruling from the IRS under Rev. Proc. 2002-22. As a result, the ruling guidelines in Rev. Proc. 2002-22 technically are not applicable for purposes of determining the characterization of the Interests for tax purposes. Tax Counsel believes, however, that in the event of an examination by the IRS, the IRS and courts of applicable jurisdiction would consider these ruling guidelines, together with existing cases and rulings, for purposes of determining whether the Interests are treated as interests in real estate or partnership interests. Tax Counsel has concluded that the Interests should be treated as interests in real estate because the Tenants in Common Agreement, the Call Agreement, the Consulting Agreement and the Master Lease comply in most material respects with the conditions set forth in Rev. Proc. 2002-22 as well as existing cases and rulings.

The IRS could, however, emphasize distinctions between this situation and Rev. Proc. 2002-22, including that: (i) the Tenants in Common Agreement does not fully comply with the parenthetical requirement in Section 6.08 of Rev. Proc. 2002-22 (concerning liability of the owner of a disregarded entity to repay advances), (ii) the Tenants in Common Agreement provides that the Tenants in Common shall be deemed to have consented to proposed actions if they do not respond to requests for their consent, which is not expressly permitted in Rev. Proc.

2002-22, (iii) the Mortgage Lender will impose requirements, including a guaranty by the Master Lessee of the nonrecourse carve-outs in the Mortgage Loan for "bad boy" actions committed by the Master Lessee or its affiliates, which could be viewed as resulting in impermissible risk sharing between the Tenants in Common and the Master Lessee, and (iv) the Tenants in Common will enter into a Consulting Agreement with the Sponsor or one of its affiliates to provide services in connection with a sale of the Property, subject to annual renewal by a majority of the Tenants in Common. Although Rev. Proc. 2002-22 does not explicitly permit these provisions, Tax Counsel believes that these provisions are consistent with the intent and purpose of Rev. Proc. 2002-22 as well as with the underlying cases and rulings governing whether the relationship among the Tenants in Common is classified as a partnership for federal income tax purposes. A risk always exists that the IRS may not agree with such opinion. The opinion of Tax Counsel is predicated on all the facts and conditions set forth in the opinion and is not a guarantee of the current status of the law and should not be accepted as a guarantee that a court of law or an administrative agency will concur in the opinion. If any of the facts or assumptions set forth in the opinion prove incorrect, it is possible that the tax consequences would change.

Treatment as a "Security." The provisions of Code Section 1031 do not apply to "(B) stocks, bonds or notes, (C) other securities or evidences of indebtedness or interest." This phrase has not been defined precisely; the exact connotation associated with the term is not clear. Congress added the exclusion in Code Section 1031 for "other securities" to preclude brokers, investment houses and bond houses from arranging tax-free exchanges of appreciated securities. Other Code sections, including Sections 165(g), 1083(f) and 1236(c), have a narrow definition of "securities." However, it is not clear whether the definitions in these Code sections apply or a broader view should be taken. In G.C.M. 35242, the IRS indicated after discussing the definition of "securities" in Code Sections 165(g)(2), 1083(f) and 1236(c), that "we believe it persuasive that Congress has consistently defined the term 'securities' in a limited sense." The IRS concluded that it did not believe whiskey warehouse receipts were "securities" under Code Section 1031. This occurred even though the SEC believed they were securities under securities law. Further, in Plow Realty Co. of Texas, mineral deeds were not securities under the predecessor to Code Section 543 even though they were securities under applicable securities law. In addition, in Rev. Rul. 55-749, the IRS concluded that applicable state law should govern whether water rights were real property for purposes of Code Section 1031. Except for any personal property that may be part of the Property, the Property should be considered real property under state law. Consequently, if these provisions are applied to the Interests, it appears that, in all material respects, an Interest should not be considered a "security" for purposes of Code Section 1031 even though an Interest may be a "security" under applicable federal and state securities laws.

Identification. The Treasury Regulations promulgated under Code Section 1031 permit taxpayers to identify alternative and multiple replacement properties within 45 days after disposing of their relinquished property. Taxpayers are permitted to identify three properties without regard to the fair market value of the properties (the "three-property rule"), multiple properties with a total fair market value not in excess of 200% of the value of the relinquished property (the "200% rule"), or any number of properties if it acquires at least 95% of the identified properties (the "95% rule"). In general, the identification requirement also can be satisfied if replacement property is actually acquired by the last day of the identification period. The Property consists of two adjacent buildings and the land on which they are situated. Cabot Acquisition believes after consulting with Tax Counsel that the Property should be treated as a single property for purposes of the three property rule. However, Tax Counsel will not render an opinion on this issue. Because the identification rules of Code Section 1031 are strictly construed, a purchaser's exchange will not qualify for deferral of gain under Code Section 1031 if too many properties are identified or if the deadlines for identification are not met. Prospective purchasers should seek the advice of their tax advisors prior to subscribing for the Interests or identifying the Property.

Certain personal property that will be conveyed to the co-owners in connection with their acquisition of the Property may not qualify as like kind property for purposes of Code Section 1031. Certain items of personal property may be conveyed to the co-owners in connection with their acquisition of Interests in the Property. For purposes of the identification requirements, items that are not like-kind to the primary property being exchanged will be considered incidental to and not separate from the primary property being exchanged if, in standard commercial transactions, the incidental property is typically transferred together with the primary property, and the fair market value of the incidental property does not exceed 15% of the value of the primary property being exchanged. Therefore, in such a case, a separate identification of the incidental personal property is not necessary. However, because the purchase price for the Property has not been allocated between the real and personal property, there is no assurance that the value of the personal property being conveyed does not exceed 15% of the value of the remainder of the Property. Furthermore, regardless of whether a separate identification is necessary, the rules governing multiple property exchanges still apply and the receipt of the personal property may trigger tax on the value thereof. Because the amount of purchase price that may be allocable to personal or intangible property (if any) is unclear and may vary depending upon the circumstances, Tax Counsel will not render an opinion regarding the tax treatment of such amounts. Any portion of the purchase price of an Interest that may be allocable to personal or intangible property may be taxable as "boot" to the Investors. Therefore, each prospective Investor must seek the advice of a qualified tax adviser as to the proper treatment of such items.

Election Out of Partnership Provisions. Code Section 1031(a) indicates that if co-owners qualify for an election under Code Section 761, and such election is made, then the owners will be treated as owning an undivided interest in property and not a partnership interest. Co-owners qualify for a Code Section 761 election if the co-owners: (i) own the property as co-owners, (ii) reserve the right separately to take or dispose of their shares of the property acquired or retained and (iii) do not actively conduct business or irrevocably authorize some person or persons acting in a representative capacity to purchase, sell or exchange such investment property, although each separate participant may delegate authority to purchase, sell or exchange its share of any such investment property for the time being for its account, but not for a period of more than one year. The Code Section 761 election is made by filing an election with the IRS or an election will be deemed to be made if there is an intent to make the election in the ownership agreement. The Treasury Regulations provide that either one of the following will indicate the requisite intent: (i) at the time of the formation of the organization, there is an agreement among the members that the organization be excluded from Subchapter K beginning with the first taxable year of the organization or (ii) the members of the organization owning substantially all of the capital interest report their respective shares of the items of income, deductions and credits of the organization on their respective returns (making such elections as to individual items as may be appropriate) in a manner consistent with the exclusion of the organization from Subchapter K, beginning with the first taxable year of the organization. The Tenants in Common Agreement includes the provision set forth in (i) above and requires the Tenants in Common to comply with (ii) above. Consequently, the Tenants in Common should be deemed to have made a Code Section 761 election to be excluded from the partnership provisions of the Code for federal income tax purposes.

However, some uncertainty exists as to whether Tenants in Common will meet the requirements to make a Code Section 761 election and, as a result, whether the election will be effective. Although the Tenants in Common should be viewed as owning the Property as co-owners and should be viewed as having the right to separately take or dispose of their Interests in the Property, it is uncertain whether the Tenants in Common will be viewed as actively carrying on a trade or business. The determination as to whether the Tenants in Common are actively carrying on a trade or business for purposes of this election is similar to whether the co-tenants' activities rise to the level sufficient that the co-owners would be treated as a partnership for federal income tax purposes. If the level of activity is sufficient that the Tenants in Common are actively carrying on a trade or business, the Code Section 761 election would not be available and, as a result, the Tenants in Common could become, or may be deemed to be, a partnership for federal income tax purposes.

Partnership Treatment. The treatment of the tenant in common relationship as a partnership for federal income tax purposes may cause the treatment of a number of tax items to be different than currently contemplated. These potential changes include whether certain elections would have to be made by the partnership and not the Tenants in Common.

Limitations on Losses and Credits from Passive Activities. Losses from passive trade or business activities generally may not be used to offset "portfolio income," i.e. interest, dividends and royalties, or salary or other active business income. Deductions from passive activities may generally be used to offset income from passive activities. Interest deductions attributable to passive activities are treated as passive activity deductions and not as investment interest. Thus, such interest deductions are subject to limitation under the passive activity loss rule and not under the investment interest limitation. Credits from passive activities generally are limited to the tax attributable to the income from passive activities. Passive activities include: (i) trade or business activities in which the taxpayer does not materially participate and (ii) rental activities. Thus, a purchaser's share of the income and loss from the Property will, in all likelihood, constitute income and loss from passive activities and will be subject to such limitation.

Losses (or credits that exceed the regular tax allocable to passive activities) from passive activities that exceed passive activity income are disallowed and can be carried forward and treated as deductions and credits from passive activities in subsequent taxable years. Disallowed losses from an activity are allowed in full when the taxpayer disposes of its entire interest in the activity in a taxable transaction, except for certain dispositions to related parties.

In the case of rental real estate activities in which an individual actively participates, up to $25,000 of losses (and credits in a deduction-equivalent sense) from all such activities are allowed each year against portfolio income and salary and active business income of the taxpayer. Except as provided below with respect to "real estate professionals," purchasers will not, in all likelihood, be actively participating in the rental real estate activities of the Property and, therefore, will not be able to deduct any loss against their portfolio or active business income. Moreover, even if an investor actively participates in rental real estate activities, there is a phase out of the $25,000 allowable loss equal to 50% of the amount by which an investor's adjusted gross income exceeds $100,000. Therefore, if an investor's adjusted gross income is $150,000 or more for any given year, they cannot use any of the $25,000 passive losses to offset non-passive income under this rule.

Certain taxpayers can, in limited circumstances, deduct losses and credits from rental real estate activities against other income, such as salaries, interest, dividends, etc. A taxpayer qualifies for this exception to the passive loss rules described above if: (i) more than half of the personal services performed by the taxpayer in trades or businesses during a year are performed in real property trades or businesses in which the taxpayer materially participates and (ii) the taxpayer performs more than 750 hours of services during the year in real property trades or businesses in which the taxpayer materially participates. In the case of a joint return, one spouse must satisfy both requirements. A real property trade or business is any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing or brokerage trade or business. In determining whether a taxpayer performs more than half of his or her personal services in real property trades or businesses, services performed as an employee are disregarded unless the employee owns more than 5% of the employer. Purchasers should consult with their own tax adviser to determine if this rule applies to them.

Leases to Tax Exempt Entities. Recently enacted Code Section 470 places limits on deductions allocable to property leased to governmental or other tax exempt entities under a disqualified lease. In general, deductions attributable to such property may only be used against the income from such property. In addition, (i) an exchange of tax exempt use property subject to a disqualified lease entered into prior to March 13, 2004 is for an Interest generally will not qualify as a section 1031 like kind exchange. Similarly, to the extent that the Premises are tax exempt use property subject to a disqualified lease, acquisition of an Interest may not qualify as an acquisition of like kind property under Section 1031. As of the date of this Offering, the Property is leased to one tax-exempt entity. The Company has examined the lease with this entity and, after consulting with Tax Counsel, has determined that these leases are not disqualified leases. However, Tax Counsel will not render an opinion on this issue and there can be no assurance that the IRS would agree with this conclusion. Therefore, prospective investors should consult with their own tax advisors on the impact that Section 470 could have on their investment in an Interest and any Section 1031 exchange.

Net Income and Loss of Purchaser. If you purchase an Interest, you will be required to determine your own net income or loss from the Property for income tax purposes. You will be required to pay your share of expenses of the Property and be entitled to your share of income. Certain expenses of the Property, such as real estate taxes and depreciation, will be different for different Tenants in Common. The Master Lessee will keep records and provide information about expenses and income for each Tenant in Common. You will be required to keep separate records to separately report your income.

Tax Liability in Excess of Cash Receipts. It is possible that your tax liability attributable to the Property may exceed your cash flow from the Property, in which case you will have to use other funds to satisfy your tax liability.

Allocation of Liabilities. Any liabilities incurred in connection with the Property will be allocated, for federal income tax purposes, to the Tenants in Common in proportion to their Interests. For purposes of determining the purchase price of replacement property in a Section 1031 Exchange, each purchaser will be able to include its proportionate share of the liabilities that encumber the Property at the time of the acquisition of an Interest.

Treatment of Gain or Loss on Disposition of Interests. The sale or exchange of an Interest will generally be treated as a disposition of your *pro rata* interest in the Property, and any gain or loss you realize from such a disposition will be treated as capital gain or loss, provided you are not deemed a "dealer" in real property. As a general rule, the ownership of real property for investment is not the type of activity that would cause a person or entity to be considered a "dealer" in real property. The question of "dealer" status is a question of fact, will depend on facts and circumstances and will be determined at the time of a sale of the Property. If a purchaser is deemed a "dealer" and the Property are is not considered a capital asset or a Code Section 1231 asset, any gain or loss on the sale or other disposition of the Property would be treated as ordinary income or loss. If the holding period for your Interest is more than one year, the portion of any gain realized that is capital gain will be treated as long-term capital gain.

In determining the amount realized on the sale or exchange of an Interest, you must include, among other things, your share of assumed indebtedness on the Property. Therefore, it is possible that the gain realized on the sale of an Interest may exceed the cash proceeds of the sale, and, in some cases, the income taxes payable with respect to the gain realized on the sale may exceed such cash proceeds. If the Property constitute Code Section 1231 assets, a purchaser would combine its gain or loss attributable to the Property with any other Code Section 1231 gains or losses realized in that year, and the resulting net Code Section 1231 gains or losses would be taxed as capital gains or constitute ordinary losses, as the case may be. This treatment may be altered depending on the disposition by a purchaser of Code Section 1231 property over several years. In general, net Code Section 1231 gains are recaptured as ordinary income to the extent of net Code Section 1231 losses in the five preceding taxable years.

Treatment of Gifts of Interests. Generally, no gain or loss is recognized for federal income tax purposes as a result of a gift of property. However, if a gift (including a charitable contribution) of an Interest is made at a time when a Tenant in Common's share of the nonrecourse indebtedness on the Property exceeds the adjusted basis of its Interest, it may recognize gain for federal income tax purposes upon the transfer. Such gain, if any, will generally be treated as capital gain. Gifts of Interests may also be subject to a gift tax imposed under the rules generally applicable to all gifts of property.

Foreclosure. In the event of a foreclosure of a mortgage or deed of trust on the Property, you would realize gain, if any, in an amount equal to the excess of your share of the outstanding mortgage or deed of trust over your adjusted tax basis in the Property, even though you might realize an economic loss upon such a foreclosure. In addition, you could be required to pay income taxes with respect to such gain even though you receive no cash distributions as a result of such foreclosure.

Method of Accounting. Each Tenant in Common will be required to report its income under its applicable accounting method.

Depreciation and Cost Recovery. Current federal income tax law allows an owner of improved real property to take depreciation deductions based on the entire cost of the depreciable improvements, even though such improvements are financed in part with borrowed funds. If, however, the purchase price of an Interest and the nonrecourse liabilities to which the Property are subject are in excess of the fair market value of the Property, you will not be entitled to take depreciation deductions to the extent deductions are derived from such excess. You will have to compute your own depreciation. Depreciation deductions can only be claimed for that portion of real property that is depreciable. The allocation of purchase price between depreciable and nondepreciable items is a question of fact, and if the amount allocated to depreciable items is decreased and the amount allocated to nondepreciable items such as land is increased, a purchaser's depreciation deductions for federal income tax purposes will be decreased. It is possible that the IRS may take the view that the increase in the price of an undivided interest in the Property is attributed to a nondeductible capitalized item. In addition, the purchase price of an Interest will not include any amount attributable to reserves.

Closing Costs and Reserves. Each purchaser of an Interest will be obligated to pay its *pro rata* share of closing costs, expenses and Mortgage Loan reserves. The tax treatment of certain expenses of the Offering, closing costs, financing costs or reserves is unclear and may vary depending upon the circumstances. Therefore, no advice is given regarding, and Tax Counsel's opinion will not address, the tax treatment of such costs and reserves, which may be taxable to the Tenants in Common. In addition, cash in a reserve generally does not constitute property that is like-kind to real property for purposes of Code Section 1031. Prospective purchasers should seek the advice of their tax advisors as to the proper treatment of such items and the impact of such items on their proposed Section 1031 Exchanges.

Payments to Cabot Acquisition and its Affiliates; Other Expenses. The Sponsor and its affiliates will receive various fees described elsewhere in this Memorandum. In addition, the Tenants in Common will incur certain expenses as a result of their ownership of Interests.

Real estate brokerage commissions (whether or not paid to affiliates of Cabot Acquisition) will be treated as capitalized expenditures and added to the basis of the Property. The amount of such brokerage commissions cannot be estimated at this time.

The availability, timing and amount of deductions from other fees and expenses will depend not only on general legal principles but also on various determinations that are subject to potential controversy on factual and other grounds. These determinations could include, among others, whether the fees paid are nondeductible on the ground that such payments are excessive or otherwise. Because the deductibility of fees and expenses is a factual matter, Tax Counsel cannot render an opinion concerning the availability, timing or amount of deductions as a result of any fees and expenses paid by the Tenants in Common.

At-Risk Rules. Individuals or closely held corporations, will be unable to deduct their share of loss from the Property, if any, to the extent such loss exceeds the amount "at risk." A purchaser's initial amount at risk will generally equal the sum of: (i) the amount of cash paid for the Interest, (ii) the amount, if any, of recourse financing obtained by the purchaser to acquire its Interest and (iii) the amount of any qualified non-recourse indebtedness encumbering the Property. Thereafter, a purchaser's amount at risk will be reduced by the amount of any cash flow to it and the amount of its loss, and will be increased by the amount of its income. Loss not allowed under the "at-risk" provisions may be carried forward to subsequent taxable years and used when the amount at risk increases. It is anticipated that the Mortgage Loan will be considered qualified non-recourse financing and therefore will qualify as "at risk." However, Tax Counsel will not issue any opinion concerning the application of the at-risk rules.

Alternative Minimum Tax. Taxpayers may be subject to the alternative minimum tax in addition to the regular income tax. The alternative minimum tax applies to designated items of tax preference. For information about tax preferences and the alternative minimum tax, a purchaser should consult its individual tax advisor.

Activities Not Engaged in for Profit. Under Code Section 183, certain losses from activities not engaged in for profit are not allowed as deductions from other income. The determination of whether an activity is engaged in for profit is based on all the facts and circumstances, and no one factor is determinative, although the Treasury Regulations indicate that an expectation of profit from the disposition of property will qualify as a profit motive. Code Section 183 has a presumption that an activity is engaged in for profit if income exceeds deductions in at least three out of five consecutive years. Although it is reasonable for a purchaser to conclude that it can realize a profit from an investment in an Interest as a result of cash flow and appreciation of the Property, there can be no assurance that a purchaser will be found to be engaged in an activity for profit because that the applicable test is based on the facts and circumstances existing from time to time.

General Limitations on the Deductibility of Interest. Interest will accrue and be payable on any loan encumbering the Property. In addition to the limitations on the deductibility of interest incurred in connection with passive activities and the "at risk" rules, the following are additional restrictions on the deduction of interest:

Capitalized Interest. Interest on debt incurred to finance construction of real property is not currently deductible and must be capitalized as part of the cost of the real property.

Interest Incurred to Carry Tax-Exempt Securities. Code Section 265(a)(2) disallows any deductions for interest paid by a taxpayer on indebtedness incurred or continued for the purpose of buying or carrying tax-exempt obligations. The application of Code Section 265(a)(2) turns on each purchaser's purpose for acquiring an Interest. Thus, Code Section 265(a)(2) might be applied to a purchaser whose purpose for investing in an Interest rather than in a nonleveraged investment is to enable such purchaser to continue to carry tax-exempt obligations. It should be noted that Code Section 7701(f) directs the IRS to prescribe regulations as may be necessary or appropriate to prevent the avoidance of provisions of the Code that deal with the linking of borrowings to investments through the use of related persons, pass-through entities or other intermediaries. Therefore, the provisions of Code Section 265(a)(2) may be applied to an investor if the investor does not itself own tax-exempt obligations or stock of a regulated investment company that distributes exempt interest dividends but rather such obligations or stock are owned by a person, entity or other intermediary related to the investor.

Prepaid Interest. Interest prepayments (including "points") must be capitalized and amortized over the life of the Mortgage Loan with respect to which they are paid.

Accuracy-Related Penalties and Interest.

Prior to the Jobs Act of 2004, all penalties relating to the accuracy of tax returns were consolidated into a single accuracy-related penalty equal to 20% of the portion of the underpayment to which the penalty applies. The penalty applied to any portion of any understatement that was attributable to: (i) negligence or disregard of rules or regulations; (ii) any substantial understatement of income tax; or (iii) any substantial valuation misstatement. In addition to these provisions, the Jobs Act of 2004 imposes a 20% accuracy related penalty for (i) listed or (ii) reportable transactions having a significant tax avoidance purpose. This penalty is increased to 30% if the transaction is not properly disclosed on the taxpayer's federal income tax return. Failure to disclose such a transaction can also prevent the applicable statute of limitations from tolling in certain circumstances and can subject the taxpayer to additional disclosure penalties ranging from $10,000 to $200,000, depending on the facts of the transaction. Similarly, any interest attributable to unpaid taxes associated with a non-disclosed reportable transaction may not be deductible for federal income tax purposes.

Negligence is generally any failure to make a reasonable attempt to comply with the provisions of the Code and the term "disregard" includes careless, reckless, or intentional disregard.

A substantial understatement of income tax generally occurs if the amount of the understatement for the taxable year exceeds the greater of (i) 10% of the tax required to be shown on the return for the taxable year, or (ii) $5,000 ($10,000 in the case of a C corporation).

A substantial valuation misstatement occurs if the value of any property (or the adjusted basis) is 200% or more of the amount determined to be the correct valuation or adjusted basis. The penalty doubles if the property's valuation is misstated by 400% or more. No penalty will be imposed unless the underpayment attributable to the substantial valuation misstatement exceeds $5,000 ($10,000 in the case of a C corporation).

The term "reportable transaction" means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under Code Section 6011, such transaction is of a type which the IRS determines as having a potential for tax avoidance or evasion.

The term "listed transaction" means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the IRS as a tax avoidance transaction for purposes of Code Section 6011.

Except with respect to "tax shelters," an accuracy related penalty will not be imposed on an underpayment attributable to negligence, a substantial understatement of income tax, or a substantial valuation misstatement if it is shown that there was a reasonable cause for the underpayment and the taxpayer acted in good faith. A "tax shelter" includes a partnership if a significant purpose of the partnership is the avoidance or evasion of tax. In addition, an accuracy related penalty will not be imposed on a reportable transaction or a listed transaction if it is shown that: (i) there is reasonable cause for the position, (ii) the taxpayer acted in good faith, (iii) the relevant facts of the transaction are adequately disclosed in accordance with the regulations prescribed under Code section 6011, (iv) there is or was substantial authority for such treatment, and (v) the taxpayer reasonably believed that such treatment was more likely than not correct.

Reportable Transaction Disclosure and List Maintenance

A taxpayer's ability to claim privilege on any communication with a federally authorized tax preparer involving a tax shelter is limited. In addition, taxpayers and material advisors are required to comply with disclosure and list maintenance requirements for reportable transactions. Cabot Acquisition and Tax Counsel have concluded that the sale of an Interest should not constitute a reportable transaction.

Accordingly, Cabot Acquisition and Tax Counsel do not intend to make any filings under these disclosure or list maintenance requirements. There can be no assurances that the IRS will agree with this determination by Cabot Acquisition and Tax Counsel. Significant penalties could apply if a party fails to file under these rules, and such rules are ultimately determined to be applicable.

State and Local Taxes

An investor should consider the state and local tax consequences of an investment in an Interest. Some states adopt Code Section 1031 in whole, other states adopt it in part, and still other states impose their own requirements to qualify for like-kind exchange treatment under state law. In addition, while many states follow federal tax law by treating single purpose entities as disregarded entities, other state laws may differ, which could result in the imposition of income, franchise or other taxes on such entities. Further, income or loss from the Property generally will be required to be included in determining the taxable state or local income of an investor or its Single Purpose Entity. Accordingly, an investor who is not currently filing an income tax return in the state where the Property is located generally may be required to file an income tax return in such state and pay tax on income from the Property located in such state. Each investor should consult its own tax advisor as to the various state and local tax consequences relating to an investment in an Interest.

ERISA CONSIDERATIONS

Cabot Acquisition does not believe that an investment in the Interests using assets of an employee benefit plan subject to Title I of ERISA or of any other retirement plan subject to Code Section 4975, such as an IRA ("Benefit Plan") is appropriate and does not intend to sell interests to purchasers whose assets are deemed to be Benefit Plan assets.

RESTRICTIONS ON TRANSFER OF INTERESTS

Cabot Acquisition will not register Interests under the Securities Act or the securities laws of any state and Cabot Acquisition is offering and selling the Interests in reliance on exemptions from the registration requirements of such laws. Applicable federal and state securities laws impose restrictions upon the resale or transfer of Interests except by gift, bequest or operation of law. The Interests are "restricted securities" as defined in Rule 144 promulgated by the Commission. You must hold the Interests indefinitely unless they are subsequently registered under the Securities Act and any applicable state securities laws or unless, upon the advice of counsel satisfactory to us, they may be sold in a transaction that is exempt from the registration requirements of such laws. Cabot Acquisition has no obligation and does not intend to register the Interests for resale under the Securities Act or any state securities laws or to take any action (including the filing of reports or the publication of information as required by Rule 144 under the Securities Act) which would make available to a purchaser an exemption from the registration requirements of any such laws for the resale or transfer of any Interests.

In addition to restrictions imposed by federal and state securities law, any transfer or sale of an Interest must comply with requirements imposed by the Mortgage Lender, which include obtaining the prior written consent of and the payment of transfer/assumption fees to the Mortgage Lender and a limit of an aggregate of 10 transfers of Interests by the Tenants in Common. There are no assurances that the Mortgage Lender will approve any transfer or sale of an Interest.

In addition, Interests may not be sold or transferred to, and by your purchase of an Interest you will be deemed to have represented and covenanted that you are not, and will not transfer the Interest to: (i) an employee benefit plan within the meaning of Code Section 3(3) of ERISA that is subject to the fiduciary responsibility provisions of Title I of ERISA (a "plan"), or a plan within the meaning of Code Section 4975(e)(1) that is subject to

Code Section 4975 (also, a "plan"), including a qualified plan (any pension, profit sharing or stock bonus plan that is qualified under Code Section 401(a) or an individual retirement account, (ii) any person that is directly or indirectly acquiring the Interest on behalf of, as investment manager of, as fiduciary of, as trustee of or with assets of a plan (including any insurance company using assets in its general or separate account that may constitute assets of a plan), (iii) any other tax-exempt entity or (iv) a foreign person.

In Connecticut, transfers of membership interests are also subject to transfer taxes, which are typically borne by the seller

PLAN OF DISTRIBUTION

General

Subject to the terms and conditions set forth in this Memorandum, Cabot Acquisition is offering undivided tenant-in-common Interests in the Property. Cabot Acquisition will sell Interests in the Property to no more than 35 purchasers as mandated by the Mortgage Lender. The price of Interests includes cash consideration and the assumption of a *pro rata* portion of the Mortgage Loan associated with the Property. In addition to the profits Cabot Acquisition will realize upon the sale of the Property to the Tenants in Common and the costs of acquiring the Property, the price of an Interest will include a *pro rata* portion of the Sales Commissions payable to third-party Broker-Dealers, offering and financing expenses and loan fees payable to third parties. Purchasers will acquire their Interests through wholly owned limited liability companies that will serve as Single Purpose Entities. Purchasers of Interests will bear a fixed cost of $2,500 for the formation of each Single Purpose Entity and thereafter will be responsible for ongoing fees and expenses (which may include the maintenance of an independent director, if required by the Mortgage Lender). The Master Lessee will pay ongoing fees and expenses related to maintaining each purchaser's Single Purpose Entity and will deduct such amounts from monthly rents payable to the purchaser's Tenant in Common under the Master Lease. The minimum purchase of Interests for the Property equals a 3.0% Interest ($352,500 cash and $540,000 debt, including a pro rata reserve holdback required by the Mortgage Lender in the amount of $79,350, unless Cabot Acquisition, in its sole discretion, determines that a smaller investment is acceptable.

Cabot Acquisition may make sales to registered representatives of Broker-Dealers participating in the Offering or to their spouses and affiliates, in each case net of Sales Commissions. Cabot Acquisition may pay the Managing Broker-Dealer due diligence and offering expenses which the Managing Broker-Dealer may reimburse to other Broker-Dealers for bona-fide expenses incurred in connection with due diligence activities. Cabot Acquisition may also pay the Managing Broker-Dealer and/or other Broker-Dealers a non-accountable marketing allowance. The commissions, fees and expenses associated with this Offering are described in "Compensation and Fees."

Employees of other Broker-Dealers may purchase Interests on the same terms and conditions as any other purchaser. Cabot Acquisition or its broker-dealers, as applicable, may subsequently transfer Interests so acquired on the same terms and conditions as any other purchaser.

Cabot Acquisition will agree along with each Broker-Dealer participating in the Offering to indemnify each other against certain liabilities including liabilities under the Securities Act, the Securities Exchange Act of 1934, as amended ("Exchange Act"), and state securities laws.

Cabot Acquisition reserves the unconditional right to cancel or modify the Offering, to reject purchases of Interests in whole or in part, to waive conditions to the purchase of Interests and to allow purchases of less than the minimum Interest amount.

Subscription Period

Cabot Acquisition will offer the Interests until the cash price received for the Interests equals $11,750,000 (the "Maximum Offering Amount") or until June 30, 2007, which date may be extended until December 31, 2007 in Cabot Acquisition's absolute discretion (the "Offering Period"). Any remaining Interests at the end of the Offering Period will be sold or transferred to persons who are not related to Cabot Acquisition (within the meaning of Code Sections 267 and 707(b)).

Method of Purchase

Information concerning how to purchase an Interest is set forth in "Method of Purchase" below. **YOU WILL BE REQUIRED TO PLACE INTO ESCROW A GOOD FAITH DEPOSIT, WHICH YOU MAY LOSE IF YOU FAIL TO CLOSE ON THE PURCHASE OF THE INTEREST AS A RESULT OF YOUR DEFAULT.**

WHO MAY INVEST

Cabot Acquisition will offer and sell the Interests in reliance on an exemption from the registration requirements of the Securities Act and state securities laws. Accordingly, distribution of this Memorandum has been strictly limited to persons who meet the requirements and make the representations set forth below. Cabot Acquisition reserves the right, in its sole discretion, to reject any subscription based on any information that may become known or available to Cabot Acquisition about the suitability of a prospective purchaser or for any other reason.

An investment in the Interests involves a high degree of risk and is suitable only for persons of substantial financial means who have no need for liquidity in this investment. Only investors who: (i) purchase the minimum Interest amount as described on the cover of this Memorandum and (ii) represent in writing that they meet the investor suitability requirements set by Cabot Acquisition and as may be required under federal or state law, may acquire Interests. The written representations you make will be reviewed to determine your suitability. In addition, Cabot Acquisition will limit each Investor's investment in the Interests to 25% of the net worth of the respective Investor.

The investor suitability requirements stated below represent minimum suitability requirements established by Cabot Acquisition for investors in Interests. However, your satisfaction of these requirements will not necessarily mean that the Interests are a suitable investment for you, or that Cabot Acquisition will accept you as an purchaser of Interests. Furthermore, Cabot Acquisition may modify such requirements, in its sole discretion, and such modifications may raise the suitability requirements for investors.

You must represent in writing that you meet, among others, all of the following requirements:

(a) You have received, read and fully understand this Memorandum and are basing your decision to invest on the information contained in this Memorandum. You have relied only on the information contained in this Memorandum and have not relied on any representations made by any other person;

(b) You understand that an investment in the Interests is highly speculative and involves substantial risks and you are fully cognizant of and understand all of the risks relating to an investment in the Interests, including, but not limited to, those risks discussed in the Risk Factors section of this Memorandum;

(c) Your overall commitment to investments that are not readily marketable is not disproportionate to your individual net worth, and your investment in the Interests will not cause such overall commitment to become excessive;

(d) You have adequate means of providing for your financial requirements, both current and anticipated, and have no need for liquidity in this investment;

(e) You can bear and are willing to accept the economic risk of losing your entire investment in the Interests;

(f) You are acquiring the Interests for your own account and for investment purposes only and have no present intention, agreement or arrangement for the distribution, transfer, assignment, resale or subdivision of the Interests;

(g) You have such knowledge and experience in financial and business matters that you are capable of evaluating the merits of investing in the Interests and have the ability to protect your own interests in connection with such investment; and

(h) You are an "Accredited Investor" as defined in Rule 501(a) of Regulation D under the Securities Act, which is any:

- Natural person that has: (i) an individual net worth, or joint net worth with his or her spouse, of more than $1,000,000 or (ii) individual income in excess of $200,000, or joint income with his or her spouse in excess of $300,000, in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year;

- Corporation, Massachusetts or similar business trust, partnership, limited liability company or organization described in Section 501(c)(3) of the Code, not formed for the specific purpose of acquiring Interests, with total assets over $5,000,000;
- Trust, with total assets over $5,000,000, not formed for the specific purpose of acquiring Interests and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of an investment in Interests as described in Rule 506(b)(2)(ii) under the Securities Act;
- Broker-dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended;
- Investment company registered under the Investment Company Act of 1940 or a business development company (as defined in Section 2(a)(48) of the Investment Company Act of 1940);
- Small business investment company licensed by the Small Business Administration under Section 301(c) or (d) or the Small Business Investment Act of 1958, as amended;
- Private business development company (as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended);
- Bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity, or any insurance company as defined in Section 2(13) of the Securities Act;
- Plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets of more than $5,000,000; or
- Entity in which all of the equity owners are Accredited Investors.

For purposes of this definition, "net worth" is defined as the difference between total assets and total liabilities, including home, home furnishings and personal automobiles. In the case of fiduciary accounts, the net worth and/or income suitability requirements must be satisfied by the beneficiary of the account or by the fiduciary, if the fiduciary directly or indirectly provides funds for the purchase of the Interests.

Interests are not suitable investments for: (i) an employee benefit plan within the meaning of Code Section 3(3) of ERISA that is subject to the fiduciary responsibility provisions of Title I of ERISA (a "plan"), or a plan within the meaning of Code Section 4975(e)(1) that is subject to Code Section 4975 (also, a "plan"), including a qualified plan (any pension, profit sharing or stock bonus plan that is qualified under Code Section 401(a)) or an individual retirement account, (ii) any person that is directly or indirectly acquiring the Interest on behalf of, as investment manager of, as fiduciary of, as trustee of or with assets of a plan (including any insurance company using assets in its general or separate account that may constitute assets of a plan), (iii) any other tax-exempt entity or (iv) a foreign person. Therefore, this Memorandum does not discuss the risks that may be associated with an investment in an Interest by such plans, accounts, persons, entities or by a foreign person.

IF YOU DO NOT MEET THE REQUIREMENTS DESCRIBED ABOVE, IMMEDIATELY RETURN THIS MEMORANDUM TO CABOT ACQUISITION OR THE APPLICABLE SELLING GROUP MEMBER. IN THE EVENT YOU DO NOT MEET SUCH REQUIREMENTS, THIS MEMORANDUM WILL NOT CONSTITUTE AN OFFER TO SELL INTERESTS TO YOU.

METHOD OF PURCHASE

General

If, after carefully reading the entire Memorandum, you would like to purchase an Interest, the escrow arrangements summarized below and set forth in the Purchase Agreement must be followed.

To buy an Interest, you must initially complete and deliver to the Managing Broker-Dealer or your broker-dealer the Purchase Agreement, Purchaser Questionnaire, credit check authorization with a current financial statement, tax returns for the past two years, and any other item required by the Mortgage Lender in connection with your entry into the Mortgage Loan documents. In addition, because transfer of the Property must comply with the Connecticut Property Transfer Act, each Tenant in Common will need to complete certain property transfer forms within 10 days of purchasing an Interest.

Within 72 hours of submitting the Purchase Agreement, you must wire a good faith deposit in the amount of $15,000 into the Escrow Account as specified in the Purchase Agreement. Your good faith deposit will be returned to you at the close of escrow or used to cover your closing costs, provided, however, in the event that you default under the Purchase Agreement, Cabot Acquisition may retain your good faith deposit as liquidated damages. Upon review of your suitability, Cabot Acquisition will provide you with a due diligence package.

In addition, you must represent in writing that you:

- understand and are aware that there are substantial uncertainties regarding the treatment of your Interest as real property for federal income tax purposes;

- have read the entire Memorandum and fully understand that there is significant risk that your Interest will not be treated as real property for federal income tax purposes;

- have independently obtained advice from your legal counsel and/or accountant regarding any tax-deferred exchange under Code Section 1031, including, without limitation, whether the acquisition of your Interest may qualify as part of a tax-deferred exchange, and you are relying on such advice and not on the opinion of Tax Counsel;

- are aware that the IRS has issued Revenue Procedure 2002-22 specifically addressing tenant-in-common programs; and the Revenue Procedure is merely guidance, and is not a "safe-harbor" for taxpayers or sponsors, so that, without the issuance of a private letter ruling on a specific offering, there is no assurance that your Interest will not be treated as a partnership interest for federal income tax purposes;

- understand that Cabot Acquisition has not obtained, and will not request, a private letter ruling from the IRS that your Interest will be treated as an undivided interest in real property as opposed to a partnership;

- understand that the tax consequences of an investment in an Interest, especially the treatment of the transaction described herein under Code Section 1031 and the related Section 1031 Exchange rules, are complex and vary with the facts and circumstances of each individual Purchaser; and

- understand that the opinion of Tax Counsel states that an Interest "should" be considered a real property interest and not a partnership interest for federal income tax purposes, and that no assurance can be given that the IRS will agree with this opinion.

Cabot Acquisition must approve each purchaser's purchase of an Interest. Cabot Acquisition may accept or reject the offer to buy Interests from any prospective purchaser at any time within 10 days after the prospective purchaser delivers to Escrow Agent and us the executed Purchase Agreement. If approved by Cabot Acquisition, the full amount of the purchase price and closing costs for the Interest must be delivered prior to the close of escrow and certain other closing conditions set forth in the Purchase Agreement must be satisfied.

Upon (i) approval by us, (ii) receipt of the executed documents listed above, (iii) payment in full of the purchase price and closing fee for an Interest and (iv) satisfaction of certain other closing conditions set forth in the Purchase Agreement, escrow will close and Cabot Acquisition will convey the purchased Interest to you. Should Cabot Acquisition reject the offer to purchase, the good faith deposit will be returned, provided that you have returned this Memorandum.

Any remaining Interests at the end of the Offering Period may be sold or transferred to persons who are not related to Cabot Acquisition (within the meaning of Code Sections 267 and 707(b)).

Formation of Single Purpose Entities

As required by the Mortgage Loan, to acquire your Interest you must form a bankruptcy-remote single member limited liability company, or a "Single Purpose Entity," the sole asset and activity of which is to acquire and hold the Interests. Cabot Acquisition will form the Single Purpose Entity on your behalf. There are costs associated with maintaining a limited liability company, as well as annual maintenance fees and annual taxes, as well as other costs the states of Delaware and/or Florida may deem appropriate. The Master Lessee will pay costs and fees of maintaining the purchaser's Single Purpose Entity and will offset such costs and fees against the *pro rata* monthly rent payable to the purchaser under the Master Lease. Depending on the size of an investment, the added ongoing costs associated with this structure could adversely affect the return on the investment.

You should seek the advice of your own independent tax advisor about the potential impact of the Single Purpose Entity structure on a proposed like-kind exchange under Code Section 1031.

LITIGATION

Currently, there are no legal actions pending against Cabot Acquisition, Master Lessee, Sponsor or their management, nor, to the knowledge of Cabot Acquisition, Master Lessee or Sponsor, affecting the Property or Interests. To the knowledge of Cabot Acquisition, Master Lessee and Sponsor, other than as stated above, there are no actions contemplated which, if determined adversely, would have a material adverse effect on Cabot Acquisition, Master Lessee, Sponsor or the Property, their financial condition or their operations.

LEGAL OPINIONS

Baker & McKenzie LLP, as Tax Counsel, will render an opinion with respect to the discussion of certain tax issues set forth in the Memorandum as well as with respect to the federal income tax treatment of the Interests. Except as to matters stated in the opinion, which will be based on the law in effect as of the date of the opinion, the issuance of the opinion should not in any way be construed as implying that Tax Counsel has approved or passed upon any other matter. Tax Counsel will be paid for providing the opinion.

Circular 230, which governs practice before the IRS, establishes rules with respect to tax opinions. In accordance with Section 10.35(b)(4) and 10.35(b)(5) of Circular 230 (as amended), 31 C.F.R. Part 10, prospective purchasers of Interests are hereby notified of the following: **(i) the opinion of Tax Counsel is not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer; (ii) the opinion of Tax Counsel was written to support the promotion or marketing of the transactions or matters addressed herein; and (iii) you should seek advice based on your particular circumstances from an independent tax advisor.**

OTHER DOCUMENTS

You may inspect copies of the documents referred to in this Memorandum or otherwise related to the Property or the Offering at Cabot Acquisition's office or, upon your written request before the purchase of Interests, Cabot Acquisition will make such documents available to you.

Please contact:

Chris Melling
Cabot Investment Properties, LLC
55 Fifth Avenue, 13th Floor
New York, New York 10003
Phone Number: 646-367-5400
Fax Number: 646-367-5401
E-Mail: cmelling@cabotinvestments.com

In connection with this Offering, Cabot Acquisition may make use of a brochure or pamphlet describing certain aspects of this Offering. Such supplemental material will not contain any material information that is not also set forth in this Memorandum. An Offering will be made only by means of this Memorandum.

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ANNEX I

PROJECTIONS AND ASSUMPTIONS

The following projections and assumptions for the Property are intended to supplement the disclosures contained in this Memorandum. The projections and assumptions were prepared based upon Cabot Acquisition's current estimates of income and expenses relating to the operation of the Property. Cabot Acquisition believes these assumptions to be reasonable and is not aware of any material factors other than as set forth in the Memorandum of which this Annex forms a part that would cause the financial information not to be necessarily indicative of future operating results. However, if the assumptions with respect to the Property do not prove correct, the Property will have difficulty in achieving its anticipated results. Some of the other underlying assumptions inevitably may not materialize and unanticipated events and circumstances may occur. Therefore, the actual results achieved during the period covered is likely to vary from the projections and assumptions, and the variation may be material. As a result, your rate of return may be lower than that set forth in the Memorandum. Your return on your investment in the Interests will depend upon economic factors and conditions beyond Cabot Acquisition's control.

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Turfway Ridge

Florence, KY

PRO FORMA ASSUMPTIONS

ACQUISITION TIMING

Early February 2007

Projected hold period is 7 years.

CAPITALIZATION

Equity	$11,750,000
Loan Proceeds (less holdback)	15,455,000
Lender Holdback from Loan	2,545,000
Total Capitalization	$29,750,000

Note: Total loan is $18.00 million.

PROPERTY INFORMATION

Name	Turfway Ridge
Address	Florence, KY
Total Rentable Square Feet	218,223
Leased Square Feet	183,861
Vacant Square Feet	34,362
% Leased	84.2%
% Occupied*	73.5%

* *% Occupied reflects Xanodyne vacancy of 23,565 square feet*

REVENUE

Rents

Base rental revenue include base contractual rent for in-place and projected leases.

Reimbursements

All of the leases at the Property are gross with a base year stop.

See Rent Roll attached hereto for information on specific leases.

Releasing Assumptions

Office - Market rent at the Property is assumed to be $18.50 per square foot and grow at 3% per year.

New leases are projected to be 5 years in length.

A renewal probability of 75% is assigned to all leases.

Leases for office space assumes 6 months downtime.

Vacancy

Market vacancy of 10% in years 1 and 2, 8% in years 3 through 5, 7% in years 6 and 7 less absorption and turnover vacancy.

EXPENSES

Real Estate Taxes derived by estimates made by Cabot Acquisition.

Insurance based on preliminary quote from prospective insurer.

LEASING & CAPITAL EXPENSES

Leasing Assumptions for Vacant Space

Xanodyne space of 23,565 square feet is projected to be leased up in 18 months with tenant improvements of $20.00 per square foot.

Other vacant suites, ranging in size from 1,177 square feet to 8,857 square feet, are projected to be leased up over a period of 3 to 18 months. Tenant improvement costs for these vacant suites ranges from $10.00 to $16.00 per square foot.

Leasing costs

Commissions on new leases for vacant office suites are projected to be 7.00% of total rent over lease term for the first three years.

Commissions on new leases for vacant office suites are projected to be 6.00% of total rent over lease term for years 4 through 7.

Commissions on renewal leases for office and industrial suites are projected to be 3.00% of total rent over term.

Tenant Improvements

Tenant Improvements for office space is projected to be $12.00 per square foot for new leases and $5.00 per square foot for renewals.

Tenant Improvements for near term lease-up office space is projected to be $25.00 per square foot for new leases and $5.00 per square foot for renewals.

Reserves

Lender requires funding of $500,000 for Capital Reserves at closing, of which $200,000 is allocated to built-up roof replacement.

Lender requires funding of $0.15 per square foot per annum for Capital Reserves beginning in year one.

Lender requires funding of $2,000,000 for TI/LC Reserve account at closing.

LOAN ASSUMPTIONS

Total loan proceeds are $18,000,000.

Loan has a fixed rate of 5.67% per annum.

Loan term is 10 years.

Loan is "interest-only" in years 1 - 5, then amortizes on a 30 year schedule thereafter.

Turfway Ridge
Florence, KY

SEVEN-YEAR CASH FLOW PROJECTIONS

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
For the Years Ending January	2008	2009	2010	2011	2012	2013	2014	2015
REVENUE								
1 Base Rental Revenue	3,898,616	4,004,667	4,103,395	4,209,379	4,338,418	4,448,789	4,572,493	4,713,670
2 Absorption & Turnover Vacancy	(573,997)	(245,940)	(76,676)	(89,945)	(129,683)	(125,017)	(211,655)	(109,252)
3 Base Rent Abatement	(141,691)	(83,962)	(14,831)	-	-	-	-	-
Scheduled Rental Income	3,182,928	3,674,765	4,011,888	4,119,434	4,208,735	4,323,772	4,360,838	4,604,418
4 Expense Reimbursement Revenue	1,418	21,905	46,073	72,467	105,551	139,515	118,425	128,447
5 Additional Revenue	26,112	26,896	27,702	28,534	29,390	30,270	31,180	32,114
6 Less General Vacancy	-	-	(319,919)	(254,885)	(339,083)	(238,505)	(174,465)	(324,802)
7 EFFECTIVE GROSS REVENUE	3,210,458	3,723,566	3,765,744	3,965,550	4,004,593	4,255,052	4,335,978	4,440,177
OPERATING EXPENSES								
Security	10,560	10,876	11,204	11,540	11,886	12,242	12,610	12,988
Cleaning	220,395	227,007	233,817	240,832	248,056	255,498	263,163	271,058
Repairs & Maintenance	110,000	113,300	116,698	120,200	123,806	127,520	131,346	135,286
HVAC	44,500	45,835	47,210	48,627	50,085	51,588	53,135	54,729
Elevator	27,200	28,016	28,856	29,722	30,614	31,532	32,478	33,452
Administrative	97,023	99,934	102,932	106,020	109,201	112,476	115,850	119,326
General Building Services	5,632	5,800	5,974	6,154	6,338	6,530	6,724	6,926
Snow Removal	17,000	17,510	18,036	18,576	19,134	19,708	20,298	20,908
Utilities	333,084	343,076	353,369	363,970	374,889	386,136	397,720	409,651
Landscaping	40,000	41,200	42,436	43,710	45,020	46,370	47,762	49,194
8 Management Fee	96,314	111,707	112,973	118,967	120,137	127,652	130,079	133,205
9 Insurance	51,000	52,530	54,106	55,730	57,400	59,122	60,896	62,724
10 Real Estate Taxes	245,049	252,401	259,973	267,771	275,805	284,079	292,601	301,379
11 Space Planning	14,850	15,296	15,754	16,228	16,714	17,216	17,732	18,262
TOTAL EXPENSES	1,312,607	1,364,488	1,403,338	1,448,047	1,489,085	1,537,669	1,582,394	1,629,088
NET OPERATING INCOME	1,897,851	2,359,078	2,362,406	2,517,503	2,515,508	2,717,383	2,753,584	2,811,089
LEASING & CAPITAL COSTS								
Master Lease Payment								
12 Capital Reserves - per Lender	32,736	32,736	32,736	32,736	32,736	32,736	32,736	
13 Leasing Reserves - LeaseCo/Lender	-	350,000	275,000	425,000	425,000	350,000	325,000	
14 Capital Expenses	312,759	38,000	3,000	3,000	155,756	41,259	3,000	
15 Capex funded from Capex Reserves	(312,759)	(38,000)	(3,000)	(3,000)	(155,756)	(41,259)	(3,000)	
16 Tenant Improvements - Actual	598,988	738,406	166,575	198,229	283,899	189,063	555,347	
17 Leasing Commissions - Actual	329,530	272,039	85,664	108,165	154,912	103,165	275,989	
18 LC Costs Paid From TI/LC Reserves	(928,518)	(1,010,445)	(252,239)	(306,394)	(438,811)	(292,228)	(831,336)	
TOTAL LEASING & CAPITAL COSTS	32,736	382,736	307,736	457,736	457,736	382,736	357,736	
NET CASH FLOW BEFORE DEBT SERVICE	1,865,115	1,976,342	2,054,670	2,059,767	2,057,772	2,334,647	2,395,848	
DEBT SERVICE								
19 Interest	948,544	1,034,775	1,034,775	1,034,775	1,034,775	1,028,736	1,015,064	
20 Principal	-	-	-	-	-	231,610	245,281	
TOTAL DEBT SERVICE	948,544	1,034,775	1,034,775	1,034,775	1,034,775	1,260,346	1,260,346	
NET CASH FLOW AFTER DEBT SERVICE	916,571	941,567	1,019,895	1,024,992	1,022,997	1,074,301	1,135,502	
21 MASTER LEASE BASE RENT PAYMENT	881,250	881,250	940,000	940,000	940,000	998,750	1,057,500	
NET CASH TO MASTER TENANT	35,321	60,317	79,895	84,992	82,997	75,551	78,002	
22 MASTER LEASE YIELD	7.50%	7.50%	8.00%	8.00%	8.00%	8.50%	9.00%	
AVERAGE CASH YIELD TO TIC INVESTORS Years 1 - 7	8.07%							

Turfway Ridge
Florence, KY

NOTES TO SEVEN-YEAR CASH FLOW PROJECTIONS

1 Includes rent from in-place and new leases. Also includes approximately $60,000 in rent credit at closing from the seller for tenant that vacated space prior to end of term and no longer pays rent; tenant is not included in occupancy or lease statistics.

2 Amount of uncollected revenue from the move out of existing tenants. Assumes a renewal probability of 75% and 6 months of downtime for office tenants.

3 Base rent abatement for projected new leases. Model assumes 3 month rent abatements for leases signed in the first year, 2 months rent abatement for leases signed in second year, and 1 month rent abatement for leases signed in third year of hold period.

4 All of the leases at the property are gross with a base year stop with tenants reimbursing the landlord for their pro-rata share of operating expenses.

5 Income derived from late fees, interest income, and miscellaneous.

6 Assumes market vacancy of 10% in years 1 and 2, 8% in years 3 through 5, 7% in years 6 and 7 less absorption and turnover vacancy.

7 In place Effective Gross Revenue in year 1 is $3,137,290.

8 Management fee 3% of Effective Gross Revenue.

9 Insurance expense based on soft quote.

10 Real estate taxes are projected to increase based on increased assessment value.

11 Expense associated with providing plans for layout of new tenant spaces.

12 Lender requires funding a Capex reserve account of $0.15 per rentable square foot per year.

13 In order to support leasing requirements at the Property, an additional TI/LC reserve is projected to be funded by the property. These reserves may be held by the Lender or LeaseCo. The actual reserves may vary from projections as rollover capital needs are assessed on an annual basis during budgeting.

14 Expected capital expenses over the hold period are detailed in the Capital Reserve Schedule herein.

15 Capital Expenses will be funded from the Capex Reserve Account and will not be a direct reduction to cash flow.

16 Tenant improvement expenses based on leasing and renewal assumptions.

17 Leasing commissions expenses based on leasing and renewal assumptions.

18 TI/LC expenses will be funded from TI/LC Reserves and will not be a direct reduction to cash flow.

19 Loan rate is locked at 5.67% and will be interest only in years 1 to 5.

20 Loan amortizes on a 30 year schedule beginning in year 6.

21 Master Lease Base Rent Payment is a fixed contractual obligation between the Master Lessee and the Tenant-In-Common Investors.

22 Yield is derived from Master Lease Base Rent Payment over total equity offering of $11,750,000.

Turfway Ridge
Florence, KY

LOAN & RESERVE SCHEDULES

LOAN SCHEDULE	Year 1	2	3	4	5	6	7
First Mortgage	18,000,000						
Loan Interest Rate	5.67%						
Amortization Period	I/O	I/O	I/O	I/O	I/O	30	29
Beginning Balance	18,000,000	18,000,000	18,000,000	18,000,000	18,000,000	18,000,000	17,768,390
Annual Debt Service							
Interest Payment	*948,544*	*1,034,775*	*1,034,775*	*1,034,775*	*1,034,775*	*1,028,736*	*1,015,064*
Principal Payment	-	-	-	-	-	*231,610*	*245,281*
Total	1,034,775	1,034,775	1,034,775	1,034,775	1,034,775	1,260,346	1,260,346
Ending Balance	18,000,000	18,000,000	18,000,000	18,000,000	18,000,000	17,768,390	17,523,108

TENANT IMPROVEMENT ("TI") & LEASING COMMISSION ("LC") RESERVE SCHEDULE	Year 1	2	3	4	5	6	7
Beginning TI / LC Reserve Balance	-	1,071,482	411,037	433,798	552,404	538,593	596,365
Plus: Reserves heldback at close by Lender	2,000,000	-	-	-	-	-	-
Plus: Reserves heldback by Master Tenant	-	350,000	275,000	425,000	425,000	350,000	325,000
Additions to Reserves	2,000,000	1,421,482	686,037	858,798	977,404	888,593	921,365
Less: Projected TI costs to be expended	598,988	738,406	166,575	198,229	283,899	189,063	555,347
Less: Projected LC costs to be expended	329,530	272,039	85,664	108,165	154,912	103,165	275,989
Subtractions from Reserves	928,518	1,010,445	252,239	306,394	438,811	292,228	831,336
Ending Balance	1,071,482	411,037	433,798	552,404	538,593	596,365	90,029

CAPITAL RESERVE SCHEDULE	Year 1	2	3	4	5	6	7
Beginning Capital Reserve Balance	-	219,977	214,713	244,449	274,185	151,165	142,642
Plus: Reserves heldback at close by Lender	500,000	-	-	-	-	-	-
Plus: Reserves heldback from cash flow by Lender	32,736	32,736	32,736	32,736	32,736	32,736	32,736
Plus: Reserves heldback by Asset Manager	-	-	-	-	-	-	-
Additions to Reserves	532,736	32,736	32,736	32,736	32,736	32,736	32,736
Building Conditions							
ADA Van Accessible Parking - Add	1,500	-	-	-	-	-	-
Pavement Repair	38,259	-	-	-	-	38,259	-
Common Area Refurbishment	-	-	-	-	152,756	-	-
Built up roof replacement	200,000	-	-	-	-	-	
Fire Alarm Control Panel Replacement	70,000	-	-	-	-	-	-
HVAC Component Replacement	3,000	3,000	3,000	3,000	3,000	3,000	3,000
Cooling Tower Recoring	-	35,000	-	-	-	-	-
Subtractions to Reserves	312,759	38,000	3,000	3,000	155,756	41,259	3,000
Ending Balance	219,977	214,713	244,449	274,185	151,165	142,642	172,378

Turfway Ridge
Florence, KY

RESIDUAL ANALYSIS

SUMMARY SOURCES & USES			
Sources		*Uses*	
Debt	18,000,000	Offering Expenses	1,351,250
Equity	11,750,000	Closing Costs & Fees	1,866,250
Total	29,750,000	Reserves	2,545,000
		Brokerage Fee - Third Party	237,500
		Purchase Price	23,750,000
		Total	29,750,000

RESIDUAL SALES ANALYSIS Holding Period of 7 years		Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Net Operating Income / Year:	8	2,811,089	2,811,089	2,811,089	2,811,089	2,811,089
		7.50%	7.75%	8.00%	8.25%	8.50%
Terminal Sales Price		37,481,187	36,272,116	35,138,613	34,073,806	33,071,635
Less:						
Closing Costs	1.00%	(374,812)	(362,721)	(351,386)	(340,738)	(330,716)
Sales Commission	4.00%	(1,499,247)	(1,450,885)	(1,405,545)	(1,362,952)	(1,322,865)
Net Sales Price		35,607,127	34,458,510	33,381,682	32,370,116	31,418,054
Less:						
Terminal Loan Balance		(17,523,108)	(17,523,108)	(17,523,108)	(17,523,108)	(17,523,108)
Net Sales Proceeds after Loan Payoff		18,084,019	16,935,402	15,858,574	14,847,007	13,894,945
Less: Return of Capital		(11,750,000)	(11,750,000)	(11,750,000)	(11,750,000)	(11,750,000)
Net Sales Proceeds		6,334,019	5,185,402	4,108,574	3,097,007	2,144,945
Add:						
Return of Accumulated TI/LC Reserves		90,029	90,029	90,029	90,029	90,029
Return of Capital Reserves		172,378	172,378	172,378	172,378	172,378
Residual Sales Profit		6,596,426	5,447,809	4,370,981	3,359,414	2,407,352
TOTAL DISTRIBUTABLE PROCEEDS FROM SALE:		6,596,426	5,447,809	4,370,981	3,359,414	2,407,352
INVESTOR RETURN ANALYSIS						
Cumulative Cash Flow		6,638,750	6,638,750	6,638,750	6,638,750	6,638,750
Total Sales Proceeds		6,596,426	5,447,809	4,370,981	3,359,414	2,407,352
Total Returns		13,235,176	12,086,559	11,009,731	9,998,164	9,046,102
Cumulative Yield		112.64%	102.86%	93.70%	85.09%	76.99%
Average Annualized Yield including Sale Proceeds		**16.09%**	**14.69%**	**13.39%**	**12.16%**	**11.00%**

Turfway Ridge

Florence, KY

TURFWAY I

	Tenant Name Type & Suite Number Lease Dates & Term	Floor SqFt Bldg Share	Rate & Amount per Year per Month	Changes on	Changes to	Description of Operating Expense Reimbursements	Assumption about subsequent terms for this tenant
1	Presidion LLC		$16.50	Oct-2006	$17.00	See method: 2005	Market
	Office, Suite: 120	3,791	$62,552	Oct-2007	$17.50	BY 95% GU	See assumption:
	Sep-2005 to Oct-2010	3.48%	$1.38	Oct-2008	$18.03		$18.50
	62 Months		$5,213	Oct-2009	$18.57		
				Aug-2010	$0.00		
2	Kelly Services Inc.		$17.50	May-2005	$18.00	See method: 2004	Market
	Office, Suite: 140	1,819	$31,833	May-2006	$18.50	BY 95% GU	See assumption:
	May-2004 to Apr-2009	1.67%	$1.46	May-2007	$19.00		$18.50
	60 Months		$2,653	May-2008	$19.50		
3	MPBH Asset Management		$18.00	-	-	Gross: Pays the	Market
	Office, Suite: 150	1,014	$18,252			increases over a	See assumption:
	Nov-2006 to Oct-2008	0.93%	$1.50			base year ending	$18.50
	24 Months		$1,521			Jan-2008: $5.47.	
4	Premiere Mortgage Fun		$0.00	Feb-2004	$18.00	See method: 2003	Market
	Office, Suite: 160	1,836	$0	Feb-2005	$18.54	BY 95% GU	See assumption:
	Jan-2003 to Jun-2011	1.68%	$0.00	Apr-2006	$18.00		$18.50
	102 Months		$0	Apr-2007	$18.50		
				Apr-2008	$19.00		
				Apr-2009	$19.50		
				Apr-2010	$20.00		
				Apr-2011	$20.50		
5	Toyota Boshuku		$17.50	Jul-2007	$18.00	See method: 2006	Market
	Office, Suite: 170	1,997	$34,948	Jul-2008	$18.50	BY 95% GU	See assumption:
	Jul-2006 to Jun-2009	1.83%	$1.46				$18.50
	36 Months		$2,912				
6	Premier Recovery		$17.75	Nov-2007	$18.00	See method:	Market
	Office, Suite: 200	10,387	$184,369	Nov-2008	$18.25	Premier Recover	See assumption:
	Nov-2006 to Jan-2010	9.53%	$1.48				$18.50
	39 Months		$15,364				
7	Premier Recovery		$18.00	-	-	See method:	Option
	Office, Suite: 230	1,016	$18,288			Premier Recover	See assumption:
	Feb-2007 to Jan-2008	0.93%	$1.50				$18.50
	12 Months		$1,524				
8	Xanodyne Pharmacal		$17.34	Oct-2003	$17.77	See method: 2002	ReAbsorb
	Office, Suite: 300	23,565	$408,617	Oct-2004	$18.26	BY 100% GU	See assumption:
	Oct-2002 to Oct-2007	21.62%	$1.45	Oct-2005	$18.81		$18.50
	61 Months		$34,051	Oct-2006	$19.37		
9	Post Buckley Smith		$0.00	Aug-2003	$17.50	See method: 2003	Market
	Office, Suite: 400	4,598	$0	Apr-2004	$18.00	BY 95% GU	See assumption:
	Mar-2003 to Mar-2008	4.22%	$0.00	Apr-2005	$18.50		$18.50
	61 Months		$0	Apr-2006	$19.00		
				Apr-2007	$19.50		
10	Storage Space		$0.00	-	-	Full Service:	Market
	Office, Suite: 405	358	$0			Pays no expense	See assumption:
	Jan-1999 to Dec-2009	0.33%	$0.00			reimbursement.	$18.50
	132 Months		$0				

11	Seed Strategy Expansi Office, Suite: 420 Feb-2005 to Jan-2010 60 Months	1,527 1.40%	$0.00 $0 $0.00 $0	May-2005 Aug-2006 Aug-2007 Aug-2008 Aug-2009	$17.50 $17.94 $18.39 $18.85 $19.32	See method: 2005 BY 95% GU	Market See assumption: $18.50
12	Seed Strategy Office, Suite: 410 Aug-2004 to Jan-2010 66 Months	4,085 3.75%	$0.00 $0 $0.00 $0	Feb-2005 Aug-2006 Aug-2007 Aug-2008 Aug-2009	$17.50 $17.94 $18.39 $18.85 $19.32	See method: 2005 BY 95% GU	Market See assumption: $18.50
13	Seed Strategy Second Office, Suite: 430 Jan-2007 to Jan-2010 37 Months	2,511 2.30%	$17.94 $45,047 $1.50 $3,754	Aug-2007 Aug-2008 Aug-2009	$18.39 $18.85 $19.32	See method: 2005 BY 95% GU	Market See assumption: $18.50
14	UFJ Bank, Limited Office, Suite: 440 Nov-2001 to Mar-2007 65 Months	1,918 1.76%	$18.50 $35,483 $1.54 $2,957	-	-	See method: 1997 BY 75% GU	Market See assumption: $18.50
15	DFDS Transport Office, Suite: 460 Mar-2005 to Aug-2010 66 Months	3,200 2.94%	$17.50 $56,000 $1.46 $4,667	Apr-2006 Apr-2007 Apr-2008 Apr-2009 Apr-2010	$17.89 $18.29 $18.70 $19.12 $19.55	See method: 2005 BY 95% GU	Market See assumption: $18.50
16	Management Office Office, Suite: 490 Expires Jan-2027	1,530 1.40%	$0.00 $0 $0.00 $0	-	-	Full Service: Pays no expense reimbursement.	Market See assumption: $18.50
17	Toyota Tsusho Office, Suite: 500 Sep-2001 to Aug-2007 72 Months	5,851 5.37%	$18.00 $105,318 $1.50 $8,777	Sep-2002 Sep-2003 Sep-2004	$18.25 $18.50 $18.75	See method: 2003 BY 75% GU	Market See assumption: $18.50
18	Central Leasing Office, Suite: 510 Jun-2000 to Jun-2008 97 Months	2,106 1.93%	$19.17 $40,372 $1.60 $3,364	Jan-2007 Jan-2008	$19.65 $20.14	See method: 2005 BY 95% GU	Market See assumption: $18.50
19	AIOI Insurance Office, Suite: 530 May-2002 to May-2011 109 Months	855 0.78%	$18.00 $15,390 $1.50 $1,283	May-2003 May-2004 May-2006 Aug-2006 Aug-2007 Aug-2008 Aug-2009 Aug-2010	$18.54 $19.00 $19.57 $18.50 $19.00 $19.50 $20.00 $20.50	See method: 2002 BY 75% GU	Market See assumption: $18.50
20	AIOI Insurance Office, Suite: 530 Jul-2007 to May-2011 47 Months	1,293 1.19%	$18.50 $23,921 $1.54 $1,993	Jul-2008 Jul-2009 Jul-2010	$19.00 $19.50 $20.00	See method: New Tenant Reimb	Market See assumption: $18.50
21	Fujitsu Consulting Office, Suite: 555 Dec-2004 to Nov-2007 36 Months	1,307 1.20%	$18.50 $24,180 $1.54 $2,015	-	-	See method: 2005 BY 95% GU	Market See assumption: $18.50

22	Shikoku Kakoki Office, Suite: 552 Aug-1998 to Jul-2008 120 Months	 847 0.78%	$17.80 $15,077 $1.48 $1,256	Aug-2006 Aug-2007	$18.25 $18.70	See method: BY 1998 75% GU	Market See assumption: $18.50
23	Mutual of America Office, Suite: 560 Sep-2000 to Mar-2007 79 Months	 2,949 2.71%	$19.00 $56,031 $1.58 $4,669	Sep-2001 Sep-2002 Sep-2003 Sep-2004 Sep-2006	$19.76 $20.55 $21.37 $22.23 $24.04	See method: 2000 BY 50% GU	ReAbsorb See assumption: $18.50
24	Mutual of America Office, Suite: 560 Apr-2007 to Mar-2017 120 Months	 3,862 3.54%	$22.25 $85,930 $1.85 $7,161	Apr-2012	$24.10	Gross: Pays the increases over a base year ending Jan-2008: $5.47.	Market See assumption: $18.50
25	Sumitomo Electric Office, Suite: 570 May-2006 to Jun-2011 62 Months	 1,429 1.31%	$0.00 $0 $0.00 $0	Jul-2006 May-2009	$17.90 $18.40	See method: 2006 BY 95% GU	Market See assumption: $18.50
S1	Suite 110 Office, Suite: Mo 8 Sep-2007 to Aug-2012 60 Months	 3,206 2.94%	$18.50 $59,311 $1.54 $4,943	Sep-2008 Sep-2009 Sep-2010 Sep-2011	$19.06 $19.63 $20.22 $20.82	Gross: Pays the increases over a base year ending Jan-2008: $5.47.	Market See assumption: $18.50
S2	Suite 120 Office, Suite: Mo 6 Jul-2007 to Jun-2012 60 Months	 5,297 4.86%	$18.50 $97,995 $1.54 $8,166	Jul-2008 Jul-2009 Jul-2010 Jul-2011	$19.06 $19.63 $20.22 $20.82	Gross: Pays the increases over a base year ending Jan-2008: $5.47.	Market See assumption: $18.50
S3	Suite 201 Office, Suite: Mo 12 Jan-2008 to Dec-2012 60 Months	 8,857 8.13%	$18.50 $163,855 $1.54 $13,655	Jan-2009 Jan-2010 Jan-2011 Jan-2012	$19.06 $19.63 $20.22 $20.82	Gross: Pays the increases over a base year ending Jan-2008: $5.47.	Market See assumption: $18.50
S4	Suite 450 Office, Suite: Mo 3 Apr-2007 to Mar-2012 60 Months	 1,107 1.02%	$18.50 $20,480 $1.54 $1,707	Apr-2008 Apr-2009 Apr-2010 Apr-2011	$19.06 $19.63 $20.22 $20.82	Gross: Pays the increases over a base year ending Jan-2008: $5.47.	Market See assumption: $18.50
S5	Suite 470 Office, Suite: Mo 9 Oct-2007 to Sep-2012 60 Months	 1,915 1.76%	$18.50 $35,428 $1.54 $2,952	Oct-2008 Oct-2009 Oct-2010 Oct-2011	$19.06 $19.63 $20.22 $20.82	Gross: Pays the increases over a base year ending Jan-2008: $5.47.	Market See assumption: $18.50
S6	Suite 520 Office, Suite: Mo 15 Apr-2008 to Mar-2013 60 Months	 1,886 1.73%	$19.06 $35,938 $1.59 $2,995	Apr-2009 Apr-2010 Apr-2011 Apr-2012	$19.63 $20.22 $20.82 $21.45	Gross: Pays the increases over a base year ending Jan-2009: $5.71.	Market See assumption: $18.50
S7	Suite 540 Office, Suite: Mo 18 Jul-2008 to Jun-2013 60 Months	 1,973 1.81%	$19.06 $37,596 $1.59 $3,133	Jul-2009 Jul-2010 Jul-2011 Jul-2012	$19.63 $20.22 $20.82 $21.45	Gross: Pays the increases over a base year ending Jan-2009: $5.71.	Market See assumption: $18.50
S8	Suite 550 Office, Suite: Mo 15 Apr-2008 to Mar-2013 60 Months	 1,177 1.08%	$19.06 $22,428 $1.59 $1,869	Apr-2009 Apr-2010 Apr-2011 Apr-2012	$19.63 $20.22 $20.82 $21.45	Gross: Pays the increases over a base year ending Jan-2009: $5.71.	Market See assumption: $18.50
S9	Suite 300 - Xanodyne Office, Suite: Mo 17 Jun-2008 to May-2013 60 Months	 23,565 21.62%	$19.06 $449,031 $1.59 $37,419	Jun-2009 Jun-2010 Jun-2011 Jun-2012	$19.63 $20.22 $20.82 $21.45	Gross: Pays the increases over a base year ending Jan-2009: $5.71.	Market See assumption: $18.50

Turfway Ridge
Florence, KY

TURFWAY II

	Tenant Name Type & Suite Number Lease Dates & Term	Floor SqFt Bldg Share	Rate & Amount per Year per Month	Changes on	Changes to	Description of Operating Expense Reimbursements	Assumption about subsequent terms for this tenant
1	Intraglobe Office, Suite: 140 Feb-2002 to Mar-2008 74 Months	 1,219 1.12%	$17.50 $21,333 $1.46 $1,778	Apr-2006 Apr-2007	$18.02 $18.57	See method: 2002 BY 100% GU	Market See assumption: $18.50
2	Aisin World Corp Office, Suite: 150 Jan-2005 to Jul-2008 43 Months	 2,448 2.24%	$18.25 $44,676 $1.52 $3,723	Jan-2006 Jan-2007 Jan-2008	$18.80 $19.36 $19.94	See method: 2005 BY 75% GU	Market See assumption: $18.50
3	Kentucky Revenue Cabi Office, Suite: 190 Jun-1997 to Jul-2007 122 Months	 7,081 6.48%	$16.37 $115,892 $1.36 $9,658	-	-	Full Service: Pays no expense reimbursement.	ReAbsorb See assumption: $18.50
4	Kentucky Revenue Cabi Office, Suite: 190 Aug-2007 to Jul-2009 24 Months	 7,081 6.48%	$16.37 $115,892 $1.36 $9,658	-	-	Full Service: Pays no expense reimbursement.	Kentucky See assumption: $18.50
5	Kentucky REvnue Cabin Office, Suite: 191 Jun-1997 to Jul-2009 146 Months	 1,197 1.10%	$0.00 $0 $0.00 $0	-	-	Full Service: Pays no expense reimbursement.	Kentucky See assumption: $18.50
6	Central Bank of Kentu Office, Suite: 110/200 Feb-2006 to Feb-2016 121 Months	 16,095 14.73%	$0.00 $0 $0.00 $0.00	Jun-2006	$18.75	See method: 2006 BY 95% GU	Market See assumption: $18.50
7	Central Bank of Kentu Office, Suite: 201 Feb-2006 to Feb-2016 121 Months	 10,363 9.49%	$0 $0 $0.00 $0.00	Jun-2006 Jan-2007 Jan-2008	$6.43 $6.62 $18.75	See method: 2006 BY 95% GU	Market See assumption: $18.50
8	DBA Direct Office, Suite: 310 Aug-2000 to Jul-2009 108 Months	 9,785 8.96%	$17 $161,453 $1.38 $13,454.00	Aug-2005 Aug-2006 Aug-2007 Aug-2008	$17.00 $17.50 $18.00 $18.50	See method: 2004 BY 95% GU	Market See assumption: $18.50
9	DBA Direct Expansion Office, Suite: 320 Oct-2006 to Jul-2009 34 Months	 1,382 1.27%	$18 $24,185 $1.46 $2,015.00	Oct-2007 Oct-2008	$18.00 $18.50	See method: New Tenants	Market See assumption: $18.50
10	Pediamed Pharmaceutic Office, Suite: 400 Aug-2004 to Oct-2007 39 Months	 12,771 11.69%	$19 $242,649 $1.58 $20,221.00	Nov-2006	$19.50	See method: 2002 BY 100% GU	Market See assumption: near term lease

11	ZF Lemforder (Pediam Office, Suite: 450 Nov-2003 to Oct-2008 60 Months	 10,084 9.23%	$17 $173,546 $1.43 $14,462.00	Nov-2006 Nov-2007	$17.53 $17.86	See method: 2003 BY 100% GU	Market See assumption: near term lease
12	Square D Office, Suite: 500 Dec-2002 to Mar-2011 100 Months	 31,956 29.25%	$0 $0 $0.00 $0.00	Jun-2003 Dec-2003 Dec-2004 Dec-2005 Apr-2006 Dec-2006 Dec-2007 Dec-2008 Dec-2009 Dec-2010	$17.50 $18.03 $18.57 $19.13 $17.75 $18.28 $18.83 $19.39 $19.98 $20.57	See method: BY 2003 95% GU	Market See assumption: $18.50
S1	Suite 130 Office, Suite: Mo 6 Jul-2007 to Jun-2012 60 Months	 1,774 1.62%	$18.50 $32,819 $1.54 $2,735	Jul-2008 Jul-2009 Jul-2010 Jul-2011	$19.06 $19.63 $20.22 $20.82	Gross: Pays the increases over a base year ending Jan-2008: $6.42.	Market See assumption: $18.50
S2	Suite 330 Office, Suite: Mo 9 Oct-2007 to Sep-2012 60 Months	 3,093 2.83%	$18.50 $57,221 $1.54 $4,768	Oct-2008 Oct-2009 Oct-2010 Oct-2011	$19.06 $19.63 $20.22 $20.82	Gross: Pays the increases over a base year ending Jan-2008: $6.42.	Market See assumption: $18.50

Turfway Ridge

Florence, KY

Office $18.50		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
For the Years Ending		Jan-2008	Jan-2009	Jan-2010	Jan-2011	Jan-2012	Jan-2013	Jan-2014	Jan-2015	Jan-2016	Jan-2017	Jan-2018
Renewal Probability		75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%
Market Rent	New:	18.50	19.06	19.63	20.22	20.82	21.45	22.09	22.75	23.44	24.14	24.86
	Renewal:	18.50	19.06	19.63	20.22	20.82	21.45	22.09	22.75	23.44	24.14	24.86
	Result:	18.50	19.06	19.63	20.22	20.82	21.45	22.09	22.75	23.44	24.14	24.86
Months Vacant	New:	6	6	6	6	6	6	6	6	6	6	6
	Renewal:	0	0	0	0	0	0	0	0	0	0	0
	Rounded:	2	2	2	2	2	2	2	2	2	2	2
Tenant Improvements	New:	12.00	12.36	12.73	13.11	13.51	13.91	14.33	14.76	15.20	15.66	16.13
	Renewal:	5.00	5.15	5.30	5.46	5.63	5.80	5.97	6.15	6.33	6.52	6.72
	Result:	6.75	6.95	7.16	7.38	7.60	7.83	8.06	8.30	8.55	8.81	9.07
Leasing Commissions	New:	7.00%	7.00%	7.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%
	Renewal:	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
	Result:	4.00%	4.00%	4.00%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%
Rent Abatements	New:	3	2	1	0	0	0	0	0	0	0	0
	Renewal:	0	0	0	0	0	0	0	0	0	0	0
	Result:	0.75	0.5	0.25	0	0	0	0	0	0	0	0
Non-Weighted Items												
Rent Changes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Retail Rent Changes												
Reimbursements		Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr
Term Lengths in Year		5	5	5	5	5	5	5	5	5	5	5

Turfway Ridge

Florence, KY

Office $18.50 near term lease

For the Years Ending		Year 1 Jan-2008	Year 2 Jan-2009	Year 3 Jan-2010	Year 4 Jan-2011	Year 5 Jan-2012	Year 6 Jan-2013	Year 7 Jan-2014	Year 8 Jan-2015	Year 9 Jan-2016	Year 10 Jan-2017	Year 11 Jan-2018
Renewal Probability		75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%
Market Rent	New:	18.5	19.06	19.63	20.22	20.82	21.45	22.09	22.75	23.44	24.14	24.86
	Renewal:	18.5	19.06	19.63	20.22	20.82	21.45	22.09	22.75	23.44	24.14	24.86
	Result:	18.5	19.06	19.63	20.22	20.82	21.45	22.09	22.75	23.44	24.14	24.86
Months Vacant	New:	6	6	6	6	6	6	6	6	6	6	6
	Renewal:	0	0	0	0	0	0	0	0	0	0	0
	Rounded:	2	2	2	2	2	2	2	2	2	2	2
Tenant Improvements	New:	25	25.75	26.52	27.32	28.14	28.98	29.85	30.75	31.67	32.62	33.6
	Renewal:	5	5.15	5.3	5.46	5.63	5.8	5.97	6.15	6.33	6.52	6.72
	Result:	10	10.3	10.61	10.93	11.26	11.59	11.94	12.3	12.67	13.05	13.44
Leasing Commissions	New:	7.00%	7.00%	7.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%
	Renewal:	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
	Result:	4.00%	4.00%	4.00%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%
Rent Abatements	New:	3	2	1	0	0	0	0	0	0	0	0
	Renewal:	0	0	0	0	0	0	0	0	0	0	0
	Result:	0.75	0.5	0.25	0	0	0	0	0	0	0	0
Non-Weighted Items												
Rent Changes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Retail Rent Changes												
Reimbursements		Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr	Base Yr
Term Lengths in Year		5	5	5	5	5	5	5	5	5	5	5

Turfway Ridge I

Florence, KY

For the Years Ending	Year 1 Jan-2008	Year 2 Jan-2009	Year 3 Jan-2010	Year 4 Jan-2011	Year 5 Jan-2012	Year 6 Jan-2013	Year 7 Jan-2014	Year 8 Jan-2015	Year 9 Jan-2016	Year 10 Jan-2017	Year 11 Jan-2018
Potential Gross Revenue											
Base Rental Revenue	$2,033,143	$2,002,307	$2,046,625	$2,115,167	$2,196,431	$2,266,196	$2,335,771	$2,399,040	$2,467,724	$2,538,707	$2,613,644
Absorption & Turnover Vacancy	(482,798)	(202,270)	(13,068)	(89,945)	(18,785)	(84,795)	(156,082)	(16,394)	(97,566)	(29,403)	(83,830)
Base Rent Abatements	(104,415)	(73,044)	(7,851)	0	0	0	0	0	0	0	0
Scheduled Base Rental Revenue	1,445,930	1,726,993	2,025,706	2,025,222	2,177,646	2,181,401	2,179,689	2,382,646	2,370,158	2,509,304	2,529,814
Expense Reimbursement Revenue											
Security	0	92	231	315	478	573	364	416	441	532	601
Cleaning	0	1,503	3,884	5,256	7,958	9,547	6,019	6,926	7,311	8,826	10,011
Repairs & Maintenance	0	942	2,432	3,293	4,987	5,981	3,769	4,339	4,579	5,530	6,271
HVAC	0	408	1,057	1,427	2,165	2,594	1,635	1,884	1,987	2,399	2,719
Elevator	0	233	605	811	1,236	1,481	931	1,076	1,132	1,369	1,550
Administrative	0	830	2,147	2,904	4,398	5,275	3,324	3,827	4,040	4,876	5,534
General Building Services	0	47	126	168	253	308	195	222	237	281	320
Snow Removal	0	144	376	510	773	926	583	671	706	856	969
Utilities	0	2,384	6,168	8,342	12,634	15,153	9,549	10,996	11,599	14,007	15,891
Landscaping	0	344	887	1,197	1,813	2,176	1,371	1,578	1,663	2,010	2,277
Management Fee	0	874	2,394	3,273	5,038	6,146	3,833	4,413	4,645	5,625	6,394
Insurance	0	436	1,129	1,525	2,312	2,774	1,750	2,013	2,122	2,564	2,909
Real Estate Taxes	0	2,096	5,423	7,334	11,108	13,323	8,397	9,669	10,204	12,318	13,970
Total Reimbursement Revenue	0	10,333	26,859	36,355	55,153	66,257	41,720	48,030	50,666	61,193	69,416
Miscellaneous Revenues	13,056	13,448	13,851	14,267	14,695	15,135	15,590	16,057	16,539	17,035	17,546
Total Potential Gross Revenue	1,458,986	1,750,774	2,066,416	2,075,844	2,247,494	2,262,793	2,236,999	2,446,733	2,437,363	2,587,532	2,616,776
General Vacancy	0	0	(153,291)	(83,318)	(162,517)	(79,536)	(11,434)	(156,025)	(79,879)	(153,782)	(105,212)
Effective Gross Revenue	1,458,986	1,750,774	1,913,125	1,992,526	2,084,977	2,183,257	2,225,565	2,290,708	2,357,484	2,433,750	2,511,564
Operating Expenses											
Security	5,280	5,438	5,602	5,770	5,943	6,121	6,305	6,494	6,689	6,889	7,096
Cleaning	87,806	90,440	93,153	95,948	98,826	101,791	104,845	107,990	111,230	114,567	118,004
Repairs & Maintenance	55,000	56,650	58,349	60,100	61,903	63,760	65,673	67,643	69,672	71,763	73,915
HVAC	23,850	24,566	25,302	26,062	26,843	27,649	28,478	29,332	30,212	31,119	32,052
Elevator	13,600	14,008	14,428	14,861	15,307	15,766	16,239	16,726	17,228	17,745	18,277
Administrative	48,503	49,958	51,457	53,001	54,591	56,228	57,915	59,653	61,442	63,285	65,184
General Building Services	2,816	2,900	2,987	3,077	3,169	3,265	3,362	3,463	3,567	3,674	3,784
Snow Removal	8,500	8,755	9,018	9,288	9,567	9,854	10,149	10,454	10,768	11,091	11,423
Utilities	139,342	143,522	147,828	152,263	156,831	161,536	166,382	171,373	176,514	181,810	187,264
Landscaping	20,000	20,600	21,218	21,855	22,510	23,185	23,881	24,597	25,335	26,095	26,878
Management Fee	43,770	52,523	57,394	59,776	62,549	65,498	66,767	68,721	70,725	73,012	75,347
Insurance	25,500	26,265	27,053	27,865	28,700	29,561	30,448	31,362	32,303	33,272	34,270
Real Estate Taxes	122,525	126,201	129,987	133,886	137,903	142,040	146,301	150,690	155,211	159,867	164,663
Space Planning	1,250	1,288	1,326	1,366	1,407	1,449	1,493	1,537	1,583	1,631	1,680
Marketing Expense	6,175	6,360	6,551	6,748	6,950	7,159	7,373	7,594	7,822	8,057	8,299
Total Operating Expenses	603,917	629,474	651,653	671,866	692,999	714,862	735,611	757,629	780,301	803,877	828,136
Net Operating Income	855,069	1,121,300	1,261,472	1,320,660	1,391,978	1,468,395	1,489,954	1,533,079	1,577,183	1,629,873	1,683,428
Leasing & Capital Costs											
Tenant Improvements	412,874	609,046	27,327	198,229	41,123	150,978	373,299	40,097	197,385	81,062	139,609
Leasing Commissions	238,788	216,831	16,220	108,165	22,439	82,383	203,696	21,879	107,705	44,232	76,180
Capital Reserve	16,349	16,349	16,349	16,349	16,349	16,349	16,349	16,349	16,349	16,349	16,349
Total Leasing & Capital Costs	668,011	842,226	59,896	322,743	79,911	249,710	593,344	78,325	321,439	141,643	232,138
Cash Flow Before Debt Service & Taxes	$187,058	$279,074	$1,201,576	$997,917	$1,312,067	$1,218,685	$896,610	$1,454,754	$1,255,744	$1,488,230	$1,451,290

Turfway Ridge II

Florence, KY

For the Years Ending	Year 1 Jan-2008	Year 2 Jan-2009	Year 3 Jan-2010	Year 4 Jan-2011	Year 5 Jan-2012	Year 6 Jan-2013	Year 7 Jan-2014	Year 8 Jan-2015	Year 9 Jan-2016	Year 10 Jan-2017	Year 11 Jan-2018
Potential Gross Revenue											
Base Rental Revenue	$1,865,473	$2,002,360	$2,056,770	$2,094,212	$2,141,987	$2,182,593	$2,236,722	$2,314,630	$2,412,385	$2,600,558	$2,682,165
Absorption & Turnover Vacancy	(91,199)	(43,670)	(63,608)	0	(110,898)	(40,222)	(55,573)	(92,858)	0	(235,003)	(20,168)
Base Rent Abatements	(37,276)	(10,918)	(6,980)	0	0	0	0	0	0	0	0
Scheduled Base Rental Revenue	1,736,998	1,947,772	1,986,182	2,094,212	2,031,089	2,142,371	2,181,149	2,221,772	2,412,385	2,365,555	2,661,997
Expense Reimbursement Revenue											
Security	11	86	144	271	380	551	576	605	723	350	472
Cleaning	268	2,174	3,636	6,814	9,547	13,828	14,495	15,208	18,121	8,762	11,795
Repairs & Maintenance	111	903	1,507	2,826	3,960	5,737	6,012	6,307	7,518	3,634	4,893
HVAC	42	338	564	1,061	1,486	2,154	2,256	2,368	2,824	1,364	1,837
Elevator	27	222	371	699	977	1,418	1,486	1,558	1,858	898	1,209
Adminstrative	98	796	1,329	2,493	3,495	5,061	5,303	5,564	6,631	3,208	4,317
General Building Services	6	46	77	145	204	294	310	322	385	185	250
Snow Removal	17	139	232	435	614	886	929	976	1,161	562	756
Utilities	392	3,176	5,311	9,952	13,951	20,210	21,177	22,222	26,477	12,803	17,237
Landscaping	40	327	549	1,029	1,440	2,087	2,186	2,295	2,733	1,321	1,780
Management Fee	106	940	1,437	2,782	3,684	5,592	5,797	6,013	7,598	3,406	5,062
Insurance	52	417	700	1,310	1,837	2,660	2,786	2,924	3,486	1,687	2,268
Real Estate Taxes	248	2,008	3,357	6,295	8,823	12,780	13,392	14,055	16,742	8,097	10,902
Total Reimbursement Revenue	1,418	11,572	19,214	36,112	50,398	73,258	76,705	80,417	96,257	46,277	62,778
Miscellaneous Income	13,056	13,448	13,851	14,267	14,695	15,135	15,590	16,057	16,539	17,035	17,546
Total Potential Gross Revenue	1,751,472	1,972,792	2,019,247	2,144,591	2,096,182	2,230,764	2,273,444	2,318,246	2,525,181	2,428,867	2,742,321
General Vacancy	0	0	(166,628)	(171,567)	(176,566)	(158,969)	(163,031)	(168,777)	(176,763)	(186,471)	(193,374)
Effective Gross Revenue	1,751,472	1,972,792	1,852,619	1,973,024	1,919,616	2,071,795	2,110,413	2,149,469	2,348,418	2,242,396	2,548,947
Operating Expenses											
Security	5,280	5,438	5,602	5,770	5,943	6,121	6,305	6,494	6,689	6,889	7,096
Cleaning	132,589	136,567	140,664	144,884	149,230	153,707	158,318	163,068	167,960	172,999	178,189
Repairs & Maintenance	55,000	56,650	58,349	60,100	61,903	63,760	65,673	67,643	69,672	71,763	73,915
HVAC	20,650	21,269	21,908	22,565	23,242	23,939	24,657	25,397	26,159	26,944	27,752
Elevator	13,600	14,008	14,428	14,861	15,307	15,766	16,239	16,726	17,228	17,745	18,277
Adminstrative	48,520	49,976	51,475	53,019	54,610	56,248	57,935	59,673	61,464	63,308	65,207
General Building Services	2,816	2,900	2,987	3,077	3,169	3,265	3,362	3,463	3,567	3,674	3,784
Snow Removal	8,500	8,755	9,018	9,288	9,567	9,854	10,149	10,454	10,768	11,091	11,423
Utilities	193,742	199,554	205,541	211,707	218,058	224,600	231,338	238,278	245,427	252,789	260,373
Landscaping	20,000	20,600	21,218	21,855	22,510	23,185	23,881	24,597	25,335	26,095	26,878
Management Fee	52,544	59,184	55,579	59,191	57,588	62,154	63,312	64,484	70,453	67,272	76,468
Insurance	25,500	26,265	27,053	27,865	28,700	29,561	30,448	31,362	32,303	33,272	34,270
Real Estate Taxes	122,524	126,200	129,986	133,885	137,902	142,039	146,300	150,689	155,210	159,866	164,662
Space Planning	1,250	1,288	1,326	1,366	1,407	1,449	1,493	1,537	1,583	1,631	1,680
Marketing	6,175	6,360	6,551	6,748	6,950	7,159	7,373	7,594	7,822	8,057	8,299
Total Operating Expenses	708,690	735,014	751,685	776,181	796,086	822,807	846,783	871,459	901,640	923,395	958,273
Net Operating Income	1,042,782	1,237,778	1,100,934	1,196,843	1,123,530	1,248,988	1,263,630	1,278,010	1,446,778	1,319,001	1,590,674
Leasing & Capital Costs											
Tenant Improvements	186,114	129,360	139,248	0	242,776	38,085	182,048	285,446	0	514,464	16,093
Leasing Commissions	90,742	55,208	69,444	0	132,473	20,782	72,293	133,762	0	280,724	8,781
Capital Reserve	16,387	16,387	16,387	16,387	16,387	16,387	16,387	16,387	16,387	16,387	16,387
Total Leasing & Capital Costs	293,243	200,955	225,079	16,387	391,636	75,254	270,728	435,595	16,387	811,575	41,261
Cash Flow Before Debt Service & Taxes	$749,539	$1,036,823	$875,855	$1,180,456	$731,894	$1,173,734	$992,902	$842,415	$1,430,391	$507,426	$1,549,413

EXHIBIT A

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

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PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

This PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement") is made and effective as of the date Seller (as defined below) executes this Agreement ("Effective Date"), by and between Cabot Turfway Ridge Acquisition LLC, a Delaware limited liability company ("Seller"), and ____ ("Buyer"), with reference to the facts set forth below. All terms with initial capital letters not otherwise defined herein shall have the meanings set forth in Exhibit B herein.

RECITALS

A. Cabot Investment Properties, LLC entered into that certain Purchase and Sale Agreement with BH Turfway LLC (the "Property Owner") ("Sales Agreement"), to purchase a 218,223 net rentable square foot, multi-tenant office property situated on 14.57-acres commonly known as "Turfway Ridge", which consists of (i) one five-story, 108,975 square foot office building, situated on 8.06-acres ("Turfway I") and (ii) one five-story, 109,248 square foot office building situated on 6.51 acres ("Turfway II") located at 7300 and 7310 Turfway Road in Florence, Kentucky 41042 (Turfway I and Turfway II, together, the "Property"), that is more completely described in that certain Private Placement Memorandum of Cabot Turfway Ridge Acquisition LLC dated January 9, 2007 (the "Memorandum"). Thereafter, Cabot Investment Properties, LLC assigned all right, title and interest into such Sales Agreement to Seller;

B. In lieu of Seller accepting title to the Property from the Property Owner directly, Seller has arranged to direct the transfer of all or substantially all of the interests in the Property to buyers, including the Buyer, as set forth in the Memorandum. Seller desires to sell an undivided interest in the Property to Buyer and Buyer desires to buy an undivided interest in the Property on the terms and conditions set forth in this Agreement. This sale is made pursuant to the Memorandum;

C. The Property shall be subject to the Loan Documents and Buyer shall acquire the Property subject to the Loan Documents and shall be a party thereto; and

D. Buyer and Cabot Investments Properties, LLC (an entity affiliated with Seller) shall enter into the Consulting Agreement and Buyer and Master Lessee (an entity affiliated with Seller), shall enter into the Loan Documents, the Master Lease Agreement, the Tenants in Common Agreement, the Call Agreement, or the Accession Agreements in the event that Buyer enters into the transaction after the Closing (together with this Agreement, the "Transaction Documents").

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. Agreement of Purchase and Sale.

1.1. Purchase, Sale and Purchase Price. In consideration of the covenants herein contained, Seller hereby agrees to sell, and Buyer hereby agrees to purchase, a ______________% undivided interest in the Property ("Buyer's Interest") at a purchase price ("Purchase Price") in an amount equal to $________________ of which $________________ shall be Cash ("Cash Portion") into the escrow created by this Agreement ("Escrow") and $________________ shall be assumption of the loan of record (based on $297,500, consisting of $117,500 of cash and $180,000 of estimated debt) for each one percent (1%) undivided interest in the Property to be acquired. The Purchase Price shall include the compensation and fees payable to Seller and its affiliates as set forth in the Memorandum. To the extent the amount of the Loan is increased or decreased, the Purchase Price shall be increased or decreased and the amount of the assumed debt shall be adjusted to reflect the change in the Purchase Price.

1.2. Payment. Buyer shall pay the Purchase Price as described in this Section 1.2. Buyer shall offer to purchase Buyer's Interest pursuant to Section 1.2.1 below. Upon Seller's acceptance of such offer, Buyer shall complete payment of the Purchase Price pursuant to Section 1.2.2 and 1.2.3 set forth below.

1.2.1. Buyer's Deposit. Buyer shall deliver to Seller an executed copy of this Agreement, together with the Purchaser Questionnaire, a credit authorization, the Lender's Certificate of Borrower, a current financial statement, tax returns for the past two (2) years and any other items that may be required by Lender in connection with Buyer's entry into the Loan Documents. In addition, if Lender requires additional information from the Buyer, Buyer shall submit this additional information within three (3) business days after Seller's or Lender's request. Buyer shall also submit a good faith deposit (the "Buyer's Deposit") equal to $25,000. Buyer shall deposit, within 72 hours of submitting this Agreement, such funds into Escrow by wire transfer to the account specified on Exhibit C attached hereto. Buyer's Deposit shall be returned to Buyer at close of Escrow or used to cover Buyer's closing costs. In the event that Buyer Defaults, Seller has the option to retain Buyer's Deposit as liquidated damages pursuant to Section 6.1 below.

____________________ ____________________

Seller's Initials Buyer's Initials

1.2.2. Cash Portion of the Purchase Price. Buyer shall deposit into the Escrow Account an amount equal to the Cash Portion of the Purchase Price, plus the amount, if any, required of Buyer under Section 4 or any other provision of this Agreement, in immediately available funds, at least five (5) Business Days before close of Escrow.

1.2.3. Loan Documents. With respect to the remaining balance of the Purchase Price ("Loan Portion"), Buyer shall become a party to, and take its Buyer's Interest subject to, the Loan Documents. A Member of Buyer and Master Lessee shall guaranty the payment and performance of Loan Documents as described in the Loan Documents.

1.3. Buyer's Deliveries. Concurrently with delivery of the Purchase Price, Buyer shall execute, acknowledge (where appropriate) and deposit into Escrow this Agreement and the other Transaction Documents, including the Loan Documents, and such other documents as may be required by the Lender or the Escrow Agent (as identified in the signature page hereto). In the event Buyer is acquiring Buyer's Interest after the initial closing of the purchase of the Property, in lieu of executing, acknowledging (where appropriate) and depositing into Escrow the Tenants in Common Agreement, the Call Agreement, the Master Lease Agreement and the Consulting Agreement, Buyer shall execute, acknowledge (where appropriate) and deposit into Escrow the Accession Agreement.

1.4. Buyer's Intent to Exchange. If Buyer's acquisition is part of a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code, it is a condition precedent to the closing of this Escrow that Buyer is able to complete an exchange for all or a portion of its relinquished property pursuant to an Exchange Agreement between Buyer and ____________________________________ ("Accommodator"). Seller agrees to execute such documents or instruments as may be necessary or appropriate to evidence such exchange, provided that Seller's cooperation in such regard shall be at no additional cost, expense or liability whatsoever to Seller, and that no additional delays in the scheduled closing date of this Escrow are incurred unless mutually agreed upon by Buyer and Seller. Buyer may assign its rights under this Agreement to Accommodator pursuant to an Exchange Agreement between Buyer and Accommodator to effect such exchange.

2. Opening and Close of Escrow.

2.1. Opening of Escrow. Upon execution of this Agreement by all parties, Seller shall open Escrow by depositing with the Escrow Agent a fully executed original of this Agreement for use as escrow instructions. The Escrow Agent shall execute the Consent of Escrow Agent at the end of this Agreement and deliver a fully executed consent to Seller. Seller shall, in turn, provide a fully executed copy of this Agreement to Buyer. Buyer and Seller agree to execute additional escrow instructions not inconsistent with the terms of this Agreement reasonably required by the Escrow Agent. If there is any inconsistency between the provisions of any such additional escrow instructions and this Agreement, the provisions of this Agreement shall control.

2.2. Seller's Deliveries. Prior to the close of Escrow, Seller shall execute, acknowledge (where appropriate) and deposit into Escrow applicable certificates regarding federal and state withholding taxes and obtain pursuant to the Sales Agreement a grant deed, warranty deed or other appropriate transfer document ("Deed"), conveying title to Buyer, among others. In the event Seller, as a Tenant in Common, is transferring all or a portion of its undivided interest to Buyer after the initial closing of the purchase of the Property, Seller shall also execute, acknowledge (where appropriate) and deposit into Escrow a Deed, the Assignment and Assumption Agreement, the Call Agreement, the Master Lease Agreement and the Tenants in Common, or the Accession Agreement, as applicable.

2.3. Close of Escrow. Escrow shall close on a date specified by Seller following the acceptance of offers to purchase a maximum of $11,750,000 of undivided interests in the Property (the "Closing Date"), (i) by filing for record the Deed, the Transaction Documents or the Accession Agreement, the Loan Documents and such other documents as may be necessary to procure Buyer's Title Policy (as defined below) and (ii) delivering funds and documents as set forth in Section 5 WHEN AND ONLY WHEN (a) all funds and instruments required pursuant to Sections 1 and 2 have been delivered to the Escrow Agent; and (b) each of the conditions precedent set forth in Section 3 has been, or upon such closing shall be, satisfied or waived as provided for in Section 3; provided, however, the Seller may extend the Closing Date for up to an additional thirty (30) days so long as Seller is diligently proceeding with the close of Escrow as of the Closing Date.

2.4. Latest Closing. If Escrow has not closed by 5:00 p.m. on the Closing Date, for any reason other than the Default of either Buyer or Seller under this Agreement, either party who is not then in Default may terminate Escrow and this Agreement by written notice to the other party and to the Escrow Agent. If this Agreement is so terminated, (i) Buyer and Seller shall promptly execute and deliver any cancellation instructions reasonably requested by the Escrow Agent; (ii) the Escrow Agent shall return Buyer's Deposit to Buyer; and (iii) Buyer and Seller shall be released from their obligations under this Agreement, other than any obligations of Buyer that survive the termination of this Agreement. If all conditions to the close of Escrow have been satisfied or waived by the Closing Date and Buyer fails to close Escrow, Seller shall, in addition to any other rights or remedies which Seller may have, be entitled to retain Buyer's Deposit pursuant to Section 6 and to terminate this Agreement and, upon such termination, Seller shall be released from all obligations under this Agreement.

3. Conditions to Closing.

3.1. Closing Conditions. This Agreement and the obligations of the parties hereunder are subject to satisfaction or waiver (by the party in whose favor the condition precedent has been established) of all the conditions precedent set forth below.

3.1.1. Review of Title Commitment. Prior to the Closing Date, Buyer will receive from the Title Company a copy of the Title Commitment (as defined below) to review and retain for its records. If any new exceptions to title appear of record prior to the Closing Date, a copy of the revised Title Commitment issued by the Title Company shall be delivered to Seller and Buyer, unless such new exceptions are removed at or prior to Closing or insured over or are deemed "Permitted Exceptions" as set forth in the Purchase and Sale Agreement. If Buyer objects to any items on the Title Commitment that will not be removed at closing within three (3) days of receipt of either report, Buyer must notify the Escrow Agent in writing. In such event, Buyer's only remedy is to terminate Escrow and, if Buyer does not so elect to terminate Escrow, Buyer shall be deemed to have consented to any such new exceptions to title. If Buyer delivers notice of its election to terminate pursuant to this Section 3.1.1, then this Agreement shall terminate as provided in Section 2.4.

3.1.2. Title Insurance. The Title Company shall issue a customary policy of title insurance ("Title Policy"), with liability in the amount of the Purchase Price insuring title to Buyer's Interest. Buyer shall take title to the Buyer's Interest subject to the exceptions (the "Permitted Exceptions") set forth in the pro forma title commitment ("Title Commitment"). The Title Company shall issue one (1) title insurance policy to all of the Tenants in Common insuring title to the Property in lieu of separate policies for each Tenant in Common. Prior to the Closing Date, Buyer will receive a copy of the Title Commitment to review and retain for its records. If Buyer objects to any provisions in the Title Commitment, then Buyer shall notify the Escrow Agent in writing within three (3) business days of receipt. In such event, Buyer's only remedy is to terminate the Escrow, and, if Buyer does not elect to terminate Escrow, Buyer shall be deemed to have consented to the Title Commitment.

3.1.3. Approval of Loan Documents. Lender shall have approved Buyer as a borrower under the Loan Documents, or if Buyer is acquiring its interest after the Closing Date, the assumption by Buyer of the Loan under the Loan Documents with respect to Buyer's Interest, if required. Buyer will receive copies of the Loan Documents substantially in the form accepted by Lender. Buyer through its limited liability company shall be a borrower thereunder and Buyer shall be a guarantor of the obligations of its borrower. If Buyer objects to any provisions or terms of the Loan Documents, then Buyer shall notify the Escrow Agent in writing within three (3) business days of receipt. In such event, Buyer's only remedy is to terminate Escrow, and, if Buyer does not elect to terminate Escrow, Buyer shall be deemed to have consented to the terms and provisions of the Loan Documents.

3.1.4. Approval of Third Party Reports. Seller shall make available, at the request of Buyer, those third party reports commissioned by Seller or its affiliates in connection with the performance of diligence on the Property. Those reports, include but are not limited to, environmental Phase I, engineering/structural and ADA reports, appraisals, and surveys (collectively, the "Reports"). To the extent necessary or appropriate, the material results of such Reports are described in the Memorandum. If Buyer objects to the results of the Reports, then Buyer shall notify the Escrow Agent in writing within three (3) business days of receipt. In such event, Buyer's only remedy is to terminate Escrow, and, if Buyer does not elect to terminate Escrow, Buyer shall be deemed to have consented to the content of the Reports.

3.2. Failure of Conditions Precedent. Sections 3.1.1, 3.1.2 and 3.1.4 are for Buyer's benefit and may only be waived by Buyer. Section 3.1.3 is for the parties' mutual benefit. If any of the foregoing conditions precedent is neither satisfied nor waived by the Closing Date, then either party, if not then in default hereunder, may terminate the Escrow and this Agreement in accordance with Section 2.4.

4. Fees and Costs.

4.1. Buyer's Fees and Costs. Buyer will pay $3,750 to cover its attributable portion of the costs and fees incurred in connection with the services of the Escrow Agent; the formation, initial qualification to do business and initial registered agent services for each limited liability company in Delaware and Kentucky; the preparation of the operating agreements for each limited liability company; and the recordation of the limited liability company certificates. Buyer expressly acknowledges and agrees to Seller's entitlement to the Organizational and Offering Expenses Allowance, the Closing and Carrying Costs Allowance, the Loan Fee and Costs and the Acquisition Fee, each as described in the Memorandum. Buyer acknowledges that Seller makes no representation or warranty whatsoever that the Buyer's Deposit constitutes valid replacement property for purposes of complying with Section 1031 of the Internal Revenue Code, and Buyer has consulted its own advisor regarding the treatment of the Buyer's Deposit with respect to such Section 1031 exchange rules.

4.2. Escrow Cancellation and Title Charges. If Escrow fails to close due to Buyer's Default under this Agreement, Buyer shall pay all escrow cancellation and title charges. If Escrow fails to close for any other reason other than the foregoing, Seller shall pay any escrow cancellation and title charges.

5. Distribution of Funds and Documents.

5.1. Deposit of Funds. After Opening of Escrow, except as provided in Section 1.2.1, all Cash, if any, received hereunder by the Escrow Agent shall be held until the close of Escrow and kept on deposit with other escrow funds in the Escrow Agent's general escrow account(s), in any state or national bank, and may be transferred to any other such general escrow account(s).

5.2. Disbursements. At the close of Escrow, the Escrow Agent will deliver or wire transfer (i) to Seller, or order, the Cash Portion of the Purchase Price, plus any proration or other credits to which Seller will be entitled, less any appropriate proration or other charges and (ii) to Buyer, or order, any excess funds theretofore delivered to the Escrow Agent by Buyer. All other disbursements by the Escrow Agent shall be made by checks of the Escrow Agent.

5.3. Recorded Documents. The Escrow Agent will cause the County Recorder to mail the Deed and any other recorded document, after recordation, to the grantee, beneficiary or person (i) acquiring rights under such document or (ii) for whose benefit such document was acquired. The Escrow Agent will, at the close of Escrow, deliver to Seller a copy (conformed to show recording date) of the Deed and each document recorded to place title in the condition required by the Agreement.

5.4. Unrecorded Documents. At the close of Escrow, the Escrow Agent will deliver by United States mail (or will hold for personal pickup, if requested) each unrecorded document received hereunder by the Escrow Agent to the payee or person (i) acquiring rights under such document or (ii) for whose benefit such document was acquired.

6. Default.

6.1 Liquidated Damages. **If Escrow fails to close due to Buyer's Default, it is agreed that the amount of Buyer's deposit together with interest thereon, if any, shall be retained and accepted by Seller as liquidated damages and not as a penalty and Seller shall be released from its obligation of selling Buyer's interest to Buyer. It is agreed that such amount constitutes a reasonable estimate of the damages to Seller under Kentucky law. The parties further acknowledge and agree that the amount of liquidated damages is fair and reasonable considering all of the facts and circumstances existing on the date of this Agreement, including the relationship of such amount to the range of harm to Seller that could be anticipated, and the anticipation that proof of causation, foreseeability and actual damages would be costly and/or impractical. Buyer and Seller agree that it is impossible or impractical to presently predict what monetary damages Seller would suffer in such event. Buyer desires to limit the monetary damages for which Buyer might be liable hereunder and Buyer and Seller desire to avoid the costs and delays they would incur if a lawsuit were commenced to collect damages and therefore agree that such liquidated damages shall constitute Seller's sole and exclusive remedy if Escrow fails to close due to Buyer's Default. By initialing this provision below, the parties specifically confirm the accuracy of such facts, the fact that they possess approximately equal bargaining strength and sophistication and the fact that each of them was represented by counsel when entering into this Agreement, which counsel explained the consequences of this section to them at the time this Agreement was made. Nothing contained herein shall be deemed to limit any obligations of Buyer other than a Default causing Escrow to fail to close that survive the close of Escrow or early termination of this Agreement and Seller shall have the right to pursue any cause of action it may have against Buyer for Buyer's failure to perform any other covenant under the transaction documents or under this Agreement after the close of Escrow or earlier termination of this Agreement. By the act of an authorized representative of each party affixing his or her initials herein, each party specifically confirms the accuracy of the above statements and its agreement with them.**

____________________ Seller's Initials

____________________ Buyer's Initials

7. Buyer Representations and Warranties.

7.1. No Concern of the Escrow Agent. The Escrow Agent shall have no concern with, or liability or responsibility for, this Section.

7.2. Purchase As-Is. AS FURTHER PROVIDED IN THE MEMORANDUM, BUYER REPRESENTS AND WARRANTS THAT IT IS RELYING SOLELY ON ITS OWN INSPECTIONS, INVESTIGATIONS AND ANALYSES OF THE PROPERTY IN ENTERING INTO THIS AGREEMENT AND BUYER IS NOT RELYING IN ANY WAY ON ANY REPRESENTATIONS, STATEMENTS, AGREEMENTS, WARRANTIES, STUDIES, REPORTS, DESCRIPTIONS, GUIDELINES OR OTHER INFORMATION OR MATERIAL FURNISHED BY SELLER OR ITS REPRESENTATIVES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER REGARDING ANY SUCH MATTERS AND IS BUYING BUYER'S INTEREST IN AN "AS-IS" CONDITION. BUYER IS A SOPHISTICATED, EXPERIENCED INVESTOR AND WILL RELY ENTIRELY ON ITS REVIEW OF THE PROPERTY. IF BUYER IS ACQUIRING ITS INTEREST AFTER THE CLOSING DATE, BUYER ACKNOWLEDGES THAT SELLER ONLY RECENTLY ACQUIRED THE PROPERTY AND HAS LIMITED KNOWLEDGE REGARDING THE CONDITION OF THE PROPERTY.

7.3. Additional Buyer Representations and Warranties. Buyer hereby represents and warrants to Seller that the following are true and correct on the date of this Agreement.

7.3.1. Buyer acknowledges that it has received, read and fully understands the Memorandum and all attachments and exhibits thereto. Buyer acknowledges that it is basing its decision to invest on the Memorandum and any exhibits and attachments thereto. Buyer further acknowledges that it has relied only on the information contained in such materials and has not relied upon any representations made by any other person. Buyer recognizes that an investment involves substantial risk and Buyer is fully cognizant of and understands all of the risk factors related to the purchase of Buyer's Interest, including, but not limited to, those risks set forth in the section of the Memorandum entitled "Risk Factors."

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Seller's Initials Buyer's Initials

7.3.2. Buyer's overall commitment to investments that are not readily marketable is not disproportionate to its individual net worth, and its investment in Buyer's Interest will not cause such overall commitment to become excessive. Buyer has adequate means of providing for its financial requirements, both current and anticipated, and has no need for liquidity in this investment. Buyer can bear and is willing to accept the economic risk of losing its entire investment in Buyer's Interest.

7.3.3. Buyer acknowledges that the sale of Buyer's Interest has not been preceded or accompanied by the publication of any advertisement or by any general solicitation.

7.3.4. All information that Buyer has provided to Seller concerning Buyer's suitability to invest in Buyer's Interest is complete, accurate and correct as of the date of its signature on the last page of this Agreement. Buyer hereby agrees to notify Seller immediately of any material change in any such information occurring prior to the Closing Date, including any information about changes concerning its net worth and financial position.

7.3.5. Buyer has had the opportunity to ask questions of, and receive answers from, Seller and its officers, directors and employees concerning the Property and the terms and conditions of the offering of Buyer's Interest, and to obtain any additional information deemed necessary to verify the accuracy of the information contained in the Memorandum. Buyer has been provided with all materials and information requested by either Buyer or others representing Buyer, including any information requested to verify any information furnished Buyer.

7.3.6. Buyer is purchasing Buyer's Interest for Buyer's own account and for investment purposes only and has no present intention, agreement or arrangement for the distribution, transfer, assignment, resale or subdivision of Buyer's Interest. Buyer understands that, due to the restrictions referred to in Section 7.3.7, and the lack of any market existing or to exist for Buyer's Interest, Buyer's investment in Buyer's Interest will be highly illiquid and may have to be held indefinitely.

7.3.7. Buyer understands that legends will be placed on the Tenants in Common Agreement with respect to restrictions on distribution, transfer, resale, assignment or subdivision of Buyer's Interest imposed by applicable federal and state securities laws. Buyer is fully aware that its Interest has not been and will not be registered with the Securities and Exchange Commission in reliance on the exemption from registration promulgated under Rule 506 of Regulation D of the Securities Act of 1933, as amended, which reliance is based in part upon Buyer's representations set forth herein. Buyer understands that its Interest has not been and will not be registered under applicable state securities laws and is being offered and sold pursuant to the exemptions specified in such laws, and, unless it is registered, it may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws. Buyer further understands that the specific approval of such resales by the state securities administrator may be required in some states.

7.3.8. Buyer understands that neither Seller, its officers, directors, employees, managers or members or affiliates nor Seller's legal counsel or advisors represents Buyer in any way in connection with the purchase of Buyer's Interest and the entering into any of the related agreements associated with the purchase, including, but not limited to, the Transaction Documents, as applicable. Buyer also understands that legal counsel to

Seller and its affiliates does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing Buyer.

7.3.9. No Tax Representations. As further provided in the Memorandum, Buyer represents and warrants that: (i) Buyer understands and is aware that there are substantial uncertainties regarding the treatment of Buyer's Interest as an interest in real property for federal income tax purposes; (ii) Buyer has read the entire Memorandum and fully understands that there is significant risk that Buyer's Interest will not be treated as an interest in real property for federal income tax purposes; (iii) Buyer has independently obtained advice from its legal counsel and/or accountant regarding any tax-deferred exchange under Code Section 1031, including, without limitation, whether the acquisition of Buyer's Interest pursuant to this Agreement may qualify as part of a tax-deferred exchange, and Buyer is relying on such advice and not on the opinion of counsel issued to Seller; (iv) Buyer is aware that the IRS has issued Revenue Procedure 2002-22 specifically addressing Tenant in Common programs; that the Revenue Procedure is merely guidance and is not a "safe-harbor" for taxpayers or sponsors, so that, without the issuance of a Private Letter Ruling on a specific offering, there is no assurance that the Buyer's Interest will not be a partnership interest for federal income tax purposes; (v) Buyer understands that Seller has not obtained, and will not request, a private letter ruling from the IRS that Buyer's Interest will be treated as an undivided interest in real property as opposed to a partnership; (vi) Buyer understands that the tax consequences of an investment in Buyer's Interest, especially the treatment of the transaction described herein under Section 1031 of the Code and the related "1031 Exchange" rules, are complex and vary with the facts and circumstances of each individual Purchaser; and (vii) Buyer understands that the opinion of counsel issued to Seller states that a Buyer's Interest "should" be treated as a real property interest and not a partnership interest for federal income tax purposes and that no assurance can be given that the IRS will agree with this opinion.

7.3.10. BUYER'S INTEREST OFFERED HEREBY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF CERTAIN STATES AND IS BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. A BUYER'S INTEREST IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. BUYER'S INTEREST HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THE MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

7.3.11. Buyer hereby agrees to indemnify, defend and hold harmless Seller and all of its limited partners, general partners, officers, directors, affiliates and advisors from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) that they may incur by reason of Buyer's failure to fulfill all of the terms and conditions of this Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents Buyer has furnished to any of the foregoing in connection with the transactions described herein. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) incurred by Seller, or any of its members, managers, officers, directors, affiliates or advisors defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents that Buyer has furnished to any of the foregoing in connection with this transaction.

7.3.12. Within three (3) days after receipt of a written request from Seller, the undersigned agrees to provide such information and to execute and deliver such documents as may be reasonably necessary to comply with any and all laws and regulations to which Seller or the tenancy in common formed by the Tenants in Common Agreement is subject.

7.3.13. Buyer, and all beneficial owners of Buyer, are in compliance with all laws, statutes, rules and regulations of any federal, state or local governmental authority in the United States of America applicable to such Persons (as hereinafter defined), including, without limitation, the requirements of Executive Order No.

13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"). For purposes of this subsection, "Person" shall mean any corporation, partnership, limited liability company, joint venture, individual, trust, real estate investment trust, banking association, federal or state savings and loan institution and any other legal entity, whether or not a party hereto; and

7.3.14. Neither Buyer nor any of the beneficial owners of Buyer:

(a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists");

(b) has been indicted or arrested for money laundering or for predicate crimes to money laundering, convicted or pled nolo contendere to charges involving money laundering or predicate crimes to money laundering;

(c) has been determined by competent authority to be subject to the prohibitions contained in the Orders;

(d) is owned or controlled by, nor acts for or on behalf of, any Person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders;

(e) shall transfer or permit the transfer of any interest in Buyer or such parties to any Person who is, or whose beneficial owners are, listed on the Lists; or

(f) shall assign this Agreement or any interest herein, to any Person who is listed on the Lists or who is engaged in illegal activities.

If Buyer or any Buyer related party become listed on the Lists or are indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering (each, a "Triggering Event"), Buyer shall immediately notify Seller, but in no event later than five (5) business days after the occurrence of the Triggering Event. In the event of a Triggering Event, Seller may terminate this Agreement upon written notice to Buyer, whereupon the Buyer's Deposit, subject to compliance with applicable governmental regulations, shall be retained by Seller, and neither party shall have any further obligation hereunder except for obligations which expressly survive termination of this Agreement. At Seller's option, Buyer shall have ten (10) business days after receipt of Seller's notice to remove such party from any interest in Buyer.

7.4. The representations and warranties of Buyer set forth herein above shall survive the close of Escrow or termination of this Agreement.

8. General Provisions.

8.1. Interpretation. The use herein of (i) the neuter gender includes the masculine and the feminine and (ii) the singular number includes the plural, whenever the context so requires. Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of the terms hereof. All exhibits referred to herein and attached hereto are incorporated by reference. This Agreement, together with the other Transaction Documents, contain the entire agreement between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

8.2. Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement thereof is or may be sought.

8.3. Cooperation. Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to herein to complete the acquisition of Buyer's Interest as provided herein. Buyer and Seller agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the parties' intent evidenced in this Agreement.

8.4. Assignment of Rights and Interests. To the extent that Seller has a right or interest, and to the extent those rights or interests are assignable, Seller hereby assigns, on a non-exclusive basis, Seller's rights and interest in any third party representations, warranties, indemnities and guaranties with respect to the Property. Such third party representations, warranties, indemnities and guaranties to be assigned on a non-exclusive basis may include, without limitation, any and all rights and interests relating to (a) work performed by third parties on or at the Property, and (b) the contracts Seller entered into with the prior owner of the Property. Notwithstanding anything to the contrary herein, Seller makes no representations or warranties regarding the existence, enforceability or assignability of any of the rights and interests referenced above. This provision shall survive the close of Escrow.

8.5. Assignment. Buyer shall not assign its rights under this Agreement, except to its Accommodator, without first obtaining Seller's written consent, which consent may be withheld in Seller's sole and absolute discretion. No such assignment shall operate to release the assignor from the obligation to perform all obligations of Buyer hereunder. Seller shall have the absolute right to assign its rights and obligations under this Agreement.

8.6. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be addressed as follows:

If to Seller, to:

Cabot Turfway Ridge Acquisition, LLC
55 Fifth Avenue, 13th Floor
New York, NY 10003
Phone Number: 646-367-5400
Fax Number: 646-367-5401

If to Buyer, to the address listed under Buyer's name on the signature page to this Agreement.

Either party may change such address by written notice to the Escrow Agent and the other party. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be deemed to have been duly given and received (i) upon personal delivery or (ii) as of the third Business Day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above or (iii) the second Business Day after deposit with FedEx or other similar overnight delivery system.

8.7. Eminent Domain. If, prior to the close of Escrow, all of the Property is taken or appropriated by any public or quasi-public authority under the power of eminent domain or Seller receives actual notice of any pending or threatened condemnation proceedings affecting all of the Property, then Buyer may terminate this Agreement without further liability hereunder in accordance with Section 2.4. In the event of a partial taking of the Property or the threatened partial taking of the Property with respect to which Seller has received actual notice that materially and adversely affects the ability to operate the Property for the purposes it is currently operated, then Buyer can elect to either (a) terminate this Agreement in accordance with Section 2.4 or (b) purchase the Buyer's Interest with a reduction in the Purchase Price in an amount equal to the condemnation award received from the condemning authority with respect to Buyer's Interest. In the event of a threatened taking or a lack of finality of any proceedings to determine the award in an actual taking, Escrow shall close and Seller shall assign to Buyer its interest in any condemnation award with respect to Buyer's Interest made by the governmental entity.

8.8. Loss or Damage. Buyer shall have no right to terminate this Agreement in the event of any loss or damage to the Property, provided that Buyer shall have the right to receive an assignment of any insurance proceeds received by Seller with respect to such loss upon the close of Escrow. The parties acknowledge and agree in no event shall the close of Escrow be extended due to any such loss or damage. Notwithstanding the foregoing, the assignment of any insurance proceeds as provided herein shall not include any proceeds received for items not related to the physical condition of the Property, such as proceeds from Seller's business interruption insurance, if any.

8.9. Periods of Time. All time periods referred to in this Agreement include all Saturdays, Sundays and state or United States holidays, unless Business Days are specified, provided that if the date or last date to perform any act or give any notice with respect to this Agreement falls on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding Business Day.

8.10. Counterparts. This Agreement may be executed in counterparts, all of which when taken together shall be deemed fully executed originals.

8.11. Joint and Several Liability. If any party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.

8.12. Choice of Law. This Agreement shall be construed and enforced in accordance with internal the laws of the State of Kentucky, without regard to conflict of laws principles, except as to the type of registration of ownership of Buyer's Interest, which shall be construed in accordance with the state of principal residence of the Buyer.

8.13. Time. Time is of the essence to this Agreement.

8.14. Third Party Beneficiaries. Buyer and Seller do not intend to benefit any party (including any other Tenants in Common) that is not a party to this Agreement and no such party shall be deemed to be a third party beneficiary of this Agreement or any provision hereof.

8.15. Severability. If any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, such fact shall in no way affect the validity or enforceability of the other portions of this Agreement.

8.16. Binding Agreement. Subject to any limitation on assignment set forth herein, all terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, successors and assigns.

8.17. ARBITRATION OF DISPUTES.

8.17.1. ALL CLAIMS SUBJECT TO ARBITRATION. ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION OR VALIDITY THEREOF, INCLUDING THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE DETERMINED BY ARBITRATION IN BOSTON, MASSACHUSETTS, BEFORE A SOLE ARBITRATOR. THE ARBITRATION SHALL BE ADMINISTERED BY JAMS PURSUANT TO ITS STREAMLINED ARBITRATION RULES AND PROCEDURES. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THE ARBITRATOR SHALL, IN THE AWARD, ALLOCATE ALL OF THE COSTS OF THE ARBITRATION AND THE REASONABLE ATTORNEYS' FEES OF THE PREVAILING PARTY, AGAINST THE PARTY WHO DID NOT PREVAIL.

8.17.2. ATTORNEYS' FEES. IF ARBITRATION, ACTION OR PROCEEDING IS INSTITUTED BETWEEN ALL OR ANY OF THE PARTIES TO THIS AGREEMENT ARISING FROM OR RELATED TO THIS AGREEMENT, THE PREVAILING PARTY OR PARTIES IN SUCH ARBITRATION, ACTION OR PROCEEDING SHALL BE ENTITLED TO RECOVER FROM THE NON-PREVAILING PARTY OR PARTIES ALL OF ITS OR THEIR COSTS OF THE ARBITRATION, ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS AS FIXED BY THE COURT OR ARBITRATOR THEREIN.

8.17.3. WAIVER OF LEGAL RIGHTS. BY INITIALING IN THE SPACE BELOW, THE PARTIES ACKNOWLEDGE AND AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARTICLE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED UNDER MASSACHUSETTS LAW AND THAT THEY ARE WAIVING ANY RIGHTS THEY MAY POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THEY ARE WAIVING THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL EXCEPT TO THE EXTENT SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 8. IF EITHER PARTY REFUSES TO SUBMIT TO ARBITRATION AFTER EXECUTION OF THIS AGREEMENT AND INITIALING BELOW, SUCH PARTY MAY BE COMPELLED TO ARBITRATE PURSUANT TO THIS AGREEMENT. EACH PARTY'S AGREEMENT TO THIS SECTION 8 IS VOLUNTARY. THE PARTIES HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION 8 TO NEUTRAL ARBITRATION.

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Seller's Initials Buyer's Initials

8.18. ACCEPTANCE OR REJECTION OF BUYER'S OFFER. THIS AGREEMENT DOES NOT CONSTITUTE AN OFFER OF ANY KIND BY SELLER AND SHALL NOT BIND SELLER UNLESS DULY EXECUTED AND DELIVERED BY SELLER. TO SUBMIT AN OFFER TO PURCHASE A BUYER'S INTEREST, BUYER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 1.2.1. SELLER SHALL HAVE THIRTY (30) DAYS TO EITHER ACCEPT OR REJECT BUYER'S OFFER. IF SELLER DOES NOT ACCEPT BUYER'S OFFER WITHIN SUCH 30-DAY PERIOD, THE OFFER SHALL BE DEEMED REJECTED. IN THE EVENT THE OFFER IS REJECTED, BUYER'S DEPOSIT SHALL BE RETURNED TO BUYER WITHOUT INTEREST AND THIS AGREEMENT SHALL NOT BECOME EFFECTIVE.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

SELLER:

CABOT TURFWAY RIDGE ACQUISITION LLC
a Delaware limited liability company

By: Cabot Investment Properties, LLC
Its: Manager

By:______________________________________
Carlton P. Cabot
President and Chief Executive Officer

BUYER:

____

By: ___________________________

____
Print Name

____

____

____
Address

____
Date

PARTIES MUST ALSO INITIAL SECTIONS 1.2.1, 6.1, 7.3.1 AND SECTION 8.17.2

CONSENT OF ESCROW AGENT

Escrow Agent hereby accepts the appointment of escrow agent pursuant to the foregoing Agreement, the Escrow Agreement annexed hereto, and is bound to the duties of Escrow Agent hereunder, subject to the following conditions and agreements of Buyer and Seller:

1. Escrow Agent is acting solely as a stakeholder and depository, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the subject matter of the escrow, or for the identity or authority of any person executing or depositing it.

2. Except for breach of this agreement by the Escrow Agent, Sellers and Buyer agree to jointly and severally indemnify, defend and hold Escrow Agent harmless from and against loss, cost damage and expense, including reasonable attorney fees (collectively "expenses") in connection with or in any way arising out of this Escrow Agreement, other than Expenses resulting from the Escrow Agent's own gross negligence or willful misconduct.

3. In the event of a dispute between Sellers and Buyer, Escrow agent may return any documents deposited with it to the depositing party, and any funds deposited with Escrow Agent, other than the Deposit, and upon such return Escrow Agent shall have no further liability or obligations with respect to this agreement, concerning said documents and additional funds. With respect to the Deposit, in the event of a dispute, Escrow Agent may continue to hold the Deposit in escrow until receipt of joint written instructions. Nothing contained herein shall limit Escrow Agent's right to interplead the Deposit into a court of competent jurisdiction or to comply with an order of a court of competent jurisdiction with respect to the disposition of the same.

Dated: ______________________ (the "Opening of Escrow")

LAWYERS TITLE INSURANCE CORPORATION
("Escrow Agent")

By:______________________________________

Its:______________________________________

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

DEFINITIONS

"Accession Agreement" shall mean that certain Accession Agreement in the form attached to the Memorandum.

"Business Day" means any day other than a Saturday or Sunday or legal holiday in the State of Kentucky or the State of Massachusetts.

"Call Agreement" shall mean that certain Call Agreement in the form attached to the Memorandum.

"Cash" shall mean (i) currency of the United States of America, (ii) cashier's check(s) currently dated and payable to the Escrow Agent or Seller, as required under this Agreement, drawn and paid through a Kentucky banking or savings and loan institution, tendered to the Escrow Agent or Seller, as required under this Agreement at least one (1) additional Business Day before funds are otherwise required to be delivered under this Agreement, or (iii) an amount credited by wire transfer to the Escrow Agent's or Seller's bank account, as required under this Agreement.

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

"Consulting Agreement" shall mean that certain Consulting Agreement in the form attached to the Memorandum.

"Default" means an act or failure to act by either Buyer or Seller which breaches or is in violation of a covenant, representation or warranty made or given by either in the Agreement.

"Escrow Agent" means the Lawyers Title Insurance Corporation.

"IRS" means the Internal Revenue Service.

"Lender" means Wachovia Securities or its affiliates.

"Loan" means the loan from Lender in the approximate amount of $18,000,000.

"Loan Documents" means the Note, the Mortgage, the Guaranty of each Borrower and the other documents evidencing or securing the Loan.

"Master Lease Agreement" shall mean that certain Master Lease Agreement in the form attached to the Memorandum.

"Master Lessee" means Cabot Turfway Ridge LeaseCo LLC.

"Mortgage" means the first priority nonrecourse mortgage in favor of Lender recorded as a lien against the Property as security for the Loan.

"Note" means that certain promissory note in the original principal amount of approximately $18,000,000 executed in favor of the Lender.

"Tenants in Common" means all persons holding an undivided interest in the Property from time to time, including Seller, Master Lessee and Buyer, as applicable.

"Tenants in Common Agreement" shall mean that certain Tenants in Common Agreement in the form attached to the Memorandum.

"Title Company" means Lawyers Title Insurance Corporation.

EXHIBIT C

WIRING INSTRUCTIONS

Bank: JP Morgan Chase
1166 Avenue of the Americas
New York, New York

[redacted]

Bank Contact: Valerie Coates
Phone: (212) 899-2152

Crediting: Lawyers Title Insurance Company
New York Special Account

[redacted]

Reference: Investor Name-
Attention: Matthew Narby
Phone: (212) 949-0100

EXHIBIT B

TENANTS IN COMMON AGREEMENT

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TENANTS IN COMMON AGREEMENT

This TENANTS IN COMMON AGREEMENT ("Agreement") is made and effective as of ____________, 2007 by and among the parties listed on Exhibit "A" attached hereto and incorporated herein (the parties shall sometimes be referred to, individually, as a "Tenant in Common" and, collectively, as the "Tenants in Common"), with reference to the facts set forth below:

RECITALS

A. The Tenants in Common will acquire undivided interests in a 218,223 net rentable square foot, multi-tenant office property situated on 14.57-acres commonly known as "Turfway Ridge", which consists of (i) one five-story, 108,975 square foot office building, situated on 8.06-acres ("Turfway I") and (ii) one five-story, 109,248 square foot office building situated on 6.51 acres ("Turfway II") located at 7300 and 7310 Turfway Road in Florence, Kentucky 41042 (Turfway I and Turfway II, together, the "Property"), that is more completely described in that certain Private Placement Memorandum of Cabot Turfway Ridge Acquisition LLC dated January 9, 2007 (the "Memorandum") and incorporated herein.

B. The Property will be subject to that certain Master Lease Agreement (the "Master Lease Agreement") between the Tenants in Common and Cabot Turfway Ridge LeaseCo LLC (the "Master Lessee") and that certain Consulting Agreement (the "Consulting Agreement") between the Tenants in Common and Cabot Investment Properties, LLC (the "Consultant"), at such time as the Tenants in Common obtain title to the Property;

C. The Tenants in Common desire to enter into this Agreement to provide for the orderly administration of their rights and responsibilities as to each other and as to others and to delegate authority and responsibility for the intended further operation and management of the Property;

D. The Tenants in Common intend that the rights, obligations and activities of each Tenant in Common with respect to the Property will be those of a holder of an undivided fractional tenant in common interest in the Property, and not those of a partner, shareholder, joint venturer or other fiduciary in a business entity;

E. The Property is subject to a loan (the "Loan") secured by a mortgage encumbering the Property (the "Mortgage") in favor of Wachovia Bank, National Association or its affiliate (together with its successors and assigns, "Lender") (the Mortgage and other documents, agreements and instruments evidencing, securing or delivered to the Lender in connection with the Loan are collectively referred to herein as the "Loan Documents"); and

F. Concurrently herewith, the Tenants in Common and Master Lessee have executed and delivered a Call Agreement (the "Call Agreement") with respect to the Property.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. Nature of Relationship Between Co-Tenants. The Tenants in Common shall each hold their respective interests (the "Interests") in the Property as tenants-in-common as determined under local law. The Tenants in Common do not intend by this Agreement to create a partnership or a joint venture, but merely to set forth the terms and conditions upon which each of them shall hold their respective interests in the Property. Neither do the Tenants in Common wish to create a partnership or joint venture with the Master Lessee (or the Property Manager or Consultant). Each Tenant in Common hereby elects to be excluded from the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986, as amended (the "Code"), with respect to the joint ownership of the Property. The exclusion elected by the Tenants in Common hereunder shall commence with the execution of this Agreement. Each Tenant in Common hereby covenants and agrees that each Tenant in Common shall report on such Tenant in Common's respective federal and state income tax returns such Tenant in Common's respective share of items of income, gain, loss, deduction and credit which result from holding the Property in a manner consistent with exclusion of the Tenants in Common from Subchapter K of Chapter 1 of the Code, commencing

with the first taxable year of the tenancy-in-common created by this Agreement. No Tenant in Common shall notify the Commissioner of Internal Revenue (the "Commissioner") that such Tenant in Common desires that Subchapter K of the Code apply to the Tenants in Common and each Tenant in Common hereby agrees to indemnify, protect, defend and hold the other Tenants in Common free and harmless from all costs, liabilities, tax consequences and expenses, including, without limitation, attorneys' fees, which may result from any Tenant in Common so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return. Except as expressly provided herein, no Tenant in Common is authorized to act as agent for, to act on behalf of, or to do any act that will bind any other Tenant in Common or to incur any obligations with respect to the Property. Each Tenant in Common agrees to treat its interest in the Property as indivisible and no Tenant in Common may transfer its interest in the Property, or any portion thereof, without transferring its entire Interest in the Property.

2. Master Lease and Consulting Agreement. Concurrently with the acquisition of the Property, the Tenants in Common will enter into a Master Lease Agreement with the Master Lessee and a Consulting Agreement with the Consultant. In addition, the Master Lessee may enter into an agreement (the "Property Management Agreement") with a third party property manager (the "Property Manager"). Pursuant to and as set forth in the Master Lease Agreement, the Master Lessee shall have the sole and exclusive right to manage, operate, maintain and lease the Property; provided, however, that the Master Lessee may employ a third party Property Manager, as agent for the Master Lessee pursuant to the Master Lease Agreement, to manage, operate, maintain and lease the Property. The Master Lease Agreement and the Consulting Agreement and the terms, covenants and conditions of the Master Lease Agreement and the Consulting Agreement are incorporated herein as if set forth in full. Neither (a) the death, retirement, removal, withdrawal, termination or resignation of the Master Lessee, the Consultant or Property Manager, (b) any assignment for the benefit of creditors by or the adjudication of bankruptcy or incompetency of the Master Lessee, the Consultant or the Property Manager nor (c) the termination of the Master Lease Agreement, the Consulting Agreement or the Property Management Agreement shall cause the termination of this Agreement, and this Agreement shall remain in full force and effect notwithstanding any such events. If the Master Lease Agreement is terminated, any new or replacement Master Lease Agreement must be unanimously approved by the Tenants in Common and the Lender.

3. Co-Tenant's Obligations. The Tenants in Common each agree to perform such acts as may be reasonably necessary to carry out the terms and conditions of this Agreement, including, without limitation:

3.1. *Documents.* Executing documents required in connection with a sale or refinancing of the Property in accordance with Section 5 below and such additional documents as may be required under this Agreement or may be reasonably required to effect the intent of the Tenants in Common with respect to the Property or any loans encumbering the Property.

3.2. *Additional Funds.* Subject to the terms of the Master Lease Agreement, each Tenant in Common is obligated to pay for a pro rata share (based on its undivided interest in the Property or as otherwise provided) of any taxes, costs, expenses, debt service, or other items specifically applicable to individual Tenants in Common or any future cash needed in connection with the ownership, operation, management and maintenance of the Property (all such obligations collectively, "Property Expenses"). To the extent any Tenant in Common fails to pay any Property Expenses pursuant to this Section 3.2 within fifteen (15) days after the Master Lessee delivers notice that such additional Property Expenses are required, any other Tenant(s) in Common may advance such amount. In no event shall such advance be for a period exceeding thirty-one (31) days. The non-paying Tenant in Common shall reimburse the paying Tenant(s) in Common upon demand the amount of any such advance plus interest thereon at the rate of ten percent (10%) per annum (but not more than the maximum rate allowed by law) until paid. Alternatively, the Master Lessee is hereby authorized to pay the Tenant(s) in Common entitled to reimbursement and interest the amounts due out of future cash from operations or from sale or refinancing of the Property or other disbursements pursuant to the Master Lease Agreement. In the absence of such an advance, following the expiration of such 15-day period the Master Lessee, or its agent or representative, may give to the delinquent Tenant in Common (the "Delinquent Tenant in Common") on behalf of the other Tenants in Common (the "Non-Delinquent Tenants in Common") written notice of such delinquency, giving the Delinquent Tenant in Common an additional two (2) business days from the date such notice is given to pay in full its proportionate share of the Property Expenses. If the Delinquent Tenant in Common does not timely pay the full amount of its proportionate share of Property Expenses, together with any and all late fees, additional interest and other charges resulting from the delinquency, or an advance of such amounts is made on behalf of the Delinquent Tenant in Common, the Delinquent Tenant in Common shall thereupon become a "Defaulting Tenant in Common." Subject to any restrictions contained in the Loan, a Delinquent Tenant in Common or Defaulting Tenant in Common shall pay any and all late fees, additional interest (accruing at the rate of ten percent (10%) per annum, but not more than the maximum rate allowed by law, until paid) or other charges that the Tenants in Common incur as a result of such Delinquent Tenant in Common's or Defaulting Tenant in Common's failure to timely pay its share of the Property Expenses, and shall otherwise indemnify the Non-Delinquent Tenants in Common from any and all loss, cost, liability or expense suffered on account of such Delinquent Tenant in Common's or Defaulting Tenant in Common's failure to timely pay its proportionate share of the Property Expenses. In the event a Tenant in Common becomes a Defaulting Tenant in Common, the Non-Delinquent Tenants in Common shall have the right to purchase the Defaulting Tenant in Common's interest in the Property in accordance with the terms of the Call Agreement. The remedies against a non-paying Tenant in Common provided for herein are in addition to any other remedies that may otherwise be available, including, but not limited to, the right to obtain a lien against the undivided interest in the Property of the non-paying Tenant in Common to the extent allowed by law and the rights provided to purchase a non-paying Tenant in Common's Interest pursuant to the Call Agreement. Notwithstanding the preceding provisions, however, it is expressly understood and agreed that all such rights to, or to obtain, reimbursement are subject and subordinate in all respects to the rights of any lender, including the Lender, and in no event shall any loans among any Tenants in Common exist or be deemed to exist at any time that the Loan or any portion thereof is outstanding.

4. Income and Liabilities. Except as otherwise provided herein and in the Master Lease Agreement, all benefits and obligations of the ownership of the Property, including, without limitation, income, operating expenses, proceeds from sale or refinance or condemnation awards shall be shared by the Tenants in Common in proportion to their respective percentage of the aggregate Interests. All such payments shall be subject to and subordinate to any debt service or other payments required by the Loan Documents.

5. Sale or Encumbrance of Property.

5.1. *Loan.* In accordance with the Master Lease Agreement, the Master Lessee shall be entitled to seek and negotiate the terms of permanent and other financing for the Property, including loans secured by the Property. Any loan encumbering the Property shall be subject to unanimous approval by the Tenants in Common, which approval shall be communicated to the Master Lessee by written response to a written request by the Master Lessee for approval. Any such written request of the Master Lessee shall be accompanied by a copy of a loan commitment letter setting forth all the material terms of the transaction. By their execution hereof, the Tenants in Common confirm their approval of the Loan secured by, among other things, the Mortgage, and hereby approve the terms of the Master Lease Agreement.

5.2. *Sale.* Any sale of the Property or any portion thereof (other than to a Tenant in Common pursuant to the offering described in the Memorandum) shall be subject to the unanimous approval of the Tenants in Common, which approval shall be communicated by written response to a written request from the Consultant for approval. Any such written request of the Consultant with respect to a sale of the Property shall be accompanied by a bona fide offer to purchase setting forth the material terms of the transaction.

5.3. *Consulting Agreement.* In accordance with the Consulting Agreement (to the extent then in effect), the Consultant shall be entitled to negotiate the sale of the Property or a portion thereof as provided for in the Loan documents and to provide other services in connection with a sale of the Property. Annual renewal of the Consulting Agreement (or any replacement consulting agreement in the event the Consulting Agreement is terminated or not renewed) in accordance with its terms requires the consent of Tenants in Common owning a majority of the undivided Interests in the Property, which consent shall be obtained and communicated to the Consultant in accordance with the terms of the Consulting Agreement. By their execution hereof, the Tenants in Common confirm their approval of the terms of the Consulting Agreement.

5.4. *Distribution of Loan or Sales Proceeds.* Notwithstanding any other provisions of this Agreement, proceeds of a loan or sale shall be distributed at the closing of the loan or the sale as set forth below.

5.4.1. To the extent necessary, the proceeds shall first be used to pay in full any loans encumbering title to the Property or any portion of the Property that is disposed of as provided for in the loan documents.

5.4.2. The proceeds shall next be used to pay all outstanding costs and expenses incurred in connection with the holding, marketing and sale of the Property or any portion of the Property as provided for in the loan documents.

5.4.3. Any proceeds remaining after payment of the items set forth in Sections 5.4.1 and 5.4.2 shall be paid as provided in Section 4.

5.5. *Leases.* No approval of the Tenants in Common is required in connection with the lease or sublease of all or any portion of the Property by the Master Lessee in accordance with the terms of the Master Lease. Upon termination of the Master Lease Agreement, no lease of all or any portion of the Property shall be entered into without the unanimous approval of the Tenants in Common.

5.6. *Transfer or Encumbrance.* The Tenants in Common will not encumber their Interests in the Property without the prior written consent of Lender, which may be withheld in its sole and absolute discretion. No Tenant in Common may transfer its Interest in the Property unless the same is expressly permitted pursuant to the terms of the Loan Documents.

5.7. *Other Authority.* Except in situations in which unanimous approval is required pursuant to Sections 2 (concerning the Master Lease Agreement), 5.1 (concerning financings), 5.2 (concerning sales) and 5.5 (concerning leases) of this Agreement, the Tenants in Common will be bound by the vote of those Tenants in Common collectively owning a majority of the undivided Interests in the Property.

5.8. *Lender Notice.* During the term of the Loan, each Tenant in Common hereby appoints the Master Lessee as the agent of each Tenant in Common with respect to the following rights: (A) the right to receive any notice or other communication from Lender, provided that timely notice of such communication shall be given by the Master Lessee to each Tenant in Common; (B) the right to receive service of process from Lender under the Loan, provided that timely notice of such service of process shall be given by the Master Lessee to each Tenant in Common; and (C) the right to sign or execute documents and negotiate any changes to the Loan Documents on behalf of each Tenant in Common with respect to any transaction relating to the Loan, provided the unanimous consent of the Tenants in Common has been received, or deemed to have been received pursuant to the terms of Section 10.16 below, by the Master Lessee prior to execution.

6. Right of First Offer. If a Tenant in Common (a "Selling Tenant") desires to sell its Interest in the Property, then such Selling Tenant shall first allow the other Tenants in Common (each an "Offeror" and collectively, for the purpose of this Section 6, the "Offerors") to make an offer to purchase the Selling Tenant's Interest pursuant to the terms and conditions set forth in this Section 6. The Selling Tenant shall provide written notice (the "ROFO Notice") to each Offeror of its intent to sell its Interest. The Offerors shall have the right, within fourteen (14) days after receipt of such ROFO Notice, to deliver a written offer to the Selling Tenant to purchase their respective share of the Selling Tenant's Interest in the Property. In the event any of the Offerors elects not to offer to purchase its share of the Selling Tenant's Interest, the other Offerors shall be entitled to offer to purchase additional Interests on a pro rata basis. If the Selling Tenant does not accept an offer from any of the Offerors within fourteen (14) days after receipt of each offer, then the Selling Tenant shall be free to sell its Interest in the Property to a purchaser other than an Offeror, provided that such sale of the Selling Tenant's Interest to a purchaser is for a price greater than any purchase price offered by an Offeror pursuant to this Section 6 and is in compliance with the terms of any loan encumbering the Property. If the Selling Tenant accepts an offer from any of the Offerors within fourteen (14) days after receipt of each such offer, then the Selling Tenant shall be required to sell its Interest in the Property to the respective Offerors and such Offerors shall be required to purchase their respective shares of the Selling Tenant's Interest in the Property. The rights contained in this Section 6 shall not apply to any transfer of an interest by Cabot Investment Properties, LLC or any of its affiliates during the offering period provided under the Memorandum or pursuant to the call rights contained in the Call Agreement. The rights contained herein shall be subject and subordinate to the terms of any loan documents encumbering the Property (including, without limitation, the Loan Documents).

7. Possession. The Tenants in Common intend to lease the Property at all times and no Tenant in Common shall have the right to occupy or use the Property at any time during the term of this Agreement.

8. Right of Partition. The Tenants in Common agree that, subject to the waiver of partition right imposed by the Lender (for as long as the Loan is encumbering the Property) and agreed to by the Tenants in Common under the Loan Documents, any Tenant in Common and any of its successors-in-interest shall have the right, while this

Agreement remains in effect, to have the Property partitioned, and to file a complaint or institute any proceeding at law or in equity to have the Property partitioned in accordance with and to the extent provided by applicable law and to the extent permitted by the Lender. The Tenants in Common acknowledge that partition of the Property may result in a forced sale by all of the Tenants in Common. To avoid the inequity of a forced sale and the potential adverse effect on the investment by the Tenants in Common, the Tenants in Common agree that, as a condition precedent to filing a partition action, the Tenant in Common filing such action (a "Selling Tenant") shall first make a written offer (the "Offer") to sell its undivided interest to the other Tenants in Common and the Master Lessee (for the purpose of this Section 8, the "Offerors") at a price equal to (a) the Fair Market Value (as defined below) of the Selling Tenant's undivided interest minus (b) (i) the Selling Tenant's proportionate share of any fee or other amount that would be payable to the Master Lessee or any affiliates (including any real estate commission) under the Master Lease Agreement upon the sale of the Property at a price equal to the Fair Market Value and (ii) selling, prepayment or other costs that would apply in the event the Property was sold on the date of the Offer. The Offerors shall be entitled to purchase a portion of the Selling Tenant's Interest in proportion to their undivided Interest in the Property. In the event any of the Offerors elects not to purchase his share of the Selling Tenant's Interest, the other Offerors shall be entitled to purchase additional Interests on a pro rata basis. The Master Lessee shall have the right to acquire any portion of the Selling Tenant's interest the other Offerors do not elect to purchase. "Fair Market Value' shall mean the fair market value of the Selling Tenant's undivided Interest in the Property on the date the Offer is made as determined in accordance with the procedures set forth below. The Offerors shall have twenty (20) days after delivery of the Offer to accept the Offer. If any or all of the other Tenants in Common (the "Purchaser") accept the Offer, the Selling Tenant and the Purchaser shall commence negotiation of the Fair Market Value within fifteen (15) days after the Offer is accepted. When two or more Offerors are collectively acting as a Purchaser under this Section 8, they shall act by vote of a majority of Interests held by such Offerors or by such other method as they shall collectively agree. If the parties do not agree on a Fair Market Value, after good faith negotiations, within ten (10) days, then each party shall submit to the other a proposal ("Proposal") containing the Fair Market Value the submitting party believes to be correct. If either party fails timely to submit a Proposal, the other party's submitted Proposal shall determine the Fair Market Value. If both parties timely submit Proposals, then the Fair Market Value shall be determined by final and binding arbitration in accordance with the procedures set forth below. The parties shall meet within seven (7) days after delivery of the last Proposal and make a good faith attempt to mutually appoint a certified real estate appraiser who shall have been active full-time over the previous five (5) years in the appraisal of comparable properties located in the same area in which the Property is located to act as the arbitrator. If the parties are unable to agree upon a single arbitrator, then the parties each shall, within fifteen (15) days after the meeting, select an arbitrator that meets the foregoing qualifications. The two (2) arbitrators so appointed shall, within fifteen (15) days after their appointment, appoint a third arbitrator meeting the foregoing qualifications and such third arbitrator shall serve as the arbitrator. The decision of the arbitrator shall be made within thirty (30) days after the appointment of the arbitrator. The arbitrator shall have no authority to create an independent structure of Fair Market Value or prescribe or change any or several of the components or the structure thereof; the sole decision to be made shall be which of the parties' Proposals shall determine the Fair Market Value. The decision of the arbitrator shall be binding upon the parties. If either party fails to appoint an arbitrator within the time period specified above, the arbitrator appointed by one of them shall reach a decision which shall be binding upon the parties. The cost of the arbitrators shall be paid equally by the Selling Tenant and the Purchaser. The arbitration shall be conducted in Boston, Massachusetts. The parties agree that Federal Arbitration Act, Title 9 of the United States Code, shall not apply to any arbitration hereunder. The parties shall have no discovery rights in connection with the arbitration. The decision of the arbitrator may be submitted to any court of competent jurisdiction by the party designated in the decision. Such party shall submit to the court a form of judgment incorporating the decision of the arbitrator, and such judgment, when signed by a judge of the court, shall become final for all purposes and shall be entered by the clerk of the court on the judgment roll of the court. If one party refuses to arbitrate an arbitrable dispute and the party demanding arbitration obtains a court order directing the other party to arbitrate, the party demanding arbitration shall be entitled to all of its reasonable attorneys' fees and costs in obtaining such order, regardless of which party ultimately prevails in the matter. By executing this Agreement each Tenant in Common is agreeing to have any dispute arising out of the matters included in the arbitration of disputes provision decided by neutral arbitration as provided for in this Agreement and each Tenant in Common is giving up any rights it might possess to have the dispute litigated in a court or jury trial. By executing this Agreement each Tenant in Common is giving up its judicial rights to discovery and appeal. If a Tenant in Common refuses to submit to arbitration after agreeing to this provision, it may be compelled to arbitrate pursuant to this Agreement. Each Tenant in Common's agreement to this arbitration provision is voluntary. Notwithstanding anything to the contrary in this Agreement, so long as the Loan or any portion thereof is outstanding, each Tenant in Common agrees that it will not seek or be entitled to seek and obtain a partition of all or any part of the Property without first obtaining the prior written consent of Lender. Accordingly, each Tenant in Common expressly waives any right it may have to partition the Property or any part thereof, unless Lender has consented in writing to such party's exercise of such rights.

9. Bankruptcy Option.

9.1. *Option.* If, during the term of this Agreement, a Tenant in Common is Bankrupt (as defined below) (a "Bankrupt Tenant in Common"), the other Tenants in Common and the Master Lessee shall have the right, to be exercised by written notice ("Bankruptcy Call Notice") to the Bankrupt Tenant in Common, to buy all of the Bankrupt Tenant in Common's Interest in the Property. Upon receipt of the Bankruptcy Call Notice, the Bankrupt Tenant in Common shall be obligated to sell to the other Tenants in Common and the Master Lessee, and the other Tenants in Common shall have the right to buy, and the Master Lessee shall be obligated, to buy the Bankrupt Tenant in Common's entire Interest in the Property for the Fair Market Value of the Bankrupt Tenant in Common's Interest in the Property, as Fair Market Value is determined under Section 8 above. Such purchase and sale shall be closed within thirty (30) days of the determination of Fair Market Value. The foregoing not withstanding, if the applicable bankruptcy court or applicable bankruptcy rules require that the fair market value of the Bankrupt Tenant in Common's Interest in the Property be determined through an alternate valuation method, the parties may agree that such alternate valuation method shall be used to determine the fair market value of the Property that is subject to such court's jurisdiction in lieu of the procedure established in Section 8, as required by such court or the applicable rules. In addition, any such bankruptcy or other insolvency proceeding will constitute an event of default under the Loan.

9.2. *Bankruptcy.* For the purposes of this Agreement, a Tenant in Common shall be considered Bankrupt if such Tenant in Common: (1) is unable to pay its debts as they come due, including any debt associated with the Property; (2) admits in writing to its inability to pay debts as they come due, including any debt associated with the Property; (3) makes a general assignment for the benefit of creditors; (4) files any petition or answer seeking to adjudicate it bankrupt or insolvent; (5) seeks liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of its debts; (6) seeks, consents to or acquiesces in the entry of an order for relief or the appointment of a receiver, trustee, custodian, or other similar official or for any substantial part of its property; (7) is the subject of the entry of an order for relief or approval of a petition for relief or reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future bankruptcy, insolvency or similar statue, law or regulation or the filing of any such petition that is not dismissed within ninety (90) days; or (8) is the subject of the entry of an order appointing a trustee, custodian, receiver or liquidator with respect to all or any substantial portion of its property, which order is not dismissed within sixty (60) days.

9.3. *Right of First Refusal.* If under federal bankruptcy law, similar debtor relief laws, or other laws affecting the Property, the option to purchase granted under this Section 9 is voided or declared unenforceable, the other Tenants in Common and the Master Lessee shall have a right of first refusal to buy any Interest in the Property of a Bankrupt Tenant in Common in the event of any proposed transfer, other than a transfer of the Property or an interest therein by foreclosure or deed in lieu thereof, by a trustee, receiver, conservator, liquidator, guardian or other transferee. Such right of first refusal shall provide that the other Tenants in Common and the Master Lessee may buy the Bankrupt Tenant in Common's Interest in the Property at the same price and on the same terms as such Interest in the Property is proposed to be sold by such trustee, receiver, conservator, liquidator, guardian or other transferee.

10. General Provisions.

10.1. *Mutuality, Reciprocity, Runs With the Land.* All provisions, conditions, covenants, restrictions, obligations and agreements contained herein, in the Call Agreement, in the Master Lease Agreement or in the Consulting Agreement are made for the direct, mutual and reciprocal benefit of each and every part of the Property; shall be binding upon and shall inure to the benefit of each of the Tenants in Common and their respective heirs, executors, administrators, successors, devisees, representatives, lessees and all other persons acquiring any undivided Interest in the Property or any portion thereof whether by operation of law or any manner whatsoever (collectively, "Successors"); shall create mutual, equitable servitudes and burdens upon the undivided Interest in the Property of each Tenant in Common in favor of the interest of every other Tenant in Common; shall create reciprocal rights and obligations between the respective Tenants in Common, their Interests in the Property and their Successors; and shall, as to each of the Tenants in Common and their Successors, operate as covenants running with the land for the benefit of the other Tenants in Common pursuant to applicable law. It is expressly agreed that each covenant contained herein, in the Call Agreement, in the Master Lease Agreement or in the Consulting Agreement (i) is for the benefit of and is a burden upon the undivided Interests in the Property of each of the Tenants in Common, (ii) runs with the undivided Interest in the Property of each Tenant in Common and (iii) benefits and is binding upon each Successor owner during its ownership of any undivided Interest in the Property, and each owner having any interest therein derived in any manner through any Tenant in Common or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein, in the Call Agreement, in the Master Lease Agreement or in the Consulting Agreement, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement, the Call Agreement, the Master Lease Agreement or the Consulting Agreement is contained in the instrument conveying such interest in the Property to such person or entity. The Tenants in Common agree that, subject to the restrictions on transfer contained herein, any Successor shall become a party to this Agreement, the Call Agreement, the Master Lease Agreement and the Consulting Agreement upon acquisition of an undivided Interest in the Property as if such person was a Tenant in Common initially executing this Agreement.

10.2. *Binding Arbitration.* Any dispute, claim or controversy arising out of or relating to this Agreement (other than determination of Fair Market Value which shall be subject to the terms of Section 8) or breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in Boston, Massachusetts, before a sole arbitrator. Arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. The arbitrator shall, in the Award, allocate all of the costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail.

10.3. *Attorneys' Fees.* If any arbitration, action or proceeding is instituted between all or any of the Tenants in Common arising from or related to or with this Agreement, the Tenant in Common or Tenants in Common prevailing in such arbitration, action or proceeding shall be entitled to recover from the other Tenant in Common or Tenants in Common all of its or their costs of arbitration, action or proceeding, including, without limitation, attorneys' fees and costs as fixed by the court or arbitrator therein.

10.4. *Entire Agreement.* This Agreement, the Master Lease Agreement and the Call Agreement constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

10.5. *Governing Law.* This Agreement shall be governed by and construed under the internal laws of the State of Kentucky without regard to choice of law rules.

10.6. *Modification.* No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless (i) the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought and (ii) the consent of the Lender is obtained.

10.7. *Notice and Payments.* Any notice to be given or other document or payment to be delivered by any party to any other party hereunder may be delivered in person, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, and addressed to the party for whom intended, as follows:

The Tenants in Common of Turfway Ridge:
c/o Cabot Turfway Ridge Acquisition LLC
55 Fifth Avenue, 13th Floor
New York, NY 10003
Phone Number: 646-367-5400
Fax Number: 646-367-5401

With a copy to the Tenants in Common at the addresses specified in Exhibit "A" hereto and with a copy to:

Nixon Peabody LLP
c/o Justine Wilcox
401 9th Street, N.W., Suite 900
Washington, DC 20004
United States of America
Phone: 202-585-8745
Fax: 202-585-8080
jwilcox@nixonpeabody.com

Any party hereto may, from time to time, by written notice to the others, designate a different address which shall be substituted for the one above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given on the third business day after sending by United States mail or on the second business day after sending by overnight delivery service.

10.8. *Successors in Interest.* All provisions of this Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest and legal representatives of the parties hereto.

10.9. *Term.* This Agreement shall commence as of the earlier of the date the first Tenant in Common acquires an Interest in the Property or the date of recordation of this Agreement and shall terminate at such time as the Tenants in Common or their successors-in-interest no longer own the Property as tenants-in-common. In no event shall this Agreement continue beyond December 31, 2055. The bankruptcy, death, dissolution, liquidation, termination, incapacity or incompetency of a Tenant in Common shall not cause the termination of this Agreement.

10.10. *Waivers.* No act of any Tenant in Common shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Tenant in Common affected. Any Tenant in Common hereto may specifically waive any breach of this Agreement by any other Tenant in Common, but no such waiver shall constitute a continuing waiver of similar or other breaches.

10.11. *Counterparts.* This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

10.12. *Severability.* If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

10.13. *Applicable Securities Laws.* TO THE EXTENT THE INTERESTS OF THE TENANTS IN COMMON PURSUANT TO THIS AGREEMENT ARE TREATED AS SECURITIES, SUCH INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THE OFFERING OF THE SECURITIES OR THE ACCURACY OR ADEQUACY OF ANY

DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE SECURITIES OFFERED HEREBY MAY NOT BE RESOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR AN APPLICABLE EXEMPTION THEREFROM.

10.14. *Time is of the Essence*. Time is of the essence of each and every provision of this Agreement.

10.15. *Limitations*. At no time shall there be more than thirty five (35) Tenants in Common (as calculated in accordance with Section 6.02 of Rev. Proc. 2002-22). Any transfer that would result in there being more than thirty-five (35) Tenants in Common shall be null and void, and the Interest in the Property that would have been transferred shall be held in trust for the economic benefit of the purported transferor. Further, no Tenant in Common will enter into or engage in any business activities other than those customarily performed in connection with the maintenance and repair of rental real property.

10.16. *Approval and Consent by the Tenants in Common*. Whenever in this Agreement the consent or approval of the Tenants in Common is required or otherwise requested, the Tenants in Common shall have fifteen (15) days from the date the request for consent or approval is submitted by the Master Lessee to approve or disapprove of the matter in writing (unless a longer or shorter period for response is specifically provided for herein). In the event a Tenant in Common does not disapprove in writing of such matter within such fifteen (15) day period (or such longer or shorter period expressly provided for herein), the Tenant in Common shall be deemed to have approved the matter.

10.17. *Subordination; Third Party Beneficiary*. This Agreement and all of the terms and provisions hereof shall in all respects be subject to and subordinate to the terms of any loan documents evidencing and secured by a mortgage or deed of trust on the Property. Any holder of any such mortgage or deed of trust shall be an express third party beneficiary of this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Loan Documents, the terms of the Loan Documents shall prevail and control. The Tenants in Common each agree that they shall not engage in any activity which would violate the terms of any of the Loan Documents.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

TENANTS IN COMMON:

Joinder of Cabot Turfway Ridge LeaseCo LLC

Master Lessee joins in this Agreement for the sole purposes of (a) accepting its rights, and agreeing to be bound by its obligations, provided for in Sections 2, 3, 5, 8 and 9 of this Agreement, and (b) not for any other purpose.

Cabot Turfway Ridge LeaseCo LLC
A Delaware limited liability company

By: Cabot Investment Properties, LLC,
Its Manager

By: ________________________________
Name: Carlton P. Cabot
Title: President

EXHIBITS

Exhibit "A" Tenants in Common and Percentage Interests

EXHIBIT “A”

TENANTS IN COMMON AND PERCENTAGE INTERESTS

EXHIBIT C

CALL AGREEMENT

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CALL AGREEMENT

This CALL AGREEMENT ("Agreement") is made by and among Cabot Turfway Ridge LeaseCo LLC (the "Master Lessee"), and the parties listed on the signature page hereto (referred to individually as a "Tenant in Common" and collectively as "Tenants in Common").

RECITALS

A. The Tenants in Common have acquired undivided interests (the "Interests") in a 218,223 net rentable square foot, multi-tenant office property situated on 14.57-acres commonly known as "Turfway Ridge", which consists of (i) one five-story, 108,975 square foot office building, situated on 8.06-acres ("Turfway I") and (ii) one five-story, 109,248 square foot office building situated on 6.51 acres ("Turfway II") located at 7300 and 7310 Turfway Road in Florence, Kentucky 41042 (Turfway I and Turfway II, together, the "Property"), that is more completely described in that certain Private Placement Memorandum of Cabot Turfway Ridge Acquisition LLC dated January 9, 2007 (the "Memorandum") and have entered into a Tenants in Common Agreement dated as of the same date as this Agreement (the "Tenants in Common Agreement") which governs the rights and duties among the Tenants in Common in connection with the ownership of the Interests.

B. Notwithstanding any restrictions on transfer contained in the Tenants in Common Agreement, this Agreement gives the right, but not the obligation, to purchase any Interests of:

(i) Tenants in Common who fail to pay Property Expenses (as that term is defined in the Tenants in Common Agreement) within time period set forth in Section 3.2 of the Tenants in Common Agreement, and thereby become "Defaulting Tenants in Common" as provided in said Section 3.2; and

(ii) Tenants in Common who do not consent to a sale, lease or refinancing of the Property or any portion thereof (as permitted by secured loan documents relating to the Property), to take any other action that requires the unanimous approval of the Tenants in Common, or to take action to prevent or cure an event of default under secured loan documents relating to the Property or to any Mezzanine Loan, as defined in that certain Master Lease Agreement executed concurrently herewith by and between Master Lessee and the Tenants in Common ("Dissenting Tenants in Common") when Tenants in Common collectively owning 80% or more of the Property do consent to such a sale, lease or refinancing, to take an action requiring unanimous consent or to take action to prevent or cure an event of default under secured loan documents relating to the Property, or consent to any Mezzanine Loan ("Consenting Tenants in Common").

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. Grant of Call Rights. Each of the Tenants in Common who is a Dissenting Tenant in Common or a Defaulting Tenant in Common hereby grants to the Master Lessee, its successors or assigns, and any of their affiliates and to each of the Tenants in Common that is not a Dissenting Tenant in Common or a Defaulting Tenant in Common, as the case may be (the "Other Tenants in Common"), the right, but not the obligation, to purchase such Dissenting Tenant in Common's or Defaulting Tenant in Common's Interest pursuant to the terms and conditions of this Agreement (the "Call Rights") when:

1.1 written notice of delinquency in the payment of Property Expenses has been given by the Master Lessee to the Defaulting Tenant in Common pursuant to Section 3.2 of the Tenants in Common Agreement and the Defaulting Tenant in Common fails to pay all such delinquent Property Expenses, together with any late fees, additional interest and other charges resulting from the delinquency, within two (2) business days from the date such notice is given to the Defaulting Tenant in Common; or

1.2 there is a bona fide offer to purchase, lease or refinance the Property or any portion thereof (as permitted by secured loan documents relating to the Property), or a proposal to take any other action that requires the unanimous approval of the Tenants in Common or a proposal to take an action to prevent or cure an imminent or actual default under secured loan documentation relating to the Property (as determined by the Master Lessee in its sole and absolute discretion) or a bona fide offer to provide a Mezzanine Loan which is acceptable to the consenting Tenants in Common, but Tenants in Common collectively owning at least 80%, but less than 100%, of the Interests have consented to accept such offer or take such action.

A Dissenting Tenant in Common or Defaulting Tenant in Common that is subject to the Call Rights is referred to herein as a "Selling Co-Tenant."

2. Exercise of Call Rights. The Call Rights are exercisable only by the Master Lessee, but the Interests may be purchased by the Other Tenants in Common pursuant to Section 2.1 below. The Master Lessee shall exercise the Call Rights by providing written notice of exercise at any time during the term of this Agreement to the Selling Co-Tenants. A copy of this notice will also be provided by the Master Lessee to all of the Other Tenants in Common.

2.1 The Other Tenants in Common may purchase the Interests subject to the exercise of the Call Rights under this Agreement by giving the Master Lessee written notice within thirty (30) days of the exercise of the Call Rights. The Interests to be purchased under this Agreement will be offered to the Other Tenants in Common by the Master Lessee on a pro rata basis according to their Interests.

2.2 Any of the Interests not purchased by the Other Tenants in Common shall be purchased by the Master Lessee.

3. Determination of Value and Payment. The purchase price for the Interests under this Agreement (the "Purchase Price") will be the greater of (i) the appraised fair market value of the Property (without any discounts) as determined by an independent third party appraiser selected by the Master Lessee or (ii) the value of the Property (as permitted by secured loan documents relating to the Property) determined by any bona fide written offer to buy the Property from a person unrelated to the Selling Co-Tenant in existence at the time of exercise, in each case multiplied by the percentage of the Property represented by such Interest and reduced by the same percentage of any debt encumbering the Property or portion thereof and the costs of a sale of the Property.

3.1 Proceeds from the Purchase Price, net of any loans encumbering title to the Property and all outstanding costs and expenses of the Property including but not limited to customary commissions, closing costs and transfer costs, multiplied by the percentage of the Property represented by the Selling Co-Tenant's Interest, shall be paid to the Selling Co-Tenants in proportion to their Interests.

3.2 Payment of the Purchase Price to the Selling Co-Tenants will occur at the earlier of (i) the closing of the sale or refinancing of the Property by the Consenting Tenants in Common if the Call Rights arise pursuant to Section 1.2 above or (ii) one hundred and eighty (180) days after exercise of the Call Rights.

4. Term. The term of this Agreement shall commence as of the date entered into and shall terminate at such time as the Tenants in Common or their successors-in-interest no longer own the Property. The bankruptcy, death, dissolution, liquidation, termination, incapacity or incompetency of a Tenant in Common shall not cause the termination of this Agreement.

5. Closing. Upon receipt of the written notice of exercise of the Call Rights, the Selling Co-Tenants shall deliver to the Master Lessee all required signatures and documentation requested by the Master Lessee. The Master Lessee shall deliver to the Selling Co-Tenants the net proceeds from the Purchase Price in the time and manner set forth in this Agreement.

6. Power of Attorney. The Master Lessee shall at all times during the term of this Agreement have a special and limited power of attorney as the attorney-in-fact for each Selling Co-Tenant, with power and authority to act in the name and on behalf of each such Selling Co-Tenant to (i) upon exercise of the Call Rights, vote the Interests of any Selling Co-Tenant in the Master Lessee's sole discretion until completion of the sale of the Interests of such Selling Co-Tenant, including, without limitation, the power to vote to consent to any proposal, the opposition to which caused the Selling Co-Tenant to become a Selling Co-Tenant, and (ii) execute, acknowledge and swear to in the execution, acknowledgment and filing of documents that are not inconsistent with the provisions of this Agreement and which may include by way of illustration but not by limitation, any contract for purchase, lease or sale of real estate, and any deed, deed of trust, mortgage or other instrument of conveyance or encumbrance, with respect to the Interests and/or the Property or any other instrument or document that may be required to effectuate the sale of the Property. For the avoidance of doubt, the parties hereto acknowledge and agree that the Master Lessee may exercise its power and authority under this limited power of attorney immediately upon providing the Selling Co-Tenant written notice pursuant to Section 2 of this Agreement.

6.1 This power of attorney may be exercised by the Master Lessee for each of the Selling Co-Tenants by the signature of the Master Lessee acting as attorney-in-fact for all of the Selling Co-Tenants, together with a list of all Selling Co-Tenants executing such instrument by their attorney-in-fact or by such method as may be required or requested in connection with the recording or filing of any instrument or other document so executed.

6.2 This power of attorney shall be irrevocable and shall survive an assignment by a Selling Co-Tenant of all or any portion of its undivided interest in the Property. Furthermore, this power of attorney shall survive the bankruptcy, death, dissolution, liquidation, termination, incapacity or incompetency of the granting Selling Co-Tenant.

6.3 The Master Lessee shall promptly furnish to a Selling Co-Tenant a copy of any document executed by the Master Lessee pursuant to the power of attorney.

7. Notices and Payment. Any notice and/or payment to be given by any party to any other party under this Agreement may be delivered in person, or may be sent in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, and addressed to the party for whom intended at the addresses set forth in the Tenants in Common Agreement. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given on the third business day after sending by United States mail or on the second business day after sending by overnight delivery service.

8. General Provisions.

8.1 Binding Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in Boston, Massachusetts, before a sole arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. The arbitrator shall, in the Award, allocate all of the costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail.

8.2. Attorneys' Fees. If any arbitration, action or proceeding is instituted between all or any of the parties to this Agreement arising from or related to or with this Agreement, the prevailing party or parties in such arbitration, action or proceeding shall be entitled to recover from the non-prevailing party or parties all of its or their costs of the arbitration, action or proceeding, including, without limitation, attorneys' fees and costs as fixed by the court or arbitrator therein.

8.3. Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless (i) the same is in writing and signed by all the parties to this Agreement and (ii) the consent of the Lender (as defined in the Tenants in Common Agreement) is obtained.

8.4. Governing Law. This Agreement shall be governed by and construed under the internal laws of the State of Kentucky without regard to choice of law rules.

8.5. Headings. The section and other headings contained in this Agreement are for reference purpose only and shall not affect in any way the meaning or interpretation of this Agreement.

8.6. Successors in Interest. All provisions of this Agreement shall inure to the benefit of and shall be binding upon the successor-in-interest, and legal representatives of the parties hereto.

8.7. No Waiver. No act of the Master Lessee shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Master Lessee.

8.8. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

8.9. Facsimile Signature. This Agreement may be executed by a party's signature transmitted by facsimile, and copies of this Agreement executed and delivered by means of facsimile signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. The parties may rely upon facsimile signatures as if such signatures were originals. A party executing and delivering this Agreement by facsimile shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature.

8.10. Equitable Relief. Each Selling Co-Tenant acknowledges and agrees that the Master Lessee's remedies at law for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and, in recognition of this fact, each Selling Co-Tenant agrees that in the event of such a breach or threatened breach, in addition to any remedies at law (including, without limitation, damages), the Master Lessee, without posting any bond, shall be entitled to obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available.

8.11. Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

8.12. Subordination; Third Party Beneficiary. This Agreement and all of the terms and provisions hereof shall in all respects be subject to and subordinate to the terms of any loan documents evidencing and secured by a mortgage or deed of trust on the Property (including, without limitation, any restrictions therein with respect to transfers of the Property or any interests in the Property). Any holder of any such mortgage or deed of trust shall be an express third party beneficiary of this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Loan Documents, the terms of the Loan Documents shall prevail and control. The Tenants in Common each agree that they shall not engage in any activity which would violate the terms of any of the Loan Documents.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CABOT TURFWAY RIDGE LEASECO LLC
By: Cabot Investment Properties, LLC
Its: Manager

By:____________________________________
Carlton P. Cabot
President and Chief Executive Officer

TENANTS IN COMMON:

By: ______________________________
[Printed Name]
Its: ______________________________

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EXHIBIT D

MASTER LEASE AGREEMENT

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MASTER LEASE AGREEMENT

BETWEEN

The Persons Listed on Annex I,
each a Delaware limited liability company,

(and certain other persons and entities from time to time
owning an undivided interest in the Premises),

AS LANDLORD,

And

Cabot Turfway Ridge LeaseCo LLC,
a Delaware limited liability company,

AS TENANT,

Dated _____, 2007

TABLE OF CONTENTS

MASTER LEASE AGREEMENT

THIS MASTER LEASE AGREEMENT (this "Lease"), made as of this ____ day of _____, 2007 (the "Closing Date"), by and between each of the persons and entities listed on Annex I, each a Delaware limited liability company having its principal office at c/o Cabot Turfway Ridge Acquisition LLC, 55 Fifth Avenue, 13th Floor, New York, NY 10003, together with those persons and entities who become owners of the Property from time to time during the Term of this Lease (the "Landlord"), and Cabot Turfway Ridge LeaseCo LLC, a Delaware limited liability company having its principal office at 55 Fifth Avenue, 13th Floor, New York, NY 10003 ("Tenant").

WITNESSETH:

NOW, THEREFORE, in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be paid and performed, Landlord hereby demises and lets to Tenant and Tenant hires from the Landlord, upon and subject to the terms and conditions hereinafter expressed, the Premises (as hereinafter defined) together with the appurtenances thereunto appertaining. Subject, however to the matters, state of facts and exceptions to title described in Exhibit A attached hereto and hereby made a part hereof.

DEFINITIONS

"Additional Rent" means all sums, other than Base Rent, payable by Tenant to Landlord (or to third parties on behalf of Landlord) pursuant to the terms of this Lease and described in Exhibit C hereto.

"Bankruptcy Code" has the meaning set forth in Section 17.8.

"Base Rent" means the amounts set forth and described on Exhibit C hereto.

"Base Term" means a term of twenty (20) years beginning on the Commencement Date.

"Capital Costs Reserve" means the sum of no more than $500,000 funded by a hold-back as required by the Lender to be used to pay certain capital costs associated with the Property.

"Capital Improvements" has the meaning set forth in Section 4.2.

"Commencement Date" means the Closing Date.

"Condemnation" or "Condemnation Proceedings" means any action or proceeding brought by competent governmental authority for the purpose of any taking of the fee of the Premises or Improvements or any part thereof or estate therein as a result of the exercise of the power of eminent domain, including, but not limited to, a voluntary conveyance to such authority either under threat of or in lieu of condemnation or while such action or proceeding is pending.

"Contract Seller" has the meaning set forth in Section 1.4.

"Default" has the meaning set forth in Article XVIII, after giving effect to all applicable notice and cure periods.

"Default Rate" means the lesser of: (i) 12% per annum, or (ii) the highest interest rate per annum permitted under the laws of the State in which the Premises are located, or under federal law, to the extent applicable.

"Existing Leases" has the meaning set forth in Section 1.3.

"Expiration Date" means the twentieth anniversary of the Closing Date.

"Impositions" means all taxes, assessments, charges for utilities, excises, levies, license and permit fees and other governmental impositions and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever, which are imposed, levied upon or assessed against or which arise with respect to the Premises (or any portion thereof) or any rights or obligations of Tenant under this Lease, including, but not limited to, any sums payable hereunder.

"Improvements" means all buildings, structures and other improvements of any and every kind or nature now or hereafter located on the Land. Such term shall include, without limitation, all fixtures now or hereafter attached or affixed, actually or constructively thereto, including, without limitation, all pipes, engines, wiring, heating, ventilating and air-conditioning equipment and systems, plumbing and lighting fixtures, and other equipment or machinery used in or about or for the maintenance or operation of the Land or the Improvements. Such term shall not include any property owned by a sublessee.

"Intangible Property" has the meaning set forth in Section 1.3.

"Land" means all the certain tracts or parcels of land described in Schedule B attached hereto and hereby made a party hereof, together with all rights, ways and easements appurtenant thereto.

"Landlord" has the meaning set forth in the recital.

"Lease" means this Master Lease Agreement.

"Leasing and Tenant Improvements Reserve" means the sum of no more than $2,000,000 funded by a hold-back as required by the Lender (and such other leasing reserve amounts as may be required by Lender under the Permitted Mortgage) to be used to pay certain leasing and other costs associated with the Property.

"Lender" means Wachovia Bank, National Association or its affiliate, together with its successor sand assigns.

"Master Lessee Reserve" has the meaning set forth in Section 2.3.

"Permitted Exceptions" means those items set forth on Exhibit A hereto.

"Permitted Mortgage" means the mortgage loan described on Exhibit A and includes the mortgage in favor of Lender and all of the other loan documents related thereto.

"Premises" means the Land, the Improvements and all personal property owned or leased by the Landlord.

"Purchase Contract" has the meaning set forth in Section 1.4.

"Requirements" means all requirements relating to land and building use, including, without limitation, planning, zoning, subdivision, environmental, toxic and hazardous waste, health, fire safety, handicapped access and any other applicable federal, state and local statutes, laws, ordinances, rules and regulations, as well as any and all encumbrances, covenants, conditions, and restrictions, foreseen or unforeseen, ordinary as well as extraordinary, which may affect the design, construction, existence or use or manner of use of the Premises or any portion thereof.

"Restoration" means the restoration, repair, replacement, rebuilding or alteration of the Premises following a casualty or a partial Taking (including, without limitation, the cost of all temporary repairs for the protection of property pending the completion of permanent restoration, repair, replacement, rebuilding or alterations), to a complete architectural unit of as nearly as possible the same value, condition and character that existed immediately prior to such casualty or Taking, to the extent permissible under applicable Requirements, including, without limitation, all zoning and use requirements and regulations.

"Service Contracts" has the meaning set forth in Section 1.3.

"Sublease" means any sublease of any or all of the Premises permitted pursuant to the terms of this Lease including, but not limited to, the Existing Leases.

"Taking" means the event of vesting of title to the Premises or any part thereof or estate therein in the condemning authority as the result of a Condemnation.

"Tax and Insurance Reserve" means the amount funded by a hold-back from the Permitted Mortgage (and such other tax and insurance reserve amounts as may be required by Lender under the Permitted Mortgage) to be used to pay certain tax and insurance costs associated with the Property.

"Tenant" has the meaning set forth in the preamble to this Lease.

"Term of this Lease" or "Term" means the Base Term and any renewals or extensions thereof.

"Use" means a commercial office/industrial building.

"Vesting Date" means the date of the Taking.

ARTICLE I PREMISES AND TERM OF LEASE

1.1 The Term of this Lease shall be for a period of twenty (20) years, commencing on the Commencement Date and terminating on the Expiration Date unless sooner terminated as hereinafter provided, upon and subject to all the terms, covenants, conditions and agreements herein contained.

1.2 As a material inducement to Landlord in the making of this Lease, Tenant does hereby represent and warrant to Landlord that Tenant is acquainted with the nature and condition, in all material respects, of the Premises, including the title of Landlord thereto, the soil and geology thereof, the manner of construction and the condition and state of repair and lack of repair of the Premises and the nature and extent of the rights of others with respect thereto, whether by way of easement, right of way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise, the Requirements pertaining to the Premises and all the portions of the Premises and the condition of the Premises and all portions of the Premises with regard to the Requirements. Tenant hereby represents and warrants to Landlord that the Premises are suitable and adequate in all material respects for the Use. Tenant has thoroughly and completely examined the physical condition of and title to the Premises as well as the Requirements pertaining to the Premises and all portions of the Premises and the condition of the Premises and all portions of the Premises with regard to the Requirements and has found all of the same to be satisfactory for all purposes. Tenant hereby accepts the Premises subject to all of the foregoing and without any representation or warranty by Landlord, express or implied in fact or by law, and expressly without recourse to Landlord as to title to the Premises, the nature, the physical condition, suitability or the usability thereof.

1.3 The parties hereto acknowledge that the Premises or portions thereof may currently be the subject of (i) leases, subleases, tenancies, licenses, occupancies and rights of others, other than those established hereby, which relate to the use of the Premises or any portion thereof (collectively, the "Existing Leases"); and (ii) service contracts which relate to the Premises (collectively, the "Service Contracts"). Landlord hereby assigns and transfers to Tenant, to the extent transferable, as of the Commencement Date and for the Term of this Lease, all of Landlord's rights, duties and obligations under the Existing Leases, and the Service Contracts including, without limitation, the right to collect rents and other charges under the Existing Leases and to enforce the terms of the Existing Leases and the Service Contracts, and all of Landlord's rights and interest in and to any intangible property relating to the Premises, including, without limitation, all tradenames and trademarks (collectively, the "Intangible Property"). Tenant does hereby undertake, covenant and agree for and during the Term of this Lease, to do, perform and discharge any and all rights, duties and obligations in connection with matters affecting the Existing Leases, the Service Contracts, the Intangible Property, the possession of the Premises or the title thereto which Landlord might otherwise have incurred during the Term of the Lease by reason of the Existing Leases, the Service Contracts, the Intangible Property or the ownership of the Premises by Landlord. Subject to the express terms, provisions and limitations set forth in this Lease, Tenant shall indemnify, protect, defend and hold Landlord harmless from and against any and all liability, damage, loss, cost or expense (including, without limitation, attorneys' fees and expenses) actually suffered or incurred by Landlord in direct connection with any or all of the Existing Leases, the Service Contracts, the Intangible Property or the ownership of the Premises arising or first accruing during the Term of this Lease; provided, however, that such indemnity shall not be applicable with respect to any liability, damage, loss, cost or expense suffered or incurred by Landlord as a result of, or due to, any negligent or intentional act or omission of any or all of Landlord and its agents, employees, officers, directors, managers and members. Tenant's obligations under this Section shall, as to matters arising, or accruing from facts arising, prior to the termination or expiration of this Lease, survive the expiration or sooner termination of this Lease.

1.4 Landlord makes no warranty or representation, express or implied, with respect to the Premises or the condition thereof or the location, use, description, design, merchantability, fitness for use, fitness for any particular purpose, condition or durability thereof, or its condition of title, it being agreed that all risks incident thereto are to be borne by Tenant. To the extent assignable, Landlord hereby assigns to Tenant during the Term of this Lease all representations and warranties made by Windsor Property Holdings, LLC, ("Contract Seller"), and any indemnities, third party warranties, guaranties (environmental or otherwise) or rights to receive payment in favor of Landlord, or transferred to Landlord by Contract Seller, under that certain purchase contract between Contract Seller and Cabot Investment Properties, LLC, as from time to time amended, and as assigned to Cabot Turfway Ridge Acquisition LLC, regarding the Premises (the "Purchase Contract"), to the extent such representations, warranties, indemnities, third party warranties, guaranties and rights to receive payment survive the closing of the Purchase Contract, and to the extent the same survive the closing, but are not assignable by Landlord, Landlord hereby agrees, at Tenant's request and at Tenant's sole cost and expense, to promptly raise and diligently pursue (in a manner and pursuant to a strategy directed by Tenant) claims against Contract Seller or any other applicable party regarding such representations, warranties, indemnities, third party warranties, guaranties and rights to receive payment. In the event that Tenant fails to pursue or enforce any right or remedy available to the Tenant under the Purchase Contract (a "Purchase Contract Claim"), the Landlord shall, following written notice to Tenant, have the right to pursue any such Purchase Contract Claim. Tenant shall be responsible for the costs related to the pursuit of any such Purchase Contract Claim provided that (i) the Landlord is successful in the pursuit of any Purchase Contract Claim and (ii) the benefits of such Purchase Contract Claim are available to Tenant or otherwise benefit the Demised Property.

1.5 Tenant shall take the Premises in an "As Is" condition as of the Commencement Date. No damage or destruction of the Premises from whatever cause prior to the Commencement Date shall in any way affect this Lease or the Base Rent or Additional Rent hereunder.

1.6 This Lease is intended to be and shall be construed as an absolute net lease, pursuant to which Landlord shall not, under any circumstances or conditions, whether presently existing or hereafter arising, or whether beyond the present contemplation of the parties, be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability except as expressly set forth herein. Notwithstanding any present or future law to the contrary, except as expressly set forth herein: (i) this Lease shall not be terminable by Tenant and Tenant waives all rights, if any, conferred upon Tenant by any statute, decree, order or otherwise to terminate or surrender this Lease; (ii) Tenant shall not be entitled to accept and waives all rights, if any, conferred upon Tenant by any statute, decree, order or otherwise to any abatement, deferral, reduction, set-off, counterclaim, defense or deduction with respect to any Base Rent and Additional Rent, and (iii) Tenant's obligations under this Lease including, but not limited to, Tenant's obligation to pay the full Base Rent and Additional Rent due hereunder, shall not be affected by reason of: (a) any damage to or destruction of the Premises, (b) any taking of the Premises (or any part) by Condemnation or otherwise, (c) any prohibition, limitation, restriction or prevention of Tenant's use, occupancy or enjoyment of the Premises, or any interference with such use, occupancy or enjoyment by any person or entity, public or private, (d) any eviction by paramount title or otherwise, (e) any default by Landlord under this Lease or any other agreement, (f) the impossibility or illegality of any required performance by Landlord, Tenant or both, (g) any action of any judicial or governmental authority, (h) any statute governing the relationship of tenants, which permits tenants to avoid their obligations under a lease, or (i) any other cause whether similar or dissimilar to the foregoing.

1.7 Mezzanine Loans. Subject to any limitations set forth in the Permitted Mortgage, and to the extent additional funds are required in excess of reserves available from time to time, the Tenant shall have the right to obtain one or more mezzanine loans to the extent the Landlord requires additional funds for operations, tenant improvements, leasing commissions or other purposes deemed appropriate by the Tenant (each individually a "Mezzanine Loan" and collectively, the "Mezzanine Loans"). Each Mezzanine Loan shall be subordinate to the interest of the Lender (or any other lender whose loan is secured by the Property) and each mezzanine lender shall be required to execute an intercreditor agreement in form as initially approved by Lender, if so required by Lender. The terms of each Mezzanine Loan shall be subject to the approval of the Tenants in Common, and each approved Mezzanine Loan shall be secured by a pledge of the membership interest held by each investor in a Tenant in

Common and shall be subject to such other terms and conditions as are, or may be in the future, be set forth in the Tenant In Common Agreement or as may be required by the Lender. The Master Lessee shall have the authority, after approval of the mezzanine loan terms by all of the Landlord, to execute all documents required by the Mezzanine Lender which are consistent with the terms of this Section 1.7. If and to the extent a Mezzanine Loan is in place, and to the extent required to perform its obligations to the Lender, the mezzanine lender or other lender, the Tenant may enter into so-called "cash-flow" notes or similar arrangements.

ARTICLE II BASE RENT AND ADDITIONAL RENT

2.1 Tenant covenants to pay to Landlord, in lawful money of the United States of America, without notice or demand and without any set-off, deduction or abatement whatsoever, (i) the Base Rent in arrears on the 15th of each calendar month during the term of this Lease, beginning the month after the Closing Date, and with the final payment to be paid on the date of termination of this Lease, which final payment shall include all Rent in arrears and (ii) Additional Rent when due. If Landlord so requests, Tenant agrees to make such payments by wire transfer of immediately available funds. Prorated monthly payments shall be made if the Term of this Lease begins on a date other than the first day of a month or ends on a date other than the last day of a month. Landlord hereby directs Tenant to pay each month, directly to the holder of the Permitted Mortgage or other appropriate party, that portion of the Additional Rent described in Section (b)(ii) of Exhibit C attached hereto prior to the due date for such payment. Additionally, Landlord hereby directs Tenant to pay, on Landlord's behalf, all annual maintenance fees and taxes required by Delaware and Kentucky to maintain the existence and qualification of Landlord in such states and the annual registered agent fees for each state where Landlord is registered (all such fees, taxes, and amounts the "Maintenance Fees"). All Maintenance Fees paid by Tenant shall reduce the amount of Base Rent otherwise payable by Tenant to Landlord.

2.2 Any Base Rent or Additional Rent not paid when due shall bear interest from the due date at the Default Rate until paid in full.

2.3 Upon or shortly after the Commencement Date, the Tenant shall establish and fund a cash reserve account in an amount equal to $200,000 (the "Master Lessee Reserve"). Subject to the terms of the loan documents for the Permitted Mortgage, Tenant shall have exclusive control over the Master Lessee Reserve and may use such funds to pay Base Rent and/or Additional Rent, but only to the extent that Tenant's income from the Premises is insufficient to pay Base Rent and/or Additional Rent. Master Lessee shall maintain the Master Lessee Reserve throughout the term of the Master Lease and shall replenish such reserve only to the extent it receives cash flow from the Premises in excess of its obligations under the Master Lease. Upon termination of the Master Lease, any remaining portion of the Master Lessee Reserve will be retained by the Master Lessee.

ARTICLE III IMPOSITIONS

3.1 Tenant shall pay (except as provided in Section 3.5), before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the non-payment thereof, all Impositions which at any time during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on (a) the Premises or any part thereof or any appurtenance thereto, (b) any use or occupation of the Premises and (c) such franchises as may be appurtenant to the use of the Premises. Upon written request of Landlord, Landlord shall promptly deliver bills for such Impositions to Tenant.

3.2 If at any time during the Term of this Lease the methods of taxation prevailing at the Commencement Date shall be altered so as to cause the whole or any part of the Impositions now levied, assessed or imposed on real estate and the improvements thereon to be levied, assessed and imposed wholly or partially as a capital levy or otherwise, on the rents received therefrom, or if as a result of any such alteration of the methods of taxation, any income, gross receipts or franchise tax, assessment, levy or other tax (including, but not limited to, any municipal, state or federal levy) or charge, or any part thereof, shall be measured by or be based, in whole or in part, upon the Premises and shall be imposed upon Landlord, then all such taxes, assessments, levies or charges or the part thereof so measured or based, shall be deemed to be included within the term "Impositions" for the purposes hereof, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions. Each such tax, assessment, levy or charge, as aforesaid, shall be deemed to be an item of Additional Rent hereunder.

3.3 In the case of assessments for local improvements or betterments which may by law be payable in installments, Tenant (subject to Section 3.7) shall only be obligated to pay such installments which are currently due or such installments as fall due during the Term of this Lease, together with interest on deferred payments, provided that Tenant shall take such steps as may be prescribed by law to convert the payment of the assessment into installment payments, and Landlord hereby agrees to cooperate with Tenant to effect the same. Such payments of installments and any interest thereon shall be made before any fine, penalty, interest or cost may be added thereto for non-payment of any installment or interest thereon.

3.4 In any suit or proceeding arising out of the failure of Tenant to keep any covenant in the provisions of this Article, the certificate or receipt of the department, officer or bureau charged with collection of the Impositions, showing that the Impositions are due and payable or have been paid, shall be prima facie evidence that such Impositions were due and payable as a lien or charge against the Premises or that the same have been paid as such by the Landlord.

3.5 To the extent permitted under the Permitted Mortgage, Tenant shall have the right, after prior written notice to the Landlord and in accordance with this Section 3.5, to contest or review by appropriate legal proceedings or in such manner as Tenant in Tenant's opinion shall deem advisable (which proceedings or other steps taken by Tenant if instituted shall be conducted diligently and solely at Tenant's own expense and free of any expense to the Landlord) any and all Impositions levied, assessed or imposed against the Premises or taxes in lieu thereof required to be paid by Tenant, provided that such contest shall not operate to prevent or in any way impair or delay a sale of the Premises by Landlord or result in a tax sale of the Premises or any portion thereof. Landlord, at the request of Tenant, will join in any such contest or proceeding and will execute any agreement in form and substance satisfactory to Landlord in settlement of any of those contests or proceedings and any documents in implementation thereof if it is necessary to do so in order to prosecute such proceeding, but Tenant in those circumstances must defend and hold Landlord harmless from and against any and all liability, loss, cost and expense (including, without limitation, attorneys' fees and expenses) suffered or incurred by Landlord in connection therewith. All payments required to be made by Landlord pursuant to any Impositions shall be reimbursed to Landlord by Tenant within thirty (30) days. In any event, no such contest shall defer or suspend Tenant's obligations to pay the Impositions as herein provided, but if by law it is necessary that such payment be suspended to preserve or perfect Tenant's contest, then the contest shall not be undertaken without there being first furnished to Landlord security in form reasonably satisfactory to Landlord, and in an amount sufficient to pay such Impositions, together with all interest and penalties thereon upon conclusion of the contest and all costs thereof that may be imposed upon Landlord or the Premises, and Tenant shall defend and hold Landlord harmless from and against any and all liability, loss, cost and expense (including, without limitation, attorneys' fees and expenses) suffered or incurred by Landlord in connection therewith. Tenant agrees that no allegation, designation, statement, document or evidence offered in any such action or proceeding for or on behalf of or in the name of Landlord or Tenant shall be admissible in evidence against Landlord's interest in the determination of the value of the Premises where such determination is required to be made by the terms hereof. Nothing in this Section 3.5 shall be in derogation of Landlord's right to contest or review any Impositions by legal proceedings or in such other manner as may be available to Landlord upon ten (10) days prior written notice to Tenant.

3.6 Upon written request of Landlord, Tenant shall promptly deliver to Landlord copies of all paid bills for Impositions.

3.7 Any Impositions relating to a fiscal period of the taxing authority occurring at the beginning or end of the Term of this Lease, only a part of which fiscal period is within the Term of this Lease (whether or not such Impositions are assessed, levied, imposed or become a lien or shall become payable, during the Term of this Lease) shall be apportioned and adjusted between Landlord and Tenant so that Landlord shall only be responsible in respect to that portion of such Impositions which bear the same ratio to the full Impositions that the part of the fiscal period which falls outside the Term of this Lease bears to the entire fiscal period. Tenant shall be responsible for the remainder of the Impositions.

3.8 Landlord hereby designates Tenant to act on its behalf, and, during the Term of this Lease, assigns to Tenant Landlord's rights and interest: (a) to complete, terminate or settle any appeal proceedings pending on the Commencement Date with respect to real estate tax assessments of the Premises for periods prior to the Commencement Date, (b) to determine the need to initiate an appeal of any real estate tax assessment of the Premises with respect to periods prior to or after the Commencement Date, and to complete, terminate or settle any such appeals, and (c) to engage legal counsel in connection with the foregoing, provided, however, that any refunds or settlement monies resulting from such appeals shall be applied as follows subject to the terms of the Permitted Mortgage: (i) first, to the payment of all attorneys' fees and costs attendant to such appeals, (ii) second, to subtenants to the extent such subtenants are entitled to a portion of such refunds or monies under their respective subleases and (iii) third, so long as Tenant is not in Default hereunder, to Tenant. Tenant shall pay all costs, including attorneys' fees and costs, attendant to such appeals (to the extent not covered by the application of any refunds or settlement monies) and Landlord shall have no obligation to pay the same. To the extent any refund or settlement monies are received that relate to the period after the Expiration Date, after the application set forth in clauses (i) and (ii) above, the remainder of such refunds shall be for Tenant, to the extent such refunds or settlement relates to a period of time on or prior to the Expiration Date, and to Landlord, to the extent such refunds or settlement relates to a period of time after the Expiration Date. At Tenant's sole costs and expense, Landlord shall cooperate with Tenant to the extent Landlord's participation is necessary to initiate, settle, terminate, extend or amend such appeals or to otherwise secure any refunds.

ARTICLE IV REPAIRS AND MAINTENANCE OF THE PREMISES

4.1 (a) Throughout the Term of this Lease, Tenant, at Tenant's sole cost and expense, shall take good care of the Premises and shall put, keep and maintain the same and every part thereof in a condition substantially the same as the condition of the Premises on the Commencement Date (ordinary wear and tear excepted), and shall make all necessary repairs thereto of whatsoever nature or kind, interior and exterior, structural and non-structural, ordinary and extraordinary and whether now foreseeable or not foreseeable, and including, without limitation, any repairs or other work required (i) by contract or Requirements under all existing leases affecting all or any part of the Premises or (ii) following a Taking or a casualty, regardless of the availability or adequacy of any award or proceeds relating thereto. Tenant (and not Landlord) shall have full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises.

(b) Throughout the Term of this Lease, Tenant shall not do or suffer any waste or damage, disfigurement or injury to the Premises or any part thereof.

(c) In addition to the foregoing, during the existence of the Permitted Mortgage, Tenant shall further maintain and repair the Premises in accordance with Landlord's obligations under the Permitted Mortgage; provided, however, that to the extent there are reserves established under the Permitted Mortgage that are applicable to any such maintenance or repairs, to the extent permitted under the Permitted Mortgage, Tenant shall have access to such reserves to fund some or all of the related costs.

4.2 Throughout the Term of the Lease, Tenant shall be obligated to pay for all repairs and replacements of the Premises, including the structure, foundation, roof, exterior walls and parking lot (the "Capital Improvements").

4.3 To the extent that there are applicable reserves established and sufficiently funded, Tenant may first exhaust the funds available in such reserves prior to the requirement that Tenant advance such expenses whether or not the funds in the reserves were paid into the reserves by Tenant pursuant to this Lease. For purposes of paying the costs for any expenditure required to be paid by Tenant, Tenant shall be entitled to demand and receive funds directly from any reserves established on behalf of the Landlord under the Permitted Mortgage. Alternatively, Tenant may satisfy its funding obligation to the extent, if any, that insurance proceeds are made available to Tenant by Tenant's insurance carrier, provided that such funds are used for any expenditures required to be paid by Tenant. If sufficient funds to make the expenditures are not provided from any reserves or any insurance proceeds, Tenant shall pay such costs directly.

4.4 During the Term of this Lease, Tenant shall be deemed to have been appointed, and Landlord hereby irrevocably appoints Tenant, as Landlord's attorney-in-fact, coupled with an interest, to make such demand

and receive such funds (without notice to, or consent of, Landlord) for and on behalf of Landlord in accordance with the terms of the Permitted Mortgage and applicable insurance coverage.

ARTICLE V COMPLIANCE WITH REQUIREMENTS

5.1 Throughout the Term of this Lease, Tenant, at Tenant's sole cost and expense and in all material respects, shall promptly comply with all present and future Requirements whether or not such Requirements shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Premises, or any part thereof. If Landlord receives any notices regarding Requirements, Landlord shall promptly deliver same to Tenant.

5.2 Tenant shall likewise observe and comply with the provisions of all insurance policies of which it has knowledge at any time in force with respect to the Premises.

5.3 Tenant shall have the right, after prior notice to Landlord, solely at Tenant's own expense, without cost or expense to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, the validity or application of any Requirements, provided, however, that Tenant may delay compliance therewith until the final determination of such proceeding only if by the terms of any such Requirements, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of, or the risk of incurring, any fine, lien, charge or liability of any kind against the Premises or Tenant's leasehold interest therein and without subjecting Tenant or Landlord to the risk of any liability, civil or criminal, for failure so to comply therewith. To the extent reasonably required and at Tenant's request and sole cost and expense, Landlord hereby agrees to cooperate with and assist Tenant with such contests.

ARTICLE VI INSURANCE

6.1 Tenant shall, at Tenant's sole cost and expense, at all times throughout the Term of this Lease, maintain the insurance below enumerated on the Premises for the mutual benefit of Landlord and Tenant:

(a) All Risks Property insurance on the Improvements in an amount not less than 100% of the full replacement costs of the Improvements with a Replacement Cost Endorsement. "Full replacement cost" as used herein means the cost of replacing the Improvements (exclusive of the cost of excavations, foundation and footings below the lowest basement floor) without deduction for physical depreciation thereof;

(b) Boiler and Machinery insurance in an amount equal to the replacement cost covering physical damage to the Improvements and to the major components of any central heating, air-conditioning or ventilation systems;

(c) Provided that the Premises, or any portion thereof, is located in an area designated as a flood prone area participating in the National Flood Insurance Program, flood insurance in an amount equal to the full replacement cost or the maximum amount then available or evidence supplied by Tenant satisfactory to Landlord, that either (i) the Premises, nor any portion thereof, is located within a one hundred (100) year flood plain as determined by the Federal Insurance Administration or (ii) such coverage is not required by the Permitted Mortgage or any lender in connection with a loan secured by the Premises;

(d) During any changes or alterations of the Premises or any part thereof and during any Restoration following a Taking or a casualty, all risk builder's risk insurance in an amount not less than one hundred percent (100%) of the full replacement cost of the Improvements; and

(e) Any additional insurance coverage required under the Permitted Mortgage.

6.2 Tenant shall also maintain, at Tenant's sole cost and expense and at all times throughout the Term of this Lease, the following insurance:

(a) insurance against loss of profits or rental under a business interruption insurance policy or under a rental value insurance policy, with no terrorism exclusion, covering risk of loss due to the occurrence of any of the hazards covered by the policies described in Sections 6.1(a), (b) and (c), and (to the extent insurance covering such hazards is generally obtainable) in Section 6.1(d), in an amount not less than the aggregate requirements for the period of twelve (12) months following the occurrence of the insured casualty for: (i) Base Rent and Additional Rent, or, if such amounts exceed the Base and Additional Rent, the rental payments due Tenant under the Subleases, (ii) Impositions and (iii) premiums on insurance required to be carried pursuant to this Article;

(b) comprehensive general liability insurance including contractual liability insurance specifically covering the indemnification obligations of Tenant under this Lease (including, without limitation, the obligations referred to in Section 14.1), on an occurrence basis against claims for personal injury, including, without limitation, elevators and/or escalators) and the sidewalks, driveways and curbs adjacent thereto with limits not less than $1 million per occurrence, $2 million in the aggregate and with $3 million of excess coverage; and

(c) any other insurance or coverage applicable to the Premises which are required to be maintained by the owner or operator of the Premises pursuant to the terms of the Permitted Mortgage, including environmental and ordinance and law coverage.

6.3 All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of responsibility and licensed to do business in the State where the Premises are located. The original policies under Section 6.1 and the certificates for the policies under Section 6.2 shall be delivered to Landlord within five (5) days of Tenant's receipt of Landlord's written request therefor. Prior to the expiration date of any policy required pursuant to this Article, the original renewal policy (or the certificate as concerns the insurance required pursuant to Section 6.2) for such insurance shall be delivered by Tenant to Landlord, together with satisfactory evidence of payment of the premium on such policy. To the extent obtainable, all such policies shall contain agreements by the insurers that (i) no act or omission by the Tenant shall impair or affect the rights of the insured to receive and collect the proceeds under the policies; (ii) such policies shall not be cancelled except upon not less than ten (10) days prior written notice to each named insured and loss payee; and (iii) the coverage afforded thereby shall not be affected by the performance of any work in or about the Premises.

6.4 The rental value policy referred to in Section 6.2(a) shall name Landlord as the loss payee and Lender to the extent so required under the Permitted Mortgage. To the extent Tenant is in Default under this Lease, Landlord shall retain and apply the proceeds, if any, of such rental value insurance first towards the payment of any portion of Additional Rent that consists of debt service payments, reserves and impounds, second to the payment of Impositions, third to payment of Base Rent, and fourth to the balance of Additional Rent. Any balance of such portion of the total proceeds remaining after such Default has been cured shall be paid to Tenant, unless the Tenant is again in Default under this Lease, in which case said proceeds shall be retained by Landlord (provided, however, that Landlord's retaining said proceeds shall not be deemed to release Tenant of any liability relating to Tenant's Default under this Lease, and shall not constitute the sole or exclusive remedy of Landlord).

6.5 Except as provided in Section 6.4, all policies of insurance shall name Tenant as the insured and Landlord and Lender as loss payees, as their respective interests may appear.

6.6 The loss, if any, under all policies of insurance of the kind referred to in Section 6.1 shall be payable to Tenant, unless the casualty results in Tenant's termination of this Lease pursuant to the provisions of Article XV, in which event the loss shall be payable to Landlord. All policies of insurance of the kind aforesaid shall expressly provide that all losses thereunder shall be adjusted and paid as provided in Sections 6.5 and 6.6.

6.7 Provided that Tenant complies with the provisions of Section 6.9, nothing contained in the foregoing provisions of this Article shall prevent Tenant from taking out insurance of the kind and in the amount provided for under Sections 6.1 or 6.2 under a blanket insurance policy or policies which cover the properties owned or operated by Tenant as well as the Premises; provided, however, if such insurance is provided pursuant to a blanket policy, Tenant shall obtain an "Agreed Value Endorsement" applicable to the Premises.

6.8 All policies under Section 6.1 and Section 6.2 shall contain endorsements that the rights of the insured to receive and collect the proceeds shall not be diminished because of any additional insurance carried by Tenant on Tenant's own account. The deductible on the policies shall not be greater than the lesser of: (i) the amount specified under the Loan Documents; or (ii) an amount Tenant reasonably anticipates could be paid from reserves.

6.9 The requirements of this Article shall not be deemed or construed to negate or modify Tenant's obligations to defend and indemnify Landlord pursuant to the provisions of this Lease, or to negate or modify Tenant's obligations to restore the Premises following a Taking or casualty pursuant to the provisions of this Lease.

6.10 Notwithstanding anything herein to the contrary, the holder of the Permitted Mortgage shall be named an additional insured under any liability policies to the extent required under the Permitted Mortgage and proceeds under such other policies shall be payable to holder as a mortgagee under a standard mortgagee clause in favor of, and acceptable to, such holder. Tenant's obligations hereunder to deliver certificates of insurance or original insurance polices to Landlord shall, during the time the Permitted Mortgage is in existence, include delivery of such items to such Lender in addition to (or where necessary in lieu of) delivery of such items to Landlord. To the extent that any insurance proceeds are paid to the Lender under the Permitted Mortgage in accordance with the requirements of the Permitted Mortgage, such payment (and, as applicable, the use of any such proceeds by Tenant to repair any related damage in accordance with the terms of the Permitted Mortgage), will be deemed to satisfy Tenant's obligations under the Lease, including Article XV, where such proceeds would, without such Permitted Mortgage, be available to Tenant to perform its repair obligations under this Lease. Tenant's and Landlord's rights in and to any insurance proceeds are subject to the rights of the holder of the Permitted Mortgage under the Permitted Mortgage.

ARTICLE VII SURRENDER AT END OF TERM

7.1 Upon the expiration or sooner termination of this Lease, Tenant shall quit and surrender the entire Premises (including, without limitation, the Improvements) to Landlord, without payment or off-set, in a condition substantially similar to the condition of the Premises on the Commencement Date, reasonable wear and tear and Capital Improvements excepted, free and clear of all leases and occupancies other than (a) the Existing Leases (to the extent the same have not expired or have since been terminated), (b) leases and occupancies entered into in accordance with Article XVII of this Lease (and when applicable, with Landlord's approval or deemed approval) and (c) any other leases and occupancies which Landlord has expressly agreed in writing shall survive the expiration or sooner termination of this Lease, and free and clear of all liens and encumbrances other than those, if any, created by Landlord and the Permitted Exceptions.

7.2 Any personal property of Tenant, any subtenant, any space tenant, any occupant, any business invitee or licensee, which shall remain upon the Premises after the expiration or sooner termination of this Lease and the removal of Tenant, such subtenant, such space tenant, such occupant, such business invitee or such licensee from the Premises, or the abandonment or vacation of the Premises by the Tenant or such subtenant, space tenant, occupant, business invitee or licensee, may, at the option of Landlord, be deemed to have been abandoned and either may be retained by Landlord as Landlord's property or may be disposed of, without accountability, in such manner as Landlord may see fit, and Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all liabilities, claims, damages, losses, charges and expenses (including, without limitation, attorneys' fees and expenses) arising in any way from such retention or disposition.

7.3 If Tenant does not vacate the Premises upon expiration or sooner termination of this Lease, then Landlord shall have the option to treat Tenant as a month-to-month tenant, subject to all of the provisions of this Lease, except that: (i) the term shall be month-to-month and (ii) the rent (excluding Additional Rent which will also be payable) shall be an amount equal to 125% of the monthly installment of Base Rent.

7.4 Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant, any subtenant, any space tenant, any occupant, any business invitee or licensee.

7.5 The terms, covenants, provisions and conditions of this Article VII shall survive the expiration or sooner termination of this Lease.

ARTICLE VIII LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

8.1 If Tenant shall at any time fail to pay any Impositions in accordance with the provisions of Article III, to take out, pay for, maintain or deliver any of the insurance policies provided for in Article VI, fail to discharge any lien or other encumbrance that Article X requires Tenant to discharge, comply with the provisions of Article XX, or shall fail to make any other payment or perform any other act on Tenant's part to be made or performed pursuant to this Lease, then, after twenty (20) days prior written notice to Tenant or without notice in case of an emergency (which shall include, but shall not be limited to, danger to person or property or the imposition of a monetary fine or penalty on Landlord or Landlord's exposure to possible liability or where the due date for such payment or performance shall have passed or shall occur within such twenty (20) day period) and without waiving, or releasing Tenant from any obligation of Tenant contained in this Lease, Landlord may (but shall be under no obligation to):

(a) pay all Impositions payable by Tenant pursuant to the provisions of Article III;

(b) take out, pay for and maintain any of the insurance policies provided for in Article VI;

(c) discharge such lien or encumbrance for Tenant's account;

(d) make any payment and perform any action on Tenant's part to be made or performed pursuant to Article XX, and enter upon the Premises for that purpose and take all such action thereon as may be necessary therefor; and/or

(e) make any payment or perform any act on Tenant's part to be made or performed hereunder as provided in this Lease, and enter upon the Premises for that purpose and take all such action thereon as may be necessary therefor.

8.2 All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance which Tenant is required to keep in force under this Lease. Landlord shall also be entitled to recover, as damages for such breach, the uninsured amount of any loss to the extent of any deficiency in the insurance required by the provisions of this Lease, damages, costs and expenses of suit suffered or incurred by reason of damage to, or destruction of, the Premises, or any part thereof, occurring during any period when Tenant shall have failed or neglected to provide insurance as aforesaid.

8.3 Claims by the Tenants in Common for indemnity in connection with matters covered by this Article VIII shall survive for one (1) year following the expiration or sooner termination of this Lease.

ARTICLE IX CHANGES AND/OR ALTERATIONS BY TENANT

9.1 Tenant shall have the right at any time and from time to time during the Term of this Lease, provided Tenant is not in Default under this Lease, to make, at Tenant's sole cost and expense and in its sole discretion, structural and non-structural changes and alterations in or to the Improvements without Landlord's consent, subject only, however, in all cases to the following:

(a) No change or alteration shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required, from time to time, all permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction. Provided there is no Default under this Lease, Landlord shall join in the application for such permits and authorizations whenever such action is necessary; provided that Landlord shall not incur or be subject to any liability or expense as a result of joining in said application.

(b) No change or alteration shall be made that could materially reduce the value of the Premises below its value immediately before such change or alteration, result in a material change in the usefulness of the Premises from its intended purpose as a commercial mixed use retail/office/self storage facility, or that would violate the terms of any Subleases.

(c) Any change or alteration shall be made promptly and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and all Requirements, and Tenant shall furnish Landlord with evidences and assurances acceptable to Landlord that all such changes and alterations shall be completed at least six months prior to the end of the Term of this Lease.

(d) The cost of any such change or alteration shall be paid promptly paid by Tenant so that the Premises shall at all times be free and clear of liens for labor and materials supplied or claimed to have been supplied to the Premises.

(e) Worker's compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Landlord, Tenant or the Premises, and general liability insurance for the mutual benefit of Tenant and Landlord with a combined single limit of not less than $2,000,000 "per occurrence" against all claims for personal injury, bodily injury, death and property damage and all risk builder's risk as provided in Section 6.1(d) shall be maintained by Tenant, at Tenant's sole cost and expense, at all times when any work is in process in connection with any change or alteration. All such insurance shall be provided by a company or companies of recognized responsibility, and all policies or certificates therefor issued by the respective insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence of such payment, shall be delivered to Landlord prior to the commencement of any work in connection therewith.

(f) All changes and alterations to the Improvements made by or on behalf of Tenant shall be and become the property of the Landlord and for purposes of this Lease shall be deemed to be a part of the Improvements. Tenant shall diligently prosecute to completion all such changes and alterations once commenced, and Tenant's obligation to complete the same pursuant to the terms of this Lease shall survive the expiration or sooner termination of this Lease.

(g) Any such changes and alterations provided for in this Article IX shall be performed by Tenant in full compliance with the terms, conditions and requirements placed on the Landlord under the Permitted Mortgage as to alterations and changes to the Premises.

9.2 Tenant covenants that in performing any work or repairs to, or restoration, replacement or rebuilding of, any portion of the Improvements required or permitted to be performed bv Tenant pursuant to the provisions of Articles IV, V, XV and XVI or any of them, Tenant shall observe and perform or cause to be performed the conditions relating to changes and alterations set forth in this Article IX.

ARTICLE X DISCHARGE OF LIENS

10.1 Tenant covenants and agrees that Tenant shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance or charge (levied on account of any Impositions or any mechanic's, laborer's or materialman's lien or any mortgage, conditional sale, title retention agreement or chattel mortgage, or otherwise) which might be or become a lien, encumbrance or charge upon the Premises or any part thereof or the income therefrom, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Tenant in the Premises or any part thereof might be impaired, provided that any Impositions may, after the same become a lien on the Premises, be paid or contested in accordance with Article III and any mechanic's, laborer's or materialman's lien may be discharged in accordance with Section 10.2.

10.2 If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, or within such other time as is required pursuant to the Permitted Mortgage, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy available to Landlord hereunder, at law or in equity, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by

Landlord and all costs and expenses incurred by Landlord in connection therewith, including, without limitation, amounts paid in good faith settlement of such lien and attorneys' fees and expenses, together with interest thereon at the Default Rate from the respective dates of Landlord's making the payment or incurring the cost and expense to the date Landlord is in actual receipt of such amount from Tenant, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

NOTICE IS HEREBY GIVEN THAT LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING AN INTEREST IN THE PREMISES (OR ANY PART THEREOF) THROUGH OR UNDER TENANT, AND THAT NO MECHANIC'S OR OTHER LIENS OR ANY SUCH LABOR, SERVICE OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES.

ARTICLE XI USE OF PREMISES

11.1 Tenant shall use the Premises for the Use and for no other purpose, and hereby covenants to use and operate the Premises for the Use at all times during the Term of this Lease.

11.2 Tenant shall not use or allow the Premises or any part thereof to be used or occupied for any unlawful purpose or in material violation of any certificate of occupancy or certificate of compliance or of any other material certificate, permit, law, statute, ordinance, rule or regulation or any of the other Requirements, or any lease, mortgage, easement, restriction or other material agreement covering or affecting the use of the Premises or any part thereof, and shall not suffer any act to be done or any condition to exist on the Premises or any part thereof, which may be dangerous, unless safeguarded as required by law, or which may constitute a nuisance, public or private, or which may make void or voidable, or cause the revocation of, any certificate of occupancy or certificate of compliance or any other material certificate or permit or any insurance then in force with respect thereto.

11.3 Tenant shall not suffer or permit the Premises, or any portion thereof, to be used by any other party, including the public, as such, without restriction or in such manner as might reasonably tend to impair Landlord's title to the Premises or any portion thereof, or in such manner as might reasonably make a possible claim or claims of adverse usage or adverse possession by such party or the public, as such, or of implied dedication of the Premises or any portion thereof.

11.4 Tenant shall not use or allow the Premises or any part thereof to be used or occupied in a manner that would result in the violation or breach of any of the terms of the Permitted Mortgage. Tenant shall further perform, at any time during the Term that the Permitted Mortgage is in effect, any covenants or obligations of the obligor under the Permitted Mortgage that relate to the Master Lease or the Premises. Such covenants and obligations shall be performed by Tenant in such a manner as to not constitute a default under the Permitted Mortgage.

ARTICLE XII ENTRY TO PREMISES BY LANDLORD

12.1 Tenant shall permit Landlord (or if Landlord consists of more than one person or entity, any such person or entity), Lender and any of such parties' authorized representatives to enter the Premises at reasonable times upon reasonable notice, and at any time in case of an emergency for the purpose of: (a) inspecting the same, and showing the same to any prospective purchaser of Landlord's fee interest therein (or any portion thereof) or, within six (6) months prior to the expiration of the Term of this Lease, any prospective tenants, or (b) making any necessary repairs thereto and performing any work therein that may be necessary by reason of Tenant's failure to commence (and diligently pursue the completion of) any such repairs within twenty (20) days after prior written notice from Landlord. Nothing herein shall imply any duty upon the part of Landlord to do any such work, and performance thereof by Landlord shall not constitute a waiver of Tenant's default in failure to perform the same.

ARTICLE XIII WAIVER OF SUBROGATION RIGHTS

13.1 Landlord and Tenant hereby each release the other party, and such other party's members, managers, shareholders, partners, agents, employees, officers, directors and authorized representatives, from any claims such releasing party may have for damage to the Premises, personal property, improvements and alterations of such party in or about the Premises to the extent the same is covered by a policy of insurance insuring such party; provided, however, that this waiver shall be ineffective unless consented to by the insurance company or companies issuing the insurance policies required to be maintained by Tenant under this Lease and shall be ineffective as to any such damage not covered by insurance required to be carried hereunder or, if greater in amount, insurance actually carried. Tenant shall cause each fire or other casualty insurance policy maintained by Tenant with respect to the Premises or any portion thereof to provide that the insurance company waives all right to recovery of paid insured claims by way of subrogation against the other party in connection with any matter covered by such policy, to the extent such waiver is available.

ARTICLE XIV <u>INDEMNIFICATION AND WAIVER</u>

14.1 Tenant shall indemnify, defend and hold Landlord (or if Landlord is constituted of more than one person or entity, each of such persons and entities) harmless from and against any and all losses, damages, expenses, costs and liabilities actually suffered or incurred by Landlord (or if Landlord is constituted of more than one person or entity, each of such persons and entities) (collectively, "<u>Damages</u>") in connection with anything and everything whatsoever directly arising from or out of: (i) any injury, illness or death to any person or damage to any property from any cause whatsoever occurring in or upon or in any other way relating to the Premises, (ii) the occupancy of the Premises or any part thereof by, through or under Tenant, and/or (iii) any failure on Tenant's part to comply with any of the covenants, terms, conditions, representations or warranties contained in this Lease; provided, however, that in no event shall the foregoing indemnity apply to any Damages arising out of, or because of, the negligence or willful misconduct of any or all of Landlord and its agents, employees, officers and directors. This indemnity extends to (but is not limited to) liability for expenses (including. without limitation, reasonable attorneys' fees and out-of-pocket expenses at both trial and appellate levels) actually incurred by Landlord in defending any action or proceeding (a) instituted against Landlord by a third party, or in which the Landlord intervenes, or against Tenant in which Landlord is made a party or appears and (b) to which the foregoing indemnity would apply.

14.2 Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury, illness or death of any person or damage to any property in or about the Premises unless caused by the negligence or willful misconduct of any or all of Landlord and its agents, contractors, employees, officers and directors.

14.3 The terms, covenants, provisions and conditions of this <u>Article XIV</u> shall survive the expiration or sooner termination of this Lease.

ARTICLE XV <u>DAMAGE OR DESTRUCTION</u>

15.1 In the event of any material casualty to the Premises, Tenant shall promptly give written notice thereof to Landlord. Subject to <u>Section 15.2</u>, Tenant shall promptly commence and proceed to complete the Restoration, but Tenant shall, in any event, prior to the expiration of the Term of this Lease, at Tenant's sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, complete the Restoration.

15.2 If, within six (6) months prior to the expiration of the Term of this Lease, the Improvements or any part thereof shall be damaged or destroyed by fire or otherwise, and the cost of Restoration exceeds any threshold set forth in the Permitted Mortgage, and provided Tenant is not then in Default under this Lease and provided insurance proceeds payable to Landlord shall, in Landlord's sole (but reasonable) judgment, be sufficient to pay the entire cost of Restoration, then Tenant shall have the option of:

(a) completing the Restoration as provided in this Lease; or

(b) terminating this Lease by written notice to Landlord given within thirty (30) days after receipt by Tenant of Landlord's estimated cost of Restoration, as aforesaid, accompanied by payment to Landlord of the Base Rent and all Additional Rent under this Lease, for a period of six (6) months after the date of such termination or to the date of what would otherwise have been the Expiration Date, whichever amount is the lesser, together with an assignment of the insurance proceeds payable to Tenant with respect to the damaged Improvements.

15.3 Except as provided in Section 15.2, no destruction of or damage to the Premises or any part thereof by fire or any other casualty shall permit Tenant to surrender this Lease or shall relieve Tenant from Tenant's liability to pay the full Base Rent and Additional Rent under this Lease or from any of Tenant's other obligations under this Lease, and Tenant waives any rights now or hereafter conferred upon Tenant by statute or otherwise to quit or surrender this Lease or the Premises or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage.

15.4 Notwithstanding anything herein to the contrary, Tenant's and Landlord's rights and obligations in and to any insurance or related proceeds derived therefrom shall, in all cases, be subject to the rights of the holder of the Permitted Mortgage.

ARTICLE XVI CONDEMNATION

16.1 In case of a Taking of all of the Premises, this Lease shall terminate and expire as of the Vesting Date and the Base Rent and Additional Rent under this Lease shall be apportioned and paid to the Vesting Date. Tenant shall have the exclusive right to participate in the Condemnation Proceedings and receive the entire award for the Taking up to the amount of the fair market value of Tenant's tangible personal property located on the Premises and taken by the condemning authority, with Landlord entitled to any balance, and no claim or demand of any kind shall be made by Landlord against Tenant, Tenant against Landlord, or any other party who could, by virtue of a claim against it, make a claim against the Landlord by reason of such termination or Taking. Tenant and Landlord hereby irrevocably assign to the other any award, compensation or other payment to which it may become entitled by reason of its interest in the Premises as provided above.

16.2 In case of a Taking of less than all of the Premises (other than for a temporary use), Landlord and Tenant shall each have the right to participate in the Condemnation Proceedings. Subject to the remaining terms of this Article, the Landlord shall receive the entire award for the Taking and no claim or demand of any kind shall be made by Tenant against Landlord or any other party who could, by virtue of a claim against it, make a claim against the Landlord by reason of such Taking, and Tenant or Landlord, as provided above, hereby irrevocably assigns to the other any award, compensation or other payment to which it may become entitled by reason of such party's interest in the Premises.

In the case of a taking of a material portion, but less than all, of the Premises (other than for a temporary use), Tenant shall determine, in Tenant's reasonable discretion, whether the remaining Premises (after Restoration referred to in Section 16.4) can be used for the Use. If it is determined by Tenant that the remaining Premises cannot be used for the Use, then and in such event this Lease shall terminate as of the Vesting Date and the Base Rent and Additional Rent shall be apportioned and paid to the date of termination and no other claim or demand of any kind shall be made by Landlord against Tenant by reason of such termination.

16.3 If, in the case of a Taking of less than all of the Premises (other than for a temporary use), this Lease is not terminated in accordance with the provisions of Section 16.2, this Lease shall continue in full force and effect as to the remaining portion of the Premises without any reduction in the Base Rent, except as expressly provided in Section 16.5. No such partial Taking shall operate as or be deemed an eviction of Tenant from that portion of the Premises not affected by such partial Taking or in any way terminate, diminish, suspend, abate or impair the obligation of Tenant to observe and perform fully all the covenants of this Lease on the part of Tenant to be performed with respect to the remainder of the Premises unaffected by the partial Taking, except as to any reduction (if any) in the Base Rent as expressly provided in Section 16.5.

16.4 If, in the case of a Taking of less than all of the Premises (other than for a temporary use), this Lease is not terminated in accordance with the provisions of Section 16.2. Tenant, at Tenant's sole cost and expense, shall, prior to the expiration of the Term of this Lease, commence and proceed with reasonable diligence to complete the Restoration and, the award in the Condemnation Proceedings shall be utilized for Restoration of the

Premises in the following manner, and subject to the following conditions and provisions. Tenant shall be entitled to utilize that portion of the award in the Condemnation Proceedings actually received by Landlord which Landlord shall pay or cause to be paid directly to Tenant. Landlord shall be entitled to the remainder of the award not needed to complete the Restoration (the "Surplus"). In the event that the cost of Restoration exceeds the award proceeds, Tenant shall pay the deficiency.

16.5 In case of a Taking of less than all of the Premises (other than for a temporary use) and if (i) this Lease shall not terminate as provided in Section 16.2, (ii) Restoration has been completed by Tenant pursuant to the provisions of Section 16.4, and (iii) a Surplus exists, then commencing as of the Vesting Date, the amount of the Base Rent payable by Tenant under this Lease shall be reduced (and Tenant shall be credited for prior overpayments) by an amount reasonably determined by Landlord and Tenant. If Landlord and Tenant cannot, within thirty (30) days, agree on the new Base Rent, either may require that the matter be submitted to binding arbitration with the Suffolk County, Massachusetts office of the American Arbitration Association.

16.6 In the event of a Taking of all or any portion of the Premises for temporary use: Tenant shall give prompt notice thereof to Landlord; the foregoing provisions of this Article shall be inapplicable thereto; this Lease shall continue in full force and effect without reduction or abatement of Base Rent or Additional Rent; and Tenant, alone, shall be entitled to make claim for, recover and retain any award recoverable in respect of such temporary use, provided, however, that:

(a) If the award is made and covers a period beyond the Term of this Lease, Landlord also shall be entitled to make claim for, participate in and receive the portion of the entire award equal to the ratio that the period of the temporary use arising after the Term of this Lease bears to the entire period of the temporary use.

(b) If possession of the Premises so taken for such temporary use shall subsequently revert to Tenant prior to the expiration of this Lease, Tenant shall promptly repair and restore any damage to the Premises resulting from such Taking and Landlord shall make available to Tenant any award proceeds actually received by Landlord with respect to such Taking to be utilized for Restoration. Upon completion of such Restoration, any balance shall be paid to Tenant.

16.7 Notwithstanding anything to the contrary in this Lease, if at the time Condemnation proceeds would be payable to Tenant pursuant to this Lease, Tenant is in Default of this Lease, all such Condemnation proceeds shall be paid to Landlord, and unless any such Default is cured by Tenant within any applicable grace periods expressly set forth in this Lease, such proceeds shall be retained by Landlord, provided, however, that if such Default is monetary in nature, Landlord shall retain only that amount of proceeds necessary to cure such Default. However, Landlord's retaining said proceeds shall not be deemed to release Tenant of any liability relating to Tenant's Default under this Lease, nor shall it be deemed to constitute the sole or exclusive remedy of Landlord.

16.8 Each of Landlord and Tenant shall promptly deliver to the other any notices it receives with respect to a Condemnation Proceeding or threatened Condemnation Proceeding.

16.9 Notwithstanding anything herein to the contrary, Tenant's and Landlord's rights and obligations in and to any condemnation proceeding or related proceeds derived therefrom shall, in all cases, be subject to the rights of the holder of the Permitted Mortgage.

ARTICLE XVII ASSIGNMENT, SUBLETTING AND MORTGAGING

17.1 (a) Except as herein expressly provided, the prior written consent of Landlord, which consent may be withheld for any reason or no reason, shall be required in order for the Tenant to sell, assign, transfer or otherwise dispose of this Lease or any interest of Tenant in this Lease or in any sublease or in any subrents whether by operation of law or otherwise.

(b) If an assignment is consented to by Landlord, no such assignment shall be valid unless (i) such permitted assignment complies with the provision of this Lease, and (ii) there shall be delivered to Landlord in proper form for recording (and otherwise in form, scope and substance satisfactory to Landlord), on the date of assignment (x) a duplicate original of the instrument of assignment, and (y) other than an assignment accomplished in conjunction with the Permitted Mortgage as additional collateral, an instrument of assumption by the transferee of all of the Tenant's obligations under this Lease, including, without limitation, any unperformed obligations which have accrued as of the date of the assumption. Any such permitted assignee shall thereafter have all of the power, authority, rights, duties, obligations and liabilities of Tenant hereunder. Tenant shall nonetheless remain liable for the payment of all Base Rent and Additional Rent due hereunder and the performance of all terms, covenants and conditions to be performed by Tenant under this Lease and Tenant shall reaffirm the same to Landlord in writing, in recordable form, acceptable to Landlord, prior to, and as a condition precedent of, such transfer. Any single consent given by Landlord hereunder shall not be deemed a waiver of Landlord's right to future requests for consent under this Article. If Landlord is requested to approve a proposed assignment or sublease, Tenant shall be responsible (regardless of whether Landlord approves the same) for paying the fees and expenses of Landlord's counsel for reviewing and/or preparing the appropriate materials and documents.

(c) Without limiting in any way the rights and remedies of Landlord hereunder, at law or in equity, but in addition thereto, any purported assignment, transfer, mortgage, pledge, disposition or encumbrance in contravention of the provisions of this Article shall be null and void and of no force and effect, but this shall not impair any remedy of Landlord because of Tenant having engaged in any act prohibited by, or in contravention of, the terms hereof.

17.2 (a) Except as herein expressly provided, Tenant may sublet the whole or any portion of the Premises without the necessity of obtaining Landlord's prior consent, subject, however to compliance with any provisions set forth in the space leases; provided, however, that no such subletting shall be valid unless such permitted subletting complies with the provisions herein set forth. Without in any way limiting the rights and remedies of Landlord hereunder, at law or in equity, but in addition thereto, any purported subletting in contravention hereof shall not thereby impair any right or remedy available to Landlord as the result of Tenant's having engaged in an act prohibited by, or in contravention of, the terms hereof, nor shall such permitted subletting relieve Tenant of any of Tenant's obligations hereunder and Tenant assumes and shall be responsible for and shall be liable to Landlord for all acts on the part of any present or future subtenant, which, if done by Tenant would constitute a Default hereunder. Each Sublease shall be expressly subject and subordinate to this Lease. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to enter into Subleases that extend beyond the Term of this Lease.

(b) Each Sublease of the whole or a portion of the Premises entered into after the date hereof must in each instance contain provisions substantially as follows:

> "Tenant ("Sublessee") covenants and agrees that, if by reason of a default (after the expiration of all applicable notice and grace periods) upon the part of Cabot Turfway Ridge LeaseCo LLC, a Delaware limited liability company, the tenant under the master lease agreement ("Sublessor"), dated the Closing Date, between each of the limited liability companies set forth on Annex I, each a Delaware limited liability company, as landlord, and Sublessor, as tenant, covering the Premises, in the performance of any of the terms or provisions of such underlying lease or if for any other reason of any nature whatsoever such underlying lease and the leasehold estate of the Sublessee thereunder are terminated by summary dispossess proceeding or otherwise, Sublessee, at the request in writing of the then landlord under such underlying lease, shall attorn to and recognize such landlord as Sublessee's landlord under this lease. Sublessee covenants and agrees to execute and deliver, at any time and from time to time, upon the request of the landlord under such underlying lease, any instrument which may be necessary or appropriate to evidence such attornment. Sublessee further waives the provisions of any statute or rule of law now or hereafter in effect which may terminate this lease or give or purport to give Sublessee any right of election to terminate this lease or to surrender possession of the Premises demised hereby in the event such underlying lease terminates or in the event any such proceeding is brought by such landlord under such underlying lease, if such landlord shall have requested in writing that Sublessee agree that this lease shall not be affected in any way whatsoever by any such proceeding or termination."

Landlord hereby agrees that, if requested by a sublessee, a Sublease shall contain, and Landlord hereby appoints Tenant as Landlord's attorney-in-fact to execute and deliver, a non-disturbance agreement from Tenant and Landlord in favor of such Subleases.

(c) Any such Sublease shall be accomplished in accordance with the restrictions on leasing set forth in the Permitted Mortgage and, if a desired Sublease does not meet the terms of such restrictions, Tenant shall not finalize such Sublease without obtaining, whether directly or indirectly through Landlord, the necessary consent to the form of such sublease from the holder of the Permitted Mortgage.

17.3 Any application by Tenant for Landlord's written consent under any paragraph of this Article XVII shall be made in writing to the Landlord. Landlord's failure to disapprove any such application within 5 business days shall be deemed to be an approval by the Landlord.

17.4 Every assignee and sublessee hereunder, if not a natural person, shall be formed and existing under the laws of a state, district or commonwealth of the United States of America.

17.5 Tenant hereby assigns to Landlord all rents due or to become due from any present or future subtenant, provided that so long as Tenant is not in Default hereunder, Tenant shall have the right to collect and receive such rents for Tenant's own uses and purposes. The effective date of Landlord's right to collect rents shall be the date of the happening of a Default under Article XVIII. Thereupon, Landlord shall apply any net amount collected by Landlord from subtenants to the Base Rent or Additional Rent due under this Lease. No collection of rent by Landlord from an assignee of this Lease or from a subtenant shall constitute a waiver of any of the provisions of this Article or an acceptance of the assignee or subtenant as a tenant or a release of Tenant from performance by Tenant of Tenant's obligations under this Lease. Tenant, without the prior consent of Landlord in writing, shall not directly or indirectly collect or accept any payment of subrent (exclusive of security deposits) under any sublease more than one month in advance of the date when the same shall become due.

17.6 Any attempted sublease or assignment in violation of the requirements of this Article XVII shall be null and void and, at the option of Landlord, shall constitute a Default by Tenant under this Lease. To the extent consent is required, the giving of consent by Landlord in one instance shall not preclude the need for Tenant to obtain Landlord's consent to further sublettings (to the extent they require such consent) or assignments under this Article XVII. If Landlord's approval is required and obtained, Tenant or the prospective sublessee or assignee shall be responsible for preparing the appropriate documentation and shall reimburse Landlord for Landlord's reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) in reviewing and approving the sublease or assignment and related documentation.

17.7 Tenant shall not mortgage or otherwise encumber Tenant's interest in this Lease. Notwithstanding the foregoing, Landlord consents to Tenant encumbering its interest in this Lease to the Lender secured by the Permitted Mortgage, acknowledges that the Lender will be obtaining a security interest in all rents to be paid to Tenant and consents to the granting of the security interest by the Tenant. Further, Tenant agrees that upon termination of the Lease, all underlying leases of the Property shall be deemed assigned to the Landlord without any act or deed of Landlord or Tenant.

17.8 If Tenant is in Default hereunder pursuant to Section 18.1(d) and Tenant elects to assume this Lease and then proposes to assign the same pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Section 10.1 et seq. (the "Bankruptcy Code") to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment, setting forth (i) the name and address of such person, (ii) all the terms and conditions of such offer, and (iii) the adequate assurances to be provided Landlord to ensure such person's future performance under this Lease, including, without limitation, the assurances referred to in Section 365(b)(d) of the Bankruptcy Code, shall be given to Landlord by Tenant no later than twenty (20) days after receipt hereof by Tenant, but in any event no later than 10 days prior to the date that Tenant shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option to be exercised by notice to Tenant given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person less any brokerage commissions which may be payable out of the consideration to be paid by such person for the assignment of this Lease. Any and all monies or other consideration constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid to or turned over to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument in form, scope and substance acceptable to Landlord, confirming such assumption.

17.9 Notwithstanding anything herein to the contrary, Landlord and Tenant shall obtain Lender's consent to any assignment or subletting of the Premises, in whole or in part, to the extent required by the loan documents securing the Permitted Mortgage.

ARTICLE XVIII EVENTS OF DEFAULT AND LANDLORD'S REMEDIES

18.1 Each of the following shall be deemed a "Default" by Tenant, and after the occurrence of any of the following, Tenant shall be "in Default" under this Lease:

(a) A failure on the part of Tenant to pay any installment of Base Rent or to pay any Additional Rent on the date such Base Rent or Additional Rent becomes due, which failure is not cured within ten (10) days after Landlord (or if Landlord is constituted of more than one person or entity, any such properly authorized person or entity) delivers written notice of such failure to Tenant (or such other period as is required under the Permitted Mortgage);

(b) A failure on the part of Tenant, whether by action or inaction, to observe or perform any of the other terms, covenants or conditions of this Lease, which failure is not cured within thirty (30) days after Landlord (or if Landlord is constituted of more than one person or entity, any such properly authorized person or entity) delivers written notice of such failure to Tenant (or such other period as is required under the Permitted Mortgage), provided, however, that if such failure is subject to cure but cannot be cured within such thirty (30) day period, Tenant shall not be in Default hereunder if it promptly commences, and diligently pursues, the curing of such failure; provided that if such cure period shall exceed ninety (90) days, Tenant shall provide Landlord with written notice advising Landlord of the estimated cure period and Tenant shall thereafter provide Landlord, by way of monthly reports, the status of such cure. If Landlord fails to cure the failure within the originally estimated curative period, without reasonable cause, such failure shall constitute a default hereunder.

(c) The leasehold hereunder demised shall be taken on execution or other process of law in any action against Tenant;

(d) If Tenant files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or any future applicable federal, state or other statute or law relative to bankruptcy, insolvency, or other relief for debtors, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, conservator or liquidator of Tenant or of all or any substantial part of Tenant's properties or Tenant's interest in this Lease; (the term "acquiesce" as used in this Section 18.1(d) includes, without limitation, the failure to file a petition or motion to vacate or discharge any order, judgment or decree within five days after entry of such order, judgment or decree); or a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors, and Tenant acquiesces in the entry of such order, judgment or decree or such order, judgment or decree remains unvacated and unstayed for an aggregate of one hundred twenty (120) days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of Tenant or of all or any substantial part of Tenant's property or Tenant's interest in this Lease shall be appointed without the consent or acquiescence of Tenant and such appointment remains unvacated and unstayed for an aggregate of one hundred twenty (120) days (whether or not consecutive);

(e) If this Lease or any estate of Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within one hundred twenty (120) days;

(f) If Tenant or Tenant's general partner or manager shall cause or institute any proceeding, or a final and non-appealable court order shall be issued, for the dissolution or termination of Tenant or Tenant's general partner or manager;

(g) If Tenant makes a general assignment for the benefit of creditors or takes any other similar action for the protection or benefit of credits;

(h) If any material representation or warranty made by Tenant in this Lease shall be inaccurate in any material respect and such inaccuracy or the adverse effect therefrom is not remedied within ten days after Landlord delivers written notice of such inaccuracy to Tenant; or

(i) If Tenant takes or fails to take any action which is in violation of the Permitted Mortgage and such violation is not cured in accordance with, and within any applicable cure periods under, the Permitted Mortgage.

18.2 In the event of any Default by Tenant as hereinabove provided in this Article, Landlord (or if Landlord is constituted of more than one person or entity, any such properly authorized person or entity) at any time thereafter may, at Landlord's option, give Tenant five (5) days written notice of Landlord's intention (among other remedies available to Landlord) to: (a) terminate Tenant's possession under this Lease or (b) terminate this Lease, and thereupon, at the expiration of said five (5) day period the Tenant's right to possession under this Lease and this Lease itself shall terminate as appropriate and the Term of this Lease shall expire as fully and completely as if that date were the date herein specifically fixed for the expiration of the Term of this Lease and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided. Any notice hereunder may be given to Tenant by any one or more of the parties constituting Landlord if there are multiple persons or entities constituting Landlord; provided, however, that any such notice shall not be given without first obtaining the necessary approvals of all such constituents.

(a) Upon the occurrence of any Default by Tenant under this Lease, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as otherwise specifically set forth herein) or demand for possession whatsoever: (i) with five (5) days prior written notice, terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord; (ii) with five (5) days prior written notice, terminate Tenant's right to occupy and possess the Premises and re-enter and take possession of the Premises (without terminating this Lease); (iii) enter the Premises and do whatever Tenant is obligated to do under the terms of this Lease and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, and (iv) exercise all other remedies available to Landlord at law or in equity, including, without limitation, injunctive relief of all varieties.

(b) In the event Landlord elects to re-enter or take possession of the Premises after Tenant's Default, Tenant hereby waives notice of such re-entry or repossession and of Landlord's intent to re-enter or retake possession. Landlord may, without prejudice to any other remedy which Landlord may have, expel or remove Tenant and any other person who may be occupying said Premises or any part thereof. All of Landlord's remedies shall be cumulative and not exclusive. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of Default shall not be deemed or construed to constitute a waiver of such Default.

(c) In the event that Landlord elects to terminate this Lease, then, notwithstanding such termination, Tenant shall be liable for and shall pay to Landlord the sum of all Base Rent and Additional Rent accrued to the date of such termination, plus, as damages, an amount equal to the total of (i) the reasonable and documented out-of-pocket costs of recovering possession of the Premises, (ii) the reasonable out-of-pocket costs of removing and storing Tenant's and any other occupant's (except a permitted sublessee's) property located therein, (iii) the reasonable and documented out-of-pocket costs of repairs to the Premises, accruing only during the period in which Tenant occupied the Premises, whether accomplished in one or more steps or phases, and (iv) the reasonable and documented out-of-pocket costs of collecting any of the foregoing amounts from Tenant.

Notwithstanding the foregoing, Landlord shall be obligated to mitigate all damages and costs resulting from the termination of this Lease.

(d) In the event that Landlord elects to take possession of the Premises and terminate Tenant's right to occupy the Premises without terminating this Lease, Tenant shall remain liable, and shall pay to Landlord on demand, any deficiency between (i) the Base Rent and Additional Rent due under this Lease for the remainder of the Term of this Lease, and (ii) rents, if any, which Landlord is able to collect from another tenant for the Premises during the remainder of the Term of this Lease (the "Rental Deficiency"). In addition, Tenant shall be liable for and shall pay to Landlord, on demand, an amount equal to (i) the reasonable and documented out-of-pocket costs of recovering possession of the Premises, (ii) the reasonable and documented out-of-pocket costs of removing and storing Tenant's and any other occupant's (except a permitted sublessee's) property located therein, (iii) the reasonable and documented out-of-pocket costs of reletting the Premises (including, without limitation, brokerage commissions) as Landlord reasonably deems necessary, (iv) the reasonable and documented out-of-pocket costs of repairs to the Premises accruing only during the period in which Tenant occupied the Premises, whether accomplished in one or more steps or phases, and (v) the reasonable and documented out-of-pocket costs of collecting any of the foregoing amounts from the Tenant. Notwithstanding the foregoing, Landlord shall be obligated to mitigate all damages and costs resulting from any actions taken under this Section 18.2(d). Landlord may file suit to recover any sums falling due under the terms hereof from time to time, and no delivery to or recovery by Landlord of any portion of the sums due Landlord hereunder shall be any defense in any action to recover any amount not theretofore reduced to judgment in favor of Landlord. Any sums received by Landlord through reletting shall reduce the sums owing by Tenant to Landlord hereunder, but in no event shall Tenant be entitled to any excess of any sums obtained by reletting over and above the Base Rent and Additional Rent. For the purpose of such reletting, Landlord is authorized to decorate or to make any repairs, changes, alterations, or additions in and to the Premises that Landlord may deem necessary or advisable, acting reasonably and in good faith. No reletting shall be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord at any time thereafter may elect to terminate this Lease for Tenant's previous Default if such Default has not been cured. In the alternative, Landlord may elect to terminate Tenant's right to occupy and possess the Premises and to immediately recover as damages, in lieu of the Rental Deficiency, a sum equal to the difference between (i) the total Base Rent due under this Lease for the remainder of the Term of this Lease, and (ii) the then fair market net rental value (excluding taxes, assessments, Impositions and all other items constituting Additional Rent hereunder) of the Premises during such period, discounted to present value at a rate equal to ten percent (10%) ("Discounted Future Rent"). In such event, if Landlord (having no obligation to do so) relets the Premises, Landlord shall have no responsibility to apply any rentals received by Landlord as a result of any such reletting to Tenant's obligations hereunder; and the aggregate amount of all damages due to Landlord, including the Discounted Future Rent hereunder, shall be immediately due and payable by Tenant to Landlord upon demand. In the event of a Default on the part of Tenant hereunder, Tenant shall no longer have any right, title or interest in any funds then held by Landlord pursuant to the terms of this Lease.

(e) This Article shall be enforceable to the maximum extent not prohibited by applicable law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion. No act or thing done by Landlord or Landlord's agents during the Term of this Lease shall be deemed an acceptance of an attempted surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless made in writing and signed by Landlord. No re-entry or taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such termination is given to Tenant.

(f) Damages under this Section 18.2 shall include, without limitation, the following:

(i) all lost rentals,

(ii) all reasonable and documented legal expenses and other related reasonable and documented out-of-pocket costs incurred by the Landlord following Tenant's Default,

(iii) all reasonable and documented out-of-pocket costs incurred by Landlord in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting, even if such remodeling, renovation or other preparation is done solely for the purpose of showing the Premises to prospective tenants,

(iv) all reasonable and documented out-of-pocket costs incurred by Landlord in reletting the Premises, including, without limitation, any brokerage commissions and the value of Landlord's time, and

(v) all reasonable and documented out-of-pocket attorneys' fees and expenses incurred in connection with Tenant's Default under this Article.

18.3 If Landlord shall enter into and repossess the Premises by reason of the Default of Tenant in the performance of any of the terms, covenants or conditions herein contained, then in that event Tenant hereby covenants and agrees that Tenant shall not claim the right to redeem or re-enter the Premises or restore the operation of this Lease, and Tenant hereby waives any right to such redemption and re-entry under any present or future law, and does hereby further, for any party claiming through or under Tenant, expressly waive its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Tenant shall have been in Default under any of the covenants of this Lease, and to claim any subrogation to the rights of Tenant under this Lease, or any of the covenants thereof, by reason of such payment.

18.4 Any action taken by Landlord under this Article shall not operate as a waiver of any right which Landlord would otherwise have against Tenant for Base Rent or Additional Rent hereby reserved or otherwise, and Tenant shall remain responsible to Landlord for any loss and damage suffered by Landlord by reason of Tenant's Default or breach. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

18.5 No receipt of monies by Landlord from Tenant after the termination or cancellation of this Lease in any lawful manner shall reinstate, continue or extend the Term of this Lease, or affect any notice given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Base Rent or Additional Rent then due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper suit, action, proceeding or remedy: it being agreed that, after the service of notice to terminate or cancel this Lease, or the commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any monies due, without in any manner affecting such notice, proceeding, suit, action, order or judgment; and any and all such monies collected shall be deemed to be payment on account of the use and occupation or Tenant's liability hereunder.

18.6 The failure of Landlord to insist in any one or more instances upon a strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such a covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by Landlord of Base Rent or Additional Rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Landlord.

18.7 All the rights and remedies herein given to Landlord for the recovery of the Premises because of the Default by Tenant in the payment of any sums which may be payable pursuant to the terms of this Lease, or the right to re-enter and take possession of the Premises upon the happening of any event of Default, or the right to maintain any action for rent or damages and all other rights and remedies allowed at law or in equity, are hereby reserved and conferred upon Landlord as distinct, separate and cumulative rights and remedies, and no one of them, whether exercised by Landlord or not, shall be deemed to be in exclusion of any of the others.

18.8 Any rights provided to Landlord pursuant to this Section 18, including the right to give notice of, or exercise rights in the event of, any default hereunder shall, where the Landlord is constituted of more than one person or entity, be subject to the rights and limitations on any such one or more constituent entities or persons by any applicable instruments governing their respective rights in and to the Premises and the Master Lease, including, but not limited to, any tenants in common agreement by and between the owners. The foregoing notwithstanding, the parties hereto acknowledge and agree that the rights under the Lease, including, by way of illustration, this Article 18 to provide notice to Tenant of any Default and to exercise any remedies in the event of any such Default by Tenant may be exercised by Landlord upon the approval of at least a 66.67% majority of the constituent tenants in common that at any time constitute Landlord.

ARTICLE XIX EARLY TERMINATION; CONSENTS

19.1 Upon the termination of the Consulting Agreement between Landlord and Cabot Investment Properties, LLC of the same date herewith or at any time after the tenth anniversary of the Commencement Date, the Tenant shall have the right to terminate this Lease, in its sole discretion, with or without cause, upon 90 days notice to the Landlord given in accordance with Section 24.7 of this Lease; provided it obtains approvals required under the Permitted Mortgage for such termination.

19.2 Notwithstanding the foregoing, except as set forth in Section 21.1 below, upon the sale of the Property (which sale may be subject to Lender's prior consent as provided in the Permitted Mortgage), this Lease shall automatically terminate and expire without prior notice.

19.3 The prior written approval of Tenant shall be required in connection with any amendments to or modification of the Permitted Mortgage and any new financing relating to the Premises.

ARTICLE XX HAZARDOUS SUBSTANCES

20.1 Tenant hereby represents, warrants, covenants and agrees to and with Landlord that all operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, by Tenant, and any tenant, subtenant or occupant of the Premises, or any portion thereof, shall throughout the Term of this Lease be in all respects in compliance with all existing and future federal, state and local laws and regulations governing, or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal of any hazardous or toxic substances, materials or wastes ("Hazardous Substances"), including, but not limited to, those substances, materials, or wastes now or hereafter listed in the United States Department of Transportation Hazardous Materials Table at Section 49 CFR 172.101 or by the Environmental Protection Agency in Section 40 CFR Part 332 and amendments thereto, or such substances, materials or wastes otherwise now or hereafter regulated under any applicable federal, state or local law.

20.2 For the purposes of this Article, "PCB" shall include all substances included under the definition of PCB in 40 CFR Section 761.3. Tenant hereby represents, warrants, covenants and agrees to and with Landlord that, to the best of Tenant's knowledge, (i) there is not present upon the Premises, or any portion thereof, or contained in any transformers or other equipment thereon, any PCB's, and (ii) Tenant shall throughout the Term of this Lease not permit to be present upon the Premises, or any portion thereof, or contained in any transformers or other equipment thereon, any PCB's.

20.3 Tenant hereby represents, warrants, covenants and agrees to and with Landlord that, to the best of Tenant's knowledge and except as disclosed in writing to Landlord prior to the date hereof, (i) there is not present upon the Premises, or any portion thereof, any asbestos or any structures, fixtures, equipment or other objects or materials containing asbestos, and (ii) Tenant shall throughout the Term of this Lease not permit to be present upon the Premises, or any portion thereof, any asbestos or any structures, fixtures, equipment or other objects or Materials containing asbestos.

20.4 Tenant agrees to indemnify, protect, defend (with counsel approved by Landlord) and hold Landlord, and the directors, officers, shareholders, partners, members, employees and agents of Landlord, harmless from and against any and all claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including, without limitation, informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including, without limitation, sums paid in settlement of claims), losses, including, without limitation, reasonable attorneys' fees and expenses (including, without limitation, any such fees and expenses incurred in enforcing this Lease or collecting any sums due hereunder), consultant fees and expert fees, together with all other costs and expenses of any kind or nature (collectively, the "Costs") that arise directly or indirectly from or in connection with the presence or release of any Hazardous Substances in or into the air, soil, surface water, groundwater or soil vapor at, on, under, over or within the Premises, or any portion thereof from and after the Commencement Date and otherwise during the Term. In the event Landlord shall suffer or incur any such Costs, Tenant shall pay to Landlord the total of all such Costs suffered or incurred by Landlord upon demand therefor by Landlord. Without limiting the generality of the foregoing, the indemnification provided by this Section shall specifically cover all Costs, including, without limitation, capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any clean-up, containment, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any nongovernmental entity or person because of the presence or release of any Hazardous Substances in or into the air, soil, groundwater, surface water or soil vapor at, on, under, over or within the Premises (or any portion thereof), as well as any claims of third parties for loss or damage due to such Hazardous Substances. In addition, the indemnification provided by this Section shall include, without limitation, all liability, loss and damage sustained by Landlord due to any Hazardous Substances that migrates, flows, percolates, diffuses or in any way moves onto, into or under the air, soil, groundwater, surface water or soil vapor at, on, under, over or within the Premises (or any portion thereof) after the date of this Lease, provided, however, that the provisions of this Section shall not apply to Costs associated with the release, discharge, disposal, dumping, spilling or leaking onto the Premises of Hazardous Substances occurring (i) as a result of the negligence or willful misconduct of any or all of Landlord and its agents, contractors, employees, officers or directors, (ii) at any time when Landlord or its agent is in control, or has taken possession of, the Premises or (iii) after the expiration of this Lease (collectively, "Landlord Costs"). Landlord agrees to indemnify, protect, defend (with counsel approved by Tenant) and hold Tenant. and the directors, officers, shareholders, partners, members, employees and agents of Tenant, harmless from and against any and all Landlord Costs.

20.5 In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively the "Remedial Work") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity, Tenant shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement. All Remedial Work shall be performed by one or more contractors all of whom shall have all necessary licenses and expertise to perform such work. The contractor or contractors (selected by Tenant) shall perform the Remedial Work under the supervision of an environmental consulting engineer, selected by Tenant and approved in advance in writing by Landlord. All costs and expenses of such Remedial Work shall be paid by Tenant to the extent arising during the Term or from facts occurring during the Term or, if otherwise, by Landlord, including, without limitation, the charges of such contractor(s) and/or the environmental consulting engineer (excluding specifically, however, Landlord's attorneys' fees and expenses incurred in connection with monitoring or review of such Remedial Work). In the event Tenant shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Landlord may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall be Costs within the meaning this Article. All such Costs shall be due and payable upon demand therefor by Landlord.

20.6 Landlord reserves the right, to be exercised from time to time during the Term of this Lease, to inspect or cause Landlord's contractors and/or environmental consulting engineers to inspect the Premises in order to confirm that no Hazardous Substances are located on, in or under any portion of the Premises, provided, however, that Landlord or its contractor or engineer, as applicable, shall have provided evidence of insurance satisfactory to Tenant with respect to any actions taken on the Premises. The fees and expenses incurred by Landlord with respect to said inspections shall be paid by Landlord. If any Hazardous Substances are discovered by said inspection to be located on, in or under the Premises, Tenant shall, at Tenant's sole cost and expense if they arise during the Term or from facts occurring during the Term or otherwise at Landlord's sole cost and expense, (and in addition to Tenant's other obligations and liabilities under this Article): (i) forthwith have all such Hazardous Substances removed from the Premises if and to the extent required by applicable laws, ordinances, rules and regulations, (ii) dispose of all Hazardous Substances so required to be removed in accordance with all applicable laws, ordinances, rules and regulations, and (iii) restore the Premises, provided, however, that the provisions of this Section shall not apply to release, discharge, disposal, dumping, spilling or leaking onto the Premises of Hazardous Substances occurring (i) as a result of the negligence or willful misconduct of any or all of Landlord and its agents, contractors, employees, officers or directors, (ii) at any time when Landlord or its agent is in control, or has taken possession of, the Premises or (iii) after the expiration of this Lease, all of which shall be the responsibility of Landlord. Nothing contained in this Section 20.6 shall be deemed or construed to amend, modify or replace any other obligation of Tenant set forth in this Article XX.

20.7 Each of the covenants, agreements, obligations, representations and warranties of Tenant set forth in this Article shall survive the expiration or sooner termination of this Lease.

ARTICLE XXI SUBORDINATION

21.1 Tenant agrees that this Lease shall be subject and subordinate at all times to the lien of the Permitted Mortgage. In the event that the holder of the Permitted Mortgage forecloses the Landlord's interest in the Premises or accepts a deed in lieu of foreclosure from Landlord as a result of Landlord's default, this Lease shall, at such holder's election, be terminated and Tenant shall not be deemed to, or have any right to, attorn to the holder of the Permitted Mortgage.

21.2 Tenant agrees to notify all lessees under Subleases and all lessees under Existing Leases that Tenant has assigned its rights under the Existing Leases and Subleases to the Lender. In such notification, Tenant shall direct the lessees to make their respective lease payments into the lock box established by Landlord and Tenant for the benefit of the Lender.

ARTICLE XXII WAIVER OF JURY TRIAL

22.1 Landlord and Tenant hereby each waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of said Premises, or any claim or injury or damage (to the extent such waiver is enforceable by law in such circumstance), and any emergency statutory or any other statutory remedy.

ARTICLE XXIII FEES

23.1 Loan Fee. Tenant or an affiliate shall receive a loan fee (the "Loan Fee") in the amount of one percent (1%) of the principal amount of all loans obtained for the Premises by Tenant during the Term of this Lease. Tenant or an affiliate shall pay any loan brokers or other parties (other than the Lender) who assist in such financings. The Loan Fee shall be paid when the new financing has closed escrow.

23.2 Transfer Fee and Reimbursement. In the event the owner of any entity which is an owner of the Premises and is part of the collective term "Landlord" desires to transfer the ownership interest in such entity, the transferring owner shall pay a transfer fee in the amount of $3,500 to Tenant or its affiliate and in addition shall reimburse Tenant or its affiliate for all actual costs incurred by Tenant or its affiliate in connection with such transfer.

23.3 Appearance Fee. In addition to out of pocket expenses, Tenant shall receive an appearance fee equal to $3,750 for each unlawful detainer or tax abatement appearance and each small claims court action appearance to collect rents under any Existing Leases or subleases with respect to the Premises.

ARTICLE XXIV GENERAL PROVISIONS

24.1 (a) This Lease shall not be affected by any laws, ordinances or regulations, whether federal, state, county, city, municipal or otherwise, which may be enacted or become effective from and after the date of this Lease affecting or regulating or attempting to affect or regulate the Base Rent or Additional Rent herein reserved or continuing in occupancy the Tenant or any sublessees or assignees of the Tenant's interest in the Premises beyond the dates of termination of their respective leases, or otherwise.

(b) The Table of Contents and title headings are inserted for convenience only, and do not define or limit, and shall not be used to construe, any Article or section to which they relate.

24.2 The acceptance by Landlord of a check or checks drawn by others than Tenant shall in no way affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment of this Lease or any sublease of all or a part of the premises not consented to by Landlord or an approval of Tenant not complying with any covenant of this Lease.

24.3 This Lease (including the attached Exhibits) contains the entire agreement between the parties regarding the subject matter hereof, and any agreement hereafter made shall not operate to change, modify or discharge this Lease in whole or in part unless such agreement is in writing and signed by the party sought to be charged therewith.

24.4 Tenant agrees, in consideration of the Landlord's commitment to enter into this Lease, and the grant of the related rights to Tenant hereunder, to execute, and subject certain of its assets to, the loan documents securing the Permitted Mortgage for purposes of securing the Permitted Mortgage. Landlord and Tenant agree that Tenant shall subject its assets, as described in the applicable loan documents, to any of the foreclosure rights held by the Lender under the Permitted Mortgage arising in, from and under such loan documents (including but not limited to any Deed of Trust, Assignment of Leases, Security Agreement and Fixture Filing and any Assignment of Leases and Rents), whether or not such foreclosure arises from any default caused by Tenant's actions or inactions, it being the express understanding of Landlord and Tenant, after due negotiation, to have Tenant's assets subjected to the rights of Lender under such loan documents for all purposes. In furtherance of the foregoing, Tenant acknowledges and agrees, and further consents to, the assignment by Landlord of Landlord's interest in and to the Lease pursuant to the loan documents, including the rights of Landlord to enforce the provisions of this Section.

24.5 Landlord and Tenant shall each, without charge, at any time and from time to time, promptly after request by the other party or by Lender, certify by written instrument, duly executed, acknowledged and delivered, to the other party or any person, firm or corporation specified by the other party:

(a) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;

(b) whether or not there are then existing any set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications thereof upon the part of Tenant to be performed or complied with, and, if so, specifying the same;

(c) the dates, if any, to which the Base Rent and any Additional Rent and other charges hereunder have been paid; and

(d) the Base Rent and the current assessed Additional Rent.

24.6 The term "Landlord" as used in this Lease means only the party(ies) that have executed this Lease as landlord as of the date hereof and such other tenants in common or other owners of the Premises allowed by the Permitted Mortgage and who become parties to the Tenants in Common Agreement. So long as this Lease survives any such transfer and the Tenants rights and obligations hereunder are not materially adversely affected (or the Lease is terminated pursuant to Section 19.1), Landlord may, subject to any other restrictions under applicable law or other agreements governing the interests of the owners, sell, assign, mortgage or otherwise encumber, convey or transfer its fee interest in the Premises or some or all of its interest in this Lease during the term of this Lease; provided that such assignee shall execute and deliver this Lease and agree to be bound by the terms hereof (and/or execute and deliver an instrument providing for an assignment and assumption to this effect). Neither Landlord nor any member or manager of Landlord or any entity constituting Landlord shall effectuate or permit a sale, transfer, assignment or pledge of any interest in Landlord or in such entity constituting Landlord other than as may be permitted by the Permitted Mortgage.

24.7 Any notice, demand, request or other communication which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to Landlord and Tenant as follows:

Landlord: c/o Cabot Turfway Ridge Acquisition LLC
55 Fifth Avenue, 13th Floor
New York, NY 10003
Attention: Timothy J. Kroll

Phone Number: 646-367-5400
Fax Number: 646-367-5401

and to each of the other parties or persons constituting Landlord at the addresses listed with their signature on the signature page hereof, as may be amended from time to time to reflect assignments of this Lease to additional persons or entities constituting Landlord.

Tenant:

Cabot Turfway Ridge LeaseCo LLC
55 Fifth Avenue, 13th Floor
New York, NY 10003
Attention: Timothy J. Kroll
Phone Number: 646-367-5400
Fax Number: 646-367-5401

With a copy to its attorney:

Nixon Peabody LLP
c/o Justine Wilcox
401 9th Street, N.W., Suite 900
Washington, DC 20004
United States of America
Phone: 202-585-8745
Fax: 202-585-8080
jwilcox@nixonpeabody.com

Notices shall be deemed properly delivered and received (i) the same day when personally delivered; (ii) one business day after timely deposit for delivery the next business day with Federal Express or another nationally recognized commercial overnight courier, charges prepaid; (iii) the same day when sent by confirmed facsimile; or (iv) three business days after deposit in the United States mail, by registered mail, return receipt requested, postage prepaid. Any party may change its address for delivery of notices by properly notifying the others pursuant to this Section 24.7. The parties hereto hereby authorize their respective attorneys to give notices on their behalf.

24.8 Tenant, upon paying the Base Rent and Additional Rent due hereunder and performing the other terms, provisions and covenants of this Lease on Tenant's part to be performed, shall, and may, at all times during the Term of this Lease peaceably and quietly have, hold and enjoy the Premises, subject to the terms hereof, free of molestation by the Landlord.

24.9 In the event of a merger, consolidation, acquisition, sale or other disposition involving Tenant or all or substantially all the assets of Tenant to one or more other entities, in addition to the other requirements set forth in this Lease, the surviving entity or transferee of assets, as the case may be, shall: (i) be formed and existing under the laws of a state, district or commonwealth of the United States of America, and (ii) deliver to Landlord an acknowledged instrument in recordable form assuming all obligations, covenants and responsibilities of Tenant under this Lease and under any instrument executed by Tenant relating to the Premises or this Lease.

24.10 This Lease shall be construed and enforced in accordance with the laws of the State in which the Premises are located and venue with respect to any action to construe or enforce this Lease shall be laid in the State where the Premises are located.

24.11 There shall be no merger of this Lease or Tenant's leasehold estate with the fee estate in the Premises by reason of the fact that the same person acquires or holds, directly or indirectly, this Lease of the leasehold estate or any interest therein as well as any of the fee estate in the Premises. Landlord and Tenant specifically waive and disclaim any merger of the fee and leasehold estates in the Premises, it being their intention to hold separate and independent estates in the Premises pursuant to this Lease.

24.12 This Lease may be executed in two or more counterparts, and all such counterparts shall be deemed to constitute but one and the same instrument.

24.13 Any consent granted by a party under this Lease shall not constitute a waiver of the requirement for consent in subsequent cases. Where Landlord's consent is required, Tenant shall be required to obtain further consent in each subsequent instance as if no consent had been given previously.

24.14 Except as otherwise provided herein in the event of any action or proceeding at law or in equity between Landlord and Tenant including an action or proceeding between Landlord and the trustee or debtor in a proceeding under the Bankruptcy Code to enforce any provision of the Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in such action or proceeding and in any appeal in connection therewith by such prevailing party, whether or not such action, proceeding or appeal is prosecuted to judgment or other final determination, together with all costs of enforcement and/or collection or any judgment or other relief. The term "prevailing party" shall include, without limitation, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment. If such prevailing party shall recover judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and expenses shall be included in and as a part of such judgment, together with all costs of enforcement and/or collection of any judgment or other relief.

24.15 Each provision of this Lease shall be separate and independent and the breach of any provision by Landlord shall not discharge or relieve Tenant from any of Tenant's obligations, except to the extent Tenant has duly performed any such obligations of Tenant. Each provision shall be valid and shall be enforceable to the extent not prohibited by law. If any provision or its application to any persons or circumstance shall be invalid or unenforceable, the remaining provisions, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected. Subject to Section 24.6, all provisions contained in this Lease shall be binding upon, inure to the benefit of, and shall be enforceable by the successors and assigns of Landlord to the same extent as if each such successor and assign were named as a party to this Lease. Subject to Article XVII, all provisions contained in this Lease shall be binding upon the successors and assigns of Tenant and shall inure to the benefit of and be enforceable by the successors and assigns of Tenant, in each case to the same extent as if each such successor and assign were named as a party.

24.16 The relationship of the parties to this Lease is landlord and tenant. Landlord is not a partner or joint venturer with Tenant in any respect or for any purpose in the conduct of Tenant's business or otherwise.

24.17 It is expressly agreed that this Lease shall not be recorded in any public office, however, at Tenant's option, simultaneously with the execution of this Lease, the parties shall execute and acknowledge a memorandum of this Lease (together with any affidavit or other instrument required in connection therewith) which shall be recorded. Within 10 days following the expiration or sooner termination of this Lease, Tenant shall execute and deliver to Landlord an instrument, in recordable form, confirming the termination of this Lease which instrument, at Landlord's option, may be placed of record in the real estate title records in the county in which the Premises are located and the cost of recording such instrument shall be shared equally by Landlord and Tenant. Tenant's obligations under the immediately preceding sentence hereof shall survive the expiration or sooner termination of this Lease.

24.18 Each person executing this Lease on behalf of Landlord does hereby represent and warrant that: (a) each entity, if any, comprising Landlord is duly organized and in good standing in the State of its organization and, if different, qualified to do business and in good standing in the State in which the Premises are located, (b) each entity, if any, comprising Landlord has full lawful right and authority to enter into this Lease and to perform all its obligations hereunder, and (c) each person (and all of the persons if more than one signs) signing this Lease on behalf of Landlord is duly and validly authorized to do so. Tenant may, in its discretion, deduct from the Base Rent, and pay directly to the applicable governmental authorities, any recurring organizational expenses and complete any recurring organizational filings, for and on behalf of the Landlord which are necessary to maintain the organizational existence of the Landlord or any one or more constituent entities constituting Landlord.

24.19 Each person executing this Lease on behalf of Tenant does hereby represent and warrant that: (a) Tenant is duly organized and in good standing in the State of its organization and, if different, qualified to do business and in good standing in the State in which the Premises are located, (b) Tenant has full lawful right and authority to enter into this Lease and to perform all of its obligations hereunder, and (c) each person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

24.20 Except with respect to a default or breach under Section 24.6, Tenant shall look solely to Landlord's interest in the Premises (including any proceeds from the sale thereof and all insurance proceeds and condemnation awards relating thereto) for the recovery of any judgment against Landlord on account of Landlord's breach of any of Landlord's covenants or obligations under this Lease. Except with respect to a default or breach under Section 24.6, Landlord, and the directors, officers, partners, members, employees and agents of Landlord, shall never have any personal liability for any breach of any covenant or obligation of Landlord under this Lease and no recourse shall be had or be enforceable against the assets of Landlord other than the interest of Landlord in the Premises (including any proceeds from the sale thereof and all insurance proceeds and condemnation awards relating thereto) for payment of any sums due to Tenant or enforcement of any other relief based upon any claim made by Tenant for breach of any of Landlord's covenants or obligations under this Lease. Tenant's right to recover for a breach or default under Section 24.6 shall not be limited or restricted in any way and, with respect to any such breach or default under Section 24.6, Tenant shall have the right to pursue any and all remedies available to Tenant against Landlord or its members and managers.

24.21 On or around 45 days following each calendar quarter during the Term of this Lease, Tenant shall deliver to Landlord (i) an operating statement with respect to the Premises for such quarter, (ii) a rent roll as of the last day of such quarter setting forth each sublease of the Premises, the rent payable under each such sublease and the expiration date of each such sublease, (iii) a report describing any structural alterations that have been made to the Premises during such quarter, and (iv) a current list of all persons or parties that, to Tenant's best knowledge, constitute Landlord under this Lease. Tenant shall also provide to Landlord such other reports with respect to the Premises as may be required under the Permitted Mortgage. Except as otherwise required pursuant to the Permitted Mortgage, Landlord agrees that any information provided to it pursuant to this Section shall remain confidential and shall not, except as otherwise required by applicable law or judicial order, be disclosed to anyone except (i) Landlord's employees, attorneys and financial consultants (ii) any potential purchasers of the Premises or an undivided tenant in common interest in the Premises, (iii) any potential Lender associated with any possible refinancing of the loan secured by the Permitted Mortgage, and (iv) to the extent required under the Permitted Mortgage, to the holder of the Permitted Mortgage.

24.22 Subordination. Landlord has executed and delivered, or may hereafter from time to time execute and deliver, a Permitted Mortgage. This Lease and Tenant's interest in this Lease shall be subordinate to the Permitted Mortgage, and to any and all advances made thereunder and to the interest thereon, and to all renewals, replacements, supplements, amendments, modifications and extensions thereof unless Lender elects to make certain of Tenant's rights and interest in this Lease superior thereto; and Tenant will promptly execute and deliver such agreement or agreements as may be reasonably required by the Lender. Tenant covenants it will not subordinate this Lease to any mortgage or trust deed other than the Permitted Mortgage without the prior written consent of the Lender.

24.23 Liability of Lender; Attornment. It is further agreed that (a) if any Permitted Mortgage shall be foreclosed, (i) the Lender (or its grantees) or purchaser at any foreclosure sale (or grantee in a deed in lieu of foreclosure), as the case may be, shall not be (x) liable for any act or omission of any prior landlord (including Landlord), (y) subject to any offsets or counterclaims which Tenant may have against a prior landlord (including Landlord), or (z) bound by any prepayment of Rent which Tenant may have made in excess of the amounts then due for the next succeeding month; (ii) the liability of the Lender or the purchaser at such foreclosure sale or the liability of a subsequent owner designated as Landlord under this Lease shall exist only so long as the Lender, purchaser or owner is the owner of the Premises, and such liability shall not continue or survive after further transfer of ownership; (iii) upon request of the Lender, if the Permitted Mortgage shall be foreclosed, Tenant will attorn, as Tenant under this Lease, to the purchaser at any foreclosure sale under any Permitted Mortgage, and Tenant will execute such instruments as may be necessary or appropriate to evidence such attornment; and (b) this Lease may not be modified or amended so as to reduce the Rent or shorten the Term provided hereunder, so as to change or eliminate any provision of Sections 24.22, 24.23, 24.24, 24.25, 24.26, 24.27, 24.28, 24.29 and 24.30, or so as to otherwise adversely affect any rights of Lender under this Lease or with respect hereto, or so as to adversely affect in any other respect to any material extent the rights of Landlord or Tenant, nor shall this Lease be cancelled or surrendered, without the prior written consent, in each instance, of the Lender.

24.24 Modification Required by Lender. Should any Lender require a modification or modifications of this Lease, which modification or modifications will not cause an increased cost or expense to Landlord or Tenant or in any other way materially change the rights and obligations of Landlord or Tenant hereunder, Landlord and Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are required therefor and deliver the same to Landlord within ten (10) days following the request therefor.

24.25 Lender Protection. Tenant agrees to give Lender, by registered or certified mail, a copy of any notice or claim of a breach of this Lease served upon Landlord by Tenant, provided that prior to such notice Tenant has been notified in writing (by way of service on Tenant of a copy of an assignment of Landlord's interests in leases, or otherwise) of the address of the Lender. Tenant further agrees that if Landlord shall have failed to cure such breach within twenty (20) days after such notice to Landlord (or if such breach cannot be cured or corrected within that time, then such additional time as may be necessary if Landlord has commenced within such twenty (20) days and is diligently pursuing the remedies or steps necessary to cure or correct such breach), then the Lender shall have an additional thirty (30) days within which to cure or correct such breach (or if such breach cannot be cured or corrected within that time, then such additional time as may be necessary if the Lender has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such breach, including the time necessary to obtain possession if possession is necessary to cure or correct such breach).

24.26 Estoppel Certificate. Tenant agrees that, from time to time upon not less than ten (10) days' prior request by Landlord or the Lender, Tenant (or any permitted assignee, subtenant, licensee, concessionaire or other occupant of the Premises claiming by, through or under Tenant) will deliver to Landlord, or to the Lender, a statement in writing signed by Tenant certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and identifying the modifications); (ii) the date upon which Tenant began paying Rent and the dates to which the Rent and other charges have been paid; (iii) that Landlord has not breached any provision of this Lease, or, if breach exists , the nature thereof in detail; (iv) that the Premises have been completed in accordance with the terms hereof and Tenant is in occupancy and paying Rent on a current basis with no rental offsets or claims; (v) that there has been no prepayment of Rent other than that provided for in this Lease; (vi) that there are no actions, whether voluntary or otherwise, pending against Tenant under the bankruptcy laws of the United States or any state thereof; and (vii) such other matters as may be required by Landlord or the Lender.

24.27 Communications with Lender. Tenant shall have the right to communicate with the Lender on behalf of the Co-Owners and to handle all day to day administration on behalf of the borrowers under the terms of the Permitted Mortgage. Without limitation of the foregoing, Tenant shall provide to Lender all reports and other information required pursuant to the terms of the Permitted Mortgage and to request Lender's approval for any matters requiring such approval in accordance with the terms of the Permitted Mortgage.

24.28 Notices and Service of Process. Landlord, including each Tenant in Common that hereafter becomes a Landlord, hereby designates Tenant as the party to receive all notices (including but not limited to service of process) on behalf of Landlord pursuant to any documentation entered into with respect to the Premises in accordance with this Lease, including all notices from the Lender pursuant to the terms of the Permitted Mortgage. Upon receipt of such a notice, Tenant shall use commercially reasonable efforts to forward a copy of such notice to each Tenant in Common comprising the Landlord at the last address provided to Tenant by such Tenant in Common for such purpose. Such address may be changed from time to time by a Tenant in Common by a notice given to Tenant in accordance with Section 24.7 hereof.

24.29 Third Party Beneficiary. Lender or any other lender from time to time is hereby expressly intended to be a third party beneficiary of the provisions contained herein.

24.30 Short Form Lease. Should any Lender require execution of a short form of lease for recording (containing the names of the parties, a description of the Premises and the Term) or a certification from Tenant concerning this Lease in such form as may be required by a Lender, Tenant agrees to promptly execute such short form of lease or certificate and deliver the same to Landlord within ten (10) days following the request therefore;

provided, however, that neither Landlord nor Tenant shall be liable for or otherwise be required to pay any recording costs, fees or taxes other than minimal instrument and per page charges.

IN WITNESS WHEREOF, Tenant and Landlord have hereunto set their respective hands the day and year first above written.

TENANT:

Cabot Turfway Ridge LeaseCo LLC,
a Delaware limited liability company

By: Cabot Investment Properties, LLC,
its Manager

By:______________________________
Name: Carlton P. Cabot
Title: President

LANDLORD:

CABOT TURFWAY RIDGE 1 LLC

[SIGNATURE PAGES ATTACHED]

LANDLORD:

Cabot Turfway Ridge Acquisition LLC,
as Vice President of each of the foregoing limited liability companies

By: ______________________________
Name: Carlton P. Cabot
Title: President

<u>ANNEX I</u>

CABOT TURFWAY RIDGE 1 LLC

<u>EXHIBIT A</u>

PERMITTED EXCEPTIONS

1. As set forth in that certain Title Insurance Policy from Lawyers' Title Insurance Company to be dated the Closing date.

2. Permitted Mortgage

EXHIBIT B

LAND - LEGAL DESCRIPTION

EXHIBIT C

RENT

(a) **Base Rent**

The annual Base Rent for each year of the Term is as follows:

Year	Annual Yield	Annual Payment	Monthly Payment
1-2	7.50%	$881,250	$73,438
3-5	8.00%	$940,000	$78,330
6	8.50%	$998,750	$83,229
7-9	9.00%	$1,057,500	$88,125
10-13	10.00%	$1,175,000	$97,917
14-16	11.00%	$1,292,500	$107,708
17-20	12.00%	$1,410,000	$117,500

Provided, however, that Base Rent shall be adjusted to deduct the expenses incurred by the Tenant for the ongoing maintenance of the single purpose entities relating to the Landlord's ownership of the Property, and all such expenses shall be deducted from the Tenant's next monthly distribution following the date such expenses become due and payable

(b) **Additional Rent**

Additional Rent due under this Lease shall be such amounts:

(i) described as Additional Rent in the body of the Lease (i.e. in Sections 3.2 (Impositions), 8.2 (Landlord's Right to Perform Tenant's Covenants) and 10.2 (Discharge of Liens)); and

(ii) payable to Lender or to the holder of the Permitted Mortgage or other appropriate party under the Permitted Mortgage, including (i) interest and principal payments under the Permitted Mortgage, (ii) ongoing fees and costs under the Permitted Mortgage (other than the fees and costs payable upon the closing of the Permitted Mortgage) and (iii) amounts payable into reserve accounts, as may be required by the Lender from time to time under the Permitted Mortgage, including for taxes, insurance, replacement and tenant improvement/leasing commission reserves, immediate repairs, fixtures, furnishings and equipment.

(c) **Adjustments**

In the event that the amount of the principal and interest components (the "P&I Components") of the Additional Rent (but not the monthly tax and insurance impounds or the monthly reserves components) are increased above the original amount established under the Permitted Mortgage (the "Anticipated P&I"), other than as a result of an event of default caused by the Tenant, the payment of Base Rent due Landlord during such months shall be reduced by a corresponding amount. If the increase in the P&I Components of the Additional Rent arising from other than a default by Tenant exceeds the amount of the corresponding Base Rent installment, any excess shall be payable solely by the Landlord and by its execution of this Lease, Landlord covenants and agrees to pay any such excess to the holder of the loan. Similarly, in the event that the amount of the P&I Components of the Additional Rent is decreased below the Anticipated P&I, the payment of the Base Rent due Landlord during such month shall be increased by a corresponding amount. Tenant shall remain responsible for any increase in, and be entitled to retain for its own account any decrease in, any monthly impound or monthly reserve installments due the Lender under the Permitted Mortgage. Base Rent due Landlord shall be reduced by all Maintenance Fees paid by Tenant on behalf of Landlord pursuant to Section 2.1.

(d) **Reserves and Impounds**

Any excess funds remaining in any reserve or impound established under the Permitted Mortgage shall, upon the satisfaction of the loan secured by the Permitted Mortgage, be divided between Landlord and Tenant as follows: First, any excess funds shall be paid to the Landlord up to a maximum of the sum of (i) the amount of any reserves established, and funded pursuant to, the Permitted Mortgage, (ii) the Leasing and Tenant Improvements, the Capital Costs Reserve and the Tax and Insurance Reserve, and (iii) any other reserve payments made directly by the Landlord thereafter (but excluding monthly reserve payments made by Tenant as part of the Additional Rent) (together, the "Landlord Funded Reserves"); and second, any remaining excess shall be deemed pre-paid rent and be paid to, and retained by, Tenant. In addition, in the event that the Lease is terminated prior to the satisfaction of the loan secured by the Permitted Mortgage, the Landlord shall remit to Tenant an amount equal to the then current balance of such reserves and impounds after first deducting the Landlord Funded Reserves. Tenant shall not be entitled to receive the then current balance of the reserves and impounds in the event that the Lease is terminated as a result of Tenant's default.

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EXHIBIT E

CONSULTING AGREEMENT

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CONSULTING AGREEMENT

This CONSULTING AGREEMENT ("Agreement") is made by and among Cabot Investment Properties, LLC (the "Consultant"), and the parties listed on the signature page hereto (referred to individually as a "Tenant in Common" and collectively as "Tenants in Common").

RECITALS

A. The Tenants in Common have acquired undivided interests (the "Interests") in a 218,223 net rentable square foot, multi-tenant office property situated on 14.57-acres commonly known as "Turfway Ridge", which consists of (i) one five-story, 108,975 square foot office building, situated on 8.06-acres ("Turfway I") and (ii) one five-story, 109,248 square foot office building situated on 6.51 acres ("Turfway II") located at 7300 and 7310 Turfway Road in Florence, Kentucky 41042 (Turfway I and Turfway II, together, the "Property"), that is more completely described in that certain Private Placement Memorandum of Cabot Turfway Ridge Acquisition LLC dated January 9, 2007 (the "Memorandum") and have entered into a Tenants in Common Agreement (the "Tenants in Common Agreement") and into a Call Agreement (the "Call Agreement") with Cabot Turfway Ridge LeaseCo LLC (the "Master Lessee"), both dated as of the same date as this Agreement, which govern the rights and duties among the Tenants in Common in connection with the ownership of the Interests.

B. The Property will be subject to that certain Master Lease (the "Master Lease") between the Master Lessee and the Tenants in Common.

C. The Property will also be subject to a loan (the "Loan") secured by a mortgage encumbering the Property (the "Mortgage") in favor of Wachovia Bank, National Association or its affiliate (together with its successor and assigns, "Lender") (the Mortgage and other documents, agreements and instruments evidencing, securing or delivered to the Lender in connection with the Loan are collectively referred to herein as the "Loan Documents").

D. Pursuant to this Agreement, the Consultant will assist the Tenants in Common in preparing the Property for sale, conducting market research and identifying potential buyers.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. If during the term of the Master Lease, the Tenants in Common determine to sell or exchange the Property, or any portion thereof, the Tenants in Common hereby grant the Consultant the exclusive right for two hundred seventy (270) days to sell the Property on terms acceptable to the Tenants in Common. The Tenants in Common shall notify the Master Lessee and the Consultant in writing of the determination to sell or exchange, which notification shall specify the commencement and termination date of such 270-day exclusive period. If the Property is sold, exchanged or otherwise disposed of as a result of offers received during such 270-day exclusive period, whether the buyer is procured by Consultant, a third-party Consultant or the Tenants in Common, a fee (the "Consulting Fee") shall be paid by the Tenants in Common to the Consultant equal to four percent (4.0%) of the gross sales price. The Consulting Fee shall be paid upon closing escrow on sale of the Property or any portion thereof and only after satisfaction of the Permitted Mortgage (as defined in the Master Lease) or any subsequent refinancing encumbering the Property.

2. Consultant may negotiate with potential purchasers and submit offers to purchase to the Tenants in Common for their approval. If the Property or any portion thereof is sold, exchanged or otherwise disposed of as a result of any such negotiations entered into during the term of this Agreement, Consultant shall be entitled to a fee paid on a pro rata basis by each person or entity comprising Landlord in an amount equal to four percent (4.0%) of the gross sales price.

3. The Consultant shall be responsible for the payment of any third-party consulting or brokerage commissions payable in connection with any sale, exchange or other disposal that is the subject of Section 1 or 2, up to a maximum amount equal to one and a half percent (1.5%) of the gross sales price. The Tenants in Common shall be responsible for third party brokerage or consulting commissions in excess of these amounts.

4. Notwithstanding anything to the contrary contained herein, if the Master Lease is terminated as a result of a default by Master Lessee under the Master Lease, the Consultant shall not be entitled to receive the Consulting Commission.

5. This Agreement, on each anniversary date, shall be subject to renewal with the consent of Tenants in Common owning a majority of the undivided interests in the Property. Sixty (60) days before each such anniversary date, the Consultant shall give written notice to each Tenant in Common of its right to renew or not renew ("Original Notice"). Absent receipt by the Consultant of a written demand not to renew from Tenants in Common holding a majority of the undivided interests in the Property within fifteen (15) days of the Original Notice ("Nonrenewal Demand"), this Agreement shall be deemed renewed until the next anniversary date. If the Consultant receives Non-Renewal Demands from Tenants in Common holding a majority of the undivided interests in the Property within fifteen (15) days of the Original Notice, this Agreement shall terminate on its anniversary date; provided, however, upon such termination, the Master Lessee may terminate the Master Lease in accordance with its terms.

6. Any notice and/or payment to be given by any party to any other party under this Agreement may be delivered in person, or may be sent in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, and addressed to the party for whom intended. Such notice should be provided to the Tenants in Common at the addresses set forth in the Tenants in Common Agreement and to the Master Lessee and the Consultant as indicated below. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given on the third business day after sending by United States mail or on the second business day after sending by overnight delivery service.

If to Master Lessee or Consultant:

c/o Cabot Investment Properties
55 Fifth Avenue, 13th Floor
New York, NY 10003
Phone Number: 646-367-5400
Fax Number: 646-367-5401

With a copy to:

Nixon Peabody LLP
c/o Justine Wilcox
401 9th Street, N.W., Suite 900
Washington, DC 20004
United States of America
Phone: 202-585-8745
Fax: 202-585-8080
jwilcox@nixonpeabody.com

7. General Provisions.

7.1 Binding Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in Boston, Massachusetts, before a sole arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. The arbitrator shall, in the Award, allocate all of the costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail.

7.2. Attorneys' Fees. If any arbitration, action or proceeding is instituted between all or any of the parties to this Agreement arising from or related to or with this Agreement, the prevailing party or parties in such arbitration, action or proceeding shall be entitled to recover from the non-prevailing party or parties all of its or their costs of arbitration, action or proceeding, including, without limitation, attorneys' fees and costs as fixed by the court or arbitrator therein.

7.3. Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless (i) the same is in writing and signed by all the parties to this Agreement and (ii) the consent of the Lender is obtained.

7.4. Governing Law. This Agreement shall be governed by and construed under the internal laws of the State of Kentucky without regard to choice of law rules.

7.5. Headings. The section and other headings contained in this Agreement are for reference purpose only and shall not affect in any way the meaning or interpretation of this Agreement.

7.6. Successors in Interest. All provisions of this Agreement shall inure to the benefit of and shall be binding upon the successor-in-interest, and legal representatives of the parties hereto.

7.7. No Waiver. No act of the Master Lessee or the Consultant shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Master Lessee or the Consultant, as applicable.

7.8. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

7.9. Facsimile Signature. This Agreement may be executed by a party's signature transmitted by facsimile, and copies of this Agreement executed and delivered by means of facsimile signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. The parties may rely upon facsimile signatures as if such signatures were originals. A party executing and delivering this Agreement by facsimile shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature.

7.10. Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

7.11. Subordination; Third Party Beneficiary. This Agreement and all of the terms and provisions hereof shall in all respects be subject to and subordinate to the terms of any loan documents evidencing and secured by a mortgage or deed of trust on the Property (including, without limitation, any restrictions therein with respect to transfers of the Property or any interests in the Property). Any holder of any such mortgage or deed of trust shall be an express third party beneficiary of this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Loan Documents, the terms of the Loan Documents shall prevail and control. The Tenants in Common each agree that they shall not engage in any activity which would violate the terms of any of the Loan Documents.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CABOT INVESTMENT PROPERTIES, LLC

By:____

Carlton P. Cabot
President and Chief Executive Officer

TENANTS IN COMMON:

By: ________________________________
[Printed Name]
Its: ________________________________

EXHIBIT F

ACCESSION AGREEMENT

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ACCESSION AGREEMENT

This ACCESSION AGREEMENT ("Agreement") is made and effective as of the date of recordation hereof, by and between Cabot Turfway Ridge Acquisition LLC, a Delaware limited liability company ("Cabot Acquisition"), and the party listed on Exhibit A attached hereto and incorporated herein ("New Tenant in Common"), with reference to the facts set forth below.

RECITALS

A. The Tenants in Common have acquired undivided interests in a 218,223 net rentable square foot, multi-tenant office property situated on 14.57-acres commonly known as "Turfway Ridge", which consists of (i) one five-story, 108,975 square foot office building, situated on 8.06-acres ("Turfway I") and (ii) one five-story, 109,248 square foot office building situated on 6.51 acres ("Turfway II") located at 7300 and 7310 Turfway Road in Florence, Kentucky 41042 (Turfway I and Turfway II, together, the "Property"), that is more completely described in that certain Private Placement Memorandum of Cabot Turfway Ridge Acquisition LLC dated January 9, 2007 (the "Memorandum") and incorporated herein by this reference.

B. The Tenants in Common have entered into a Master Lease Agreement with Cabot Turfway Ridge LeaseCo LLC (the "Master Lessee"), dated ___________, 2007, which is incorporated herein by this reference (the "Master Lease Agreement"), with respect to the Property. The Tenants in Common have also entered into a Tenants in Common Agreement (the "Tenants in Common Agreement"), a Call Agreement with the Master Lessee (the "Call Agreement") and into a Consulting Agreement with Cabot Investment Properties, LLC ("Consulting Agreement") each dated ____________, 2007 and each of which are incorporated herein by this reference.

C. Concurrently herewith, Cabot Acquisition is conveying to the New Tenant in Common a ______% undivided tenant in common interest in the Property (the "Interest"). Cabot Acquisition desires to assign to the New Tenant in Common, and the New Tenant in Common desires to assume, Cabot Acquisition's rights and obligations under the Tenants in Common Agreement, Call Agreement, Master Lease Agreement and Consulting Agreement (to the extent still in effect).

D. Concurrently herewith, the New Tenant in Common is executing loan assumption agreements with Wachovia Securities or its affiliate (the "Lender").

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. Assignment and Assumption. The New Tenant in Common acknowledges that it has been given a copy and has reviewed the Tenants in Common Agreement, the Call Agreement, the Master Lease Agreement and the Consulting Agreement (if still in effect) (collectively, the "Operative Agreements") and agrees to be bound by such Operative Agreements. Pursuant to the Operative Agreements, Cabot Acquisition hereby assigns to the New Tenant in Common, and the New Tenant in Common hereby assumes, any and all of Cabot Acquisition's rights and obligations under the Operative Agreements with respect to the Interest, and the New Tenant in Common takes such Interest subject to all of Cabot Acquisition's obligations and liabilities under the Operative Agreements. The parties acknowledge and agree that the New Tenant in Common is a Successor (as defined in the Tenants in Common Agreement) and that the Operative Agreements are binding upon the New Tenant in Common and that the New Tenant in Common is conclusively deemed to have consented and agreed to every restriction, provision, grant of power of attorney and designation as agent, covenant, right and limitation contained in the Operative Agreements, as if the New Tenant in Common was a Tenant in Common initially executing such Operative Agreements.

2. Miscellaneous.

2.1. Entire Agreement. This Agreement, together with the agreements relating to the purchase of the Interest, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

2.2. Governing Law. This Agreement shall be governed by and construed under the internal laws of the State of Kentucky without regard to choice of law rules.

2.3. Binding Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in Boston, Massachusetts, before a sole arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. The arbitrator shall, in the Award, allocate all of the costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail.

2.4. Attorneys' Fees. If any arbitration, action or proceeding is instituted between all or any of the parties to this Agreement arising from or related to or with this Agreement, the prevailing party or parties in such arbitration, action or proceeding shall be entitled to recover from the non-prevailing party or parties all of its or their costs of the arbitration, action or proceeding, including, without limitation, attorneys' fees and costs as fixed by the court or arbitrator therein.

2.5. Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

2.6. Successors and Assigns. All provisions of this Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest, assigns, and legal representatives of the parties hereto.

2.7. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

2.8. Severability. If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

2.9. Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

2.10. Third Party Beneficiaries. The Tenants in Common and the Master Lessee are expressly intended to be third party beneficiaries of this Agreement and will have the right to enforce the obligations of the New Tenant in Common hereunder.

[Signatures Follow On Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CABOT TURFWAY RIDGE LLC,
a Delaware limited liability company
By: Cabot Investment Properties, LLC
its Manager

By:____
Carlton P. Cabot
President and Chief Executive Officer

Tenant(s) in Common:

_________________, LLC,
a Delaware limited liability company

By: ____________________________

EXHIBITS

Exhibit A	New Tenant in Common
Exhibit B	Description of the Property

EXHIBIT A

NEW TENANT IN COMMON

EXHIBIT B

Legal Description of the "Property"

EXHIBIT G

LEASE ABSTRACTS FOR MAJOR TENANTS

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Turfway Ridge Office Park

Premises: Suite 110 and 2nd floor of 7310 Turfway Road, Florence, Kentucky

Lease Summary

Landlord:	BH Turfway LLC, a Delaware limited liability company
Tenant:	Central Bank & Trust Co., a Kentucky banking corporation Tenant is not a Tax-Exempt Entity.
Date of Lease:	October 12, 2005 (Sec. 1.1(a))
The Premises:	Approximately 5,733 rsf of space located at Suite 110 on the first floor of 7310 Turfway Road, Florence, Kentucky (the "Building") and approximately 20,725 rsf of space comprising all of the second floor of the Building. (Sec. 1.1(d))
Permitted Use:	For a retail banking center, corporate office and all related general office use (Sec. 1.1(f))
Term and Date of Amendments:	Ten years, commencing on the earlier of: (i) the date which is 120 days from the date of execution of the Lease or (ii) the date on which Tenant has commenced operation within the Premises and expiring on the 11th anniversary of the Commencement Date. (Sec. 1.1(g)) No Amendments provided.
Commencement Date:	The earlier of: (i) the date which is 120 days from the date of execution of the Lease or (ii) the date on which Tenant has commenced operations within the Premises. (Sec. 1.1(g))
Rent Commencement Date:	Month 5 of the Term. (Sec. 1.1(h))

Fixed Expiration Date:	11th anniversary of the Commencement Date (1.1(g))
Fixed Payment Date:	On or before the first day of each month (Sec. 3.1)
Options to Extend:	Tenant granted four options to extend the Lease for five years each at market rent, which options are exercisable upon 120 days prior written notice. (Sec. 1.1(g))
Option for Additional Space, Right of First Refusal and similar rights:	Tenant has the right of first refusal to lease available space in the Building. (Sec. 4.4)
Purchase Option for Property:	Lease is silent.
Landlord Option to Put the Property to Tenant:	Lease is silent.
Termination Right:	None, other than termination rights in the event of default, casualty or condemnation.

Base Rent:

Month	Rent/month	Rent/sf	Rent/year
1-4	$0	$0	---
5-24	$31,193.52	$18.75	$374,322.25
25-120	$41,340.63	$18.75	$496,087.50

Base Rent for months 5-24 is partially abated. 10,363 rsf (1/2 of the 2nd floor premises) is charged at a rate sufficient for Landlord to recover applicable Operating Expenses. The remaining 16,095 rsf is charged at the full annual Base Rent per sf. (Sec. 1.1(h))

Percentage Rent/ Additional Rent: Tenant pays its share of Addition Expenses and Addition Taxes as additional rent. (Sec. 3.2)

Tenant does not pay Percentage Rent.

Rent Based on Net Profits or Net Income:	None
Tenant's Share:	24.25% (Sec. 1.1 (i))
Operating Expenses:	Tenant pays its share of increases in Expenses from the Expenses for the calendar year ending December 31, 2005 ("Additional Expenses".
Tenant Improvement Allowance:	Landlord agrees to provide Tenant an allowance in the amount of $24 per rentable square foot of the Premises. (Sec. 7.1(a))
Real Estate Taxes:	Tenant pays its share of increases in Taxes from the Taxes for the calendar year ending December 31, 2005 ("Additional Taxes"). (Sec. 3.2)
Electricity:	The cost of electricity during normal business hours is included in the Expenses. (Sec. 5.1) Tenant pays the cost of meter service and installation of necessary facilities to measure any required excess capacity and pays for the cost of any additional electricity required. (Sec. 5.2(b))
HVAC:	The cost of HVAC during normal business hours is included in the Expenses. (Sec. 5.1) Tenant pays an hourly rate reasonably determined by Landlord for HVAC outside normal business hours. (Sec. 5.2(a))
Security Deposit:	None. (Sec. 1.1(k))
Subordination/ Nondisturbance:	Lease is subject and subordinate to any ground lease, first mortgage or first deed of trust now or later encumbering the Building or Land. Subordination is automatic. (Sec. 17.3)

Insurance:	Landlord shall maintain commercial general liability insurance, all risk or fire insurance, loss of rental income insurance or loss of insurable gross profits and such other insurance as Landlord reasonably elects to obtain or any Lender requires. (Sec. 9.1) Tenant shall maintain commercial general liability insurance, all risk or fire insurance, boiler and machinery insurance (if any boiler or machinery is operated in the Premises), automobile liability insurance with limits of not less than $2,000,000 combined for bodily injury and property damage (if Tenant operates owned, hired or non-owned vehicles on the Land) and worker's compensation and employer's liability insurance. (Sec. 9.2)
Parking:	Tenant has use of pro rata share of unassigned, non-reserved parking spaces in the Building's parking facilities, which shall be 110 spaces (4.15 spaces per 1,000 square feet of the Premises. (Sec. 1.1(o))
Alterations:	Tenant may make alterations so long as the alterations (a) comply with all applicable Laws, (b) are made only with the prior written consent of Landlord, which consent shall not be unreasonably withheld, (c) equal or exceed Building Standards and (d) are carried out only by persons selected by Tenant and approved in writing by Landlord. (Sec. 7.2)
Provisions for Casualty:	If the Premises or the Building are damaged by casualty, Landlord will promptly notify Tenant and if the estimated repair time for damage to the Premises or any other portion of the Building necessary for Tenant's occupancy is longer than 180 days from the date of damage (or 30 days if the damage occurred within the last 12 months of the Term), then either party may terminate the Lease. If the estimated repair time for all damage to the Building is longer than 180 days from the date of damage (or 30 days if the damage occurred within the last 12 months of the Term) or if such damage is not insured against by Landlord's insurance policies, then Landlord may terminate the Lease. (Sec. 10.1) If the Premises or Building are damaged by casualty and neither party terminates the Lease, Landlord will repair the damage with reasonable promptness, but will not be required to spend more for the repairs than the available insurance proceeds. (Sec. 10.2)

	If casualty renders the Premises untenantable and the Lease is not terminated, Rent will abate beginning on the date of such damage and end on the date Landlord has substantially completed the repairs. (Sec. 10.3)
Provisions for Taking:	If all or substantially all of the Building or Premises are taken, the Lease shall terminate as of the date of the taking. (12.1) If only part of the Building or Premises is taken and alteration or reconstruction is not economically justified, Landlord may terminate the Lease. (12.2(a)) If over 20% of the Premises is taken and Landlord is unable to provide Tenant with comparable replacement premises in the Building, Tenant may terminate the Lease if the Premises cannot be operated by Tenant in an economically viable fashion due to such partial taking. (Sec. 12.2(b)) If neither Landlord nor Tenant elects to terminate the Lease upon a partial taking, the Rent will be diminished by an amount allocable to the portion of the Premises which was taken and Landlord will restore and reconstruct the Building and Premises to substantially their former condition (provided, however, that Landlord will not be required to spend an amount in excess of the net amount received as compensation for damages). (Sec. 12.2(d))
Estoppel Certificate:	Tenant shall deliver estoppel certificates to Landlord upon not less than 10 days' prior request. (Sec. 16)
Notices:	All notices must be in writing and shall be deemed received (a) when given, if delivered in person, (b) one business day after deposit with a private courier or overnight delivery service or (c) 2 business days after sent by US certified mail, with return receipt requested and postage prepaid. (Sec. 26)
Assignment/Subletting:	Tenant may not assign or sublet without Landlord's prior written consent. (Sec. 13.1) Any change by Tenant of its legal organization, any transfer of 51% or more of Tenant's assets and any other transfer of interest effecting a change in control of Tenant will be deemed an assignment. (13.6)

Landlord has right to recapture the Premises. (Sec. 13.2)

Landlord is entitled to all excess rents collected by Tenant. (13.5)

Landlord may sell, convey, assign Landlord's interest subject to Tenant's rights under the lease and upon the transfer, Landlord will be relieved of liability under the Lease from and after the effective date of the transfer. (Sec. 17.1 & 17.2)

Miscellaneous: Tenant may use a portion of the paved area of the parking facility servicing the Building as a drive-thru banking facility. (Sec. 20(b))

So long as Tenant is open and operating as a retail banking center, Landlord shall not enter into any new lease for space in the Building which permits another entity to conduct retail/consumer banking services in the Building. (27.2)

Turfway Ridge Office Park

Premises: Suite 510 of 7300 Turfway Road, Florence, Kentucky

Lease Summary

Landlord:	PHL-OPCO, LP, a Delaware limited partnership
Tenant:	Central Leasing (U.S.A.) Inc., a Delaware corporation Tenant is not a Tax-Exempt Entity
Date of Lease:	May 2, 2000 (Sec. 1.1(a))
The Premises:	2,085 square feet of space located at Suite 510, 7300 Turfway Road, Florence, Kentucky (the "Building") (Sec. 1.1(d))
Permitted Use:	For general office use (Sec. 1.1(f))
Term and Date of Amendments:	5 year term (Sec. 1.1(g)) No Amendments provided.
Commencement Date:	June 15, 2000 (Sec. 1.1(g))
Rent Commencement Date:	Commencement Date (Sec. 3.1)
Fixed Expiration Date:	June 30, 2005 (Sec. 1.1(g)) ***No options to extend provided in the Lease and no amendments or other documents were provided indicating the term was extended.***
Fixed Payment Date:	On or before the first day of each month (Sec. 3.1)

Options to Extend:	Lease is silent.
Option for Additional Space, Right of First Refusal and similar rights:	Lease is silent.
Purchase Option for Property:	Lease is silent.
Landlord Option to Put the Property to Tenant:	Lease is silent.
Termination Right:	None, other than termination rights in the event of default, casualty or condemnation. (Sec. 10.1 & 12.2(b))

Fixed Rent:

Lease Years	Rent/Month	Rent/year
6/15/00 – 6/30/03	$3,318.63	$39,823.56
7/1/03 – 6/30/05	$3,561.88	$42,742.56

(Sec. 1.1(h))

Percentage Rent/ Additional Rent:	Tenant pays its share of Additional Expenses and Additional Taxes as additional rent. (Sec. 3.2) Tenant does not pay Percentage Rent.
Rent Based on Net Profits or Net Income:	None
Tenant's Share:	1.92% (Sec. 1.1(i))
Operating Expenses:	Tenant must pay its share of increases in Expenses from the Expenses for the calendar year ending December 31, 2000 ("Additional Expenses"). (Sec. 3.2)

Tenant Improvement Allowance:	None.
Real Estate Taxes:	Tenant must pay its share of annual increases in Taxes from the Taxes for the calendar year ending December 31, 2000 ("Additional Taxes"). (Sec. 3.3)
Electricity:	Expenses include the cost of electricity during normal business hours and in amounts not exceeding the demand the electrical system serving the Premises is designed to provide. (Sec. 5.1(c)) Tenant must pay any costs of meter service and installation of necessary facilities to measure any required excess capacity and pays for the cost of any additional electricity required. (Sec. 5.2(b))
HVAC:	The cost of HVAC during normal business hours is included in Expenses. (Sec. 5.1(b)) Tenant must pay an hourly rate reasonably determined by Landlord for HVAC outside normal business hours. (Sec. 5.2(a))
Security Deposit:	$3,440.25 (Sec. 1.1(k))
Subordination/ Nondisturbance:	Lease is subject and subordinate to any ground lease, first mortgage or first deed of trust now or later encumbering the Building or Land, and all their renewals, modifications, supplements, consolidations and replacements. Subordination is automatic. (Sec. 17.3)
Insurance:	Landlord shall maintain commercial general liability insurance, all risk or fire insurance, loss of rental income insurance or loss of insurable gross profits and such other insurance as Landlord reasonably elects to obtain or any Lender requires. (Sec. 9.1) Tenant shall maintain commercial general liability insurance, all risk or fire insurance, boiler and machinery insurance (if any boiler or machinery is operated in the Premises), automobile liability

insurance with limits of not less than $1,000,000 combined bodily injury and property damages (if Tenant operates owned, hired, or non-owned vehicles on the Land), and worker's compensation and employer's liability insurance. (Sec. 9.2)

Parking:	Tenant has use of its pro rata share of unassigned, non-reserved parking spaces in the Building's parking facilities. (Sec. 1.1(o))
Alterations:	Tenant may make alterations to the Premises so long as alterations (a) comply with all applicable Laws, (b) are made only with Landlord's written consent, which consent shall not be unreasonably withheld , (c) equal or exceed Building Standard, and (d) are carried out only by persons selected by Tenant and approved in writing by Landlord. (Sec. 7.1)
Provisions for Casualty:	If the Premises or Building is damaged by fire or casualty, Landlord shall notify Tenant in writing of necessary estimated time to repair such damage. If the estimated necessary repairs cannot be completed within 180 days from the date of damage or within 30 days if the damage occurred within the last 12 months of the Term, then Tenant may terminate the Lease. If the estimated necessary repairs cannot be completed within 180 days from the date of damage or within 30 days if such damage occurred within the last 12 months of the Term, or if such damage is not insured against by insurance policies, then Landlord may terminate the Lease by written notice. (Sec 10.1) If the Premises of Building are damaged by fire or casualty and neither party terminates the Lease, Landlord will repair the damage with reasonable promptness, but will not be required to spend more for the repairs than the available insurance proceeds. (Sec. 10.2). If fire of casualty renders the Premises untenantable and the Lease is not terminated, Rent will abate beginning on the date of such damage and end on the date Landlord has substantially completed the repairs. (Sec. 10.3)
Provisions for Taking:	If all or substantially all of the Building or Premises are taken, the Lease shall terminate as of the date the condemning authority takes physical possession of the Building or Premises. (Sec. 12.1)

If only part of the Building or Premises is taken and alteration or reconstruction is not economically justified, then Landlord may terminate the Lease. (Sec. 12.2(a))

If over 20% of the Premises is taken and Landlord is unable to provide Tenant with compatible replacement premises, Tenant may terminate the Lease, if the Premises cannot be operated by Tenant in an economically viable fashion. (Sec. 12.2(b))

Estoppel Certificate:	Tenant must deliver estoppel certificates to Landlord upon not less than 10 days' prior request. (Sec. 16)
Notices:	All notices must be in writing will be deemed received (a) when actually given and received, if delivered in person; (b) one business day after deposit with a private courier or overnight delivery service or (c) 2 business days after deposited in the US certified mail, with return receipt requested and postage prepaid. (Sec. 25)
Assignment/Subletting:	Tenant may not assign or sublet without Landlord's prior written consent, except to a wholly-owned subsidiary or parent of Tenant. (Sec. 13.1 & 13.7) Any change by Tenant of its legal organization, any transfer of 51% or more of Tenant's assets and any other transfer of interest effecting a change in control of Tenant will be deemed an assignment. (13.6) Landlord has the right to recapture the Premises. (Sec. 13.2). Landlord is entitled to 50% of the excess rents collected by Tenant. (Sec. 13.5). Landlord may sell, convey, or assign Landlord's interest, subject to Tenant's rights under the Lease and upon the transfer, Landlord will be relieved of liability under the Lease from and after the effective date of the transfer. (Sec. 17.1 & 17.2)

Turfway Ridge Office Park

Premises: Suites 310 and 330 of 7310 Turfway Road, Florence, Kentucky

Lease Summary

Landlord:	BH Turfway LLC, a Delaware limited liability company, successor in interest to PHL-OPCO, LP
Tenant:	DBAdirect, Inc, a Delaware corporation Tenant is not a Tax-Exempt Entity
Date of Lease:	November 1, 1999 (Sec. 1.1(a))
The Premises:	11,168 rsf of space located at Suites 310 and 330, 7310 Turfway Road, Florence, Kentucky (7th Amend., Sec. B.2 & 6th Amend., Sec. 1(e) & 1(f))
Permitted Use:	For general office use (Sec. 1.1(f))
Term and Date of Amendments:	Original term of 5 years (Sec. 1.1(g)) Term extended from March 31, 2005 to June 30, 2009, per 6th Amend., Sec. 2 Seventh Amendment to Office Lease dated September, 2006 Sixth Amendment to Lease dated May 19, 2004 Fifth Amendment to Lease dated May 6, 2002 Fourth Amendment to Lease dated November 27, 2000 Third Amendment to Office Lease dated August 29, 2000 Second Amendment to Office Lease dated August 14, 2000 First Amendment to Office Lease Agreement dated May 1, 2000
Commencement Date:	March 13, 2000 (Occupancy Estoppel Certificate dated March 13, 2000)

Rent Commencement Date:	Commencement Date (Sec.3.1)
Fixed Expiration Date:	June 30, 2009 (6th Amend., Sec. 1(i))
Fixed Payment Date:	On or before the first day of each month (Sec. 3.1)
Options to Extend:	Tenant granted one option to extend the Lease for 5 years at the greater of market rent or $20.09 per square foot, plus an allowance to be determined by Landlord for repainting and recarpeting, which option is exercisable upon at least 180 days prior written notice. (Sec. 27.2) Term extended from March 31, 2005 to June 30, 2009. (6th Amend., Sec. 2)
Option for Additional Space, Right of First Refusal and similar rights:	Lease is silent. Premises was expanded pursuant to the Sixth and Seventh Amendments.
Purchase Option for Property:	Lease is silent.
Landlord Option to Put the Property to Tenant:	Lease is silent.
Termination Right:	So long as Tenant is not in default under the Lease, Tenant shall have the right to terminate the Lease on the last day of a month during Term (provided that no termination shall be effective prior to 6/30/07), which right is exercisable upon 180 days prior written notice and the payment of a termination fee equal to the sum of 4 months Base Rent plus the then unamortized balance of the cost of Leasehold Improvements and brokerage commissions paid by Landlord and amortized over the 60 month Term in equal monthly installments, with an interest factor of 10% per annum. (6th Amend., Sec. 10).

Base Rent:

Month	Rent/month	Rent/sf	Rent/yr
10/1/06 – 6/30/07	$16,286.76	$17.50	$195,440.04
7/1/07 – 6/30/08	$16,752.00	$18.00	$201,024.00
7/1/08 – 6/30/09	$17,217.33	$18.50	$206,607.96

(7th Amend., Sec. B.3)

Percentage Rent/
Additional Rent: Tenant pays its share of Additional Expenses and Additional Taxes as additional rent. (Sec. 3.2)

Tenant does not pay Percentage Rent.

Rent Based on Net Profits
or Net Income: None

Tenant's Share: 10.29% (7th Amend., Sec. B.4)

Operating Expenses: Tenant pays its share of increases in Expenses from the Expenses for the calendar year ending December 31, 2004 ("Additional Expenses").

Tenant Improvement
Allowance: Landlord agreed to provide Tenant an allowance of $70,000 for construction performed in order to expand the Premises pursuant to the Sixth Amendment.

Real Estate Taxes: Tenant pays its share of increases in Taxes from the Taxes for the calendar year ending December 31, 2004 ("Additional Taxes"). (Sec. 3.2)

Electricity: The cost of electricity during normal business hours is included in the Expenses. (Sec. 5.1)

Tenant pays the cost of meter service and installation of necessary facilities to measure any required excess capacity and pays for the cost of any additional electricity required. (Sec. 5.2(b))

HVAC:	The cost of HVAC during normal business hours is included in the Expenses. (Sec. 5.1) Tenant pays an hourly rate reasonably determined by Landlord for HVAC outside normal business hours. (Sec. 5.2(a))
Security Deposit:	$14,677.50 (6th Amend., Sec 7(b))
Subordination/ Nondisturbance:	Lease is subject and subordinate to any ground lease, first mortgage or first deed of trust now or later encumbering the Building or Land. Subordination is automatic. (Sec. 17.3)
Insurance:	Landlord shall maintain commercial general liability insurance, all risk or fire insurance, loss of rental income insurance or loss of insurable gross profits and such other insurance as Landlord reasonably elects to obtain or any Lender requires. (Sec. 9.1) Tenant shall maintain commercial general liability insurance, all risk or fire insurance, boiler and machinery insurance (if any boiler or machinery is operated in the Premises), automobile liability insurance with limits of not less than $1,000,000 combined for bodily injury and property damage (if Tenant operates owned, hired or non-owned vehicles on the Land) and worker's compensation and employer's liability insurance. (Sec. 9.2)
Parking:	Tenant may use its pro rata share of unassigned, non-reserved parking spaces in the Building's parking facilities. (Sec. 1.1(o))
Alterations:	Tenant may make alterations to the Premise so long as the alterations (a) comply with all applicable Laws, (b) are made only with the prior written consent of Landlord, which consent shall not be unreasonably withheld, (c) equal or exceed Building Standards and (d) are carried out only by persons selected by Tenant and approved in writing by Landlord. (Sec. 7.1)

Provisions for Casualty:

If the Premises or the Building are damaged by casualty, Landlord will promptly notify Tenant and if the estimated repair time for damage to the Premises or any other portion of the Building necessary for Tenant's occupancy is longer than 180 days from the date of damage (or 30 days if the damage occurred within the last 12 months of the Term), then Tenant may terminate the Lease. If the estimated repair time for all damage to the Building is longer than 180 days from the date of damage (or 30 days if the damage occurred within the last 12 months of the Term) or if such damage is not insured against by Landlord's insurance policies, then Landlord may terminate the Lease. (Sec. 10.1)

If the Premises or Building are damaged by casualty and neither party terminates the Lease, Landlord will repair the damage with reasonable promptness, but will not be required to spend more for the repairs than the available insurance proceeds. (Sec. 10.2)

If casualty renders the Premises untenantable and the Lease is not terminated, Rent will abate beginning on the date of such damage and ending on the date Landlord has substantially completed the repairs. (Sec. 10.3)

Provisions for Taking:

If all or substantially all of the Building or Premises are taken, the Lease shall terminate as of the date of the taking. (12.1)

If only part of the Building or Premises is taken and alteration or reconstruction is not economically justified, Landlord may terminate the Lease. (12.2(a))

If over 20% of the Premises or Tenant's computer room is taken and Landlord is unable to provide Tenant with comparable replacement premises in the Building, Tenant may terminate the Lease if the Premises cannot be operated by Tenant in an economically viable fashion due to such partial taking. (Sec. 12.2(b))

If neither Landlord nor Tenant elects to terminate the Lease upon a partial taking, rent will be diminished by an amount allocable to the portion of the Premises which was taken and Landlord will restore and reconstruct the Building and Premises to substantially their former condition (provided, however, that Landlord will not be required to spend an amount in excess of the net amount received as compensation for damages). (Sec. 12.2(d))

Estoppel Certificate:	Tenant shall deliver estoppel certificates to Landlord upon not less than 10 days' prior request. (Sec. 16)
Notices:	All notices must be in writing and shall be deemed received (a) when given, if delivered in person, (b) one business day after deposit with a private courier or overnight delivery service or (c) 2 business days after sent by US certified mail, with return receipt requested and postage prepaid. (Sec. 25)
Assignment/Subletting:	Tenant may not assign or sublet without Landlord's prior written consent, except to a wholly-owned subsidiary of Tenant, to the parent of Tenant or to a corporation which is wholly-owned by the parent of Tenant or a subsidiary of Tenant, provided that the net worth of such entity is equal to or greater than that of Tenant. (Sec. 13.1 & 13.7) Any change by Tenant of its legal organization, any transfer of 51% or more of Tenant's assets and any other transfer of interest effecting a change in control of Tenant will be deemed an assignment. (13.6) Landlord has right to recapture the Premises. (Sec. 13.2) Landlord is entitled to 50% of the excess rents collected by Tenant. (13.5) Landlord may sell, convey, assign Landlord's interest subject to Tenant's rights under the lease and upon the transfer, Landlord will be relieved of liability under the Lease from and after the effective date of the transfer. (Sec. 17.1 & 17.2)

Turfway Ridge Office Park

Premises: Suites 410, 420 and 490 of 7310 Turfway Road, Florence, Kentucky

Lease Summary

Landlord:	PHL-OPCO, LP, a Delaware limited partnership
Tenant:	PediaMed Pharmaceuticals, Inc., a Delaware corporation Tenant is not a Tax-Exempt Entity.
Date of Lease:	July 17, 2002 (Sec. 1.1(a))
The Premises:	12,771 rsf of space located at Suites 410, 420 and 490, 7310 Turfway Road, Florence, Kentucky (1st Amend., Sec. 2)
Permitted Use:	General office use (Sec. 1.1(f))
Term and Date of Amendments:	October 14, 2002 – October 31, 2007 (1st Amend., Sec. 3) First Amendment to Lease dated May 21, 2004
Commencement Date:	March 13, 2000 (Occupancy Estoppel Certificate dated March 13, 2000)
Rent Commencement Date:	Commencement Date (Sec. 3.1)
Fixed Expiration Date:	October 31, 2007 (1st Amend., Sec. 3)
Fixed Payment Date:	On or before the first day of each month (Sec. 3.1)

Options to Extend:	Tenant granted two options to extend the Lease for five years each, at a Base Rent equal to 95% of the then-market rental rate, which options are exercisable upon 180 days prior written notice. (Sec. 27.2)
Options to Relocate:	Landlord may, at its own cost and expense and upon at least 90 days prior notice, substitute for the Premises other premises in the Building, provided that the New Premises will be similar to the Premises in area and usable for Tenant's purpose. (Sec. 26.6)
Option for Additional Space, Right of First Refusal and similar rights:	Tenant has the right of first offer to lease space on the fourth floor of the Building. (1st Amend., Sec. 7)
Purchase Option for Property:	Lease is silent.
Landlord Option to Put the Property to Tenant:	Lease is silent.
Termination Right:	None, other than termination rights in the event of default, casualty or condemnation.

Fixed Rent:

Period	Rent/month	Rent/sf
11/1/05 – 10/31/06	$20,220.75	$19.00
11/1/06 – 10/31/07	$20,752.88	$19.50

(1st Amend., Sec. 4(b))

Percentage Rent/ Additional Rent:	Tenant pays its share of Additional Expenses and Additional Taxes as additional rent. (Sec. 3.2) Tenant does not pay Percentage Rent.
Rent Based on Net Profits or Net Income:	None

Tenant's Share:	11.76% (1st Amend., Sec. 5)
Operating Expenses:	Tenant pays its share of increases in Expenses from the Expenses for the calendar year ending December 31, 2002 ("Additional Expenses"). Tenant's share of controllable Additional Expenses shall be limited to the lesser of Tenant's share of actual controllable Additional Expenses for the calendar year or the controllable Additional Expenses for 2003 increased at the rate of 5% per annum for each year since 2003. (Sec. 3.2(d))
Tenant Improvement Allowance:	Landlord agreed to provide Tenant an allowance of up to $115,620.60 for construction performed in order to expand the Premises pursuant to the First Amendment. (1st Amend., Sec. 2)
Real Estate Taxes:	Tenant pays its share of increases in Taxes from the Taxes for the calendar year ending December 31, 2002 ("Additional Taxes"). (Sec. 3.2)
Electricity:	The cost of electricity during normal business hours is included in the Expenses. (Sec. 5.1) Tenant pays the cost of meter service and installation of necessary facilities to measure any required excess capacity and pays for the cost of any additional electricity required. (Sec. 5.2(b))
HVAC:	The cost of HVAC during normal business hours is included in the Expenses. (Sec. 5.1) Tenant pays an hourly rate reasonably determined by Landlord for HVAC outside normal business hours. (Sec. 5.2(a))
Security Deposit/Letter of Credit:	$20,651.50 (1st Amend., Sec 6) Tenant required to obtain a letter of credit in the amount of $86,000, with the opportunity for reduction. (Sec. 27.3)

Subordination/ Nondisturbance:	Lease is subject and subordinate to any ground lease, first mortgage or first deed of trust now or later encumbering the Building or Land. Subordination is automatic. (Sec. 17.3)
Insurance:	Landlord shall maintain commercial general liability insurance, all risk or fire insurance, loss of rental income insurance or loss of insurable gross profits and such other insurance as Landlord reasonably elects to obtain or any Lender requires. (Sec. 9.1) Tenant shall maintain commercial general liability insurance, all risk or fire insurance, boiler and machinery insurance (if any boiler or machinery is operated in the Premises), automobile liability insurance with limits of not less than $1,000,000 combined for bodily injury and property damage (if Tenant operates owned, hired or non-owned vehicles on the Land) and worker's compensation and employer's liability insurance. (Sec. 9.2)
Parking:	Tenant has use of its pro rata share of unassigned, non-reserved parking spaces in the Building's parking facilities, which share is 4 spaces per 1,000 square feet of the Premises. (Sec. 1.1(o))
Alterations:	Tenant may make alterations so long as the alterations (a) comply with all applicable Laws, (b) are made only with the prior written consent of Landlord, which consent shall not be unreasonably withheld, (c) equal or exceed Building Standards and (d) are carried out only by persons selected by Tenant and approved in writing by Landlord. (Sec. 7.1)
Provisions for Casualty:	If the Premises or the Building are damaged by casualty, Landlord will promptly notify Tenant and if the estimated repair time for damage to the Premises or any other portion of the Building necessary for Tenant's occupancy is longer than 180 days from the date of damage (or 30 days if the damage occurred within the last 12 months of the Term), then Tenant may terminate the Lease. If the estimated repair time for all damage to the Building is longer than 180 days from the date of damage (or 30 days if the damage occurred within the last 12 months of the Term) or if such damage is not insured against by Landlord's insurance policies, then Landlord may terminate the Lease. (Sec. 10.1)

If the Premises or Building are damaged by casualty and neither party terminates the Lease, Landlord will repair the damage with reasonable promptness, but will not be required to spend more for the repairs than the available insurance proceeds. (Sec. 10.2)

If casualty renders the Premises untenantable and the Lease is not terminated, Rent will abate beginning on the date of such damage and ending on the date Landlord has substantially completed the repairs. (Sec. 10.3)

Provisions for Taking:	If all or substantially all of the Building or Premises are taken, the Lease shall terminate as of the date of the taking. (12.1) If only part of the Building or Premises is taken and alteration or reconstruction is not economically justified, Landlord may terminate the Lease. (12.2(a)) If over 20% of the Premises or Tenant's computer room is taken and Landlord is unable to provide Tenant with comparable replacement premises in the Building, Tenant may terminate the Lease if the Premises cannot be operated by Tenant in an economically viable fashion due to such partial taking. (Sec. 12.2(b)) If neither Landlord nor Tenant elects to terminate the Lease upon a partial taking, the Rent will be diminished by an amount allocable to the portion of the Premises which was taken and Landlord will restore and reconstruct the Building and Premises to substantially their former condition (provided, however, that Landlord will not be required to spend an amount in excess of the net amount received as compensation for damages). (Sec. 12.2(d))
Estoppel Certificate:	Tenant shall deliver estoppel certificates to Landlord upon not less than 10 days' prior request. (Sec. 16)
Notices:	All notices must be in writing and shall be deemed received (a) when given, if delivered in person, (b) one business day after deposit with a private courier or overnight delivery service or (c) 2 business days after sent by US certified mail, with return receipt requested and postage prepaid. (Sec. 25)

Assignment/Subletting:	Tenant may not assign or sublet without Landlord's prior written consent, except to an affiliate of Tenant. (Sec. 13.1 and 13.7)
	Any change by Tenant of its legal organization, any transfer of 51% or more of Tenant's assets and any other transfer of interest effecting a change in control of Tenant will be deemed an assignment. (13.6)
	Landlord has right to recapture the Premises. (Sec. 13.2)
	Landlord is entitled to 50% of the excess rents collected by Tenant. (13.5)
	Landlord may sell, convey, assign Landlord's interest subject to Tenant's rights under the lease and upon the transfer, Landlord will be relieved of liability under the Lease from and after the effective date of the transfer. (Sec. 17.1 & 17.2)

Turfway Ridge Office Park

Premises: Suites 300 and 500 of 7310 Turfway Road, Florence, Kentucky

Lease Summary

Landlord:	BH Turfway LLC, a Delaware limited liability company, successor in interest to Phoenix Home Life Mutual Insurance Company
Tenant:	Square D Company, a Delaware corporation Tenant is not a Tax-Exempt Entity.
Date of Lease:	February 5, 1996
The Premises:	Approximately 31,956 rsf of space located at Suites 300 and 500, 7310 Turfway Road, Florence, Kentucky (the "Building")
Permitted Use:	For office space. (Lease Schedule)
Term and Date of Amendments:	Original term of 5 years (Lease Schedule) Term extended to November 30, 2002, per 2nd Amend., Sec. 2 Term extended from December 1, 2002 to November 30, 2007, per 4th Amend., Sec. 4 Term extended from November 30, 2007 to March 31, 2011, per 6th Amend., Sec. 2 Seventh Amendment to Lease dated July 31, 2006 Sixth Amendment to Lease dated May 25, 2006 Fifth Amendment to Lease dated October 27, 2005 Fourth Amendment to Lease dated June 28, 2002 Third Amendment to Lease dated September 28, 2000 Second Amendment to Lease dated September 17, 1997 First Amendment to Lease dated January 15, 1997

Commencement Date:	Original Commencement Date of May 1, 1996 Term extended from December 1, 2002 to November 30, 2007, per 4th Amend., Sec. 4 Term extended from November 30, 2007 to March 31, 2011, per 6th Amend., Sec. 2
Rent Commencement Date:	The later of August 1, 1996 or 90 days from occupancy (Lease Schedule)
Fixed Expiration Date:	Original Expiration Date of April 30, 2001 Term extended to November 30, 2002, per 2nd Amend., Sec. 2 Term extended from December 1, 2002 to November 30, 2007, per 4th Amend., Sec. 4 Term extended from November 30, 2007 to March 31, 2011, per 6th Amend., Sec. 2
Fixed Payment Date:	On the first day of each month. (Lease Schedule)
Options to Extend:	Tenant granted two options to extend the Lease for three years at market rent, which options are exercisable upon 180 days prior written notice. (4th Amend., Sec. 8) Term extended from November 30, 2007 to March 31, 2011, per 6th Amend., Sec. 2
Option for Additional Space, Right of First Refusal and similar rights:	Tenant was granted the right to add to the Premises Suites 130, 140 and 330 on or before September 30, 2003. (4th Amend., Sec. 9) During each January and July of the Term (so long as Tenant leases at least 40,000 rsf in the Building), Landlord agrees to give Tenant a written report setting forth the then existing vacancies and

anticipated vacancies for the upcoming 6 month period and lease to Tenant any vacant space in which Tenant expresses an interest. (4th Amend., Sec. 10)

Purchase Option for Property: Lease is silent.

Landlord Option to Put the Property to Tenant: Lease is silent.

Termination Right: None, other than in the event of casualty, condemnation or default.

Base Rent:

Year	Rent/month	Rent/sf	Rent/year
9/3/06 – 11/30/06	$47,268.25	$17.75	$567,219.00
12/1/06 – 11/30/07	$48,679.64	$18.28	$584,155.68
12/1/07 – 11/30/08	$50,144.29	$18.83	$601,731.48
12/1/08 – 11/30/09	$51,662.20	$19.40	$619,946.40
12/1/09 – 3/31/11	$53,206.74	$19.98	$638,480.88

(7th Amend., Sec. 4)

Percentage Rent/ Additional Rent: Tenant pays its share of increases in Operating Expense as additional rent. (Sec. 5.B)

Tenant does not pay Percentage Rent.

Rent Based on Net Profits or Net Income: None

Tenant's Share: 14.63% (7th Amend., Sec. 5)

Operating Expenses: Tenant pays its share of increases in Operating Expenses from the Operating Expenses for the base year of 2006. (Sec. 5.B & 6th Amend., Sec. B.3)

Tenant Improvement Allowance:	Landlord provided Tenant an allowance of $7 per square foot for certain improvements made pursuant to the 7th Amendment. (7th Amend., Sec. 7(e)) Tenant was granted a $7,800 credit against the cost of certain improvements made pursuant to the 4th Amendment. (4th Amend., Ex. B-4, Sec. 7) Allowance of $346,500, less Landlord's costs of $191,000, granted to Tenant pursuant to Original Lease. (Addendum, Sec. 2)
Real Estate Taxes:	Tenant pays its share of real estate taxes as part of Operating Expenses. (Sec. 5.B)
Electricity:	Tenant pays for electricity for its normal business activities as part of Operating Expenses and any additional equipment, feeders or risers need by Tenant shall be supplied at Tenant's expense. (Sec. 6.E) Landlord will provide Tenant electricity after normal Building hours at a charge of $35 per hour. (Addendum, Sec. 3)
HVAC:	The cost of HVAC is included in Operating Expenses, except that Landlord will provide Tenant HVAC after normal building hours at a charge of $35 per hour. (Sec. 5.B.(iii) & Addendum, Sec. 3)
Security Deposit:	None. (Sec. 3)
Subordination/ Nondisturbance:	Lease is subordinate to the lien of any mortgage or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the Building and to all advances made or hereafter to be made upon the security thereof. Subordination is automatic. (Sec. 28)
Insurance:	Landlord shall maintain fire and extended coverage insurance on the Building. (Sec. 25)

Tenant shall maintain fire and extended coverage insurance on its personal property and comprehensive general public liability insurance. (Sec. 25 & 27)

Parking: Tenant may use 190 first-come, first-served, non-exclusive surface parking spaces. If the rentable square footage of the Premises is increased or decreased, the number of Tenant's parking spaces shall be adjusted pro rata based on a ratio of 4.5 spaces per 1,000 rsf. (4th Amend., Sec. 17)

Alterations: Tenant may not make alterations to the Premises without Landlord's prior written consent. (Sec. 14)

Provisions for Casualty: If the Premises or the Building or any portion of either is damaged during the Term by casualty, but are not wholly suitable for occupancy, Landlord shall repair and/or rebuild the same as promptly as possible, provided that the proceeds from insurance policies are made available to Landlord. In such event, the Lease shall remain in effect and a proportionate reduction in the monthly rent shall be made for the time required to make such repairs, except (i) if the Tenant can use and occupy the Premises without substantial inconvenience or (ii) if said repairs are delayed at the request of or by reason of any act on the part of Tenant, there shall be no reduction in rental while the Premises are being repaired. Notwithstanding anything to the contrary, if the Premises cannot be restored within 120 days, Tenant may terminate this Lease upon 30 days written notice to Landlord. (Sec. 24(a))

If the Premises are rendered wholly unsuitable for occupancy by casualty or if the Premises or Building are damaged or destroyed by casualty to the extent that 50% or more of either is rendered unsuitable for occupancy, then either party may terminate. (24(b))

If, as a result of any damage either to the Premises or to the Building, Landlord determines to abolish or rebuild the Premises or the Building, then Landlord may terminate the Lease. (24(b))

If Landlord does not elect to terminate the Lease, Landlord shall repair and/or rebuild the Premises as promptly as possible and the Lease shall remain in effect, subject to equitable abatement in the monthly rent. (24(b))

	Notwithstanding anything to the contrary contained in the Lease, if repairs are not completed within 120 days, then Tenant may terminate the Lease. (24(b))
Provisions for Taking:	If the Premises are partially taken or condemned to such an extent as to render a portion of the Premises unsuitable for occupancy, the rent shall abate as to the portion deemed unsuitable. If such partial taking renders the Premises unsuitable for its intended purpose, Tenant may terminate the Lease. (Sec. 23) If the whole Premises is taken, the Lease shall terminate as of the date of the taking. (Sec. 23)
Estoppel Certificate:	Tenant shall deliver estoppel certificates to Landlord upon not less than 10 days' prior request. (Sec. 29)
Notices:	Notice must be in writing and will be deemed given (a) when given and received, if delivered in person to a party who acknowledges receipt in writing; (b) one business day after deposit with a private courier or overnight delivery service, if such service obtains a written acknowledgement of receipt; or (c) two business day after deposit in the US mail, certified with return receipt requested and postage prepaid. (5th Amend., Sec. 5)
Assignment/Subletting:	Tenant may not assign or sublet without Landlord's prior written consent. (Sec. 32) Landlord has right to recapture the Premises. (Sec. 32) Use of the Premises by Groupe Schneider or any entity directly or indirectly owned by or under the control of Groupe Schneider shall not be considered an assignment or sublease. (Sec. 32)
Miscellaneous:	Tenant has exercised its option to reduce the square footage of Suite 300, which was granted pursuant to the 6th Amend. (7th Amend., Sec. 2) Landlord agreed to complete certain Reconfiguration Work prior to September 3, 2006 and Tenant agreed to make certain improvements for which Landlord provided Tenant an allowance of $7 per square foot. (7th Amend., Sec. 7(e))

Tenant may install a satellite dish on the roof of the Building. (4th Amend., Sec. 13)

The 3rd floor vendeteria is part of the Premises and for the exclusive use of Tenant. (4th Amend., Sec. 14)

First, Second and Third Amendments were terminated pursuant to the Fourth Amendment. (4th Amend., Sec. 2 & 3)

Turfway Ridge Office Park

Premises: Suite 300 of 7300 Turfway Road, Florence, Kentucky

Lease Summary

Landlord:	PHL-OPCO, LP, a Delaware limited partnership
Tenant:	Xanodyne Pharmacal, Inc., a Delaware corporation Tenant is not a Tax-Exempt Entity
Date of Lease:	February 22, 2002 (Sec. 1.1(a))
The Premises:	23,565 square feet of space located at Suite 300, 7300 Turfway Road, Florence, Kentucky (the "Building") (Sec. 1.1(d))
Permitted Use:	For general office use (Sec. 1.1(f))
Term and Date of Amendments:	60-month term (Sec. 1.1(g)) No Amendments provided.
Commencement Date:	The earlier of either (1) the first day on which Tenant occupies the Premises for the regular conduct of its business or (2) 120 days after the Start Date which is anticipated to be May 15, 2002. (Sec. 1.1(g), Exhibit B)
Rent Commencement Date:	Commencement Date (Sec. 3.1)
Fixed Expiration Date:	60-months after Commencement Date (Sec. 1.1(g))

Fixed Payment Date:	On or before the first day of each month (Sec. 3.1)
Options to Extend:	Tenant is granted two options to extend the Lease for 5-years each, at a Base Rent equal to 95% of the then-market rental rate, subject to 3% annual increases, which options are exercisable upon at least 180 days prior written notice. (Sec. 27.2)
Option for Additional Space, Right of First Refusal and similar rights:	Lease is silent.
Purchase Option for Property:	Lease is silent.
Landlord Option to Put the Property to Tenant:	Lease is silent.
Termination Right:	None, other than termination rights in the event of default, casualty or condemnation. (Sec. 10.1 & 12.2(b))

Fixed Rent:

Lease Months	Rent/Month	Rent/sf	Rent/year
1-12 months	$22,806.44	$17.34	$273,677.28
13-24 months	$34,895.84	$17.77	$418,750.08
14-36 months	$35,858.08	$18.26	$430,296.96
37-48 months	$36,938.14	$18.81	$443,257.68
49-60 months	$38,037.84	$19.37	$456,454.08

(Sec. 1.1(h))

Percentage Rent/ Additional Rent:	Tenant pays its share of Additional Expenses and Additional Taxes as additional rent. (Sec. 3.2) Tenant does not pay Percentage Rent.
Rent Based on Net Profits or Net Income:	None

Tenant's Share:	21.77% (Sec. 1.1(i))
Operating Expenses:	Tenant must pay its share of increases in Expenses from the Expenses for the calendar year ending December 31, 2002 ("Additional Expenses"). (Sec. 3.2) Tenant's share of controllable Expenses shall be limited to the lesser of Tenant's share of actual controllable Additional Expenses for the calendar year or the Additional Expenses for 2003 increased at the rate of 5% per annum for each year after 2003. (Sec. 3.2(d))
Tenant Improvement Allowance:	Landlord agrees to provide Tenant an allowance equal to the lesser of a) Tenant's Costs plus Additional Costs or 2) the Maximum Allowance Amount of $471,300.00, which is $20.00 per rentable square foot of the Premises. (Exhibit B, Sec. 1(j) & 17)
Real Estate Taxes:	Tenant must pay its share of annual increases in Taxes from the Taxes for the calendar year ending December 31, 2002 ("Additional Taxes"). (Sec. 3.3)
Electricity:	Expenses include the cost of electricity but excludes nonstandard electrical equipment, electricity that exclusively serves Tenant's premises and electricity that is required for Tenant's special needs. (Sec. 5.1) Tenant must pay any costs of meter service and installation of necessary facilities to measure any required excess capacity and pays for the cost of any additional electricity required. (Sec. 5.2(b))
HVAC:	The cost of HVAC during normal business hours is included in Expenses. (Sec. 5.1(b)) Tenant must pay an hourly rate reasonably determined by Landlord for HVAC outside normal business hours. (Sec. 5.2(a))
Security Deposit/Letter Of Credit:	Tenant required to obtain a letter of credit in the amount of $75,000, with the opportunity for reduction. (Sec. 27.3)

Subordination/ Nondisturbance:	Lease is subject and subordinate to any ground lease, first mortgage or first deed of trust now or later encumbering the Building or Land, and all their renewals, modifications, supplements, consolidations and replacements. Subordination is automatic. (Sec. 17.3 & Sec. 1.2(f))
Insurance:	Landlord shall maintain commercial general liability insurance, all risk or fire insurance, loss of rental income insurance or loss of insurable gross profits and such other insurance as Landlord reasonably elects to obtain or any Lender requires. (Sec. 9.1) Tenant shall maintain commercial general liability insurance, all risk or fire insurance, boiler and machinery insurance (if any boiler or machinery is operated in the Premises), automobile liability insurance with limits of not less than $1,000,000 combined bodily injury and property damages (if Tenant operates owned, hired, or non-owned vehicles on the Land), and worker's compensation and employer's liability insurance. (Sec. 9.2)
Parking:	Tenant has use of its pro rata share of unassigned, non-reserved parking spaces in the Building's parking facilities which share is 4 spaces per 1,000 square feet of the Premises. (Sec. 1.1(o))
Alterations:	Tenant may make alterations to the Premises so long as alterations (a) comply with all applicable Laws, (b) are made only with Landlord's written consent, which consent shall not be unreasonably withheld , (c) equal or exceed Building Standard, and (d) are carried out only by persons selected by Tenant and approved in writing by Landlord. (Sec. 7.1)
Provisions for Casualty:	If the Premises or Building is damaged by fire or casualty, Landlord shall notify Tenant in writing of necessary estimated time to repair such damage. If the estimated necessary repairs cannot be completed within 180 days from the date of damage or within 30 days if the damage occurred within the last 12 months of the Term, then Tenant may terminate the Lease. If the estimated necessary repairs cannot be completed within 180 days from the date of damage or within 30 days if such damage occurred within the last 12 months of the Term, or if such damage is not insured against

by insurance policies, then Landlord may terminate the Lease by written notice. (Sec 10.1)

If the Premises of Building are damaged by fire or casualty and neither party terminates the Lease, Landlord will repair the damage with reasonable promptness, but will not be required to spend more for the repairs than the available insurance proceeds. (Sec. 10.2).

If fire of casualty renders the Premises untenantable and the Lease is not terminated, Rent will abate beginning on the date of such damage and end on the date Landlord has substantially completed the repairs. (Sec. 10.3)

Provisions for Taking: If all or substantially all of the Building or Premises are taken, the Lease shall terminate as of the date the condemning authority takes physical possession of the Building or Premises. (Sec. 12.1)

If only part of the Building or Premises is taken and alteration or reconstruction is not economically justified, then Landlord may terminate the Lease. (Sec. 12.2(a))

If over 20% of the Premises is taken and Landlord is unable to provide Tenant with compatible replacement premises, Tenant may terminate the Lease, if the Premises cannot be operated by Tenant in an economically viable fashion. (Sec. 12.2(b))

Estoppel Certificate: Tenant must deliver estoppel certificates to Landlord upon not less than 10 days' prior request. (Sec. 16)

Notices: All notices must be in writing will be deemed received (a) when actually given and received, if delivered in person; (b) one business day after deposit with a private courier or overnight delivery service or (c) 2 business days after deposited in the US certified mail, with return receipt requested and postage prepaid. (Sec. 25)

Assignment/Subletting: Tenant may not assign or sublet without Landlord's prior written consent, except to an affiliate of Tenant. (Sec. 13.1 & 13.7)

Any change by Tenant of its legal organization, any transfer of 51% or more of Tenant's assets and any other transfer of interest effecting a change in control of Tenant will be deemed an assignment. (13.6)

Landlord has the right to recapture the Premises. (Sec. 13.2).

Landlord is entitled to 50% of the excess rents collected by Tenant. (Sec. 13.5).

Landlord may sell, convey, or assign Landlord's interest, subject to Tenant's rights under the Lease and upon the transfer, Landlord will be relieved of liability under the Lease from and after the effective date of the transfer. (Sec. 17.1 & 17.2)

Turfway Ridge Office Park

Premises: Suite 450 of 7310 Turfway Road, Florence, Kentucky

Lease Summary

Landlord:	PHL-OPCO, LP, a Delaware limited partnership, successor in interest to Phoenix Home Life Mutual Insurance Company
Tenant:	ZF Lemforder Corporation, a Delaware corporation Tenant is not a Tax-Exempt Entity.
Date of Lease:	December 12, 1996
The Premises:	Approximately 10,084 rsf of space located at Suite 450, 7310 Turfway Road, Florence, Kentucky (the "Building")
Permitted Use:	For office space (Lease Schedule)
Term and Date of Amendments:	Original term of 60 months (Lease Schedule) Term extended to November 31, 2003, per 1st Amend., Sec. 1 Term extended from October 31, 2003 to October 31, 2008, per 2nd Amend., Sec. 2 Second Amendment to Lease dated July 17, 2003 First Amendment to Lease dated September 22, 1998
Commencement Date:	Original Commencement Date of February 1, 1997 (Lease Schedule) Term extended from October 31, 2003 to October 31, 2008, per 2nd Amend., Sec. 2

Rent Commencement Date:	February 1, 1997 (Lease Schedule)
Fixed Expiration Date:	Original Expiration Date of January 31, 2002 (Lease Schedule) Term extended to November 31, 2003, per 1st Amend., Sec. 1 Term extended from October 31, 2003 to October 31, 2008, per 2nd Amend., Sec. 2
Fixed Payment Date:	On the first day of each month (Lease Schedule)
Options to Extend:	Tenant granted one option to extend the Lease for five years at market rent, which option is exercisable upon 180 days prior written notice. (2nd Amend., Sec. 9)
Option for Additional Space, Right of First Refusal and similar rights:	Tenant has right of first refusal to lease the space adjacent to the Premises, subject to the rights of Square D. (2nd Amend., Sec. 8)
Right to Relocate:	If the Leased Premises is less than a full floor, Landlord may, at Landlord's expense, relocate Tenant to comparable space within the Building, subject to Tenant's reasonable approval. (Sec. 16)
Purchase Option for Property:	Lease is silent.
Landlord Option to Put the Property to Tenant:	Lease is silent.
Termination Right:	Tenant was granted one-time option to terminate the Lease effective October 31, 2006, which had to be exercised by written notice to Landlord on or before January 31, 2006. (2nd Amend., Sec. 9)

Base Rent:

Year	Rent/month	Rent/sf	Rent/year
11/1/05 – 10/31/06	$14,462.14	$17.21	$173,545.68
11/1/06 – 10/31/07	$14,731.04	$17.53	$176,772.48
11/1/07 – 10/31/08	$15,008.35	$17.86	$180,100.20

(2nd Amend., Sec. 3)

Percentage Rent/ Additional Rent: Tenant pays its share of Additional Expense and Additional Taxes as additional rent. (2nd Amend., Sec. 4)

Tenant does not pay Percentage Rent.

Rent Based on Net Profits or Net Income: None

Tenant's Share: 9.27% (2nd Amend., Sec. 4(a)(2))

Operating Expenses: Tenant pays its share of increases in Expenses from the Expenses for the calendar year ending December 31, 2003 ("Additional Expenses"). (2nd Amend., Sec. 4(b))

Tenant's share of controllable Additional Expenses shall be limited to the lesser of Tenant's share of (1) actual controllable Additional Expenses for the calendar year or (2) the controllable Additional Expenses for 2004 increased at a rate of 4% per annum for each year since 2003. (2nd Amend., Sec. 4(e))

Tenant Improvement Allowance: Tenant granted an allowance of $33,850 to modify the Premises. (1st Amend., Sec. 3)

Real Estate Taxes: Tenant pays its share of increases in Taxes from the Taxes for the calendar year ending December 31, 2003 ("Additional Expenses"). (2nd Amend., Sec. 4(b))

Electricity: Tenant pays for electricity as part of Expenses. If Lessee uses any of the services and electrical current in an amount greater than

5,000 watt hours annually per square foot (or such larger amount as may be deemed excessive by Landlord), Landlord may charge Tenant a reasonable sum as reimbursement for the direct cost of such services. (Sec. 6.E)

HVAC:	The cost of HVAC during normal business hours is included in Expenses. (Sec. 5.B.(iii))
Security Deposit:	None. (Sec. 3)
Subordination/ Nondisturbance:	Lease is subordinate to the lien of any mortgage or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the Building and to all advances made or hereafter to be made upon the security thereof. Subordination is automatic. (Sec. 28)
Insurance:	Landlord shall maintain fire and extended coverage insurance on the Building. (Sec. 25) Tenant shall maintain fire and extended coverage insurance on its personal property and comprehensive general public liability insurance. (Sec. 25 & 27)
Parking:	Landlord does not provide designated or reserved parking. (2^{nd} Amend., Sec. 11)
Alterations:	Tenant may not make alterations to the Premises without Landlord's prior written consent. (Sec. 14)
Provisions for Casualty:	If the Premises or the Building or any portion of either is damaged during the Term by casualty, but are not wholly suitable for occupancy, Landlord shall repair and/or rebuild the same as promptly as possible, provided that the proceeds from insurance policies are made available to Landlord. In such event, the Lease shall remain in effect and a proportionate reduction in the monthly rent shall be made for the time required to make such repairs, except (i) if the Tenant can use and occupy the Premises without

substantial inconvenience or (ii) if said repairs are delayed at the request of or by reason of any act on the part of Tenant, there shall be no reduction in rental while the Premises are being repaired. Except upon the occurrence of events described in (i) and (ii) above, Tenant's obligation to pay abated rent terminates 60 days from any damage event. (Sec. 24(a))

If the Premises are rendered wholly unsuitable for occupancy by casualty or if the Premises or Building are damaged or destroyed by casualty to the extent of 50% or more of the monetary value of either or all elevators servicing the Premises remain inoperable for 10 days, whether the Premises themselves be damaged or not or so that 50% or more of the floor space contained in either thereof shall be rendered unsuitable for occupancy, then Landlord may, at its option, terminate the Lease or elect to repair or rebuild the same. (24(b))

If, as a result of any damage either to the Premises or to the Building, Landlord determines to abolish or rebuild the Premises or the Building, then either party may terminate the Lease. (24(b))

If Landlord does not elect to terminate the Lease, Landlord shall repair and/or rebuild the Premises as promptly as possible and the Lease shall remain in effect, subject to equitable abatement in the monthly rent.

Provisions for Taking: If the Premises are partially taken or condemned to such an extent as to render a portion of the Premises unsuitable for occupancy, the rent shall abate as to the portion deemed unsuitable. (Sec. 23)

Estoppel Certificate: Tenant shall deliver estoppel certificates to Landlord upon not less than 10 days' prior request. (Sec. 29)

Notices: Notice shall be deemed given when personally delivered or deposited in US mail, postage prepaid. (Sec. 39)

Assignment/Subletting: Tenant may not assign or sublet without Landlord's prior written consent. (Sec. 32)

Landlord has the right to recapture the Premises. (Sec. 32)

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EXHIBIT H

FORM OF TAX OPINION

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BAKER & MCKENZIE

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January 9, 2007

Cabot Investment Properties LLC
100 Summer Street, 23rd Floor
Boston, MA 02110
Attn: Carlton P. Cabot

Re: Cabot Turfway Ridge Acquisition LLC

Ladies and Gentlemen:

Cabot Turfway Ridge Acquisition, LLC, a Delaware limited liability company ("Company"), has retained Baker & McKenzie LLP as tax counsel to render opinions on specific federal income tax issues in connection with the proposed transactions described below. This letter sets forth our opinion concerning (i) whether the undivided tenant in common interests in the Property (as defined below) should be treated as interests in real property for federal income tax purposes and not as (A) interests in a partnership or (B) a "security" under Section 1031;[1] and (ii) whether the discussion of federal income tax consequences in the Memorandum (as defined below) is correct in all material respects. In addition, for purposes of Circular 230, this opinion addresses the applicability of certain judicially created substance over form doctrines to the proposed tenancy in common arrangement. All capitalized terms used herein and not otherwise defined have the meaning set forth in the Transaction Documents (as defined below).

Company is offering undivided tenant in common interests (individually an "Interest" and collectively the "Interests") in a 218,223 net rentable square foot, multi-tenant office property situated on 14.57 acres located at 7300 and 7310 Turfway Road in Florence, Kentucky 41042 (the "Property") to certain purchasers (individually, a "Tenant in Common" and collectively, the "Tenants in Common"). The Property consists of (i) one five-story, 108,975 square foot office building, situated on 8.06 acres ("Turfway I") and (ii) one five-story, 109,248 square foot office building situated on 6.51 acres ("Turfway II"). Each of Turfway I and Turfway II is referred to herein as a "Parcel" and collectively, as the "Property." Each Investor will acquire the same *pro rata* interest in each Parcel and no Investor may sells its Interest in either Parcel separate and apart from its Interest in the other Parcel (except as part of the sale of an entire Parcel by all of the Tenants in Common). All portions of Turfway I and Turfway II are contiguous.

As of January 9, 2007, the Property was approximately 84.2% leased to 26 tenants (the "Tenants") pursuant to existing leases (the "Leases"). Purchasers of Interests will acquire an undivided pro-rata interest in the Property. The relationship between the purchasers of such Interests will be governed by the Tenants in Common Agreement (the "TIC Agreement"). The Interests will also be subject to a Call Agreement (the "Call Agreement"). In addition, the purchasers will enter into or ratify the Master Lease Agreement with Cabot Turfway Ridge LeaseCo LLC (the "Master Lessee") and a consulting agreement (the "Consulting

[1] All section references provided herein refer to the Internal Revenue Code of 1986, as amended.

Agreement") with Cabot Investment Properties, LLC (the "Consultant") with respect to the Property. Purchasers acquiring Interests after the initial closing will enter into an Accession Agreement. As a condition of the real estate purchase agreement with the seller of the Property (the "Seller"), the Master Lessee will enter into a property management agreement (the "Property Management Agreement") with Neyer Management, a regional commercial real estate management firm ("Property Manager"), pursuant to which the Property Manager will manage the day-to-day operations of the Property for twelve months after closing. The Master Lessee will be responsible for paying the Property Manager's fees.

The TIC Agreement, the Call Agreement, the Master Lease Agreement, the Accession Agreement, the Property Management Agreement and the Consulting Agreement, are collectively referred to herein as the "Operative Documents").

Upon the acquisition of an Interest, each Tenant in Common is expected to be required to take its Interest in the Property subject to a pro rata portion of an approximately $18,000,000 first-priority, nonrecourse loan (the "Mortgage Loan") which is expected to be secured by a first priority mortgage on the Property and an assignment of leases and rents. The Mortgage Loan is expected to be evidenced by certain financing documents entered into between the Company, the Master Lessee and Wachovia Securities or an affiliate (the "Lender") (such Mortgage Loan documents are referred to herein as the "Financing Documents").

Company may, at its discretion, obtain bridge financing in connection with the acquisition of the Property from such lenders and upon such terms as it deems necessary or appropriate. Any such bridge loan would be loaned to the Sponsor or the owner of Company. The bridge financing would be secured by the ownership interests in Company and would be repaid out of the proceeds of the Offering and cash flow attributable to unsold Interests held by Company. The bridge financing would not encumber the Property and the Tenants in Common would not be directly responsible for repayment of the bridge financing. All costs associated with such bridge financing would be borne by Company, and not the Tenants in Common.

At closing, the Master Lessee will fund a reserve of $200,000 (the "Master Lessee Reserve"), which will serve as a supplement to cash flow from the Property in satisfying the Master Lessee's obligations under the Master Lease. The Master Lessee will maintain the Master Lessee Reverse throughout the term of the Master Lease. If the Master Lessee Reserve is drawn upon, the Master Lessee will replenish the Master Lessee Reserve only to the extent it receives cash flow from the Property in excess of its obligations under the Master Lease. Upon termination of the Master Lease, any remaining portion of the Master Lessee Reserve will be retained by the Master Lessee.

The Master Lessee will pledge its assets, as required by the Lender, to ensure performance of its obligations under the Master Lease and the Mortgage Loan documents. The Master Lessee will not, however be obligated as a co-borrower under the Mortgage Loan.

The Sponsor may elect to form a new special purpose entity, which will be a Delaware limited liability company ("Mezzco"), to act as a mezzanine lender to the Tenants in Common in covering costs associated with the Property in excess of reserves. The Sponsor or an affiliate of the Sponsor may own up to 49% of the membership interests in Mezzco. Subject to limitations imposed by the Mortgage Loan documents, and to the extent additional funds are required in excess of reserves available from time to time, the Master Lessee will have the right, but not the obligation, to obtain one or more mezzanine loans to the extent the Tenants in Common require additional funds for operations, tenant improvements, leasing commissions or other purposes deemed appropriate by the Master Lessee (each individually a "Mezzanine Loan" and collectively, the "Mezzanine Loans"). The terms of each Mezzanine Loan will be subject to the unanimous approval of the Tenants in Common. Any Mezzanine Loan will be made to the Tenants in Common on a joint and several basis. Each Mezzanine Loan will be subordinate to the interest of the Lender (or any other lender whose loan is secured by an interest in the Property) and Mezzco will likely be required to execute a subordination and standstill agreement in a form approved by the Lender. The Mezzanine Loan will not be secured by the Property or any of the other collateral for the Mortgage Loan directly. Instead, each Mezzanine Loan will be secured by a pledge of the equity interests in the Tenants in Common. Accordingly, each purchaser will be required to pledge his or her equity interest in the Tenant in Common owned by that purchaser.

In formulating our opinion, we reviewed and are relying upon the following documents: (i) the Offering Memorandum (the "Memorandum") dated January 9, 2007, and prepared in connection with the sale of Interests, and (ii) the Operative Documents (collectively, the "Transaction Documents"). As of the date of this opinion, we have not reviewed the Financing Documents; for purposes of this opinion, we have relied upon the description of the financing in the Memorandum and the loan commitment dated December 7, 2006. In addition, we have assumed that the representations set forth in the letter addressed to us, and signed on behalf of the Company on January 9, 2007 (the "Representation Letter") are true, complete and correct in all respects as of the date hereof.

OPINION

Based on our review of the Transaction Documents and the Representation Letter, it is our opinion that (i) the Interests should be treated as interests in real property (and not as interests in a partnership) for federal income tax purposes, (ii) an Interest should not be treated as a "security" under Section 1031 and (iii) the discussion of federal income tax consequences in the Memorandum is correct in all material respects.

Acquisition of the Property may involve the acquisition of an incidental amount of personal property located at the Property.[2] Our opinion as to the characterization of the Interests as interests in real property does not extend to such items and does not address the treatment of such items for purposes of Section 1031.

Our opinion does not address, and should not be viewed as expressing any opinion concerning, whether the acquisition of an Interest by a specific purchaser will, in light of the applicable facts and circumstances relating to any specific purchaser, constitute a purchase of like-kind replacement property that qualifies for non-recognition of gain under Section 1031, as we do not know, or have any reason to know, the particular facts and circumstances of any specific purchaser's situation.

DISCUSSION

I. The Interests Should Be Treated as Interests in Real Property and Not as Interests in a Partnership for Federal Income Tax Purposes

The primary issue addressed herein is whether the Interests will be treated as interests in real property or as interests in a partnership for federal income tax purposes. To properly resolve this issue a number of authorities must be considered, including: federal case law, Section 761, the Treasury Regulations under Section 7701 (the "check-the-box regulations"),[3] as well as the guidance provided under Revenue Procedure 2002-22.[4] Each of these authorities is addressed in turn in this Part I.[5]

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[2] For purposes of the identification rules under Section 1031 of the Code, property that is incidental to a larger item of property is not treated as property separate from the larger property. Property is incidental if: (i) in standard commercial transactions, the property is typically transferred together with the larger item of property; and (ii) the aggregate fair market value of all of the incidental property does not exceed 15 percent of the aggregate fair market value of the larger items of property. While compliance with identification requirements under Section 1031 are beyond the scope of this opinion (and each prospective investor should consult his or her own tax advisor regarding these requirements), Company has represented that these requirements will be satisfied.

[3] See Treas. Reg. §301.7701-3.

[4] 2002-1 C.B. 733 (March 19, 2002). The factors set forth in Revenue Procedure 2002-22 are procedural requirements to obtain an advance ruling from the IRS and, as such, are not substantive law with respect to whether the Interests should be treated as interests in real estate and not as interests in a partnership for federal income tax purposes.

[5] In connection with the offering of the Interests and pursuant to a Confidential Private Placement Memorandum Addendum (the "Addendum"), Cabot Addison Investment LLC ("CAI") may to accredited investors units of membership interest in the Company (the "Units") described in the Addendum. CAI would use the capital raised through this offering of Units to acquire Interests. While we have taken the potential issuance of Units into account in rendering our Opinion, our Opinion applies only to the Interests and not to the treatment of Units.

Parts I. A, B and C below review the case law that governs the determination of whether a partnership has been created for federal income tax purposes. Specifically, Part I.A analyzes the common law that governs the determination of whether a partnership exists for federal income tax purposes. Against this backdrop, Part I.B addresses whether the co-tenancy with respect to the Property should be viewed as a partnership or mere co-ownership arrangement and Part I.C addresses whether the Property Management Agreement and Master Lease Agreement should be viewed as creating a partnership between the Tenants in Common and the Master Lessee or the Property Manager.

The election out of partnership treatment provided under Section 761 is addressed in Part I.D. Part I.E reviews the factors set forth in Revenue Procedure 2002-22 in light of the specific facts relating to the co-ownership of the Property.

A. The Co-Ownership Arrangement Should Not Be Treated as a Partnership under Section 761 and its Interpretive Case Law

There is no clear and precise standard as to whether a joint ownership arrangement will be classified as a partnership for federal income tax purposes or some other arrangement such as a tenancy in common or independent contractor relationship. A determination as to whether a joint ownership arrangement will be classified as a partnership or as some other arrangement for federal income tax purposes is based on all the facts and circumstances of each case.[6]

Section 761 provides that for federal income tax purposes, the term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a corporation or a trust or estate. The Treasury Regulations promulgated under Section 761 further provide that the term "partnership" is broader in scope than the common law meaning of partnership and may include groups not commonly called partnerships. Because the Code and the Treasury Regulations thereunder fail to define precisely what constitutes a partnership for federal income tax purposes, the courts have focused on a number of factors when determining whether a partnership exists. The factors most commonly considered by the courts when addressing this issue are set forth in the following discussion.

1. Intent to Form a Partnership. In Commissioner v. Culbertson,[7] the Supreme Court indicated that a partnership exists when:

> considering all the facts--the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the

6 Estate of Smith v. Commissioner, 313 F.2d 724 (8th Cir. 1963).

7 337 U.S. 733 (1949); see also, Commissioner v. Tower, 327 U.S. 280 (1946).

> parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent--the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise.[8]

Since Culbertson, the intent of the parties has been the key factor in determining whether a particular arrangement constitutes a partnership for tax purposes.[9] The requisite intent is not the intent to be treated as a partnership for state law or tax purposes, but the intent to carry on a business or venture for joint economic gain. Thus, a partnership may be found to exist for federal income tax purposes even where there is an expressed intention not to form a partnership.[10] In the present case, there is no evidence that the parties intend to form a partnership or carry on a business or venture for joint economic gain. The Operative Documents expressly provide that the parties thereto do not intend to form a partnership or other joint venture, and, to our knowledge, the parties have not otherwise expressed an intent to join together as partners.

2. Other Factors to be Considered. Despite the Supreme Court's indication in Culbertson that a partnership is not defined by reference to any specific factor or set of factors, the courts and the Internal Revenue Service ("IRS") have generally taken into account a number of factors including: (i) the joint contribution of capital or services; (ii) joint control and ownership of capital and earnings; (iii) sharing of profits as co-proprietors; (iv) sharing of losses; (v) control over the business; (vi) the parties' agreement and their conduct in executing its terms; (vii) maintaining separate books of accounts for the business; and (viii) whether the parties filed partnership tax returns or otherwise represented the business to others as a partnership.[11] Each of these factors is discussed separately below.

(i) Joint Contribution of Capital or Services. In order to be considered a partner, a participant must generally contribute capital and/or services to the business.[12] If capital is not a material income-producing factor, a participant will be

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8 Id. at 742.

9 See also, Gilford v. Commissioner, 11 T.C.M. (CCH) 175 (1952), aff'd 201 F.2d 735 (2nd Cir. 1953) and Coffin v. United States, 120 F. Supp. 9 (S.D. Ala. 1954).

10 See Haley v. Commissioner, 203 F.2d 815 (5th Cir. 1953).

11 See Wheeler v. Commissioner, 37 T.C.M. (CCH) 883 (1978); Luna v. Commissioner, 42 T.C. 1067 (1964); G.C.M. 36436 (Sept. 25, 1975). Under Section 6110(k)(3), private letter rulings ("PLRs"), general counsel memoranda ("G.C.M.s"), technical advice memorandums ("TAMs") field service advisories ("FSAs") and certain other types of written determinations cannot be cited as precedent. These types of written determinations generally are not binding on the Service and cannot be relied upon by taxpayers.

12 See James v. Commissioner, 16 T.C. 930 (1951), aff'd 197 F.2d 813 (5th Cir. 1952); Podell v. Commissioner, 55 T.C. 429 (1970).

considered a partner if he or she contributes vital and essential, or in some cases valuable, services to the operation.[13] If capital is a material income-producing factor in the business, a participant will be considered a partner if he or she contributes capital or performs valuable services.[14] While the Master Lessee and any Property Manager will be performing valuable services with regard to the Property, such services will be performed pursuant to a contractual undertaking in the form of the Master Lease and the underlying Property Management Agreement between the Master Lessee and the Property Manager and not in exchange for an interest in the Property. Similarly, services provided by the Consultant under the Consulting Agreement will be performed pursuant to a contractual undertaking and not in exchange for an interest in the Property. The Master Lessee Reserve is intended to provide capital to satisfy the Master Lessee's contractual obligations under the Master Lease and therefore should not be characterized as a partnership capital contribution.

(ii) Joint Control and Ownership of Capital and Earnings. Another factor to be considered is whether a participant has the necessary joint control and ownership of a capital interest in the venture and the earnings of the venture. This test is similar to and sometimes combined with the "control over the business test" described below. Generally, the ability to spend or distribute capital or earnings demonstrates that a participant is actually a partner.[15] The requisite power to spend or distribute earnings generally only occurs if the participant "owns" a portion of the capital and the earnings. Consequently, a participant generally has this "control" if the participant has the power and the authority to take such action. Here, the Tenants in Common do not have any power to independently direct or control the capital or earnings generated with respect to the Property.

(iii) Sharing of Profits as Co-Proprietors. A joint sharing of profits will only be treated as a partnership if two or more of the participants have a proprietary interest in the enterprise.[16] A profit sharing arrangement will not be treated as a partnership if only one party has a proprietary interest.[17] Generally, co-proprietors divide the

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13 See Galluzzo v. Commissioner, 43 T.C.M. (CCH) 199 (1981); Poggetto v. United States, 306 F.2d 76 (9th Cir. 1962).

14 See Kuzmick v. Commissioner, 11 T.C. 288 (1948) acq. 1949-1 C.B. 3; Ayrton Metal Co. v. Commissioner, 34 T.C. 464 (1960), aff'd on this issue, 299 F.2d 741 (2d Cir. 1962).

15 Terrell v. Commissioner, 54 T.C.M. (CCH) 870 (1987) (partnership existed where each participant could withdraw funds at any time); Estate of Smith v. Commissioner, 313 F.2d 724 (8th Cir. 1963) (no partnership because the participant had no right to claim or withdraw any of the cash and all remaining capital belonged to the other participants).

16 See Federal Bulk Carriers, Inc. v. Commissioner, 66 T.C. 283, (1976), aff'd, 558 F.2d 128 (2d Cir. 1977) ("central feature" of joint venture is "a proprietary interest in the net profits of the enterprise coupled with an obligation to share its losses"); Rev. Rul. 75-43, 1975-1 C.B. 383 (cattle operator not a partner even though he received a share of the net income because no intent to form a partnership and operator had no control).

17 See, e.g., Estate of Smith v. Commissioner, 313 F.2d 724 (8th Cir. 1963) (no partnership because the participant had no right to claim or withdraw any of the cash and all remaining capital belonged to the other participants); Pounds v. United States, 372 F.2d 342 (5th Cir. 1967); Luna v.

net income generated by a joint participation. As a result, a division of the net profits is a strong indication that an arrangement is a partnership. If a participant receives a fixed fee or a share of the gross revenue, regardless of profitability, the participant is not likely to be a partner.[18] In the present case, the Master Lessee will receive the excess of the rental income received from the Tenants over the stated amounts owed to the Tenants in Common under the Master Lease. The Master Lessee will receive a refinancing fee of 1.0% of the amount of any loan obtained to refinance the Property, a transfer fee of $3,500 per transfer of an Interest by a Tenant in Common, and an appearance fee equal to $3,750 (in addition to actual out of pocket expenditures) for each unlawful detainee, tax abatement, or small claims action appearance. The Master Lessee will pay the Property Manager a monthly property management fee equal to 3% of the gross revenue from the Property. The Consultant will be entitled to receive a Consulting Fee of 4.0% of the gross sales price of the Property in a sale to a third Party under the terms and conditions of the Consulting Agreement (in which case the sponsor will be responsible for paying outside consulting and broker fees up to 1.5% of the gross sales price of the Property.). None of these payments are contingent upon the economic performance of the Property or the net profits generated by the Property in the rental market, and Company has represented that these fees are reasonable in amount. Accordingly, these payments should not be viewed as an inappropriate sharing of profits between Company or the Master Lessee and the Tenants in Common.

(iv) Sharing of Losses. Another element in determining whether a partnership exists is whether the participants share in losses. Although a direct and mutual sharing of potential partnership losses is neither necessary nor sufficient for a business to be treated as a partnership,[19] its absence is not generally characteristic of a partnership relationship.[20] Under the proposed tenancy-in-common arrangement, the Tenants in Common will bear the economic risk of loss with respect to the Property in accordance with their respective Interests. The Property Manager and the Consultant will not be subject to a risk of loss with respect to the Property. The Master Lessee, like any tenant under a net lease, will of course have such a risk of loss with respect to its interest in the Property. In addition, under the Mortgage Loan (including the carve-outs to nonrecourse liability for certain "bad boy" acts) both the Tenants in Common, the Company, the Master Lessee and certain guarantors of the Sponsor are anticipated to bear the risk of personal recourse

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Commissioner, 42 T.C. 1067 (1964); Allison v. Commissioner, 35 T.C.M. (CCH) 1069 (1976); Robert W. Ewing, 17 T.C.M. (CCH) 626 (1958) (participant who had share of profits not a partner because no risk of loss and no control); Paul J. Kelly, 29 T.C.M. (CCH) 1090 (1970) (participant who shared in profits was not a partner because no control and no sharing of losses); Kenneth E. Ronemus, 28 T.C.M. (CCH) 799 (1969) (no partnership because no ownership interest and no control); Rev. Rul. 75-43 1975-1 C.B. 383.

18 Allison v. Commissioner, 35 T.C.M. (CCH) 1069 (1976); but see, Cecil I. Haas, 12 T.C.M. (CCH) 1117 (1953) (partnership held to exist between an employer and a former employee entitled to 15 percent of net profits up to $125,000 per year and shared in losses).

19 See Poggetto v. United States, 306 F.2d 76 (9th Cir. 1962).

20 See G.C.M. 36436 (Sept. 25, 1975); Luna v. Commissioner, 42 T.C. 1067 (1964); Miller-Smith Hosiery Mills v. Commissioner, 22 T.C. 581 (1954); PLR 8046064 (undated).

liability in accordance with their own actions. With the exception of certain environmental matters (which, in any event, may impact the parties by operation of law) and certain matters that are structurally controlled by the Sponsor or the obligation of the Master Lessee (an affiliate of the Sponsor), the parties to the Mortgage Loan are not expected to be personally liable for the actions of another. Thus, losses will be borne pro rata and not "shared." Under the Master Lease, the Master Lessee is required to fund the Master Lessee Reserve at closing. Funds in the Master Lessee Reserve can be used to pay rent to the Tenants in Common and satisfy the Master Lessee's other obligations under the Master Lease. In addition, it is anticipated that in the event of a default under the Mortgage Loan, the Mortgage Lender could foreclose on the funds in the Master Lessee Reserve to satisfy the Mortgage Loan. Deposits by the Master Lessee to satisfy its obligations to pay rent or costs associated with the operation of the Property are a contractual undertaking and do not represent a sharing of loss (or profit). Amounts in the Master Lessee Reserve remain the property of the Master Lessee to which it is entitled upon termination of the Master Lease. Accordingly, the fact that the Mortgage Lender would be able to reach these funds in the event of a default does not constitute risk sharing or support the existence of a partnership.

(v) Control over the Business. Another important characteristic of a partnership is joint control over the business by the participants.[21] The absence of a right to participate in management may establish that a person is an employee or independent contractor rather than a partner.[22] However, the lack of control may not be sufficient to classify the arrangement as other than a partnership if other partnership factors are present.[23] However, the delegation of management authority to a single partner does not, in itself, negate the existence of a partnership.[24] The necessary control is the actual power to control the important business decisions and such power still exists even if delegated[25] or if the day to day operations may be handled by others.[26] Other cases have emphasized the control over

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21 See, Arthur Venneri Co. v. United States, 340 F.2d 337 (Cl. Ct. 1965); Mayer v. Commissioner, 13 T.C.M. (CCH) 391 (1954); Ryza v. Commissioner, 36 T.C.M. (CCH) 269 (1977) (joint control evidence of partnership); Fred P. Fiore, 39 T.C.M. (CCH) 64 (1979) aff'd without op., 636 F.2d 1208 (3rd Cir. 1980); and Allison v. Commissioner, 35 T.C.M. (CCH) 1069 (1976) (absence of joint control evidence of no partnership).

22 Estate of Kahn v. Commissioner, 499 F.2d 1186 (2d Cir. 1974); James v. Commissioner, 16 T.C. 930 (1951), aff'd per curiam, 197 F.2d 813 (5th Cir. 1952); Kirk v. Commissioner, 179 F.2d 619 (1st Cir. 1950); Estate of McDaniel v. Commissioner, 20 T.C.M. (CCH) 1551 (1961); Finch v. Commissioner, 14 T.C.M. (CCH) 692 (1955).

23 Beck Chemical Equipment Corp. v. Commissioner, 27 T.C. 840 (1957) acq., 1957-2 C.B. 3 (partners shared in losses); Bartholomew v. Commissioner, 10 T.C.M. (CCH) 957 (1951), on remand from 186 F.2d 315 (8th Cir. 1951).

24 Gurtman v. Commissioner, 34 T.C.M. (CCH) 475 (1975).

25 Podell v. Commissioner, 55 T.C. 429 (1970).

26 Estate of Kahn v. Commissioner, 499 F.2d 1186 (2d Cir. 1974); James v. Commissioner, 16 T.C. 930 (1951), aff'd per curiam, 197 F.2d 813 (5th Cir. 1952); Kirk v. Commissioner, 179 F.2d 619 (1st Cir. 1950); Estate of McDaniel v. Commissioner, 20 T.C.M. (CCH) 1551 (1961); Finch v.

the revenue producing portion of the venture and the right to sell the assets.[27] An absence of control negates the presence of a partnership.[28] Moreover, a partner need not participate in management and control over the partnership's business if he or she has a capital investment in the venture.[29] In the event that sufficient control exists, an arrangement may be treated as a partnership even though all partnership factors are not present.[30] Although the control exercised by the Tenants in Common over the Property pursuant to the TIC Agreement is indicative of a partnership, this factor alone should not result in the characterization of the co-ownership as a partnership for federal income tax purposes.

(vi) Parties' Agreement and Conduct in Executing its Terms. The terms of the agreement between the participants bear on the question of the intent of the participants as set forth in Culbertson.[31] Obviously, if the participants have signed a partnership agreement they intend to be partners.[32] As stated above, the Operative Documents expressly provide that there is no intent on the part of the Tenants in Common to enter into a relationship as partners and expressly restrict the Tenants in Common from holding themselves out as partners in a partnership or other legal entity.

(vii) Maintenance of Separate Books. A partnership generally maintains separate books and records of its business. Consequently, if separate books and records are maintained, it is more likely that a partnership will be deemed to exist. However, separate books and records may be a non-factor if separate books and records are needed for other business purposes.[33] The Master Lessee or its designee will maintain books of accounts on behalf of the Tenants in Common with respect to the operation of the Property pursuant to the terms of the Master Lease. The IRS could view this as a factor that is indicative of a partnership. This factor alone, however, should not be conclusive with respect to the characterization of the co-ownership for federal income tax purposes.

(viii) Filing of Tax Returns or Other Partnership Action. Since the existence of a partnership as determined under Culbertson is based on the intention of the participants, the fact that the parties have a partnership agreement and represent themselves

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Commissioner, 14 T.C.M. (CCH) 692 (1955); Hartman v. Commissioner, 17 T.C.M. (CCH) 1020 (1958).

27 G.C.M. 36961 (Dec. 21, 1976); Estate of Kahn v. Commissioner, 499 F.2d 1186 (2d Cir. 1974); Allison v. Commissioner, 35 T.C.M. (CCH) 1069 (1976).

28 G.C.M. 36436 (Sept. 25, 1975); Carnegie Productions Inc. v Commissioner, 59 T.C. 642 (1973).

29 See Turner v. Commissioner, 24 T.C.M. (CCH) 544 (1965); Eugene C. Hartman, 17 T.C.M. (CCH) 1020 (1958).

30 Wheeler v. Commissioner, 37 T.C.M. (CCH) 883 (1978) (partnership established when taxpayer provided expertise and other partners provided all capital and had all risk of loss because the taxpayer had sufficient control).

31 G.C.M. 36436 (Sept. 25, 1975).

32 Wheeler v. Commissioner, 37 T.C.M. (CCH) 883, 890 (1978). A written partnership agreement is not essential, however.

33 G.C.M. 36961 (Dec. 21, 1976).

to third parties and to the IRS as partners can be extremely important. Indeed, if a partnership income tax return is filed by a venture, the members of the venture are virtually precluded from denying their status as partners.[34] Further, if co-owners hold themselves out as partners,[35] file documents as partners,[36] or operate as a partnership, the requisite intent is likely to be found.[37] In the present case, the TIC Agreement expressly prohibits the Tenants in Common from filing partnership tax returns or otherwise representing the co-ownership to others as a partnership. Thus, no partnership returns will be filed and no Tenants in Common will hold themselves out as partners.

In summary, the majority of these factors commonly considered by the courts indicate that the co-ownership arrangement among the Tenants in Common should not give rise to a partnership.

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[34] McManus v. Commissioner, 583 F.2d 443 (9th Cir. 1978) cert. denied, 440 U.S. 959 (1979); Maletis v. United States, 200 F.2d 97 (9th Cir. 1952) cert. denied, 345 U.S. 924 (1953); Halstead v. Commissioner, 296 F.2d 61 (2d Cir: 1961) (per curiam); Smith v. Commissioner, 37 T.C.M. (CCH) 1731 (1978); TAM 199907029 (September 30, 1998) (partnership found where parties entered into a partnership agreement and filed partnership tax returns); PLR 9741017 (July 10, 1997) (parties filed partnership tax returns; IRS found intent so no need to look at level of business activity); c.f. Allison v. Commissioner, 35 T.C.M. (CCH) 1069, 1078 (1976) (no partnership existed; failure to file partnership tax returns described as "admission against interest"); but see Powell v. Commissioner, 26 T.C.M. (CCH) 161 (1967) (no partnership even though partnership returns filed).

[35] Beck Chemical Equipment Corp. v. Commissioner, 27 T.C. 840 (1957) acq., 1957-2 C.B.3.

[36] Demirjian v. Commissioner, 54 T.C. 1691 (1970) aff'd, 457 F.2d 1 (3rd Cir. 1972) (property held as "partners").

[37] Rothenberg v. Commissioner, 48 T.C. 369 (1967).

B. The Co-Ownership Arrangement Should Not Be Treated as a Partnership under the Section 7701 Regulations.

One of the most difficult areas in which to apply the entity classification rules under the check-the-box regulations is with respect to whether a co-ownership arrangement should be classified as a mere co-ownership or as a partnership.[38] The Treasury Regulations[39] provide, in general, the following:

[38] Varner v. Commissioner, 32 T.C.M. (CCH) 97 (1973), the court indicated that "a twilight zone separates co-ownership from joint ventures and partnerships" and that there is "a plethora of case law which attempts to better define the twilight zone." There have been several PLRs issued by the IRS concerning the treatment of tenants in common. Most of these authorities were issued prior to the release of Revenue Procedure 2002-22. In TAM 7832007, the IRS concluded that a partnership was not created where co-owners entered into a tenancy in common agreement with respect to warehouse property held for the production of rental income where (i) all decisions were made by all of the co-owners, (ii) the co-owners were obligated to pay a pro rata share of the expenses, (iii) each co-owner had a right of first refusal, (iv) the co-owners waived the right to partition the property, and (v) the co-owners denied the intent to form a partnership. The co-owners also entered into a management agreement to manage the property. The IRS reached its conclusion because the leases for the warehouse did not require the co-owners to actively carry on a trade or business by providing any services beyond general maintenance. In PLR 8048064, the IRS concluded that an undivided interest in an office building did not constitute a partnership where the co-owners entered into a tenancy in common agreement which provided the following: (i) the property was held for the production of income, (ii) each co-owner was obligated to pay his or her pro rata share of the expenses, (iii) all decisions regarding the property were to be made by a majority of interest as tenants in common, (iv) that for a period of approximately ten years, each co-owner had a right of first refusal and waived the right to partition, and (v) that the co-owners did not intend to form a partnership or joint venture. The co-owners also entered into a management agreement where the management would provide customary services required under the leases. The management agreement could be terminated upon 30 days' written notice. In PLR 200327003, the IRS concluded that, pursuant to the requirements in Revenue Procedure 2002-22, an undivided fractional interest in a property did not constitute an interest in a business entity. In PLR 200513010, the IRS approved a requirement that the co-owners, before exercising their right of partition, offer their interest for sale to the other co-owners at fair market value, as determined by an independent appraisal. In addition, the IRS approved the use of unanimously approved leasing guidelines provided by the co-owners annually to the management company.

[39] Treas. Reg. §301.7701-1(a)(2).

> Mere co-ownership of property which is maintained, kept in repair, and rented or leased does not constitute a . . . [partnership]. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a . . . [partnership], thereby. Tenants in common, however, may be partners if they actively carry on a trade, business, financial operation, or venture and divide the profits thereof. For example, a partnership exists if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent.

In making a determination of whether a tenants in common arrangement reflects an interest in the underlying property or the existence of a partnership under Section 7701, the IRS and the courts have generally looked at the following: (i) the level of business activities carried on by the co-owners, (ii) the intent of the parties, (iii) whether there is a sharing of profits and losses, (iv) the method of operation of the co-owners, (v) whether the co-owners can separately sell their interests, and (vi) whether there is an exclusive agent for the co-owners. These factors are discussed below.[40]

1. Level of Business Activities Carried on by the Co-Owners. One of the most important factors that can distinguish a co-ownership from a partnership is the level of business activity to be carried on by the co-owners. Fairly substantial activities indicate an intent to join together for the purpose of conducting a joint business venture;[41] whereas the mere passive co-ownership of property is more generally regarded as negating any intent to conduct a business or engage in a venture for profit jointly.[42] However, in one recent Tax Court case, a tenancy in common arrangement was found to be a partnership when there was very limited activity because the Tax Court concluded the taxpayer intended to form a "50-

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[40] It should be further noted that a co-ownership arrangement can be classified as a separate entity for federal tax purposes and the classification of such separate entity is determined under Treas. Reg. §§301.7701-2, 301.7701-3 and 301.7701-4. Pursuant to Treas. Reg. §301.7701-3, an entity that is not classified as a corporation under Treas. Reg. §§301.7701-2(b)(1),(3),(4),(5),(6),(7) or (8) (an "Eligible Entity") can elect its classification for federal tax purposes. In the absence of an election, a domestic Eligible Entity will be treated as a partnership. Company has represented that no election has been made to treat the tenancy in common as a corporation for federal income tax purposes. As a result it is unlikely that the TIC Agreement would be treated as an association taxable as a corporation.

[41] Estate of Levine v. Commissioner, 72 T.C. 780 (1979) aff'd, 634 F.2d 12 (2d Cir. 1980) (services provided by self-managing co-owners sufficient to treat co-owners as partners).

[42] Burde v. Commissioner, 43 T.C. 252 (1964) aff'd, 352 F.2d 995 (2d Cir. 1965); McShain v. Commissioner, 68 T.C. 154 (1977), cert. denied, 383 U.S. 966 (1966).

50 partnership and share all profits and losses equally."[43] It appears that some courts may have adopted a flexible standard such that the level of business activity that is allowed before co-owners are considered partners is lower in the event the co-owners have held themselves out as partners or filed partnership tax returns.[44] Other courts have focused on the degree of business activity which could override other factors.[45] In fact, the IRS has ruled that once intent has been found, in this case by filing partnership tax returns, there is no requirement to look at the level of business activity.[46] In addition, as stated above, the Treasury Regulations indicate that if co-owners lease space and, in addition, provide services to the occupants, either directly or indirectly, or through an agent, a partnership exists.

A variety of business-like activities have given rise to partnership status for federal income tax purposes. For example, co-owners were held to be partners where: (i) the co-owners operated a watch repair business through one of the co-owners,[47] (ii) the co-owners jointly developed a synthetic natural gas property even though the co-owners separately financed their portion, each co-owner could dispose of its interest and the co-owners divided up the natural gas in kind,[48] (iii) several utilities jointly constructed and operated a power plant,[49] (iv) the activity involved short term rentals,[50] (v) the co-owners acquired lots, renegotiated

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[43] Cusick v. Commissioner, 76 T.C.M. (CCH) 241 (1998).

[44] See Demirjian v. Commissioner, 54 T.C. 1691 (1970), aff'd, 457 F.2d 1 (3rd Cir. 1972) (the payment of light, water and heat expenses sufficient to establish business where co-owners held themselves out as partners and filed partnership tax returns; the Third Circuit Court of Appeals affirmed the decision with an emphasis on the fact that the co-owners filed partnership tax returns); Varner v. Commissioner, 32 T.C.M. (CCH) 97 (1973) (co-owners treated as partners where there was a rental of property with minimal activity but the participants filed partnership returns and held themselves out as a partnership); McManus v. Commissioner, 65 T.C. 197 (1975), aff'd, 583 F.2d 443 (9th Cir. 1978), cert. denied, 440 U.S. 959 (1979) (real estate subdivided but participants filed partnership returns and held themselves out as partners; the Ninth Circuit Court of Appeals indicated that the taxpayer was estopped from changing the status claimed on the tax returns; *c.f.*, Appleby v. Commissioner, 41 B.T.A. 18 (1940), aff'd, 123 F.2d 700 (2d Cir. 1941) (no partnership when no intention to be a partnership even through co-owners demolished the property, constructed a garage and leased the property); and Gabriel v. Commissioner, 66 T.C.M. (CCH) 1283 (1993) (degree of business activities insufficient to create a partnership).

[45] Lulu Lung Powell, 26 T.C.M. (CCH) 161 (1967) (filing of partnership return did not cause a tenancy in common arrangement to be treated as a partnership when only customary expenses were incurred and no intent to form partnership).

[46] PLR 9741017 (July 10, 1997).

[47] Rev. Rul. 54-613, 1954-2 C.B. 269.

[48] PLR 7826096 (March 31, 1978); see also Estate of Levine v. Commissioner, 72 T.C. 780 (1979), aff'd, 634 F.2d 12 (2d Cir. 1980) (development of property followed by rental treated as a partnership). Joint operating agreements have generally been classified as partnerships. See TAM 7951006 (August 21, 1979).

[49] PLR 9414004 (December 17, 1993).

[50] PLR 9543003 (July 10, 1995).

encumbrances and sold 68 residential lots,[51] (vi) the activity involved the joint development of a bath oil invention,[52] (vii) the activity involved the daily rental of fishing boats,[53] (viii) the activity involved the leasing of a master audio record,[54] (ix) the participants acquired, rehabilitated and resold real estate[55] and (x) the participants pooled their money to buy Lotto tickets.[56] Thus, any additional business activity other than the mere co-ownership and leasing of the Property may cause co-owners to be treated as partners.

The IRS provided guidance in Revenue Ruling 75-374[57] regarding the level of business activity that is allowed by co-owners before co-owners will be treated as a partnership.[58] In this ruling, the IRS indicated that the furnishing of customary services in connection with the maintenance and repair of an apartment property will not render a co-ownership a partnership.[59] The IRS has defined "customary" services under the REIT rules as those that tenants in buildings of a similar class in the geographic market are customarily provided.[60]

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51 Brady v. Commissioner, 25 T.C. 682 (1955), acq., 1956-2 C.B. 5.

52 Tibbals v. Commissioner, 17 T.C.M. (CCH) 228 (1958). No partnership where co-owners jointly held land for investment because no intent to form a partnership.

53 Underwriters Insurance Agency of America v. Commissioner, 40 T.C.M. (CCH) 5 (1980).

54 Marinos v. Commissioner, 58 T.C.M. (CCH) 97 (1989).

55 Podell v. Commissioner, 55 T.C. 429 (1970). Allison v. Commissioner, 35 T.C.M. (CCH) 1069 (1976) (a partnership was not found where the participants acquired and rehabilitated real estate).

56 Estate of Winkler, 73 T.C.M. (CCH) 1657 (1997).

57 1975-2 C.B. 261.

58 See also, Gilford v. Commissioner, 11 T.C.M. (CCH) 175 (1952) aff'd, 201 F.2d 735 (2nd Cir. 1953) and Coffin v. United States, 120 F. Supp. 9 (S.D. Ala. 1954).

59 See also, Powell v. Commissioner, 26 T.C.M. (CCH) 161 (1967) and Hahn v. Commissioner, 22 T.C. 212 (1954), petition dismissed, Hahn v. Commissioner, 216 F.2d 954 (8th Cir. 1954) (co-owners of real estate with limited business activity not considered partners even though partnership return was filed). It is important to note that the IRS also issued an unpublished private letter ruling to the taxpayer and that the services that were provided were substantial. The services included unattended parking, water, cleaning, heat, repairs, maintenance and trash removal for a 468 unit apartment complex which included a recreational building, tennis courts, parking garage and artificial lake. PLR 740426021A (April 26, 1974). The IRS further indicated, however, that the furnishing of additional services will render a co-ownership a partnership if the additional services are furnished directly by the co-owners or through their agent. The IRS has recently ruled that a tenant in common arrangement was not a partnership based on a representation from the taxpayer that the taxpayer will only provide those services that are usual and customary to maintain the replacement property, such as, heat, air conditioning, hot and cold water, unattended parking, normal repairs, cleaning of public areas, and trash removal, and will not render additional services. PLR 200019014 (February 10, 2000); See also, PLR 9853028 (September 30, 1998).

60 Treas. Reg. §1.856-4(b)(1); PLR 200013021 (December 15, 2000); PLR 9307032 (November 15, 1992) and PLR 9013043 (December 28, 1989). Usual and customary services include cleaning and customary maintenance of common area; maintenance of the landscaping; providing, lighting, cleaning, repairing and repaving shopping center parking lot; repair of limited components of the

Some repairs and other improvements may be required in order to lease space in the Property or otherwise comply with the existing Leases and any new Lease. We believe that the level of business activities carried on by the co-owners, or their agent, should not be viewed as exceeding the mere furnishing of customary services in connection with the maintenance and repair of commercial rental property. The Master Lease is a net lease, and no services, customary or otherwise, will be provided to the Master Lessee on behalf of the Tenants in Common thereunder. Consequently, the mere leasing of the Property should not be sufficient business activity to cause the Tenants in Common to be treated as partners. In the event that additional services are subsequently provided by the Tenants in Common or through their agent, or additional business or development activities are carried on by the Tenants in Common or through an agent, the Tenants in Common could become or may be deemed partners in a partnership for federal income tax purposes.

2. Intent of the Parties. The mere holding of business property by co-owners does not make the co-owners partners in the absence of a showing of any intention on their part to become partners.[61] The TIC Agreement states that the Tenants in Common will each hold their respective interests in the Property as tenants-in-common and that the Tenants in Common do not intend the TIC Agreement to create a partnership or a joint venture. Similarly, the Master Lease states that the Tenants in Common and Master Lessee are not partners or joint ventures. With respect to the Property Manager, the Property Management Agreement states that there is no intent to form a partnership or joint venture with the Tenants in Common. **[Verify]** In addition, the Tenants in Common will not be parties to the Property Management Agreement. Each Tenant in Common is required by the TIC Agreement to report separately his or her share of income or loss and the Tenants in Common will not file a partnership return and will not maintain partnership records. If the Tenants in Common take action as a partnership in the future, the Tenants in Common could be treated as a partnership and not as holders of undivided interests in real property.

3. Sharing of Profits or Losses by the Co-owners. An owner of an undivided interest is generally obligated only for his or her share of expenses and is entitled only to his or her share of income. Under the TIC Agreement and the Master Lease Agreement, each Tenant in Common will be required to pay only his or her share of expenses and will share all profits and losses generated by the Property under the Master Lease pro rata in proportion to its respective Interest. The fact that each Tenant in Common has a pro rata share of profit or loss from the Property should not establish a partnership.

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buildings; trash collection; background music in the common areas; providing a security guard at designated times; providing, repairing and replacing lines and conduits for heating, ventilation and air conditioning central to each property; janitorial services; fire protection services and sprinkler systems.

61 Powell v. Commissioner, 26 T.C.M. (CCH) 161 (1967).

4. Method of Operations. Decisions of a partnership are generally made by a managing partner or a majority of the partners. Decisions by co-owners regarding a property usually require unanimous consent. Under the TIC Agreement, unanimous consent of the Tenants in Common is required for (i) any sale, exchange, lease or re-lease of all or a portion of the Property, (ii) any loans or modifications of loans secured by the Property or any Mezzanine Loans, and (iii) the approval of the Master Lease Agreement, and any extension, renewal or modification of such agreement. Because of the unanimous consent requirement, the decision making powers of the Tenants in Common should not be indicative of a partnership.

5. Owners Have the Right to Freely Dispose of their Interests in the Property. Owners of property generally can freely dispose of their interest whereas partners are obligated to act together in order to generate profits.[62] Under the TIC Agreement, the Tenants in Common will be able to freely transfer, sell or encumber their Interests, although it is expected that under the Mortgage Loan, the Tenants in Common will have to covenant and agree not to transfer the Property without the prior written consent of the Lender, subject to certain limited exceptions. However, it is anticipated that the Lender will give its consent to separate sales or transfers of the Property or Interests, provided that no event of default has occurred and is continuing and the Lender is satisfied with the transferee's reputation, financial condition and bankruptcy remote character and certain other requirements are satisfied. In addition, it is expected that if any Tenant in Common brings an action for partition, such an action will be an event of default under the Mortgage Loan. However, in the event that an action for partition is brought, the other Tenants in Common and the Master Lessee will then have an option to purchase the Interest of the Tenant in Common bringing the partition action for its fair market value. There is a similar option in the event a Tenant in Common files for bankruptcy. There is also a right of first offer provided to Company and the other Tenants in Common in the event a Tenant in Common desires to sell its Interest. Further, there is a right to purchase a dissenting Tenant in Common's Interest at fair market value in the event that at least 80% of the Tenants in Common vote to (i) approve a sale or refinancing of the Property, (ii) take any other action that requires the unanimous approval of the Tenants in Common, or (iii) take action to prevent or cure an event of default under the Mortgage Loan. The TIC Agreement provides that whenever the Tenants in Common have a right to purchase another Tenant in Common's Interest, the purchase price of the Interest is

[62] Bussing v. Commissioner, 89 T.C. 1050 (1987); Alhouse v. Commissioner, 62 T.C.M. (CCH) 1678 (1991); Bergford v. Commissioner, 12 F.3d 166 (9th Cir. 1993). In PLR 200513010 (April 1, 2005) the IRS ruled that a tenancy in common relationship did not constitute a partnership even though the tenants in common agreed to offer their interests to the other co-owners at fair market value prior to exercising their right to partition. Moreover, in PLR 8048064 (September 5, 1980) and TAM 7832007 (April 29, 1978), the IRS ruled that tenants in common did not form a partnership even though the tenants in common waived their right to partition the subject property, and the tenants in common had a right of first refusal on the sale of the tenant in common interests.

the fair market value of such Interest. These rights do not limit transferability but simply address typical situations that arise whenever property is jointly owned and one co-owner's actions could impact the other co-owners. Accordingly, the rights provided to the Tenants in Common with respect to a sale, partition or bankruptcy should not create a partnership.

6. Exclusive Agent for the Property. In the event that co-owners are obligated to deal with each other in order to receive any economic gain, the co-owners are likely to be treated as partners.[63] Co-owners who owned undivided interests in computer equipment but could not sell, transfer, encumber or partition the property and had an exclusive agent to sell and lease the equipment were considered partners because they could only realize a profit by acting together.[64] The IRS also previously ruled that co-owners were partners when the co-owners agreed with an exclusive agent to sell the property and surrender their rights to separately sell their interest in real estate.[65] Here, the Tenants in Common can sell or transfer their Interests (subject to applicable restrictions under the Financing Documents). The Tenants in Common will not be parties to the Property Management Agreement. Accordingly, none of the Master Lessee, the Consultant nor the Property Manager should be viewed as an exclusive agent of the Tenants in Common.

In light of the above factors considered most relevant by the courts in classifying a co-ownership arrangement as a mere tenancy-in-common, rather than a partnership, the co-ownership arrangement contemplated by the Transaction Documents should be considered as interests in real property and not as interests in a partnership for federal income tax purposes.

C. The Master Lease and the Various Management Agreements Should Not Be Viewed as Creating a Partnership or a Financing

It is possible that the Master Lease Agreement between the Tenants in Common and the Master Lessee (or a combination of one or more of the Master Lease Agreement, the Property Management Agreement, the Consulting Agreement and the TIC Agreement) could be classified as a financing or as a partnership for federal income tax purposes. There is, once again, no bright line test in making this determination. This question will be analyzed in two parts. Part I.C.1 analyzes the Master Lease under Revenue Procedure 2001-28[66] which sets forth guidelines for obtaining an advanced ruling a lease constitutes a true lease (and not a financing) for federal income tax purposes. Part I.C.2 analyzes the Master Lease Agreement under case law distinguishing leases and partnerships. Because the Tenants in Common will not be parties to the Property Management Agreement, this agreement is unlikely to create a partnership between the Tenants in Common and the Property Manager.

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63 Id.
64 Id.
65 PLR 8002111 (Oct. 22, 1979).
66 2001-1 C.B. 1156.

1. Lease vs. Financing

Transactions structured as leases may be recharacterized for federal income tax purposes to reflect their economic substance.[67] For example, in appropriate circumstances a purported lease may be recharacterized as a conditional sales contract. Recharacterization of the Master Lease as a financing or other arrangement for federal income tax purposes would have significant tax consequences. For example, if the Master Lease were recharacterized as a financing, the Master Lessee would be treated as the owner of the Property for federal income tax purposes. As a result, Tenants in Common attempting to participate in Section 1031 Exchanges would not be treated as having received qualified replacement property when they acquired their Interests because the Tenants in Common would be treated as having made a loan to the Master Lessee. As the owner of the Property for federal income tax purposes, the Master Lessee would be entitled to claim any depreciation deductions. To the extent that payments of "rent" were recharacterized as payments of interest and principal, the payment of principal would not be treated as the receipt of taxable income to the Tenants in Common and would not be deductible by the Master Lessee. All of these consequences could have a significant impact on the tax consequences of an investment in the Property.

Revenue Procedure 2001-28 [68]sets forth advance ruling guidelines for "true lease" status. Company has not sought, and does not expect to request, a ruling from the IRS under Revenue Procedure 2001-28. These ruling guidelines provide certain criteria that the IRS will require to be satisfied in order to issue a private letter ruling that the lease is a "true lease" for federal income tax purposes. In the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction would consider these ruling guidelines, together with existing cases and rulings, for purposes of determining whether the Master Lease qualifies as a true lease for federal income tax purposes. However, we do not believe that strict compliance with Revenue Procedure 2001-28 is required to conclude that the Master Lease should be characterized as a true lease for federal income tax purposes. Rather, we believe that satisfying most of the material ruling guidelines should be sufficient for purposes of determining the characterization of the Interests for federal income tax purposes. Accordingly, the following discussion reviews the factors considered relevant by the IRS under Revenue Procedure 2001-28.

(i) Minimum Unconditional At-Risk Investment. The lessor must make a minimum unconditional "at risk" investment in the property (the "Minimum Investment") when the lease begins, must maintain such Minimum Investment throughout the entire lease term, and such Minimum Investment must remain at the end of the lease

[67] See, e.g., Frank Lyon Co. v. United States, 435 U.S. 561 (1978), rev'g 536 F.2d 746 (8th Cir. 1976), rev'g 73-2 USTC ¶9,523 (E.D. Ark. 1973); Rice's Toyota World, Inc. v. Commissioner, 752 F.2d 89 (4th Cir. 1985), aff'g 81 T.C. 184 (1983); Helvering v. F. & R. Lazarus & Co., 308 U.S. 252 (1939); Emershaw v. Commissioner, T.C. Memo. 1990-246.

[68] 2001-1 C.B. 1156. The guidelines were designed with equipment, rather than real estate, leveraged leases as a primary concern.

term. The Minimum Investment must be an equity investment (the "Equity Investment") that includes only consideration paid, and personal liability incurred, by the lessor to purchase the property. The net worth of the lessor must be sufficient to satisfy any such personal liability.[69]

(i) Initial Minimum Investment. When the property is first placed in service or use by the lessee, the Minimum Investment must be equal to at least 20 percent of the cost of the property. The Minimum Investment must be unconditional. That is, the lessor must not be entitled to a return of any portion of the Minimum Investment through any arrangement, direct or indirect, with the lessee, a shareholder of the lessee, or any party related to the lessee (within the meaning of Section 318 of the Code) (the "Lessee Group").[70] Each of the Tenants in Common will acquire their Interests in the Property for an unconditional equity investment equal to approximately 30 percent of the cost of their Interest in the Property. None of the Tenants in Common will be entitled to demand the return of his or her Equity Investment from the Company or the Master Lessee, a shareholder of either, or any party related to the Company or the Master Lessee, either through a put option, a guaranty of residual value, or other arrangement with such persons. The various purchase options under the TIC Agreement and the Call Agreement do not violate this requirement because such options give the Master Lessee and/or the other Tenants in Common the right, but not the obligation, to acquire the Interest of a Tenant in Common. Moreover, each of the purchase options is for fair market value and therefore does not guaranty the return of any Tenant in Common's Equity Investment. Similarly, the Master Lessee Reserve provides a source of funds for payment of rent to the Tenants in Common and property expenses (and, in the case of a foreclosure, the Mortgage Loan); it does not provide a guaranty of the residual value of the Property.

(ii) Maintenance of Minimum Investment. The Minimum Investment must remain equal to at least 20 percent of the cost of the property at all times throughout the entire lease term. That is, the excess of the cumulative payments required to have been paid by the lessee to or for the lessor over the cumulative disbursements required to have been paid by or for the lessor in connection with the ownership of the property must never exceed the sum of (i) any excess of the lessor's initial Equity Investment over 20 percent of the cost of the property plus (ii) the cumulative pro rata portion of the projected profit from the transaction (exclusive of tax benefits)[71]. The Company has represented to us that it anticipates that the equity invested in the Property will equal at least 20 percent of the cost of the Property at all times throughout the entire lease term and that, to its knowledge, no plan or intention exists to reduce such equity through distributions or refinancing of the Property or otherwise. It is impossible, however, to determine at this time whether the economic performance of the Property will comply with the above stated computation provided in Revenue Procedure 2001-28.

69 Revenue Procedure 2001-28, § 4.01.
70 Revenue Procedure 2001-28, §4.01(1).
71 Revenue Procedure 2001-28, §4.01(2).

(iii) Residual Investment. Under Revenue Procedure 2001-28, the fair market value of the property at the end of the lease term must be estimated to be an amount equal to at least 20 percent of the original cost of the property. For this purpose, fair market value must be determined (i) without including in such value any increase or decrease for inflation or deflation during the lease term, and (ii) after subtracting from such value any cost to the lessor for removal and delivery of possession of the property to the lessor at the end of the lease term. In addition, under Revenue Procedure 2001-28, a reasonable estimate of the remaining useful life of the property at the end of the lease term must equal the longer of one year or 20 percent of the originally estimated useful life of the property.[72] The Company has represented that the Property is expected to have a value at the anticipated time of sale which exceeds 20 percent of the original cost of the Property and that the financial projections of the value of the Property at the anticipated time of sale are not based on increases or decreases in inflation or deflation during the lease term and reflect the anticipated costs of sale. In addition, the Company has represented that a reasonable estimate of the remaining useful life of the Property at the end of the lease term should equal the longer of one year or 20 percent of the originally estimated useful life of the Property. This representation is logical in light of the significant amount of land (and the value thereof) included in the Property.

(ii) Lease Term and Renewal Options. For purposes of determining whether the various requirements imposed under Revenue Procedure 2001-28 are satisfied, the lease term must include all renewal or extension periods except renewals or extensions at the option of the lessee at fair rental value at the time of such renewal or extension.[73] The Master Lease has a term of 20 years and does not provide for any renewal options. Because both the Equity Investment of the Tenants in Common and the Master Lease will terminate at the time of the anticipated sale, the anticipated time of sale might be used as the measuring period for purposes of determining the term of the Master Lease. One could also argue that the entire term of the Master Lease should be used as the applicable measuring period in determining whether the various requirements of Revenue Procedure 2001-28 have been met. We have considered each of these alternatives in reaching our conclusions herein concerning the application of Revenue Procedure 2001-28.

(iii) Purchase and Sale Rights. No member of the Lessee Group may have a contractual right to purchase the property from the lessor at a price less than its fair market value at the time the right is exercised.[74] When the property is first placed in service or use by the lessee, the lessor may not have a contractual right to cause any party to purchase the property.[75] The lessor must also not have any present intention to acquire such a contractual right. A provision that permits the lessor to abandon the property to any party will be treated as a contractual right of the lessor to cause such party to purchase the

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[72] Revenue Procedure 2001-28, §4.01(3).
[73] Revenue Procedure 2001-28, §4.02.
[74] Revenue Procedure 2001-28, §4.03.
[75] Revenue Procedure 2001-28, §4.03.

property.[76] While the TIC Agreement and the Call Agreement do contain various purchase options that may permit the Master Lessee to purchase the Interest of a Tenant in Common, all such purchase options require the payment of fair market value. The Master Lease and other Operative Documents do not provide any Tenant in Common with a put option or the right to abandon the property to any party. The ability to abandon the Property to the Lender due to the nonrecourse nature of the debt encumbering the Property should not cause the Master Lease to be treated other than as a true lease.

(iv) Investment by Lessee. Except as otherwise provided below, no part of the cost of the property or the cost of improvements, modifications, or additions to the property ("Improvements"), may be furnished by any member of the Lessee Group. If the lease requires the lessee to maintain and keep the property in good repair during the term of the lease, ordinary maintenance and repairs performed by a member of the Lessee Group will not constitute an Improvement.[77] While the Master Lessee may incur some obligations to construct improvements under one or more subleases, this should not affect the characterization of the Master Lease for federal income tax purposes. Under the Master Lease, the Master Lessee may be required to pay for certain tenant improvements associated with the Property. We believe that any improvements required to be constructed by the Master Lessee are consistent with ordinary commercial practice and should not prevent the Master Lease from qualifying as a true lease for federal income tax purposes.[78] The provision for Mezzanine Loans reinforces this conclusion. While Mezzanine Loans are optional, they effectively shift the burden of constructing improvements to the Tenants in Common.

(v) No Lessee Loans or Guarantees. No member of the Lessee Group may lend to the lessor any of the funds necessary to acquire the property, or guarantee any indebtedness created in connection with the acquisition of the property by the lessor.[79] A guarantee by any member of the Lessee Group of the lessee's obligation to pay rent, properly maintain the property, or pay insurance premiums or other similar conventional obligations of a net lease does not constitute a guarantee of the indebtedness of the lessor.[80] There are no guarantees under the Master Lease or other Operative Documents that violate this requirement. The Master Lessee Reserve is not a guaranty of the Mortgage Loan. Rather, the Master Lessee is assuming a contractual obligation to create a deposit account to cover rent and property expenses. A lessee's obligation to reserve funds against its

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[76] Revenue Procedure 2001-28, §4.03.

[77] Revenue Procedure 2001-28, §4.04.

[78] In addition, in its private ruling practice under Revenue Procedure 75-21 (the predecessor to Revenue Procedure 2001-28 which included a similar requirement. the IRS has generally concluded that the making of an improvement not permitted under this guideline will not affect the true lease analysis. See PLR 8712025; see also G.C.M. 36,727 (May 13, 1976) ("We too have found no statutory or judicial law reclassifying a lease transaction as a purchase because of lessee improvements.").

[79] Revenue Procedure 2001-28, §4.05.

[80] Revenue Procedure 2001-28, §4.05.

obligation to pay rent or other expenses is consistent with a lease and the fact that a lender may be able to seize such funds in the event of a foreclosure on the lessee's property interest should not cause this obligation to be treated as a guaranty. The terms of the Mezzanine Loan program require Mezzco to be an unrelated party. Accordingly, Mezzanine Loans are not made by a member of the Lessee Group. In addition, Mezzanine Loans will not be incurred to acquire the Property.

(vi) Profit Requirement. The lessor must expect to receive a profit from the transaction, apart from the value of or benefits obtained from the tax deductions, allowances, credits, and other tax attributes arising from such transaction. This requirement is met if: (a) the aggregate amount required to be paid by the lessee to or for the lessor over the lease term plus the value of the residual investment exceed an amount equal to the sum of the aggregate disbursements required to be paid by or for the lessor in connection with the ownership of the property and the lessor's Equity Investment in the property, including any direct costs to finance the Equity Investment; and (b) the aggregate amount required to be paid to or for the lessor over the lease term exceeds by a reasonable amount the aggregate disbursements required to be paid by or for the lessor in connection with the ownership of the property[81]. The Company has represented to us that this requirement is expected to be satisfied.

In light of the above factors, the Master Lease satisfies most of the pertinent material conditions set forth in Revenue Procedure 2001-28. Accordingly, we believe that the Master Lease arrangement should be treated as a true lease rather than a financing for federal income tax purposes.

[81] Revenue Procedure 2001-28, §4.06.

2. Lease vs. Partnership

It also is necessary to consider whether the Master Lease could be re-characterized as a partnership for federal income tax purposes.[82] Case law indicates that in addition to the factors discussed above, there are other factors indicating that a purported lease or management agreement may in fact be a partnership for federal income tax purposes.[83] Of these factors, significant participation in the management of the property or an agreement by the lessor and lessee to share losses and expenses seem to be the most important.

The courts have focused on the following factors when analyzing this issue:

(i) Intent. The test set forth in Culbertson is equally applicable in determining whether an agreement is treated as a partnership or as a lease. As stated above, the Operative Documents specifically state that the Tenants in Common do not intend to form a partnership or joint venture with the Master Lessee. Likewise, the Master Lease recites that it is intended to be characterized as a lease for federal income tax purposes, that the economic relationship embodied therein is that of landlord and tenant, and the parties do not intend to form a partnership or joint venture.

(ii) Joint Contribution of Capital or Services. Where persons combine their capital and services together in an enterprise such that they are required to deal with each other to realize the economic benefits from the property, the arrangement generally will be characterized as a partnership.[84] The Tenants in Common and the Master Lessee do not intend to pool either their capital or services. The Tenants in Common will make the Property available to the Master Lessee for use in its leasing business for a fee and will participate in, or provide services to, the Master Lessee's business only to the extent necessary to protect their investment in the Property. Similarly, the Master Lessee will not

[82] Because the Property Manager will not be in privity of contract with the Tenants in Common, there should be little doubt that there is no partnership between the Property Manager and the Tenants in Common.

[83] See Haley v. Commissioner, 203 F.2d 815 (5th Cir. 1953), rev'g and rem'g 16 T.C. 1509 (1951) (citing Culbertson and stating that a transaction will be treated as a partnership rather than a lease "if the agreements and the conduct of the parties . . . plainly show the existence of such [a partnership] relationship, and the intent to enter into it"); Bussing v. Commissioner, 88 T.C. 449 ("A partnership for federal income tax purposes is formed when the parties to a venture join together capital or services with the intent of conducting a business or enterprise and of sharing the profits and/or losses of the venture"). In Bussing, the parties entered into a multiparty sale lease-back transaction intended to qualify under Frank Lyon Co. v. United States, supra. Rent payments generally offset amounts due under the debt incurred to purchase the asset, giving the purchaser-lessor an interest in the rent. Because of a remarketing agreement that enabled the seller-lessee to share along with the purchaser lessor in the residual value of the leased property. The purchaser-lessee took the property subject to already existing debt and therefore bore a risk of loss if this debt was not repaid.

[84] Bussing v. Commissioner, supra; Alhouse v. Commissioner, 62 T.C.M. (CCH) 1678 (1991).

provide capital to enable the Tenants in Common to acquire or improve the property and will provide services to the Tenants in Common only to the extent necessary to comply with its obligations under the Master Lease.

(iii) Joint Capital and Ownership of Capital and Earnings. Another factor is whether the participants will have joint control over the capital and earnings of the venture.[85] The Master Lessee and/or the Property Manager will have joint control over cash from the Property. However, neither the Master Lessee nor the Property Manager should be deemed to have an ownership interest in the funds to which the Tenants in Common are entitled and they do not have the power to spend such funds except pursuant to the specific terms provided under the Master Lease, or the Property Management Agreement. The Tenants in Common, the Master Lessee, and the Property Manager and the Consultant will each earn a separate profit. The Property Manager will be paid a percentage of gross rents by the Master Lessee. The Master Lessee will recognize income or loss based on the difference between the rent it receives on its subleases and the expenses of leasing and operating the Property. The Consultant will receive a sales commission under circumstances described in the Consulting Agreement on the resale of the property (as long as the Consulting Agreement remains in effect at the time of the sale). The Tenants in Common will receive rent from the Master Lessee. Thus, none of these parties will jointly share in profits or losses; rather, each will bear its own separate risk that a profit will be realized.

(iv) Sharing of Profits as Co-proprietors. Partners generally share profits as co-proprietors. A sharing of profits, however, is not alone sufficient to make partners or joint venturers out of participants in a business enterprise if the requisite element of co-ownership is not established. [86] A profit share in a lease can be received by a lessor as

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85 See e.g., Section 704(e)(1)

86 See Treas. Reg. § 301.7701-1(a)(2) (if an individual owner, or tenants in common, of farm property leases it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes); Grandview Mines v. Commissioner, 282 F.2d 700 (9th Cir. 1960), aff'g 32 T.C. 759 (1959) (46.5% of lessee's net profits from leased property; not recharacterized as partnership); Freesen v. Commissioner, 84 T.C. 920 (1985) ('The fact that the consideration paid for the use of property is a function of net profits, does not require a finding that a joint venture exists"); see also United States v. Myra Foundation, 382 F.2d 107 (8th Cir. 1967) (sharecropping arrangement not partnership even though landowner furnished seed, paid half of certain expenses, and participated in farming operations through a farm manager); White's Iowa Manual Labor Inst. v. Commissioner, T.C. Memo 1993-364, 66 T.C.M. (CCH) 389 (same result); Harlan E. Moore Charitable Trust v. United States, 9 F.3d 623 (7th Cir. 1993) (same result); Oblinger Trust v. Commissioner, 100 T.C. 114 (1993); cf. Bank of El Paso v. United States, 509 F.2d 832 (5th Cir. 1975) (holding characterization as lease or partnership was a question for the jury and distinguishing Myra Foundation); Revenue Ruling 57-7, 1957-1 C.B. 435 (arrangements in which coin-operated entertainments were placed on premises and under which the owner of the premises received a percentage of the gross receipts were leases); Manchester Music Co., Inc. v. United States, 733 F. Supp. 473 (D.N.H. 1990) (reaching opposite conclusion

rent without the lessor becoming a partner in the enterprise. A share of net receipts, as opposed to gross receipts, is stronger evidence that a partnership relationship exists, but without more, will not cause a lease to be recharacterized as a partnership. Under the Master Lease Agreement, the Master Lessee receives rent from the sublease of the Property whereas the Tenants in Common receive rent from the Master Lease. The Property Manager will receive a fee from the Master Lessee based on the gross revenue from the Property. Under the Consulting Agreement, the Consultant will receive a consulting fee for services in connection with the resale of the Property based on the gross sales proceeds. Thus, the Tenants in Common, the Master Lessee, and the Consultant should not be viewed as sharing in the net profits from the Property. The compensation of the Property Manager is a matter of the contract between the Master Lessee and the Property Manager, and the terms of such contract are very unlikely to create a partnership between the Master Lessee, the Property Manager, the Consultant and the Tenants in Common as each will bear its own risk that it will make a profit.

(v) Sharing of Losses. Although the sharing of losses is not required to obtain partner status, this has often been a significant factor in cases distinguishing leases from partnerships. A mere profit-sharing agreement would not be taxed as a partnership absent an intent to form a partnership, especially when there was no agreement to share losses. In the case of the Master Lease, the Tenants in Common will net lease the Property to the Master Lessee, and will not share in losses, if any, sustained by the Master Lessee with respect to the subletting of the Property. Rather, the Tenants in Common will share gross rents, as Tenants in Common and not as partners.[87]

(vi) Control over the Business. An arrangement whereby two or more persons share the profits of a common undertaking does not constitute a joint venture in the absence of the power to control.[88] Typically, a lessor does not jointly manage the leased property with the lessee. The right of a lessor to participate in the management of the property, therefore, is an important factor distinguishing leases from partnerships.[89] Under

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from Rev. Rul. 57-7); In re Acme Music Co., Inc., 196 B.R. 925 (W.D. Pa. 1996) (no partnership between owner of premises of operator of coin-operated entertainments where owner and operator shared only gross profits, not net profits); Rev. Rul. 92-49, 1992 –1 C.B. 433 (allowing taxpayers to elect how to report arrangements described in Revenue Ruling 57-7); see also Duley v. Commissioner, 41 T.C.M. (CCH) 1521 (1981) (no partnership even though profit sharing because no intent to form partnership, no sharing of losses and no material interest in capital); Koss v. Commissioner, 57 T.C.M. (CCH) 882 (1989) (no partnership when joint sharing of profits because no obligation to contribute capital or share losses and no proprietary interest in profits); PLR 8003027 (Oct. 23, 1979); G.C.M.. 36113 (Dec. 19,1974); Revenue Ruling 75-43,1975-1 C.B. 383.

87 Sharing of gross rents, without more, is very unlikely to create a partnership arrangement. Treas. Reg. §1.761-1(a); Treas. Reg. §301.7701-1(a)(2).

88 Joe Balestrieri and Co. v. Commissioner, 177 F.2d 867 (9th Cir. 1949); O'Conner v. Commissioner, 19 T.C.M. (CCH) 380 (1960) (broker split profits but compensated for losses).

89 See, e.g., Grandview Mines v. Commissioner, 282 F.2d 700 (9th Cir. 1960); Haley v. Commissioner, 203 F.2d 815 (5th Cir. 1953)

the terms of the Master Lease, the Tenants in Common will have limited rights to participate in the management of the Property. The Master Lessee and the Property Manager will have the right to manage the day to day operation of the Property. While any decision to sell or refinance the Property will require the consent of the Tenants in Common, these rights are normal for a lessor to possess as the owner of the Property and therefore do not support partnership characterization. Any sublease by the Master Lessee does not require the consent of the Tenants in Common.

(vii) Parties' Agreement and Conduct in Executing its Terms. As stated above, the Master Lease specifically states that the parties do not intend to create a partnership or joint venture. Accordingly, the parties' agreement and, to our knowledge, their conduct in executing its terms should not be indicative of a partnership for federal income tax purposes.

(viii) Maintenance of Separate Books. As provided above, neither the Master Lessee nor the Property Manager will keep books or records on behalf of the Tenants in Common; rather, the Master Lessee will keep records such that each Tenant in Common can separately report his share of income.

(ix) Filing of Tax Returns or Other Partnership Action. Pursuant to the TIC Agreement, no partnership returns will be filed and the parties are prohibited from otherwise acting or holding themselves out as partners in a partnership.

(x) Lessee Shares in Residual Proceeds. A number of cases have upheld transactions as leases even though the lessee engaged to provide the lessor with remarketing services in exchange for a share of the sales proceeds.[90] Courts have recognized that brokerage commissions based on a percentage of the sales proceeds are ordinary commercial transactions that are not in themselves indicative of a partnership.[91] Accordingly, the Consulting Fee received by the Consultant, an affiliate of the Master Lessee, is not indicative of a Partnership.

Based on these factors, the arrangement between and among the Tenants in Common and the Master Lessee should not give rise to a partnership for federal income tax purposes.

D. Election Out of Partnership Treatment under Section 761

Section 1031(a) indicates that if co-owners qualify for an election under Section 761, and such election is made, then the co-owners will be treated as owning an interest in real estate and not a partnership interest for federal income tax purposes. Co-owners are eligible to make such an election if the co-owners (i) own the property as co-owners, (ii) reserve the

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[90] See, e.g., Levy v. Commissioner, 91 T.C. 838 (1988); Casebeer v. Commissioner, 909 F.2d 1360 (9th Cir. 1990)

[91] See Robert W. Ewing, 17 T.C.M. (CCH) 626 (1958).

right separately to take or dispose of their shares of any property acquired or retained, and (iii) do not actively conduct business or irrevocably authorize some person or persons acting in a representative capacity to purchase, sell, or exchange such investment property, although each separate participant may delegate authority to purchase, sell, or exchange his or her share of any such investment property for the time being for his or her account, but not for a period of more than one year.[92] The Section 761 election is made by either filing an election with the IRS or, in the alternative, an election will be deemed to be made if there is an intent to make the election in the ownership agreement.[93] The Section 761 Treasury Regulations provide that either one of the following will indicate the requisite intent: (a) at the time of the formation of the organization there is an agreement among the members that the organization be excluded from Subchapter K beginning with the first taxable year of the organization or (b) the members of the organization owning substantially all of the capital interests report their respective shares of the items of income, deductions, and credits of the organization on their respective returns (making such elections as to individual items as may be appropriate) in a manner consistent with the exclusion of the organization from Subchapter K, beginning with the first taxable year of the organization.[94]

The TIC Agreement includes the provision set forth in (a) above and requires the Tenants in Common to comply with (b) above. Consequently, the Tenants in Common should be deemed to have made a Section 761 election. However, there is some uncertainty as to whether the requirements to make such an election will be met and, as a result, whether the election will be effective. Although the Tenants in Common should be viewed as owning the Property as co-owners and should be viewed as having the right to separately take or dispose of their Interests in the Property, it is uncertain whether the Tenants in Common will be viewed as actively carrying on a trade or business. The determination as to whether the Tenants in Common are actively carrying on a trade or business for purposes of the Section 761 election is similar to whether the co-tenants' activities rise to the level sufficient that the co-owners would be treated as a partnership for income tax purposes. If the level of activity is sufficient that the Tenants in Common are engaged in a trade or business, the election under Section 761 would not be available and, as a result, the Tenants in Common could become or may be deemed a partnership for income tax purposes. Further, the IRS could make a determination that even though the Tenants in Common may have elected out from Subchapter K, each Tenant in Common has entered into a separate partnership with the Property Manager, the Master Lessee, or the Consultant.

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92 Treas. Reg. §1.761-2(a)(3).
93 Treas. Reg. §1.761-2(b)(2).
94 Treas. Reg. §1.761-2(b)(2).

E. Revenue Procedure 2002-22

Revenue Procedure 2002-22 was issued by the IRS to provide guidance regarding the co-ownership of undivided fractional interests in rental real property and the treatment of such interests as interests in real property rather than as interests in a partnership for federal income tax purposes. Company has not sought, and does not expect to request, a ruling from the IRS under Revenue Procedure 2002-22. As a result, the ruling guidelines technically are not applicable for purposes of determining the characterization of the Interests for federal income tax purposes.

We believe, however, that in the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction would consider these ruling guidelines, together with existing cases and rulings, for purposes of determining whether the Interests are treated as interests in real property or as partnership interests for federal income tax purposes. Even though the requirements set forth in Revenue Procedure 2002-22 are procedural requirements to obtain an advance ruling from the IRS and, as such, are not substantive law with respect to what qualifies or does not qualify as real property for purposes of a Section 1031 exchange, the Revenue Procedure provides a significant baseline to use in analyzing whether a co-tenancy arrangement constitutes a partnership. Accordingly, the following discussion reviews the factors considered relevant by the IRS under the Revenue Procedure.

1. Tenancy in Common Ownership. Each of the co-owners must hold title to the property (either directly or through a disregarded entity) as a tenant in common under local law.[95] In the present case, the Company has represented that it has received an opinion from its real estate counsel that each co-owner will hold title to the Property directly or through a disregarded entity formed under Delaware law as a tenant in common under local law.

2. Number of Co-Owners. The number of co-owners must be limited to no more than 35 persons.[96] The Company has represented that there will be 35 or fewer Tenants in Common.

3. No Treatment of Co-Ownership as an Entity. The co-ownership may not file a partnership or corporate tax return, conduct business under a common name, execute an agreement identifying any or all of the co-owners as partners, shareholders, or members of a business entity, or otherwise hold itself out as a partnership or other form of business entity (nor may the co-owners hold themselves out as partners, shareholders, or members of a business entity). The co-owners cannot have held their interests in the property

[95] Revenue Procedure 2002-22; ¶6.01.

[96] Revenue Procedure 2002-22; ¶6.02.

through a partnership or corporation immediately prior to the formation of the co-ownership.[97] The TIC Agreement contains these requirements and the Company has represented that these requirements will be met.

4. Co-Ownership Agreement. The co-owners may enter into a limited co-ownership agreement that may run with the land. A co-ownership agreement may provide that a co-owner must offer the co-ownership interest for sale to the other co-owners, the sponsor, or the lessee at fair market value before exercising any right to partition; or that certain actions on behalf of the co-ownership require the vote of co-owners holding more than 50 percent of the undivided interests in the property.[98] The TIC Agreement complies with these requirements in all material respects.

5. Voting. The co-owners must retain the right to approve the hiring of any manager, the sale or other disposition of the property, any leases of a portion or all of the property, or the creation or modification of a blanket lien. Any sale, lease, or re-lease of a portion or all of the property, any negotiation or renegotiation of indebtedness secured by a blanket lien, the hiring of any manager, or the negotiation of any management contract (or any extension or renewal of such contract) must be by unanimous approval of the co-owners. For all other actions on behalf of the co-ownership, the co-owners may agree to be bound by the vote of those holding more than 50 percent of the undivided interests in the property.[99] The TIC Agreement provides that (i) the creation of any loan encumbering the Property, or otherwise with respect to the Property, (ii) the approval of any Mezzanine Loan; (iii) the consummation of any sale of the Property to third party purchasers; and (iv) any lease shall be subject to the prior unanimous approval by the Tenants in Common (after the termination of the Master Lease). In addition, following the termination of the Master Lease, approval of any manager or management agreement shall require the unanimous consent of the Tenants in Common. The Property Management Agreement is between the Property Manager and the Master Lessee rather than the Tenants in Common. The Consulting Agreement must be renewed annually, but is not a management or brokerage contract and therefore can be renewed based upon the consent of only a majority of the Tenants in Common. The TIC Agreement also provides that actions that do not require the unanimous consent of the Tenants in Common may be decided by the vote of those holding a majority of the Interests in the Property.

6. Restrictions on Alienation. Each co-owner must have the right to transfer, partition, and encumber his or her undivided interest in the property without the agreement or approval of any person. However, restrictions on the right to transfer, partition, or encumber interests in the property that are required by a lender and that are consistent with customary commercial lending practices are not prohibited. Moreover, the co-owners, the sponsor, or the lessee may have a right of first offer with respect to any co-owner's

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[97] Revenue Procedure 2002-22; ¶6.03.

[98] Revenue Procedure 2002-22; ¶6.04.

[99] Revenue Procedure 2002-22; ¶6.05.

exercise of the right to transfer the co-ownership interest in the property. [100] In addition, a co-owner may agree to offer the co-ownership interest for sale to the other co-owners, the sponsor, or the lessee at fair market value before exercising any right to partition.[101] The TIC Agreement provides that each Tenant in Common can transfer, partition or encumber its Interest. It is anticipated that the Lender will require restrictions on these rights that are consistent with customary commercial lending practices. The TIC Agreement also provides a right of first offer with respect to any sale by a Tenant in Common.

7. Sharing Proceeds and Liabilities upon Sale of Property. If the property is sold, any debt secured by a blanket lien must be satisfied and the remaining sales proceeds must be distributed to the co-owners.[102] The TIC Agreement provides that the proceeds from the sale of the Property shall (i) first be used to pay in full any loans encumbering title to the Property, (ii) second, to pay all outstanding costs and expenses incurred in connection with the holding, marketing and sale of the Property and (iii) third, to the Tenants in Common pro rata in accordance with their respective Interests in the Property.

8. Proportionate Sharing of Profits and Losses. Each co-owner must share in all revenues generated by the property and all costs associated with the property in proportion to the co-owner's undivided interest in the property. Neither the other co-owners, nor the sponsor, nor the manager may advance funds to a co-owner to meet expenses associated with the co-ownership interest, unless the advance is recourse to the co-owner (and, where the co-owner is a disregarded entity, the owner of the co-owner) and is not for a period exceeding 31 days.[103] The TIC Agreement provides that all income, revenue and proceeds from sale or refinance or condemnation awards shall be shared by the Tenants in Common in proportion to their respective undivided interests in the Property. In addition, under the TIC Agreement, any funds advanced by a Tenant in Common to cover another co-tenant's share of expenses will be recourse to such co-tenant and must be repaid within 31 days of the funding of such loan. However, the TIC Agreement does not comply with the parenthetical set forth above. We have considered this issue and concluded that the parenthetical requirement is (i) not indicative of a partnership, (ii) not based on the case law or rulings, and (iii) contrary to the general treatment of disregarded entities. In short, the law concerning the existence of a partnership does not support this parenthetical requirement.

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[100] Revenue Procedure 2002-22; ¶6.06.
[101] Id.
[102] Revenue Procedure 2002-22; ¶6.07.
[103] Revenue Procedure 2002-22; ¶6.08.

9. Proportionate Sharing of Debt. The co-owners must share in any indebtedness secured by a blanket lien in proportion to their undivided interests.[104] Under the TIC Agreement, the Tenants in Common will share any indebtedness secured by the Property pro rata in proportion to their undivided Interests in the Property. Any Mezzanine Loan will be secured by the Membership interests in the Tenants in Common rather than the property and therefore would not violate this requirement. In any case, any such Mezzanine Loan would be shared proportionately by the Tenants in Common.

10. Options. A co-owner may issue an option to purchase the co-owner's undivided interest, provided that the exercise price for the call option reflects the fair market value of the property determined as of the time the option is exercised. For this purpose, the fair market value of an undivided interest in the property is equal to the co-owner's percentage interest in the property multiplied by the fair market value of the property as a whole.[105] Here, the Tenants in Common have a right to purchase a dissenting Tenant in Common's Interest, a defaulting Tenant in Common's Interest or the Interest of a Tenant in Common in the event such Tenant in Common files for bankruptcy or files an action for partition. The TIC Agreement provides that whenever the Tenants in Common have the right to purchase another Tenant in Common's Interest, the purchase price of the Interest will be the fair market value of such Interest.

11. No Business Activities. The co-owners' activities must be limited to those customarily performed in connection with the maintenance and repair of rental real property. Activities will be treated as customary activities for this purpose if the activities would not prevent an amount received by an organization described in Section 511(a)(2) from qualifying as rent under Section 512(b)(3)(A) and the regulations thereunder. In determining the co-owners' activities, all activities of the co-owners, their agents, and any persons related to the co-owners with respect to the property will be taken into account, whether or not those activities are performed by the co-owners in their capacities as co-owners.[106] From time to time, the in-house engineering staff of the Master Lessee, the Property Manager or their affiliates may provide sundry services to tenants unrelated to tenant improvements or may hire outside contractors to provide such services. The Master Lessee and/or Property Manager are not required to provide such services under the terms of the Leases and are reimbursed separately for such services. The Company has represented that these requirements will be met and, in light of the terms of the Master Lease Agreement and the Property Management Agreement, there is no current intent for the Tenants in Common to engage in such activities under the proposed ownership structure.[107]

[104] Revenue Procedure 2002-22; ¶6.09.

[105] Revenue Procedure 2002-22; ¶6.10.

[106] Revenue Procedure 2002-22; ¶6.11.

[107] Rent under Section 512(b)(3)(A) includes only rents from real property and rents from personal property leased with real property if the rents from personal property are an incidental amount of the total rents received or accrued under the lease.[107] Rents attributable to personal property

12. Management and Brokerage Agreements. The co-owners may enter into management or brokerage agreements, which must be renewable no less frequently than annually, with an agent, who may be the sponsor or a co-owner (or any person related to the sponsor or a co-owner), but who may not be a lessee. In all events, however, the manager must disburse to the co-owners their shares of net revenues within 3 months from the date of receipt of those revenues. The determination of any fees paid by the co-ownership to the manager must not depend in whole or in part on the income or profits derived by any person from the property and may not exceed the fair market value of the manager's services. Any fee paid by the co-ownership to a broker must be comparable to fees paid by unrelated parties to brokers for similar services.[108] Under the Transaction Documents, (i) upon the expiration of the Master Lease Agreement, any management agreements will be subject to annual approval of the Tenants in Common; (ii) the Master Lessee must distribute net cash flow to the Tenants-in-Common within 3 months of their receipt; (iii) no fees paid under the management agreements depend in whole or in part on the income or profits received from any portion of the Property; (iv) the Consultant will not be the Master Lessee; and (v) the Consulting Agreement will be renewed no less frequently than annually. The Company has represented that the fees due under the Property Management Agreement and the Consulting Agreement do not exceed the fair market value of the services and that such fees are comparable to fees that would be charged by an unrelated party.

13. Leasing Agreements. All leasing arrangements must be bona fide leases for federal tax purposes. Rents paid by a lessee must reflect the fair market value for the use of the property. The determination of the amount of the rent must not depend, in whole or in part, on the income or profits derived by any person from the property leased (other than an amount based on a fixed percentage or percentages of receipts or sales).[109] The Lease is with an unrelated party. Company has represented that these requirements will be met, and our analysis of the Master Lease supports the conclusion that the Master Lease should be a bona fide or "true" lease for federal tax purposes, rather than a financing or other arrangement. We have also examined the Leases to ensure compliance with new Code Section 470. Under Section 470, replacement property in an exchange that is "tax-exempt use property" (very generally, property that is leased to a government entity, a tax-exempt organization, or a foreign person) will not qualify for tax-free treatment under Section 1031 if the lease of such property is "disqualified." In order for lease to avoid being classified as a disqualified lease under these rules, the lease must either meet the requirements of Section

generally are not an incidental amount of total rents if such rents exceed 10% of the total rents. In addition, rent under Section 512(b)(3)(A) does not include amounts paid where more than 50% of the total rents attributable to the property are attributable to personal property.[107] The Company has represented that (i) rents attributable to personal property will not exceed 10% of total rents; and (ii) less than 50% of total rents from the Property will be attributable to personal property. Accordingly, rents from the leasing of incidental personal property at the Property should qualify as rent for purposes of Section 512(b)(3)(A).

[108] Revenue Procedure 2002-22; ¶6.12.

[109] Revenue Procedure 2002-22; ¶6.13.

470(d) or must not be a disqualified lease under Section 168(h).[110] One of the Tenants, the Commonwealth of Kentucky (Department of Revenue) is a tax-exempt entity. The Company has represented that the requirements of Section 470(d) will be met with respect to the Lease with this Tenant.

14. Loan Agreements. The lender with respect to any debt that encumbers the property or with respect to any debt incurred to acquire an undivided interest in the property may not be a related person to any co-owner, the sponsor, the manager, or any lessee of the property.[111] The Company has represented that these requirements will be met.

15. Payments to the Company. The amount of any payment to the sponsor for the acquisition of the co-ownership interest (and the amount of any fees paid to the sponsor for services) must reflect the fair market value of the acquired co-ownership interest (or the services rendered) and may not depend, in whole or in part, on the income or profits derived by any person from the property.[112] The Company has represented that these requirements will be met.

In light of the above factors, the TIC Agreement, the Call Agreement, the Property Management Agreement and the Master Lease Agreement comply in most material respects with the conditions set forth in Revenue Procedure 2002-22.

II. The Distinctions between the Proposed Tenancy in Common Arrangement and the Revenue Procedure Should Not Cause the Arrangement to be Classified as a Partnership

A. Distinctions Compared to Revenue Procedure 2002-22

The IRS could emphasize certain distinctions between the proposed tenancy-in-common arrangement and Revenue Procedure 2002-22. For example, the following differences could be highlighted by the IRS: (i) the TIC Agreement provides for deemed consent of certain

[110] The requirements of Section 470(d) are generally as follows: (i) the lessee may not monetize its lease obligations (including any purchase option) in an amount that exceeds 20% of the taxpayer's adjusted basis in the leased property at the time the lease is entered into; (ii) the lessor must maintain a substantial equity investment in the leased property, meaning that at the time the lease is entered into, the taxpayer initially makes an unconditional, at-risk equity investment in the property of at least 20% of the taxpayer's adjusted basis in the leased property at that time, (iii) the taxpayer maintains such equity investment throughout the lease term; (iv) at all times during the lease term, the fair market value of the property at the end of the lease term is reasonably expected to equal at least 20% of its initial fair market value; and (v) if the lessee has the option to purchase the property and the property has a seven year or more class life, the purchase price must be equal to the fair market value of the property at the time of exercise of the purchase option.

[111] Revenue Procedure 2002-22; ¶6.14.

[112] Revenue Procedure 2002-22; ¶6.15.

issues, which is not explicitly permitted under Revenue Procedure 2002-22, (ii) the TIC Agreement does not fully comply with the parenthetical requirement in Section 6.08 of Revenue Procedure 2002-22 (concerning liability of the owner of a disregarded entity to repay advances); (iii) the Lender has imposed requirements, including the liability on the part of the Company and its affiliates for certain nonrecourse carve-outs in the Mortgage Loan, which could be viewed as resulting in impermissible risk sharing between the Tenants in Common and the Company and its affiliates; and (iv) the Tenants in Common will enter into a Consulting Agreement, subject to annual renewal with the consent of a majority of the Tenants in Common, with the Sponsor or one of its affiliates to provide services in connection with the sale of the Property, which is not specifically provided for under Revenue Procedure 2002-22.

B. Analysis

Although Revenue Procedure 2002-22 does not explicitly permit these provisions, we believe that these provisions are consistent with the intent and purpose of Revenue Procedure 2002-22 as well as with the underlying cases and rulings governing whether the relationship among the Tenants in Common is classified as a partnership for income tax purposes. A risk always exists that the IRS may not agree with such opinion. Accordingly, our opinion is not based upon compliance with the factors set forth in the Revenue Procedure; rather, our opinion rests upon the cases and other authorities discussed in Parts I. A, B, C and D above.

First, the IRS has approved the use of certain deemed consent provisions;[113] however, no assurance exists that the IRS would approve the manner in which they are used in the present case. Second, the requirement under Section 6.08 of Revenue Procedure 2002-22 that an owner of a disregarded entity must be liable to repay advances of the Tenant in Common is simply not supported by any authority outside of the Revenue Procedure. The case law governing the existence of a partnership for federal income tax purposes does not support this requirement under the Revenue Procedure. Third, as discussed below, the allocation of liabilities under the Mortgage Loan (including the nonrecourse carve-outs) should not create an impermissible sharing of liability among the Company and the Tenants in Common. Fourth, because the Consulting Agreement is neither a brokerage agreement nor a management agreement, it is not subject to the requirement that management and brokerage agreements must be renewed annually with the unanimous consent of the Tenants in Common. Therefore, we believe that these facts should not cause the tenancy in common to be clarified as a partnership for income tax purposes.

[113] PLR 20032700 (July 3, 2003); PLR 200513010 (May 1, 2005).

III. The Terms of the Mortgage Loan Should Not Create an Impermissible Sharing Among the Sponsor and the Tenants in Common.

A. The Mortgage Loan Terms

The Mortgage Loan will contain certain "carve-outs" to its non-recourse provisions allowing the Lender to proceed against the assets of the Tenants in Common and the owners and affiliates thereof ("TIC Principals") to repay amounts due on the Mortgage Loan in addition to foreclosing on the Property. Except as discussed below, the Company (and certain of its owners) will be solely responsible for the nonrecourse carve-outs of a transactional nature over which the Company and its affiliates, as opposed to the Tenants in Common, exercise more relative control. Likewise, each of the Tenants in Common and its respective owner will remain responsible for those nonrecourse carve-outs over which it has more relative control. Thus, in the event a Tenant in Common and/or its TIC Principal breaches one or more of the non-recourse carve-out provisions under the Mortgage Loan, such breach will trigger a "springing" liability of the defaulting Tenant in Common and its TIC Principal.

If an environmental insurance policy is not obtained on the Property, each Tenant in Common and at least one of its TIC Principals will be required to agree to perform all remedial work required by, and indemnify the Mortgage Lender for losses that may occur as a result of, the presence of hazardous materials on the Property or any violation of environmental laws, regulations, rules or other requirements of any governmental agency or authority relating to the health, environment or hazardous substances.

The Master Lessee will indemnify, defend and hold the Tenants in Common harmless from and against any and all losses, damages, expenses, costs and liabilities actually suffered or incurred by Tenants in Common in connection with anything and everything whatsoever directly arising from or out of: (i) any injury, illness or death to any person or damage to any property from any cause whatsoever occurring in or upon or in any other way relating to the Property, (ii) the occupancy of the Property or any part thereof by, through or under the Master Lessee, and/or (iii) any failure on the Master Lessee's part to comply with any of the covenants, terms, conditions, representations or warranties contained in the Master Lease; provided, however, that in no event will the Master Lessee indemnify the Tenants in Common for damages arising out of, or because of, the negligence or willful misconduct of any or all of the Tenants in Common or their agents, employees, officers and directors.

B. Analysis

In the present case, except as discussed below, the allocation of liability under the Mortgage Loan corresponds with each Purchaser's undivided fractional ownership interest in the Property. The carve-outs to nonrecourse liability under the Mortgage Loan (the so-called "bad boy" provisions) correspond with each party's individual action or inaction. With the exception of (i) certain environmental matters,[114] and (ii) certain cash and property management issues, no party will be held liable for the actions of another. Although the Company and its Indemnitor theoretically could be liable for the actions of the Tenants in Common (and their TIC Principals) with respect to certain carve-outs relating to environmental matters and certain cash and property management issues, any such liability is unlikely to arise as the cash and property management issues involved (i.e., the proper handling of insurance premiums and proceeds, condemnation proceeds, rents and waste at the Property) are structurally controlled by the Master Lessee (an affiliate of the Company and its Indemnitor). Moreover, the Master Lessee is acting on behalf of the Tenants in Common with respect to such issues and, therefore, should be viewed as the proper party accountable for any violation of such carve-outs caused by a Tenant in Common or its TIC Principal.

Thus, except as noted above, each party bears potential liability under the Mortgage Loan based on its own individual conduct. Moreover, under the Master Lease, the Master Lessee must indemnify the Tenants in Common for liabilities in excess of insurance caused by the Master Lessee's actions or inactions. Accordingly, the terms of the Mortgage Loan should not create an impermissible sharing of liability among the Company and the Tenants in Common for federal income tax purposes.

IV. The Interests Should Not Be Treated as a "Security" Under Section 1031

If the Interests are determined to be "securities" for purposes of Section 1031, an investor would recognize gain, if any, on the exchange of property for an Interest to the extent the fair market value of the Interest received in the exchange exceeded the adjusted tax basis of the relinquished property. For the reasons discussed below, the Interests should not constitute "securities" for purposes of Section 1031.

A. Section 1031(a)(2) – Legislative History

The exclusion of certain property set forth in Section 1031(a)(2) was added to the predecessor to Section 1031 in 1923. The legislation amended the predecessor to Section 1031 to include the following italicized language:

> When any such property held for *investment or for* productive use in trade or business (not including stock-in-trade or other property held primarily for sale, *and in the case of property held for investment not including stock, bonds, notes, choses in action, certificates of trust or*

[114] Although the Company is potentially liable for environmental matters not directly within its control, such liability might otherwise result under federal environmental laws regardless of the terms provided under the loan documents.

> *beneficial interest, or other securities or evidences of indebtedness or interest)*, is exchanged for property of a like kind or use.

The reason for the addition of the language above was to prevent taxpayers from using the predecessor to Section 1031 to exchange investment securities, such as stocks and bonds, tax free. A letter from the Secretary of Treasury dated January 13, 1923, provided as follows:

> The revenue act of 1921 provides, in section 202, for the exchange of property held for investment for other property held for investment for other property of a like kind without the realization of taxable income. Under this section, a taxpayer who purchases a bond of $1,000 which appreciates in value may exchange that bond for another bond of the value of $1,000, together with $100 in cash (the $100 in cash representing the increase in the value of the bond while held by the taxpayer), without the realization of taxable income. This provision of the act is being widely abused. Many brokers, investment houses and bond houses have established exchange departments and are advertising that they will exchange securities for their customers in such a manner as to result in no taxable gain. Under this section, therefore, taxpayers owning securities which have appreciated in value are exchanging them for other securities and at the same time receiving a cash consideration without the realization of taxable income, but if the securities have fallen in value since acquisition will sell them and in computing net income deduct the amount of the loss on sale. This result is manifestly unfair and destructive of the revenues. The Treasury accordingly urges that the law be amended so as to limit the cases in which securities may be exchanged for other securities without the realization of taxable income to those cases where the exchange is in connection with the reorganization, consolidation or merger of one or more corporations.[115]

[115] Id.

In response to the concern expressed in the letter above, Congress amended the predecessor to Section 1031 to exclude therefrom the types of property currently set forth in Section 1031(a)(2).[116]

The term "security" is not defined in either Section 1031 or the Treasury regulations promulgated thereunder. The term "securities" is narrowly defined in other Sections of the Code, including the following:

- Section 165(g) (defining the term "security" as "(A) a share of stock in a corporation; (B) a right to subscribe for, or to receive, a share of stock in a corporation; or (C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form...");

- Section 402(e)(4)(E)(i) (providing that "[t]he term 'securities' means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form");

- Section 1083(f) (stating that "the term 'stock or securities' means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing)"); and Section 1236(c) (providing that "the term 'security' means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing").

The Interests clearly would not be considered "securities" under any of the above Sections which, although not expressly applicable for Section 1031 purposes, the IRS has indicated are relevant to the issue of how broad or restrictive the scope of "securities" may be for Section 1031 purposes.

In addition, there are instances in the Code where a term is defined by specific reference to federal securities law, such as the following examples:

- Section 67(c)(2)(B)(i)(I) ("continuously offered pursuant to a public offering (within the meaning of Section 4 of the Securities Act of 1933, as amended)").

- Section 83(c)(3) ("so long as the sale of property at a profit could subject a person to suit under Section 16(b) of the Securities Exchange Act of 1934").

[116] Id.

- Section 162(m)(2) ("the term 'publicly held corporation' means any corporation issuing any class of common equity securities required to be registered under Section 12 of the Securities Exchange Act of 1934").
- Section 277(b)(3) ("which for each day of any taxable year is a national securities exchange subject to regulation under the Securities Exchange Act of 1934 or a contract market subject to regulation under the Commodity Exchange Act.")
- Section 409(e)(4)(A) ("a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934").

In Plow Realty Co. of Texas v. Commissioner,[117] the Tax Court addressed whether two mineral deeds, each conveying an undivided one-eighth interest in oil, gas, sulphur and other minerals, were "securities" for purposes of determining whether the gains from such conveyances constituted "personal holding company income" under Section 502(b) of the Internal Revenue Code of 1939. If such gains were "securities," and hence, "personal holding company income" as defined under the 1939 revenue code, the gains would be subject to a 25% surtax.

The taxpayer contended that the mineral deeds were conveyances of an interest in real estate and not a sale of "securities." The Tax Court agreed:

> Under securities and exchange acts mineral deeds and assignments of mineral rights have been held to be "securities." Securities & Exchange Commissioner v. Joiner Leasing Corporation, 320 U.S. 344 [1943]; State v. Pullen, 192 A. 473 [(R.I. 1937)]. But here we have a revenue statute and not a question of the exercise of police power by a state or the National Government for the protection of the public. The respondent's regulations define "stock or securities" in broad and comprehensive language, but even so, we do not think the instruments herein can be classified as securities under the revenue act. Cf. Wellington Fund, Inc., 4 T.C. 185 [1944]. What we have here is two deeds of conveyance evidencing two private sales of undivided interests in realty, under which title passed to and became vested in the grantees. Such sales do not, in our opinion, under the circumstances here constitute a sale of securities under respondent's regulations.

[117] Plow Realty Co. of Texas v. Commissioner, 4 T.C. 600 (1945).

Based on this reasoning, the Tax Court held that the gains realized by the taxpayer upon the conveyance of the mineral deeds were not "personal holding company income" because the mineral deeds did not convey "securities."

In General Counsel Memorandum 35242, the IRS stated that "[a]lthough [the definitions under Sections 165(g), 402(a)(3), 1083(f) and 1236(c)] do not control for purposes of Code §1031, we believe it persuasive that Congress has consistently defined the term 'securities' in a limited sense." Accordingly, the IRS determined that an exchange of whisky receipts for other whisky receipts qualified for nonrecognition treatment under Section 1031(a).

Equally important, General Counsel Memorandum 35242 determined that the whisky receipts were not "securities" for purposes of Section 1031 even though the Securities and Exchange Commission believed such receipts constituted securities under the Securities Act of 1933 and the Securities Exchange Act of 1934. This is consistent with the Tax Court's position that property which constitutes a security under applicable securities laws is not necessarily a "security" for purposes of a specific provision of the Code.[118] The IRS further noted, in the proposed revenue ruling attached to the general counsel memorandum, that the "securities" exception to nonrecognition treatment was added to "preclude brokers, investment houses, and bond houses from arranging the tax free exchanges of appreciated securities for their clients."[119]

Equally important, General Counsel Memorandum 35242 determined that the whisky receipts were not "securities" for purposes of Section 1031 even though the Securities and Exchange Commission believed such receipts constituted securities under the Securities Act of 1933 and the Securities Exchange Act of 1934. This is consistent with the Tax Court's position that property which constitutes a security under applicable securities laws is not necessarily a "security" for purposes of a specific provision of the Code. The IRS further noted, in the proposed revenue ruling attached to the general counsel memorandum, that the "securities" exception to nonrecognition treatment was added to "preclude brokers, investment houses, and bond houses from arranging the tax free exchanges of appreciated securities for their clients."

Based on the narrow scope of the definition of "securities" for various Code provisions, the IRS endorsement of this narrow definition in the Section 1031 context, and the Tax Court's conclusion that the definition of a "security" under applicable securities laws is irrelevant, we believe that the Interests should not be treated as "securities" for Section 1031 purposes.

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118 Plow Realty Co. of Texas v. Commissioner, 4 T.C. 600 (1945).

119 G.C.M. 35242 (February 16, 1973), <u>citing</u> S. Rept. 1113, 67th Cong. (1927), 1939-1 (Part 2) C.B. 845-46.

V. Certain Judicially Created Substance Over Form Doctrines Should Not Apply

Under Circular 230, which governs practice before the IRS, we are required to consider in connection with the issuance of this opinion all material issues that might impact the opinions reached herein. There are a number of judicially created substance over form doctrines that may conceivably apply to the proposed tenancy-in-common, including the economic substance / business purpose, the sham transaction, and step transaction doctrines. For reasons discussed more fully below, none of the foregoing doctrines should apply in the instant case.

A. Economic Substance and Business Purpose

1. Applicable Rules

Taxpayers generally are free to structure their business transactions as they please, even if motivated by tax avoidance considerations.[120] While a transaction with no purpose other than to reduce taxes will not be recognized for U.S. Federal income tax purposes, a transaction that has a meaningful business purpose and economic substance should be respected, regardless of whether the taxpayer also intended to reduce taxes.[121]

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120 See Gregory v. Helvering, 293 U.S. 465 (1935); Rice's Toyota World v. Commissioner, 81 T.C. 184, 196 (1983), aff'd in part, rev'd in part and rem'd, 752 F.2d 89 (4th Cir. 1985).

121 Gregory, at 469; see also Superior Oil Co. v. Mississippi, 280 U.S. 390, 395-96 (1930) ("The only purpose of the [taxpayer] was to escape taxation . . . The fact that it desired to evade the law, as it is called, is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can if you do not pass it."); Knetsch v. United States, 364 U.S. 361, 365 (1960) (citing *Gregory* regarding the legal right of a taxpayer to decrease or altogether avoid taxes); ACM Partnership v. Commissioner, 157 F.3d 231, 248 n.31 (3d Cir. 1998) ("[I]t is also well established that where a transaction objectively affects the taxpayer's net economic position, legal relations, or nontax business interests, it will not be disregarded merely because it was motivated by tax considerations. In analyzing both the objective and subjective aspects of ACM's transaction in this case where the objective attributes of an economically substantive transaction were lacking, we do not intend to suggest that a transaction which has actual, objective effects on a taxpayer's nontax affairs must be disregarded merely because it was motivated by tax considerations."), aff'd in part, rev'd in part 73 T.C.M. (CCH) (CCH) 2189 (1997); Yosha v. Commissioner, 861 F.2d 494, 499 (7th Cir. 1988) (a transaction has economic substance when ". . . it is the kind of transaction that some people enter into without a tax motive, even though the people fighting to defend the tax advantages of the transaction might not or would not have undertaken it but for the prospect of such advantages — may indeed have had no other interest in the transaction.").

In Frank Lyon Co. v. United States,[122] the Supreme Court stated:

> Where . . . there is a genuine multiple-party transaction with economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax independent considerations, and is not shaped solely by tax-avoidance features that have meaningless labels attached, the Government should honor the allocation of rights and duties effectuated by the parties.[123]

As a result of Frank Lyon, a two-pronged test was developed to determine whether the form of a transaction should be respected or disregarded as a sham. In Rice's Toyota World, Inc.,[124] the Fourth Circuit articulated this test by stating that "[t]o treat a transaction as a sham, the court must find that the taxpayer was motivated by no business purposes other than obtaining tax benefits in entering the transaction, and that the transaction has no economic substance because no reasonable possibility of a profit exists."[125] This test therefore analyzes both the objective and subjective aspects of a transaction, i.e., the economic substance and the subjective business motivation behind the transaction, respectively.[126] These objective and subjective aspects are not "discrete prongs of a 'rigid two-step analysis,'" but rather are related factors in the analysis of whether a transaction has sufficient substance, apart from its tax consequences, to be respected.[127]

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[122] 435 U.S. 561 (1978).

[123] Id. at 583-84. See also Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991) (a savings and loan association that swapped mortgage portfolios in order to recognize a tax loss was allowed such loss; the Supreme Court focused not on the tax-motivated purpose, but on whether the portfolios were materially different by tax as opposed to economic standards).

[124] Note 54, *supra*.

[125] Rice's Toyota World, Inc., at 91. See also Horn v. Commissioner, 968 F.2d 1229, 1237 (D.C. Cir. 1992) (before declaring a transaction an economic sham, the court should consider whether the transaction presented a reasonable prospect for economic gain).

[126] Casebeer v. Commissioner, 909 F.2d 1360, 1363 (9th Cir. 1990); accord Lerman v. Commissioner, 939 F.2d 44, 53-54 (3d Cir. 1991) (noting that a sham transaction is defined as a transaction that "has no business purpose or economic effect other than the creation of tax deductions" and holding that the taxpayer was not entitled "to claim "losses" when none in fact were sustained").

[127] Id. at 1363. See also Jacobson v. Commissioner, 915 F.2d 832, 837 (2d Cir. 1990) (the determination of economic substance looks to whether the transaction has any "practical economic effects other than the creation of income tax losses"); Weller v. Commissioner, 270 F.2d 294, 297 (3rd Cir. 1959) (transactions that do not change the flow of economic benefits are disregarded if they do not change the taxpayer's financial position); Northern Ind. Pub. Serv. Co. v. Commissioner, 115 F.3d 506 (7th Cir. 1997), aff'd, 105 T.C. 341 (1995) (the IRS could not set aside transactions which resulted "in actual, non-tax related changes in economic position."); *Larsen v. Commissioner*, 89 T.C. 1229 (1987); but cf. Kirchman v. Commissioner, 862 F.2d. 1486

With respect to determining profit potential, the courts have not traditionally established a threshold amount of profit to determine whether a transaction should be respected for federal income tax purposes. The Tax Court has in some cases required more than a de minimis amount of profit, especially where transactions involving financial instruments are concerned.[128] Other courts, however, have been reluctant to propose a threshold amount.[129]

In United Parcel Service of America, Inc.,[130] the Eleventh Circuit reversed the Tax Court[131] on the issue of economic substance in finding that the restructuring by United Parcel Service ("UPS") of its excess-value business had both real economic effects and a business purpose. The Court reasoned that setting up a transaction (that otherwise has economic substance) with tax planning in mind is permissible as long as it figures in a bona fide, profit-seeking business purpose. In its finding that UPS' transaction had a valid business purpose, the Court noted that "a "business purpose" does not mean a reason for a transaction that is free of tax considerations. Rather, a transaction has a "business purpose" . . . as long as it figures in a bona fide, profit-seeking business."

2. Analysis

The proposed tenancy-in-common arrangement should be recognized for federal income tax purposes according to its form. The proposed tenancy-in-common arrangement will be undertaken to allow direct ownership of undivided fractional Interests in the Property by the Tenants in Common. Thus, each Tenant in Common will be given an opportunity to own a portion of the Property which they might not otherwise be able to acquire of their own accord due to their individual financial limitations. In addition, each Tenants in Common will have a right to its pro rata share of all income and loss generated by the Property and will be liable for its pro rata share of the Mortgage Loan. The allocation of all economic benefits and burdens associated with the Property will correspond to the respective Interest owned by each Tenant in Common. Because the proposed tenancy-in-common arrangement has a meaningful business purpose and economic substance, it should be respected.

(11th Cir. 1989) (existence of a nontax business purpose does not mandate the recognition of a transaction that otherwise lacks economic substance); *Goldstein v. Commissioner*, 364 F.2d 734 (2d Cir. 1966) (the court denied the taxpayer a prepaid interest deduction on debt incurred by the taxpayer solely to generate a deduction because the taxpayer could not reasonably have had any purpose in entering the transactions other than to reduce taxes).

128 See Hilton v. Commissioner, 74 T.C. 305, 353 (1980); aff'd per curiam, 671 F.2d 316 (9th Cir. 1982) (a 6% rate of return was required for purposes of the economic substance determination); Krumhorn v. Commissioner, 103 T.C. 29 (1994).

129 See Estate of Thomas v. Commissioner, 84 T.C. 412, 440 n. 52 (1985) (the court abstained, absent legislative guidance, from proposing a particular return for purposes of the determination of profit potential).

130 254 F.3d 1014 (11th Cir. 2001).

131 T.C. Memo 1999-268.

B. Sham Transaction Doctrine

1. Applicable Rules

Under the sham transaction doctrine, a transaction may be disregarded if it constitutes a factual sham or an economic sham. A factual sham is a purported transaction that is not executed as a factual matter.[132] In contrast, an economic sham is a transaction that has occurred, but is devoid of economic substance.[133] In general, the economic sham doctrine will not be applied if the taxpayer can prove that there is either a business purpose for, or economic substance to, the given transaction.[134]

The application of any substance-over-form doctrine is extremely fact specific, which has led courts to render somewhat inconsistent rulings in this area. For example, the Third Circuit in ACM Partnership v. Commissioner, disregarded the capital loss that arose from a complex, multi-step partnership transaction.[135] The court ultimately concluded that the steps involved in the transaction lacked a non-tax economic effect and did not possess a significant non-tax business purpose.[136] The Third Circuit nevertheless recognized that "it is well established that where a transaction objectively affects the taxpayer's net economic position, legal relations, or non-tax business interests, [a transaction] would not be disregarded merely because it was motivated by tax considerations."[137] The transaction at issue in Boca Investerings Partnership v. United States[138]was similar to the ACM transaction, but the District Court for the District of Columbia respected the partnership transactions at issue in that case. The Boca court concluded that the partnership had been

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132 Brown v. Commissioner, 85 T.C. 968, 1000 (1985), aff'd sub nom, Sochin v. Commissioner, 843 F.2d 351 (9th Cir. 1988); Brion D. Graber, Can the Battle be Won? Compaq, the Sham Transaction Doctrine, and a Critique of Proposals to Combat the Corporate Tax Shelter Dragon, 149 U. Pa. L. Rev. 355, 362-63 (November 2000).

133 Gregory v. Helvering, 293 U.S. 465 (1935); Knetsch v. United States, 364 U.S. 361, 366 (1960) ("There may well be single-premium annuity payments with non-tax substance which create an 'indebtedness' for the purposes of Section 23(b) of the 1939 Code and Section 163(a) of the 1954 Code. But this one is a sham."); Goldstein v. Commissioner, 364 F.2d 734, 742 (2d Cir. 1966) ("[T]ransactions that lack all substance, utility, purpose, and which can only be explained on the ground the taxpayer sought an interest deduction in order to reduce his taxes, will also be so transparently arranged that they can candidly be labeled 'shams.'"), cert. den'd, 385 U.S. 1005 (1967); Alessandra v. Commissioner, 69 T.C.M. (CCH) (CCH) 2768 (1995).

134 Rice's Toyota World, Inc. v. Commissioner, 81 T.C. 184, 203 ("Our analysis does not end here. Mr. Rice's failure to focus on the business or non-tax aspects of the transaction is not necessarily fatal to petitioner's claim. If an objective analysis of the investment indicates a realistic opportunity for economic profit which would justify the form of the transaction, it will not be classified as a sham."). *See also* Frank Lyon Co. v. United States, 435 U.S. 561 (1978).

135 157 F.3d 231, 263 (3rd Cir. 1998).

136 157 F.3d at 247.

137 157 F.3d at 248, fn. 31

138 Boca Investerings Partnership v. United States, 167 F. Supp. 2d 298 (D.C.C. 2001).

formed as a valid investment partnership. It had the potential to make a profit or loss from its activities, and the partners were not sheltered from economic risk or guaranteed a specific return on their respective partnership investments.

The Fifth and Eighth Circuits have recently held that certain foreign tax credit planning strategies implemented to achieve tax benefits must be recognized under the sham transaction doctrine, because the transactions were sufficiently imbued with both economic substance and business purpose. The Fifth Circuit, in Compaq Computer Corporation v. Commissioner,[139] reversed a decision of the Tax Court, and held that a purchase and immediate resale of American depository receipts ("ADRs") of a foreign publicly traded corporation possessed economic substance. Specifically, the court concluded that the transaction had objective economic substance, because tax was Compaq's principal, but not sole, purpose in entering into the transaction.[140] As a result, Compaq could credit the foreign taxes associated with the dividend.[141] The Eighth Circuit came to a similar conclusion in IES Industries, Inc. v. United States,[142] which reversed a district court decision that a purchase and sale of ADRs were sham transactions.

There are a number of cases in this area that are difficult to reconcile. Nevertheless, the main point that appears to underlie all of the cases is the principle enunciated by Judge Learned Hand in Gregory v. Helvering - i.e., that tax motivated transactions are not per se invalid, provided there is some non-tax business purpose for the transaction.[143]

2. Analysis

The sham transaction doctrine should not apply to the proposed tenancy-in-common arrangement because all of the component steps necessary to implement the proposed tenancy-in-common arrangement will actually occur. Moreover, the economic sham concept should not apply to the instant case because the parties have a business purpose in undertaking the investment in the Property, and, as discussed above, the transactions will have economic substance. Thus, the sham transaction doctrine should not be applied to recharacterize the proposed tenancy-in-common arrangement.

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[139] 277 F.3d 778 (5th Cir. 2001), *rev'g,* 113 T.C. 214 (1999), motion for rehearing pending.

[140] 277 F.3d at 786-87.

[141] 277 F.3d at 788.

[142] IES Industries, Inc. v. United States, 253 F.3d 350 (8th Cir. 2001), rehearing denied sub nom., Alliant Energy Corp. v. United States, 2001 U.S. App. LEXIS 24929 (8th Cir. 2001) (the facts of Compaq Computer and of IES Industries are in large part identical because the strategy upon which the transactions were based was developed and marketed by the same securities broker).

[143] 69 F.2d 809, 810 (2d Cir. 1934) ("Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to chose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.") aff'd. 293 U.S. 465 (1935).

C. Step Transaction Doctrine

1. Applicable Rules

Courts have applied three separate versions of the so-called "step transaction doctrine" to determine whether purportedly separate steps should be combined as components of a single transaction: (i) the "end result" test, (ii) the "mutual interdependence" test, and (iii) the "binding commitment" test.[144] Nevertheless, the IRS cannot use the step transaction doctrine to invent steps that did not occur or recast a transaction into another transaction with the same number of steps.[145]

The Tax Court recently applied both the end result and mutual interdependence tests in Andantech, described more fully above. In Andantech, a U.S. partnership was formed with two non-U.S. partners to cause the foreign partners to recognize a significant portion of the income attributable to a sale leaseback transaction that the partnership entered into with Comdisco.[146] Almost all of the partnership interests were then contributed to a U.S. indirect subsidiary of a U.S. bank, so that the bank could enjoy the benefits of the losses (attributable to interest and depreciation) generated by the partnership's lease arrangement with Comdisco.[147] The Tax Court, applying both the end result and mutual interdependence tests, concluded that a more direct characterization of the transaction was a direct sale-leaseback arrangement between Comdisco and bank's subsidiary.[148] The court analyzed a number of facts in reaching this conclusion, but the salient fact was that all of the parties intended the ultimate result (i.e., that bank's subsidiary would participate in the lease) and the intermediate steps were meaningless apart from tax considerations.

The Second Circuit rejected a somewhat similar argument by the IRS in Grove v. Commissioner.[149] The IRS in Grove attempted to reorder a donation of stock followed by a redemption as a redemption of the stock followed by a gift of cash.[150] The Tax Court refused to permit the IRS to recast the transaction, reasoning that there was no reason to recast the form of the transaction chosen by the taxpayer, even though the form was tax-

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[144] Stephen S. Bowen, *The End Result Test*, 72 TAXES 722 (December 1994).

[145] Esmark, Inc. and Affiliated Companies v. Commissioner, 90 T.C. 171, 196 (1988) ("Respondent proposes to recharacterize the tender offer/redemption as a sale of the Vickers shares followed by a self-tender. This characterization does not simply combine steps; it invents new ones. Courts have refused to apply step-transaction in this manner."), aff'd without published opinion, 886 F.2d 1318 (7th Cir. 1989).

[146] Andantech, 2002 Tax Ct. Memo LEXIS 99 *101-14.

[147] Id.

[148] Id.

[149] Grove, 490 F.2d 241, 247 (2nd Cir. 1973).

[150] Id. at 245.

motivated.[151] The only effect of the IRS's recast would be to create a tax liability, in a transaction form that was no more direct than the form chosen by the taxpayer. Thus, the mere fact that a taxpayer considers the U.S. federal income tax effects of a transaction in its planning should not transform a non-taxable event into a taxable event.

2. Analysis

The step transaction doctrine should not be applicable to the proposed tenancy in common arrangement. In this case, the Tenants in Common constitute a separate, diverse and unrelated group of investors desiring to acquire an undivided fractional interest in the Property as offered by the Company under a private placement of tenancy in common interests. Thus, the ultimate result (i.e., separate ownership of undivided fractional interests in the Property) of the proposed tenancy in common arrangement can only be achieved if the intermediate steps of the Company acquiring the Property and offering the Interests for sale to the Tenants in Common is first undertaken. Thus, the step transaction doctrine may not be applied to recharacterize the transaction steps utilized to implement the proposed tenancy in common arrangement. Moreover, even if the IRS were to collapse the transaction steps together, the resulting transaction (a direct purchase of the Property by the Tenants in Common) should not significantly change the resulting federal income tax effect of the proposed tenancy in common arrangement.

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A number of issues discussed in this opinion have not been definitively resolved by statutes, regulations, rulings or judicial opinions. Accordingly, no assurances can be given that the conclusions expressed herein will be accepted by the IRS, or, if contested, would be sustained by a court, or that legislative changes or administrative pronouncements or court decisions may not be forthcoming that would significantly alter or modify the conclusions expressed herein. Each Tenant in Common must consult its own tax counsel about the tax consequences of an investment in an Interest.

This opinion is solely for your information and assistance with respect to the sale of Interests in the Property. Each Tenant in Common is encouraged to consult with his or her tax advisor, in determining whether to purchase an Interest. Other than as set forth herein, this opinion may not be relied upon by any other person or for any other purposes, nor may it be quoted from or referred to or copies delivered to any other person without prior written

[151] Id. at 247 ("We are not so naive as to believe that tax considerations played no role in Grove's planning. But foresight and planning do not transform a non-taxable event into one that is taxable. Were we to adopt the Commissioner's view, we would be required to recast two actual transactions -- a gift by Grove to RPI and a redemption from RPI by the Corporation — into two completely fictional transactions — a redemption from Grove by the Corporation and a gift by Grove to RPI. Based upon the facts as found by the Tax Court we can discover no basis for elevating the Commissioner's 'form' over that employed by the taxpayer in good faith.")

consent. This opinion is not applicable as to any individual tax consequences of a Tenant in Common or the individual application of the Section 1031 rules to such Tenant in Common. Our willingness to render the opinion set forth herein neither implies, nor should be viewed as implying, any approval or recommendation of an investment in the Property.

In rendering our opinion, we have considered the applicable provisions of the Code, final, temporary and proposed regulations thereunder, pertinent judicial authorities, interpretive rulings and revenue procedures issued by the IRS and such other authorities as we have considered relevant. It should be noted that statutes, regulations, judicial decisions and administrative interpretations are subject to change at any time and, in some cases, with retroactive effect. This opinion is not binding upon the IRS or courts of applicable jurisdiction, which may disagree with all or any portion of the opinions expressed herein. We undertake no obligation to update the opinions expressed herein after the date of this letter. Furthermore, our opinion is conditioned upon the accuracy and completeness of the representations set forth in the Representation Letter. This opinion does not address any other tax consequences of the acquisition of Interests in the Property.

We have reviewed the discussion of federal income tax consequences contained in the Memorandum and we believe that it is correct in all material respects. Our opinion, however, does not address whether the exchange entered into by a purchaser satisfies all of the requirements of Section 1031.

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Our opinion is not intended or written to be used, and it cannot be used, by any purchaser for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code. This opinion is written to support the promotion and marketing of the proposed transaction, and each purchaser should seek advice based on the purchaser's particular circumstances from an independent tax advisor.

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We are furnishing this opinion solely in connection with the sale of the Interests in the Property described herein. Accordingly, Company may only circulate this opinion in connection with the sale of the Interests to potential investors. This opinion may be relied upon by purchasers of the Interests in connection with their purchase of such Interests, but may not be relied upon, circulated, quoted or otherwise referred to by other persons in connection with any other property or co-ownership arrangement.

Very truly yours,

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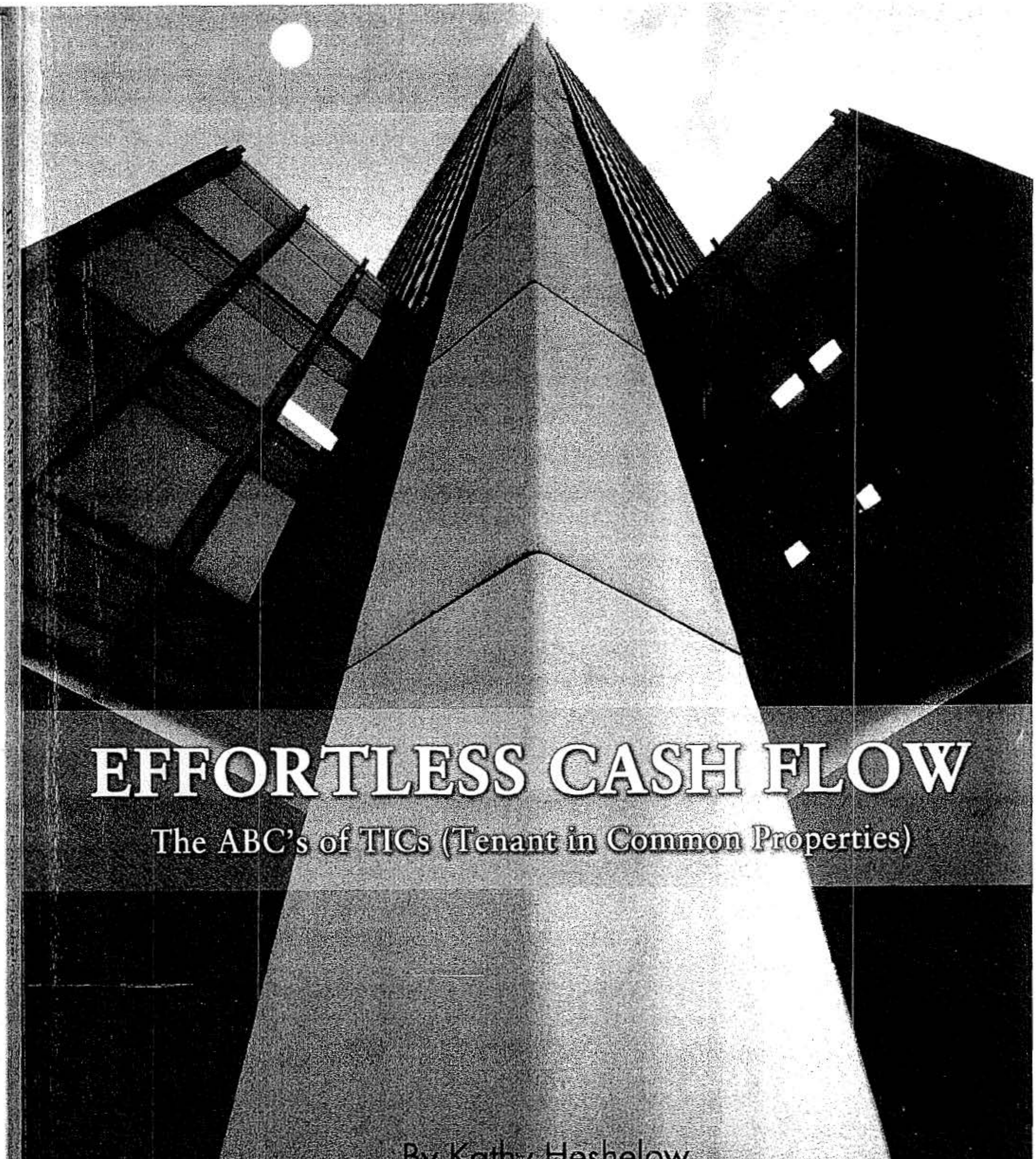
EFFORTLESS CASH FLOW
The ABC's of TICs (Tenant in Common Properties)
By Kathy Heshelow

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I dedicate this book to my husband, Harlan.

reflect the
them.

Contents

List of Photographs

The photos in this book represent TIC properties that were purchased in 2005 or previous as TICs. They are included to give the reader an idea as to the caliber of the typical TIC investment.

List of Figures

Acknowledgments

I would like to thank all of the TIC sponsors who have provided photos for this book. I'm sorry I couldn't accommodate everyone this time.

Everything starts with the sponsor. Without them, the investor would have nothing to buy and there would be no TIC industry! The sponsors certainly have much responsibility upon their heads, including searching out the right properties, conducting extensive due diligence, going through the extensive securitization process and structuring them correctly for the investors, signing for loans, and so forth. They then follow through with the investors for years.

I would like to thank tax attorney, Robert Sommers, for allowing me to reference some of his historical information about the 1031 tax-deferred exchange for this book. I would like to thank Tim Cronic for his time and expertise on the 1031 process. Thanks to Manuel Nogales of Omni Consulting & Research for the Exit Strategy Statistics, and thanks to both Manuel and Brady Flamm for the TIC statistics. Thanks to Amy Knickerbocker at A3K Design. I would like to thank Shanon Ford at PacWest for the large packet of information on Best Practices materials and supporting documents. I would like to thank David Levine of Direct Capital Securities for his insights. Finally, I think Larry Behrends of CapWest Securities for his support.

Introduction

Welcome to the world of specialized real estate investment!

You are about to discover what the Tenant in Common (TIC) industry is all about. Certainly, those of us in this industry find it exciting and dynamic. However, due to their structure, TICs are somewhat complicated. To the uninitiated, they can also be confusing. However, many of my clients who invested have often come back to me and said, "I wish I had known about these types of investments before. Cash flow without management!" Of course, these investments are not for everyone, and should not be for everyone, based on financial situation and suitability. That will be explained as well.

This book is an introductory primer to help those contemplating a TIC investment. As will be explained, TICs are a complex weaving together of the worlds of commercial real estate, securities, finance and law. However, this book is neither a law treatise nor a definitive work by any means. I could spend many more pages of detail on each subject treated in the book, especially securities law, deeper issues on TICs themselves, and tax issues. However, the intent is to give a basic overview of the subject and not to put new investors into a deep sleep!

The TIC world is young, but it is quickly maturing. By the end of 2005 and beginning in 2006, we had a larger number offerings available for investors than ever before. Typically, when a new TIC offering came out, it could be full within a matter of several days—even hours. There were not enough offerings for the many interested investors. Compared to other types of real estate, one does make faster decisions with this type of investment. Because many investors are conducting 1031 tax-deferred exchanges, the timing is relatively short for investors anyway. Today, while there is still urgency and demand for TICs, investors and their advisors have more choice and time to review the array of offerings. The supply and demand has evened out.

I would like to offer a word about terms used in the book. There are many formats used for Tenant in Common, Tenancy in common and TIC. (Specifically, the hyphenation and capitalization can vary.) When discussing the property itself in this book, I use the words "Tenant in Common" or "TIC." When discussing the investors into such property, I use the words "tenants-in-common." I thought this would help alleviate some confusion and make some visual distinctions as you read and absorb the information. I have included a glossary at the end of the book, which may be helpful for the various terms of law, real estate and finance you will encounter.

This book represents my opinion and reporting of facts. I am not an attorney, accountant, securities expert, lender, tax expert or qualified intermediary. I am a commercial real estate broker with experience in all types of real estate. I specialize in triple-net (NNN) properties, often for those in a 1031 tax-deferred exchange. I am also a licensed securities representative for private and public placements. In this book, I provide the best information available on TICs and related subjects for educational purposes. However, specific details, as they apply to you or your tax situation, should be discussed with your attorney, accountant or other specialist. While the information included is as accurate as possible, it is not warranted.

I hope you will both learn about this complicated investment type and enjoy the book as well. You may contact me with questions or comments at Legcykathy@aol.com, toll free at 866-891-1031, or use the 'Contact Me' icon at www.tic-investments.org.

Kathy Heshelow

This book represents neither an offer to sell nor a solicitation to buy a security. Such an offer can only be made by means of a Private Placement Memorandum.

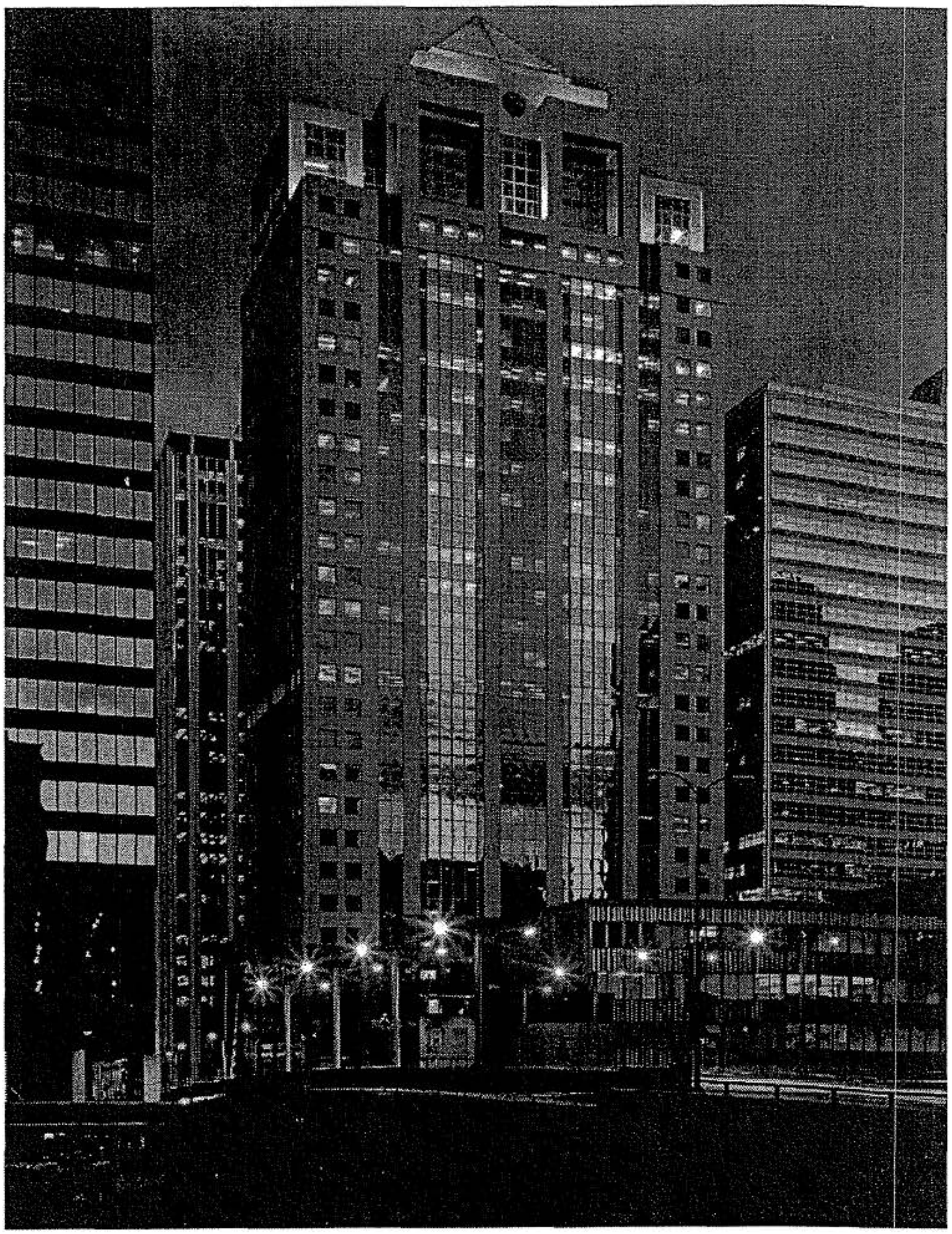

Photo 1. Sponsor: Triple Net Properties, LLC. 123 North Wacker Drive, Chicago, Illinois.

Chapter 1

What Are Tenant-in-Common (TIC) Properties? Why Are They So Popular?

Maybe you have heard about Tenant in Common (TIC) investments, or maybe you have heard snippets of information about them. Maybe you are doing a 1031 tax-deferred exchange and someone suggested a TIC to you. Maybe you tried an Internet search and found all sorts of references to TICs but not much detailed information. Maybe you have spoken with a few people and are thinking about investing but feel you need to know more. You might think TICs have been one of the best-kept secrets of recent years. In any case, you are certainly curious to know more about these investments. That's why you have this book!

What is a TIC?

The term "tenants in common" is a definition in law and real estate and refers to a way real estate is held. The legal dictionary defines tenants in common as a legal arrangement whereby two individuals or more can share ownership of a property. Unlike joint tenancy, tenancy in common allows a deceased person's property or property share to be passed to his or her beneficiaries instead of to the other owner(s). The property is held in common or in indivision.

What has evolved is an industry in which large, prepackaged, professionally-managed, institutional-grade properties, such as office buildings, shopping centers, or apartment complexes, are being offered by sponsors as Tenant in Common (TIC) properties. Each investor or co-owner obtains a percentage interest, or fractional interest, with all rights of possession and ownership. However, each investor or co-owner is not involved in the day-to-day management. Each TIC investor enjoys his or her pro rata share of the net income, tax shelters, non-recourse loan, appreciation, and share of the proceeds at the property's resale. The investor into this type of TIC would, in fact, be holding the real estate as a tenants-in-common.

These professionally packaged properties are passive income vehicles with a cash flow paid monthly. These are not partnerships, general or limited. Today's TICs are usually formed as a limited liability company (LLC). You, the investor, have voting power on key decisions. In addition to office buildings, shopping centers and apartment complexes—the "three main food groups" commonly offered—other asset types such as assisted-living facilities, golf courses, hotels, or industrial properties are occasionally offered.

To be clear: while you could join with college friends or relatives to buy a piece of local property and hold title to that property as tenants-in-common, this book is discussing the institutional-grade properties that are sold to investors around the country (usually unknown to each other) who hold title as tenants-in-common. The property itself is commonly called a Tenant in Common or TIC property.

Vast amounts of equity have been placed into TICs. In 2002, $356,600,000 of equity went into securities-based TICs, and by 2004, more than $1,719,713,284 of equity was invested—yes, that is more than a Billion dollars. The final 2005 figure, released at the time of this book's first edition, stood at $3,229,018,208 of equity invested. Investment for 2006 came in at $3,700,000 of equity and about $4.5B is projected for 2007 (source: Omni Consulting & Research).

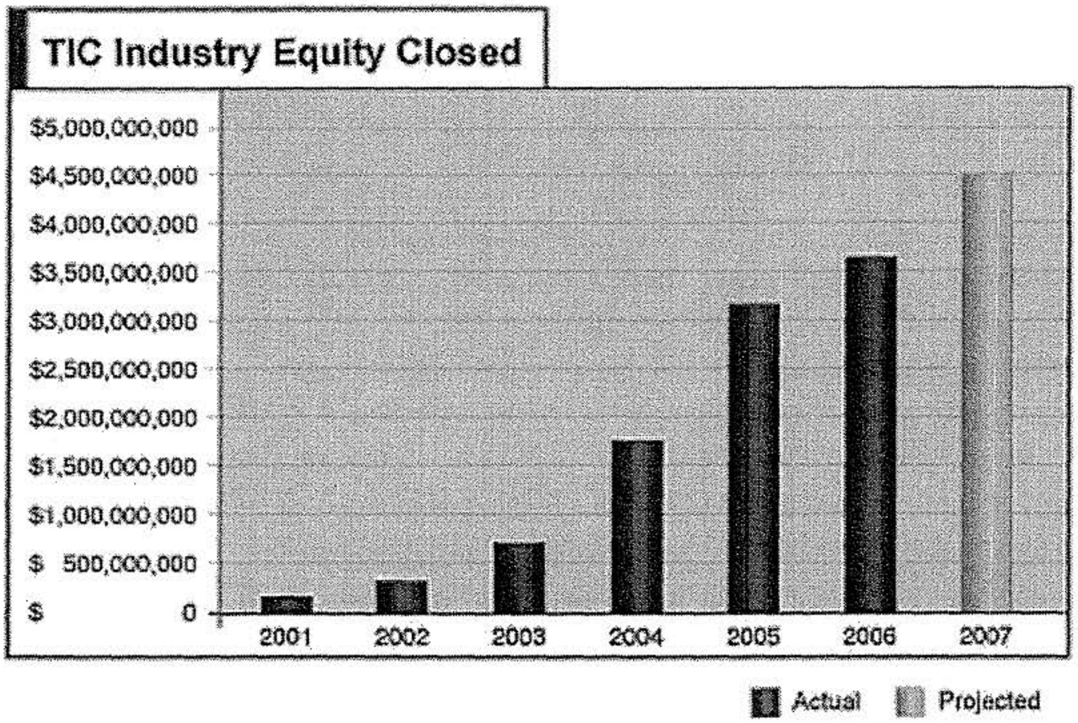

Figure 1. Securitized TIC Industry Equity from 2001 (Courtesy: Omni Consulting & Research). Chart by A3K Design.

Even though tremendous amounts of equity have been placed to date, in many ways TIC properties have seemed to be almost a secret. They are slowly becoming known to investors across the United States. Many of the investors into TICs have been conducting 1031 tax-deferred exchanges, and many of the earlier investors resided on the West Coast of the United States. More and more investors have become aware of this investment type through various channels. Thus, the industry has grown. There are definitely some reasons why we do not see advertising about TICs, including regulatory issues, and yet why so much equity is being placed into these properties.

Why are TICs so popular and why has the industry grown so strongly?

The most profound reason is a 2002 Internal Revenue Service (IRS) Revenue Procedure ruling. This ruling, Rev Proc 2002-22, essentially set forth the guidelines whereby a TIC would be recognized as real estate, not as a partnership. Hence, it could be used in a 1031 tax-deferred exchange. (For those of you not familiar with the 1031 tax-deferred exchange, Chapter Two will go into some detail.) Before 2002, the IRS had viewed TICs as interests in a partnership, thereby disqualifying them as like-kind real property for the exchange.

A small group of companies, mostly in southern California, were offering TIC properties in the 1990s as passive investment choices for their clients. However, since the landmark ruling in 2002, TIC offerings, sponsors, and investors have grown by leaps and bounds. The handful of sponsor companies selling TICs has grown each quarter since 2002. Today, there are more than seventy sponsors. Moreover, it continues to grow.

A second reason why TICs have taken off as an industry is that many investors today want passive income, or effortless cash flow. They want to own real estate, but they do not wish to actively manage property. Many baby boomers may have put more than their share of time in on the "3 Ts"—trash, toilets, and tenants. New investors may not have deep real estate experience. However, they do not want to deal with the "3 Ts" but do want to benefit from real estate ownership. Real estate investors can step into a TIC investment with experienced managers running their investment and gain a cash flow with tax benefits. Some of these investors may be retirees who want something perceived to be more stable or diversified from their other retirement holdings. On the other hand, they may be younger investors who simply want to diversify and enjoy passive income. Many investors, regardless of their age, need to defer the capital gains upon sale of their investment property, which may be quite hefty.

Investors today want to be able to travel or pursue their hobbies and busy professions. They want to have time for their families. They don't wish to manage real estate. However, they like the stability of income and value from real estate. As interest rates have been historically low, interest paid out from money markets, CDs, and other types of such investments have also been low. Real estate income has beaten those returns in the last years and has performed well in general.

Many people became tired of the stock market or at least tired of its volatility. A number of investors decided it was time to diversify outside of paper investments only. In fact, some financial planners suggest that real estate should be part of an investor's portfolio. Some people at retirement age may have seen their retirement funds diminishing at the beginning of this century and onward following record gains in the late 1990s. In fact, starting in 2000, the United States stock market fell dramatically. Over a twelve-month period, the benchmark S&P 500 Index lost one-quarter of its value. Additionally, the NASDAQ Composite Index lost over 60 percent of its value.[1] There have been gains and recovery.

However, because of this, real estate became one of the darlings, if not the favored choice, for many investors. Wall Street also took notice. While everything goes in cycles and real estate will become less popular one day when other investments bring higher yields, many do see real estate as a good choice for diversification and as more 'stable'. It is a bricks-and-mortar structure with intrinsic value on land with value that they can see and feel, and which in many cases appreciates. With TICs, investors gain a number of tenants—often credit tenants—who form the base of the cash flow. While there are risks to real estate, investors receive tangible benefits from their investment, including sheltering of the income they collect each month (unlike many other investments) and the tax deferral at sale if they chose a 1031 tax-deferred exchange.

An investor with $100,000 can purchase $100,000 of stocks, bonds or mutual funds. An investor with $100,000 can purchase $300,000 or more of commercial real estate. Leverage is an advantage in real estate. Leverage is defined as the use of borrowed money to increase your profits in an investment. Building wealth in real estate is usually accomplished or aided by financing. Because more money is invested overall, leverage significantly increases the percentage of profit you can make. Leverage or financing allows you to purchase a much larger investment than you would normally have been able to. Most TIC properties are financed with non-recourse debt, the advantageous kind of debt for investors. Non-recourse financing is a type of loan in which the only remedy available to the lender in the event of the borrower's default is to foreclose on the collateral. The borrower is not personally liable for repayment. In other words, you, the investor, would not

1 Courtney Coile and Phillip Levine, National Bureau of Economic Research (NBER), "Do Changes in the Stock Market Affect Retirement Decisions?" *NBER Working Paper 10779*, September 2004.

be responsible for a $60 million dollar loan taken on a TIC property you invest in. Your liability would be limited to the amount of your investment.

There have been historic increases in real estate values in many areas of the United States. Many people have taken this opportunity to cash out on properties that have served them well, perhaps for a retirement nest egg or to build their wealth. I have had clients who realized tremendous capital gains at the sale of their properties, including properties sold in such states as California, Arizona or Florida. By using a 1031 tax-deferred exchange, they could defer paying tax on those gains and increase their net worth through buying or 'trading' into new investment property. With a TIC, they often received better monthly income than they were getting with their former property. (Often rents could not keep up with the appreciation, especially with residential rentals.) Moreover, they gained this new income with absolutely no management.

Yet even investors with moderate gains and/or with enough equity (at least $100,000) to invest in TICs have been favoring the 1031 tax-deferred exchange over taking the cash and paying the capital gains tax. No one should ever have to pay the tax on an investment property if he or she intends to reinvest into more investment property. The 1031 tax-deferred exchange can be a very powerful strategy to preserve capital and/or build wealth, even though one must follow many regulations and restrictions.

The 1031 investor has definitely fueled the real estate investment markets for the last four to six years. Hence, this is another reason why the TIC industry has exploded.

Low interest rates, high property values, gradual economic recovery and lack of confidence in the stock market have all contributed to the booming 1031 market and the TIC popularity.

As mentioned, TIC deals were initiated in the early 1990s by real estate entrepreneurs who wanted to provide property with stable cash flow and no management for their investors. These investors typically had less than $500,000 in cash. Investors with more equity were often purchasing the popular triple-net-lease (NNN) properties if they wanted passive income, even though these are usually single-tenant deals and are usually not institutional-grade.

Some of the sponsors began submitting Private Letter Ruling requests to the IRS in 1998 and 1999, attempting to gain acceptance for their TIC offerings for a 1031 tax-deferred exchange. At that time TIC-structured properties were viewed as partnerships and did not qualify for a 1031. However, the IRS decided it would be better to address the general issues on TICs rather than make a ruling on each deal. So, the IRS took a standstill on all TIC rulings and they finally addressed the issue by releasing Rev Proc 2002-22 in March 2002, which is a procedural guideline for all. Details on this ruling are discussed later.

So, why else are TICs so popular?

Several of the reasons were just addressed. TICs are passive income properties with no management and no daily responsibilities or headaches, which allows more personal freedom. They provide annual income (paid monthly) and partial tax sheltering of that income through depreciation and/or expenses. They can be used in the 1031 tax-deferred exchange. The following are some of the other reasons why TICs are popular.

TICs are easier and faster to acquire than many other types of real estate, which is especially essential for a 1031 tax-deferred exchange. From the day an investor conducting an exchange sells his investment property, he has only forty-five days until he or she must 'identify' properties that he may or will acquire. It is not easy to find, negotiate, study and buy an investment property and arrange financing in these short time frames. In addition, income-producing properties are at a premium and in low supply. There are many potential buyers fighting over a smaller supply. TIC properties are prepackaged and ready for purchase almost immediately.

TICs provide access to institutional-grade properties with low equity. The minimum equity required for purchase may be as low as $100,000 to $300,000, even though this number can be higher and varies from property to property. Usually, with about $100,000 to $300,000, if you wish to leverage into a single ownership property, you would be able to purchase a commercial property in the $300,000 to $950,000 price range, depending on the tenants in place, the type of building, and your credit for a bank loan. Commercial investment properties in that price range usually have local tenants or franchisees of national tenants, depending on your market. These definitely would not be institutional-grade quality properties. They may be management investments as well.

Besides TICs, NNN (triple net) investment properties are the other prevalent no-management income property. These properties have been popular with 1031 investors for years. A NNN property typically has a single tenant such as Burger King, Applebee's, Advance Auto, 7-Eleven, Tire Kingdom, Starbucks, etc. The lease term is usually fifteen or twenty years. Not only does the tenant pay for rent, it also pays for taxes, insurance, and maintenance. The guarantee could be corporate (desirable) or franchisee (less desirable but depends on the size of the franchisee). The typical price range is about $1.2 million to $3.5 million. For higher-rated tenants, such as Walgreen's, CVS, Wal-Mart, Best Buy or Home Depot, the price can easily be $5 million and much higher. Moreover, the cap rates are low for higher rated tenants—at this writing typically 5.8 percent to 6.5 percent unleveraged (in most parts of the country). The investor would probably have to obtain a less desirable recourse loan for acquisition of these NNN properties rather than non-recourse for the single tenant property, except for a highly-rated tenant with corporate guarantee such as Walgreen's. In a recourse loan, you are personally responsible for the loan. Remember, you are not personally responsible for a non-recourse loan. Interest rates and terms are better for non-recourse loans as well.

Most NNN properties are not institutional-grade. Indeed, some investors balk at a single tenant property even if there is no management involved, preferring multi-tenant investments for risk aversion. If that single tenant leaves your building, breaks the lease, or goes out of business, you have no cash flow and will need time to find solutions while continuing to pay debt service. If one tenant among many leaves in a TIC, you might have a reduction of cash flow but all of your 'eggs are not in one basket', like in a NNN property.

You can see that with the same $100,000 to $300,000 and above in equity, you would be able to own a piece of a class A retail shopping center or bank office tower, for instance, that may have nationally known credit tenants in place instead of a single-tenant property. There will be much better financing terms on TIC deals that you could get alone on a NNN deal or most other types of real estate. Unlike the NNN, the TIC property would be ready to purchase, all due diligence would be completed, and all financing would be in place. You simply study the real estate essentials and story on the TIC and the TIC sponsor, get answers to your questions, and then subscribe into the property if it suits you. TIC ownership has truly opened up the world of the institutional grade properties to a large group of investors who would have never been able to buy such properties on their own. This type of property was usually the domain of the pension funds, life insurance companies, or super-wealthy. TICs are appealing because an investor with a relatively small investment can gain ownership to a higher level property.

Some investors ask what institutional-grade properties are. Most in the commercial real estate world use this term even though there is no specific, stated definition and some of the details may vary. However, professionals tend to agree on certain facts when describing institutional-grade, as follows:

Institutional-grade properties are often called trophy properties. They are considered buildings of high standard as well as good design and construction. Their size is also large enough to merit the attention of institutional investors. These buildings are usually located in primary, or perhaps secondary, markets. They are usually in the central business district or a prime demographic location. They may have a name anchor tenant or tenants like a bank or respected Fortune 500 company. Due to the strength of the tenants, the construction, the location, and the street appeal, they are considered to be less risky than other real estate. In the past, the asset classes of office or retail were only considered institutional-grade. However, this has expanded to class A apartment complexes and even some industrial or flex properties.

Now let's return to more several more reasons why TIC properties are popular.

Diversification. If they have enough equity, investors can diversify into several asset classes. For instance, with $500,000, an investor could place funds into two different TIC properties. He or she could diversify between types, for example, an office building and apartment complex. He or she could diversify geographically, for example, a property in Phoenix and a property in Atlanta. Different parts of the country experience growth and cycles at different rates. Moreover, asset classes go through their own cycles as well. Diversification is a commonsense approach for investment funds.

Tailoring of the investment. Investment into a TIC or TICs can allow the investor to tailor the amount of the investment to his or her specific needs. If an investor has purchased a single-ownership property but has some funds left over, perhaps $200,000, he or she can use these funds to complete a 1031 tax-deferred exchange (if he or she is in one) and gain additional cash flow. An investor can also be sure to replace the debt (a 1031 requirement) by acquisition of a leveraged TIC property. Almost all TIC properties are leveraged, usually between sixty and seventy percent loan to value. A few will have lower leverage. A few may go higher than seventy percent. Rare is the unleveraged, securitized TIC, even though they do occasionally appear.

While a TIC may not be right for every investor, they have helped supply another option among all real estate choices. They have given the 1031 investor a viable choice, and they have offered another option to the passive income investor.

Disadvantages or Downsides

TIC investments are not risk-free. Liquidity, market and management risks can be considered among the disadvantages. The following list provides a quick, general overview of the disadvantages. Chapter Ten (What Could Go Wrong?) discusses these and other issues.

Cash flow disruption. Your cash flow could be reduced or cut for a time if a tenant or tenants leave and new ones are not engaged, or due to other factors typical in real estate ownership.

Liquidity. TIC properties are not liquid. By nature, real estate is not liquid. You cannot decide that you want to sell today and have the funds available tomorrow. Anyone who is thinking about investing in a TIC needs to know that this is a long-term investment (at least two-and-a-half years to more than ten years). Investors should also go into an investment with the plan to stay until the property resells.

No Developed Secondary Market. At this time, there is no developed secondary market for TICs.

Market risk. If the economy goes soft or the real estate market goes soft for the asset class or geographic location of your TIC, it would possibly take some time to resell the building. The weak market could cause loss of tenants, which ultimately affects cash flow and income.

Financing Risk. Most TICs have non-recourse financing. If the loan comes due and the property has not sold, you would need to refinance. In a rising interest rate climate, there is risk that your cash flow may be reduced because of higher debt service. There could also be difficulty in refinancing. There could also be difficulty in refinancing if, for instance, your building has lost tenants.

Management Risk. Poor management could affect the asset. Your TIC Agreement gives you the right to vote out or change your management company. However, you would normally vote out a manager upon poor performance, and your cash flow may have already been affected.

Capital Call. There is risk of a capital call in a TIC investment, if the reserves were not sufficient and there is need for capital improvement or expense payments, for instance, or due to a loss of tenants. This is not a common occurrence and would usually be a last resort, but there is the risk.

Group risk. Are you willing to be invested with others who are unknown to you in a property? The tenants-in-common will be required to vote on certain key decisions. A good sponsor or manager will lead the process. However, there could be risk of conflict.

Remember, there is risk in every investment out there, not just real estate or TICs. Before investing, you should always contemplate the risks and their impact on you.

The following are a few examples of when NOT to consider a TIC investment:

- If you do not want to lose total management control of a property.
- If the monies for this investment are entirely for living expenses or you have few liquid assets.
- If you cannot make faster decisions than you may be used to in other real estate.
- If do not have or use e-mail.
- If you are not familiar with or comfortable with real estate risk.
- If you need to negotiate everything.
- If you do not really want a passive income property.
- If you are not an accredited investor (this is explained later).

OK, I have a general idea of the advantages and disadvantages. Now give me a brief summary: how does this work? From whom do I buy a TIC property? Where do I find the properties?

TIC sponsors are the companies that find the real estate and buy it or tie it up. They conduct due diligence, obtain the loan, and package it with all necessary legalities and structure. If the TIC is a security (most are), it is sold by licensed registered representatives of securities Broker/Dealers. Most sponsors do not have the proper licensing to directly sell the TIC. The securities Broker/Dealer will approve (or not) the TIC property that has been presented to them by the sponsor before the registered representative can present it to you.

The registered representative will be the professional who advises you of the current offerings and their features. The representative will work with you to understand your financial goals and situation. He or she will help with suitability and assist in reviewing the choices and their details. If the TIC is sold strictly as a real estate-based structure, real estate brokers or agents will bring the TIC to you and advise you of the current offerings. In the time crunch of a 1031, these advisors, either real estate or securities representatives, can be your lifeline to a successful trade and acquisition strategy. TIC properties come and go relatively quickly. They could close in about a month from the time you are reserved or subscribed in the property, depending on the size of the property and the structure. There is a tremendous amount of turnover of TIC properties, and many investors are interested in purchasing.

In the TIC acquisition, your qualified intermediary (QI) will be the third-party entity who holds your funds in trust and assists in specifics regarding the 1031. The registered representative, through their Broker/Dealer, will be responsible for helping you find suitable properties and getting you subscribed. The title company for the sponsor will be involved in the tremendous amounts of closing documents along with the bank and sponsor. Lenders will qualify you for the non-recourse loan. Attorneys will be quite involved in the transactions. Your own team members may also be involved. Chapter Four will go into more detail about the various parties involved and will include tips on what to look for or avoid. Chapters Six and Seven go into detail about the subscription process and getting into a TIC.

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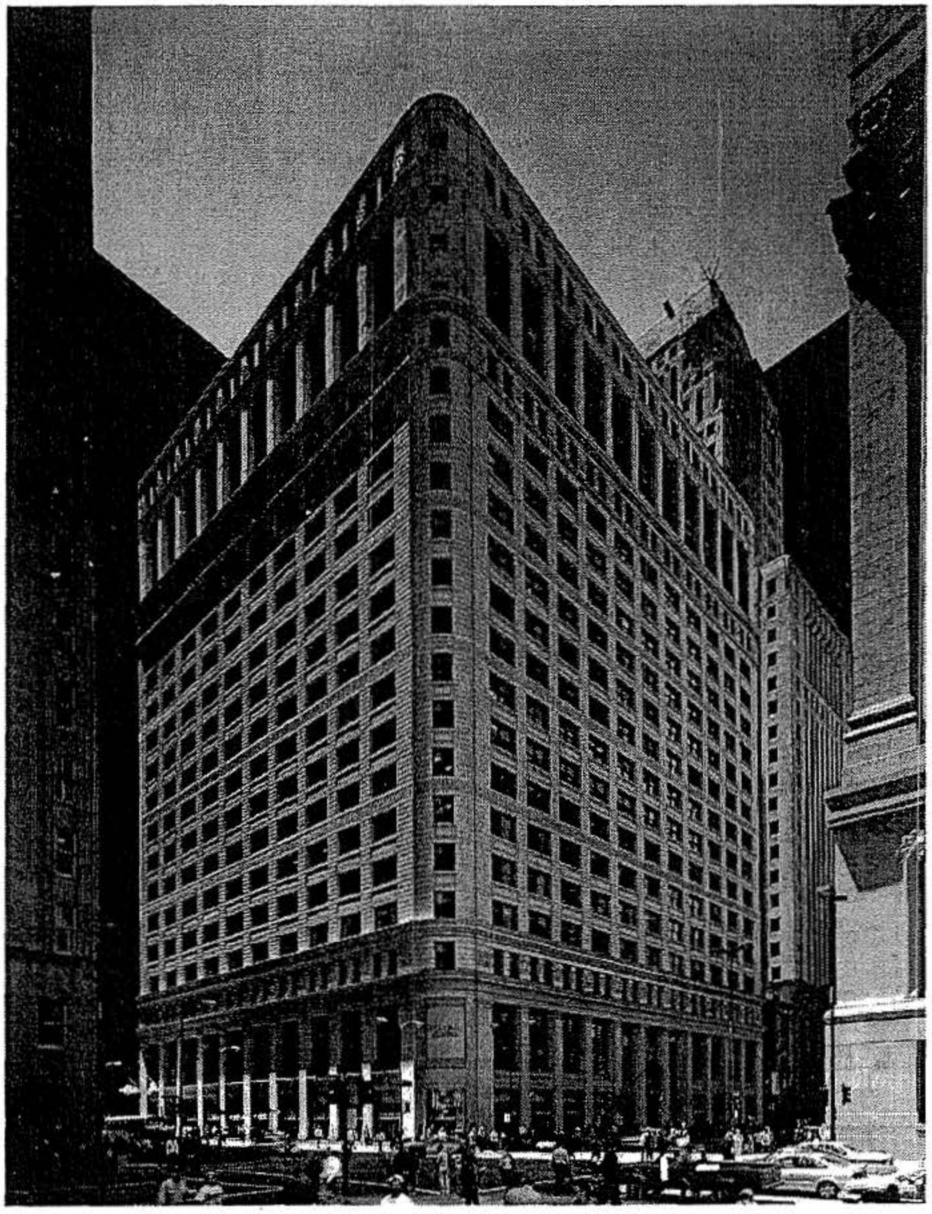


Photo 2. Sponsor: TIC Properties, LLC. Burnham Center, Chicago, IL

Chapter 2

The 1031 Tax-Deferred Exchange and TICs

The author is not a tax attorney, qualified intermediary or tax expert. This chapter discusses the history and commonly known mechanics of the 1031 tax-deferred exchange. It has been included to help the uninitiated understand what a 1031 tax-deferred exchange is and how it could benefit them. While the author will directly quote IRS publications, she recommends that the readers consult one of the many professionals or publications that specialize in this complex and specific subject if they wish to conduct a tax-deferred exchange.

Because many 1031 investors find TICs to be a good solution, discussing the 1031 tax-deferred exchange is essential. While many investors across the United States are aware of this powerful strategy, there are still many who are just discovering it.

What is the 1031 tax-deferred exchange, sometimes also known as the Starker exchange, Delayed exchange, Like-kind exchange, or simply 'a 1031'?

It is the sale or disposition of property and the acquisition of 'like-kind' property following the rules and structure of Section 1031 of the Internal Revenue Code (IRC) in order to defer federal tax, capital gain, and depreciation recapture taxes. 'Like-kind' as applied to real estate is essentially any type of investment real estate with a few exceptions such as a personal residence. This means you can sell an office building and buy a retail center or land; you can sell an apartment building and buy an industrial building or hotel.

Educated investors know they never need pay the tax on their capital gains if they intend to reinvest sale funds into more investment property. They also know they can DEFER the tax due by reinvesting the proceeds into another investment property. This is not a tax-free transaction—it is a deferral, which can go on indefinitely and for any number of exchanges, until the day an investor or his or her heirs decide they will cash out and pay the tax. The IRS specifically states in its code:

> *"No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment, if such property is exchanged solely for property of like-kind which is to be held either for productive use in a trade or business or for investment."*

Section 1031 does not apply to exchanges of inventory, stocks, bonds, notes, other securities or evidence of indebtedness, or most other assets. However, it does apply to some business and personal property, such as planes, boats, or trucks. For purposes of this book, we are discussing real estate to real estate.

A little history to understand the 1031

(Much of this history is taken with permission from the history of 1031 exchanges by Robert L. Sommers; Journal of Taxation, a publication of Warren, Gorham and Lamont.)

Section 1031 of the Internal Revenue Code ("IRC") has a rather long and complicated history dating back to 1921. The first income tax code was adopted in 1918 as part of The Revenue Act of 1918, but it did not provide for any type of tax-deferred exchange. The first tax-deferred exchange was authorized as part of The Revenue Act of 1921 when the United States Congress created Section 2021 of the Internal Revenue Code. Between 1921 and 1970, 1031 exchanges were always simultaneous swaps between two parties. Between 1921 and 1924, they also included non-like-kind properties.

The section number applicable to the tax-deferred exchange was changed from 2021 to Section 112(b)(1) with the passage of The Revenue Act of 1928. The 1954 amendment of the tax Code changed it to Section 1031 of the Internal Revenue Code, and many of our present language and procedural details were adopted.

We can thank the Starker family for the rise of the 'deferred exchange.' In 1979, the *Starker* case gave rise to the so-called "deferred or non-simultaneous exchange". It is an extremely important case for every investor since. The taxpayer, T. J. Starker, transferred timber property which was free and clear of debt to Crown Zellerbach Corporation, in exchange for an unsecured promise by Crown to transfer to him like-kind property chosen during a five-year period. At the end of this five-year period, Mr. Starker would receive any outstanding balance in cash. When the transaction was set up and the property transferred to Crown, a trust agreement was formed whereby the sale proceeds would be held in a separate bank account. The terms of the trust clearly stated that the funds could only be used to purchase the replacement property for the Starker family and for no other purpose. Neither the Starker family nor Crown had access to the funds, except for buying the replacement properties.

When the IRS saw this arrangement, it denied the tax deferral. The IRS argued that a 1031 exchange meant the swap of property between two parties simultaneously. Remember, up to this point, trades were always simultaneous swaps. The job of the IRS is to collect taxes and enforce the regulations, as it understands them. So, the IRS fought against the Starker arrangement. Starker took the case to court. In a monumental decision, the Ninth Circuit Court ruled in favor of the Starker family and against the IRS. The Ninth Circuit found that Section 1031 did not contain the requirement of simultaneity and that an exchange today for like-kind property five years in the future was permissible. The Court also stated that Mr. Starker's possibility of receiving cash in the future did not cause the transaction to fail under Section 1031.

Now, instead of having to find someone with whom to simultaneously swap property (risky at best and quite complicated to accomplish), investors could sell a property today to a buyer and exchange the proceeds into another property from someone else in the future. This was and is a far more practical procedure. However, it also became an administrative nightmare for the IRS. The IRS could see that if property could be sold to one person today and bought from another later, then the application of the law could become not only quite complicated but hard to manage.

So in 1984 and 1986, Congress decided to limit the *Starker* decision with the Deficit Reduction Act of 1984 and The Tax Reform Act of 1986. Essentially, the deferred exchange was codified. Time limitations were defined. Those limitations stipulate that an investor has 45 days from the day of selling his relinquished property to identify property or properties he will buy; he has a total of 180 days to close on one or more of those identified properties. Congress also amended Section 1031(a)(2) of the Internal Revenue Code to disallow exchanges of partnership interests.

The Tax Reform Act of 1986 marks the start of what has become a tremendous explosion in the amount of 1031 tax-deferred exchange transactions seen today. The Tax Reform Act of 1986 eliminated preferential capital gain treatment so that:

- All capital gains were taxed as ordinary income.
- Passive loss and at-risk rules were enacted.
- Accelerated depreciation methods were eliminated and replaced with straight-line depreciation consisting of thirty-nine years for commercial property and twenty-seven-and-a-half years for residential property.

These changes significantly altered the benefits of owning real estate and made the 1031 exchange one of the few tax benefits left for real estate investors.

Eleven years after the Starker decision permitted deferred like-kind exchanges and six years after Congress' actions in response to the Starker decision, the IRS itself finally published proposed regulations intended to answer myriad unresolved issues. Many tax experts say the regulations are relatively clear, brief, well stated and, for the most part, consistent with the body of case law interpreting Section 1031.

Some Revenue Rulings perhaps helped pave the way for the TIC industry. Rev Rul 75-374, 1975-2 C.B. 261 ruled that a two-person co-ownership of an apartment building rented to tenants did not constitute a partnership for tax purposes. The co-owners had hired an agent to manage the apartment property, and the agent collected rents, paid expenses, handled repair and maintenance, and common area maintenance. The ruling concluded that the agent's activities were not sufficiently extensive to deem it a Partnership. In Private Letter Ruling (PLR) 8049064, the IRS ruled that parties to a series of real estate exchanges received undivided interests in an office building and not interests in a partnership. The interests were regulated by a TIC agreement and a Management agreement. PLR 8117040 also ruled that owners of an apartment building were co-owners and not partners because the TIC Agreement provided for majority rule on managing the building, and an agent had been hired to manage the building.

Several early TIC sponsors were asking for Private Letter Rulings to approve their particular offerings for a 1031 tax-deferred exchange. The IRS issued Rev Proc 2000-24, ordering everyone to stop asking for private rulings while it studied the issue of TICs. At last, two years later on March 19, 2002, it made the landmark provisions with Revenue Procedure (Rev Proc) 2002-22. The ruling, which includes fifteen points, provided standards for determining whether TIC interests are considered real estate or partnerships and how they can qualify as like-kind real property for the 1031 tax-deferred exchange. The distinction is essential. Partnerships do not qualify for the tax-deferred exchange. The key point is to avoid the TIC being treated as a partnership and hence being disallowed. Most TIC sponsors provide an attorney opinion letter regarding this ruling in relation to their specific TIC offering.

Rev Proc 2002-22 consists of an introductory section on purpose. Section 2 provides a background, which includes some previous rulings and groundwork for what the IRS was looking for as it made the ruling. Section 3 describes the scope. Sections 4 and 5 indicate the guidelines for submitting a ruling request and what information should be included. Section 6 lays out the conditions that should be satisfied in obtaining a ruling. This includes the fifteen-point guideline. Attorneys usually point out that the fifteen-point ruling is a guideline, not a statement of substantive law. What has developed since Rev Proc 2002-22 is the widespread acceptance of a structure for doing TIC offerings. In fact, until there are any further rulings, most sponsors of TIC properties have adapted their offerings to conform as closely as possible to the fifteen guidelines.

You will rarely see a Private Letter Ruling from the IRS on your specific property. Why? Because the process to obtain the ruling takes a very long time, much longer than what a 1031 tax-deferred exchange would allow. Because the IRS guidelines are clear in Rev Proc 2002-22, the sponsors follow this as closely as possible and obtain attorney opinion letters on the offering.

Rev Proc 2002-22 gave 1031 exchangers a viable solution. In fact, prepackaged TICs solve a problem for many investors. When an investor acquires real estate in an exchange, he or she needs time to find the property, submit a Letter of Intent, and negotiate a purchase contract. It especially takes time to conduct inspections, negotiate loans and gain approval, get permits, licenses, review leases and tenants, review title, survey, and lien holders. All of this is difficult at best, especially if the investor is not already in contract to buy the replacement property at the time of sale of the relinquished property. Here was a ruling that allowed a prepackaged, ready-to-go, institutional-grade property, throwing off passive income, to be purchased in short time frames, whereby all due diligence and loan negotiations have been completed. The time frame to get into this kind of property is well within the forty-five-day identification period. Sometimes an investor may have acquisition complete before the required forty-five-day identification period ends.

The final note about 1031/TIC history regards the Delaware Statutory Trust (DST). Some TIC sponsors offer private placements in the DST structure. DSTs are not TICs. They are passive-income, multi-owner, institutional offerings similar to TICs. The IRS Rev Rul 2004-86 describes a situation whereby the DST is classified as a trust for federal tax purposes. A beneficial interest in the trust qualifies as like-kind property for the 1031 exchange. The DST is covered in Chapter Nine.

So what are the basic rules that I need to know when I conduct a 1031 exchange?

There are very detailed rules that you must follow in a 1031 with no exceptions. All investors should know the general mechanics. If you break one of the rules, the exchange is disallowed, and you will pay the capital gains. When you decide that you are going to sell an investment property, you will want to ascertain that there will be sufficient capital gain involved with that 'relinquished property.' This will help determine whether it makes sense to do a 1031 in the first place—that is, if you were planning to reinvest in more investment property or a 'replacement property.' Your accountant, financial planner, or attorney can help you determine your capital gains if you cannot.

The qualified intermediary (QI) or exchange accommodator is the professional third party who must hold the proceeds of your sale in escrow. You, the investor/seller/exchanger, do not touch the funds—or else you will pay the tax. The QI will handle the specific paperwork necessary for the transfer before you sell your property, assist you with identification of property you will purchase for the exchange, hold the funds in trust, and then transfer the funds for acquisition of your chosen properties, along with other important details.

Find your QI well <u>before</u> you sell your property. Ideally, it should be before you go into contract on the property you will sell. The contract for your relinquished property should contain some specific exchange language. An example of this contract language is:

> *Buyer is aware that the sale of the subject property is part of an IRC 1031 tax-deferred exchange. Buyer agrees to an assignment of the Seller's interest in this purchase contract to a*

qualified intermediary to effect the exchange. No additional costs or liabilities will be incurred on the part of the Buyer.

There are many qualified intermediaries and QI companies throughout the United States. Their national association, Federation of Exchange Accommodators (FEA), lists all members on its Web site (www.1031.org). You can also read more about the QI in Chapter Four of this book.

Investors should know that there are no exceptions to the rules for dates and deadlines, even if specific dates fall on a Sunday or holiday. The investor must identify the properties with the QI that he or she may—or will—buy by calendar day 45 from the day the relinquished property sold. The investor must close on one or all of the identified properties no later than calendar day 180 from the day the relinquished property sold. The time limits imposed by the IRS are absolutes. If you are one day or one hour late, your trade is disqualified, and you will pay the tax.

From time to time in recent history, the IRS has granted extensions to exchangers, for example, to those affected by devastating hurricanes. Your QI will know about these rare exceptions.

You have several choices for identification of the properties to acquire. The QI will supply the instructions, and the registered representative or broker can assist:

- **The Three Property Rule**. Identify up to three properties of any value. Acquire one, two, or all three of the properties. Most choose this option. It is wise to use all three slots, even if you intend to acquire only one property. You will have backup options in case something goes awry with the first choice.
- **The 200 Percent Rule**. Identify four or more properties, whose value cannot exceed twice (200 percent) of the relinquished property value. Exceeding the 200 percent limit will disallow your transaction. A few choose this option.
- **The 95 Percent Rule**. Identify any number of properties with an aggregate fair market value exceeding 200 percent of the relinquished properties. Acquire virtually all (at least 95 percent of them, based on the total fair market value). Very few choose this option.

Identifying replacement property is relatively straightforward, and the QI will assist. (He or she usually supplies specific forms to use.) The designation must be made in a written document signed and dated by the exchanger. It must be delivered or transmitted to the QI no later than midnight of day 45. A fax is often preferred because it includes a date and time in the fax receipt document. The IRS regulations state that street addresses or property descriptions that are used must be unambiguous. Identification of a TIC property usually includes:

- Property name
- Property address
- Percentage interest being purchased (if known) or total equity raise
- Loan-to-value (LTV)
- Additional information (for example, the TIC sponsor name)

In a 1031 tax-deferred exchange, you must take title to the new property in exactly the same way you held title in the relinquished property, whether it is you personally or an entity such as a trust, corporation, partnership, or LLC.

When exchanging into the replacement property, you must replace both equity and debt at the same amount or greater, if you wish to defer the capitals gains in full. You do not have to place all of your proceeds into a new property, but whatever you take out will be taxed. You need to replace the same amount of financing or greater. If you do not wish to do so, you are permitted. You will simply have a tax obligation on the difference. If you add new cash out of your pocket, you can reduce the financing. In other words, new cash can replace mortgage boot. (Mortgage boot cannot ever replace cash.)

While there are many rules and regulations involved with a 1031 exchange, the goal of this chapter is to provide the basic understanding of the concepts. Consult one of the professionals who specialize in the 1031 tax-deferred exchange for full details, especially relating to your specific situation. The full IRS code can be found on the IRS Web site at www.irs.gov.

Frequently Asked Questions about the 1031 tax-deferred exchange

Question: Do I have to invest the exact amount of money that I received from the relinquished property?

> **Answer:** To defer capital gains, you must invest the exact amount or more. You must also replace the same amount of debt or more.

Question: Can I keep some of the cash from the sale of the relinquished property but exchange the rest?

> **Answer:** Yes, but you will pay capital gains tax on the amount of cash you take. Make sure to coordinate with the QI or your accountant so that it is done properly.

Question: I recently sold an investment property and have the funds in my money market account. Can I still do a 1031 exchange?

> **Answer:** No, it is too late. The exchange must be set up so that your proceeds are held by the third party in assignment. Those funds are used to purchase your new property. You cannot 'touch' the funds, so to speak.

Question: Can I use 1031 proceeds to pay down a mortgage and defer tax. With the proceeds, could I make improvements to investment real estate I own and defer tax?

> **Answer:** No. Paying down a mortgage is not considered 'like kind' nor is making improvements to a property you already own with one exception concerning construction leasehold exchanges.

Question: What is "boot"?

> **Answer:** "Boot" is anything of value exchanged that is not "like-kind" to the relinquished property. This is usually cash or mortgage debt used to equalize the transaction.

Question: Can I sell one large property and buy several smaller ones?

> **Answer:** Absolutely. Many TIC investors in fact sell one property and diversify into several. An investor may sell many properties and buy one, or sell one and buy many. It is the equity and debt that must be replaced, not the number of properties. However, you must follow the identification rules.

Question: What if the property was held in a Trust or owned by a corporation? What if a Partnership or LLC wants to do a 1031 with investment property they own?

> **Answer:** No problem. The entity in which you sell your relinquished property is the entity in which you must take title.

Question: I've heard that a Special Purpose (or Single Purpose/Single Member) Entity LLC (SPE LLC) will be formed for me in a TIC investment. Won't that disqualify the trade?

> **Answer:** No. The SPE LLC is a disregarded entity (disregarded or invisible for income tax purposes) and is a flow-through entity that serves to protect you from the other investors—like a firewall—and to help reduce liability. The lender usually requires that this entity be used. It does not affect your 1031 exchange or entity regulations. The SPE LLC name is usually the name of the property and a number (South Main LLC 1, South Main LLC 2, etc.), but it could be whatever the attorney deems it should be. Your monthly payments will be made in the name of the entity. The SPE LLC is discussed further in Chapter Six.

Question: Can my own attorney or CPA serve as my QI?

> **Answer:** No. A QI must remain completely independent and cannot have been your agent in the past two years.

Question: Is there a limit to the number of exchanges I can do in a year? I have several properties that I want to sell.

> **Answer:** No. No limit is specified. Just make sure the properties are indeed investment properties that were "acquired and held for productive use in a trade or business."

Question: Is the 1031 tax-deferred exchange only for capital gains?

> **Answer:** No. The 1031 applies to capital gains taxes (15 percent), depreciation recapture (25 percent), and state income taxes (generally 8 to 9 percent, where applicable). Long-term capital gains taxes apply to property held more than one year. Gains from property held less than a year are taxed as ordinary income.

Question: Can any of the expenses for investing be deducted from the 1031 proceeds without incurring any tax consequence?

> **Answer:** Even though the IRS has not published a complete list of qualifying expenses, there are some rulings and case histories. Transaction costs may be deducted if they are paid in connection with an exchange (Letter Ruling 8328011). Brokerage commission can be deducted. Though, in a TIC, you will not be paying real estate brokerage commission for acquisition. However, you will probably pay commission for the property you sell. Direct costs of selling real estate include title insurance, legal fees, notary fees, closing or escrow fees, and recording fees.
>
> Any cost to acquire a loan cannot be deducted, including mortgage points, assumption fees, credit reports, mortgage insurance, and so forth. Other non-exchange expenses

include such things as property taxes, insurance, association fees, and utility charges. Your QI and/or your accountant will help you with these line items.

Question: How will I handle my 1031 at tax time? How will I account for it?

> **Answer:** Among other things, you will use Tax Form 8824, entitled "Like-Kind Exchanges." Your accountant will walk you through this, as he or she handles your returns. The QI can assist. There are also detailed instructions with Form 8824. Make sure to save all information and closing statements because your accountant will need these.

Question: What if I don't identify property by the deadline? What if I can't get into what I identified or decide not to do the 1031 after I have started the process? What happens to my funds held with the QI?

> **Answer:** The right to receive your funds is actually limited. If you did not identify anything by day 45, your funds can then be released after day 45. If you have identified property but were unable to acquire or buy, you will go through a process with your QI before funds can be released. Otherwise, the funds are not available until after the 180-day expiration.

To end this chapter, know that there are different kinds of 1031 exchanges that are less common, including:

- Reverse exchanges (the replacement property is purchased first; then the relinquished property is sold)
- Construction (improvement, leasehold, or build-to-suit) exchanges
- Simultaneous exchanges

A full book could easily be written about the 1031 tax-deferred exchange (many have been!). If you are interested and would like to know more, I recommend you speak with an attorney or a QI. You should also review the many excellent books on the subject.

IRS REV PROC 2002-22 FIFTEEN POINTS

1 Tenancy in Common Ownership. Each of the co-owners must hold title to the Property (either directly or through a disregarded entity) as a tenant in common under local law. Thus, title to the Property as a whole may not be held by an entity recognized under local law.

2 Number of Co-Owners. The number of co-owners must be limited to no more than 35 persons. For this purpose, "person" is defined as in § 7701(a)(1), except that a husband and wife are treated as a single person, and all persons who acquire interests from a co-owner by inheritance are treated as a single person.

3 No Treatment of Co-Ownership as an Entity. The co-ownership may not file a partnership or corporate tax return, conduct business under a common name, execute an agreement identifying any or all of the co-owners as partners, shareholders, or members of a business entity, or otherwise hold itself out as a partnership or other form of business entity (nor may the co-owners hold themselves out as partners, shareholders, or members of a business entity). The Service generally will not issue a ruling under this revenue procedure if the co-owners held interests in the Property through a partnership or corporation immediately prior to the formation of the co-ownership.

4 Co-Ownership Agreement. The co-owners may enter into a limited co-ownership agreement that may run with the land. For example, a co-ownership agreement may provide that a co-owner must offer the co-ownership interest for sale to the other co-owners, the sponsor, or the lessee at fair market value (determined as of the time the partition right is exercised) before exercising any right to partition (see section 6.06 of this revenue procedure for conditions relating to restrictions on alienation); or that certain actions on behalf of the co-ownership require the vote of co-owners holding more than 50 percent of the undivided interests in the Property (see section 6.05 of this revenue procedure for conditions relating to voting).

5 Voting. The co-owners must retain the right to approve the hiring of any manager, the sale or other disposition of the Property, any leases of a portion or all of the Property, or the creation or modification of a blanket lien. Any sale, lease, or re-lease of a portion or all of the Property, any negotiation or renegotiation of indebtedness secured by a blanket lien, the hiring of any manager, or the negotiation of any management contract (or any extension or renewal of such contract) must be by unanimous approval of the co-owners. For all other actions on behalf of the co-ownership, the co-owners may agree to be bound by the vote of those holding more than 50 percent of the undivided interests in the Property. A co-owner who has consented to an action in conformance with this section 6.05 may provide the manager or other person a power of attorney to execute a specific document with respect to that action, but may not provide the manager or other person with a global power of attorney.

6 Restrictions on Alienation. In general, each co-owner must have the rights to transfer, partition, and encumber the co-owner's undivided interest in the Property without the agreement or approval of any person. However, restrictions on the right to transfer, partition, or encumber interests in the Property that are required by a lender and that are consistent with customary commercial lending practices are not prohibited. See section 6.14 of this revenue procedure for restrictions on who may be a lender. Moreover, the co-owners, the sponsor, or the lessee may have a right of first offer (the right to have the first opportunity to offer to purchase the co-ownership interest) with respect to any co-owner's exercise of the right to transfer the co-ownership interest in the Property. In addition, a co-owner may agree to offer the co-ownership interest for sale to the other co-owners, the sponsor, or the lessee at fair market value (determined as of the time the partition right is exercised) before exercising any right to partition.

7 Sharing Proceeds and Liabilities upon Sale of Property. If the Property is sold, any debt secured by a blanket lien must be satisfied and the remaining sales proceeds must be distributed to the co-owners.

8 Proportionate Sharing of Profits and Losses. Each co-owner must share in all revenues generated by the Property and all costs associated with the Property in proportion to the co-owner's undivided interest in the Property. Neither the other co-owners, nor the sponsor, nor the manager may advance funds to a co-owner to meet expenses associated with the co-ownership interest, unless the advance is recourse to the co-owner (and, where the co-owner is a disregarded entity, the owner of the co-owner) and is not for a period exceeding 31 days.

9 Proportionate Sharing of Debt. The co-owners must share in any indebtedness secured by a blanket lien in proportion to their undivided interests.

10 Options. A co-owner may issue an option to purchase the co-owner's undivided interest (call option), provided that the exercise price for the call option reflects the fair market value of the Property determined as of the time the option is exercised. For this purpose, the fair market value of an undivided interest in the Property is equal to the co-owner's percentage interest in the Property multiplied by the fair market value of the Property as a whole. A co-owner may not acquire an option to sell the co-owner's undivided interest (put option) to the sponsor, the lessee, another co-owner, or the lender, or any person related to the sponsor, the lessee, another co-owner, or the lender.

11 No Business Activities. The co-owners' activities must be limited to those customarily performed in connection with the maintenance and repair of rental real property (customary activities). See Rev. Rul. 75-374, 1975-2 C.B. 261. Activities will be treated as customary activities for this purpose if the activities would not prevent an amount received by an organization described in § 511(a)(2) from qualifying as rent under § 512(b)(3)(A) and the regulations thereunder. In determining the co-owners' activities, all activities of the co-owners, their agents, and any persons related to the co-owners with respect to the Property will be taken into account, whether or not those activities are performed by the co-owners in their capacities as co-owners. For example, if the sponsor or a lessee is a co-owner, then all of the activities of the sponsor or lessee (or any person related to the sponsor or lessee) with respect to the Property will be taken into account in determining whether the co-owners' activities are customary activities. However, activities of a co-owner or a related person with respect to the Property (other than in the co-owner's capacity as a co-owner) will not be taken into account if the co-owner owns an undivided interest in the Property for less than 6 months.

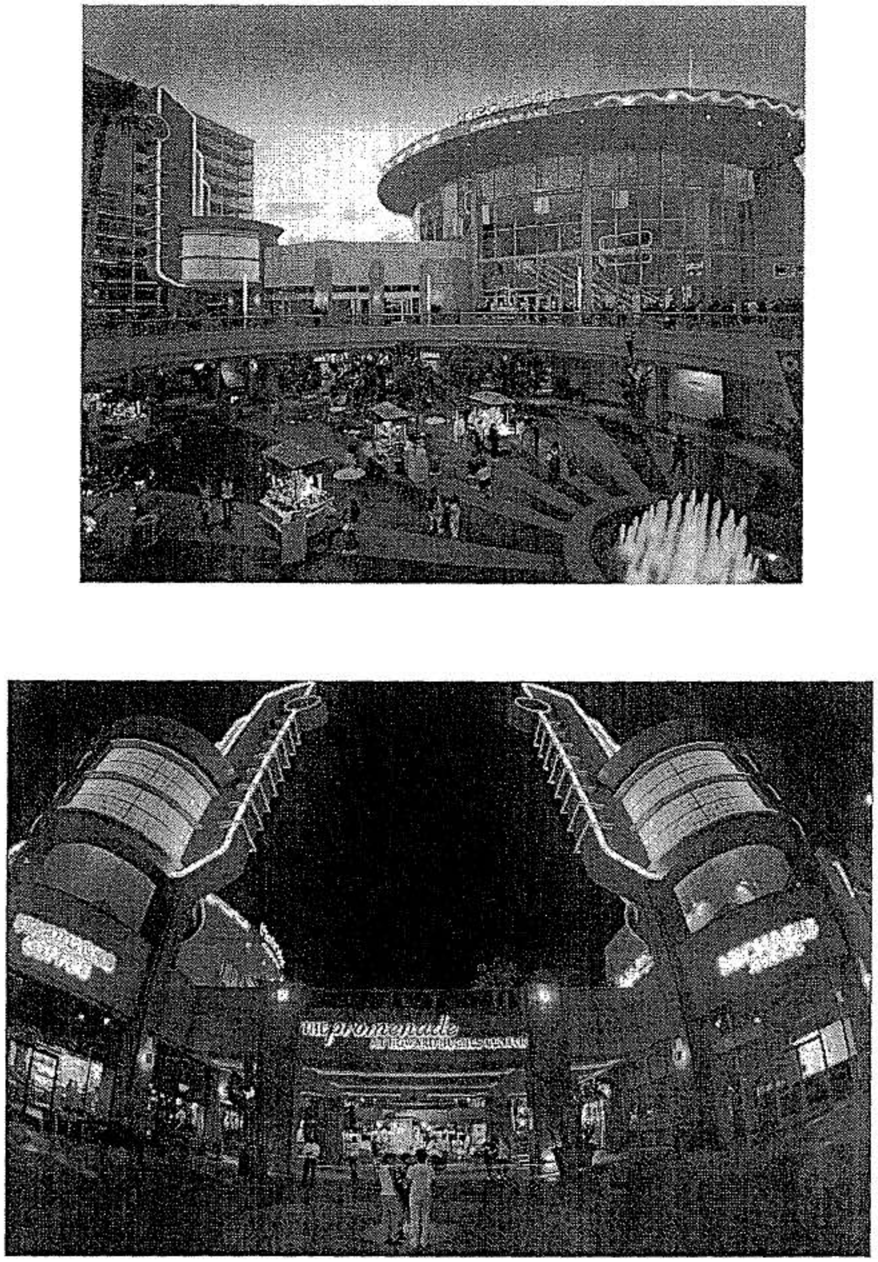
12 Management and Brokerage Agreements. The co-owners may enter into management or brokerage agreements, which must be renewable no less frequently than annually, with an agent, who may be the sponsor or a co-owner (or any person related to the sponsor or a co-owner), but who may not be a lessee. The management agreement may authorize the manager to maintain a common bank account for the collection and deposit of rents and to offset expenses associated with the Property against any revenues before disbursing each co-owner's share of net revenues. In all events, however, the manager must disburse to the co-owners their shares of net revenues within 3 months from the date of receipt of those revenues. The management agreement may also authorize the manager to prepare statements for the co-owners showing their shares of revenue and costs from the Property. In addition, the management agreement may authorize the manager to obtain or modify insurance on the Property, and to negotiate modifications of the terms of any lease or any indebtedness encumbering the Property, subject to the approval of the co-owners. (See section 6.05 of this revenue procedure for conditions relating to the approval of lease and debt modifications.) The determination of any fees paid by the co-ownership to the manager must not depend in whole or in part on the income or profits derived by any person from the Property and may not exceed the fair market value of the manager's services. Any fee paid by the co-ownership to a broker must be comparable to fees paid by unrelated parties to brokers for similar services.

13 Leasing Agreements. All leasing arrangements must be bona fide leases for federal tax purposes. Rents paid by a lessee must reflect the fair market value for the use of the Property. The determination of the amount of the rent must not depend, in whole or in part, on the income or profits derived by any person from the Property leased (other than an amount based on a fixed percentage or percentages of receipts or sales). See section 856(d)(2)(A) and the regulations thereunder. Thus, for example, the amount of rent paid by a lessee may not be based on a percentage of net income from the Property, cash flow, increases in equity, or similar arrangements.

14 Loan Agreements. The lender with respect to any debt that encumbers the Property or with respect to any debt incurred to acquire an undivided interest in the Property may not be a related person to any co-owner, the sponsor, the manager, or any lessee of the Property.

15 Payments to Sponsor. Except as otherwise provided in this revenue procedure, the amount of any payment to the sponsor for the acquisition of the co-ownership interest (and the amount of any fees paid to the sponsor for services) must reflect the fair market value of the acquired co-ownership interest (or the services rendered) and may not depend, in whole or in part, on the income or profits derived by any person from the Property.

Figure 2. Revenue Procedure 2002-22.



Photos 3. Sponsor: Passco Real Estate Enterprises, Inc. Two views of the Howard Hughes Promenade, Los Angeles, CA

Chapter 3

Securities or Real Estate?

Securities or real estate? That is the question!

This question has been hotly debated in the TIC industry since 2002. Are TIC properties real estate? Are TIC properties a security? Why is there the debate and such controversy? Why would a piece of real estate be considered a security and sold as such?

While TIC properties are indeed brick-and-mortar real estate and were qualified by the IRS as like-kind real estate for the 1031 tax-deferred exchange, another factor comes into play, specifically the *Howey* Decision, or Howey Test. In the *Howey* Decision, the United States Supreme Court determined an investment contract is included in the definition of a security. An investment contract is defined as an investment of money into a common enterprise with the expectation of profits derived primarily from the effort of others. Hence, most view ownership in TIC properties as an investment contract, and the majority of TIC sponsors offer the product as such.

It seems fairly clear. TIC buyers invest their money into a common enterprise (the income-producing TIC property). They invest for a cash flow, to preserve capital and to make a profit. This profit comes from the work of professional management companies, sponsors and asset managers other than themselves. Specifically, it is primarily from the effort of others.

Further, in the *SEC v. Edwards* case, an investment contract was defined as the presence of an investment in a common venture premised on a reasonable expectation of profits derived from the entrepreneurial or managerial efforts of others. There are other rulings and precedents as well.

However, there are companies offering real estate-based TICs. Some of these sponsors have obtained legal opinions from law firms stating that the TIC interests they are selling are interests in real estate, not securities, and/or that they comply with Rev Proc 2002-22. One of the points in this kind of arrangement is that the sponsor cannot remain in the deal as a sponsor or manager. In the *SEC v. Life Partners* (1996) it was stated that if there are no efforts after the sale, the need for securities law protection is diminished. At least two active real estate-based firms exit the TIC investment as sponsor or manager after the sale: one based in California, and one based in Utah offering non-leveraged retail properties. The California firm developed a system of exiting and relinquishing all decisions on the TIC in a sponsor's capacity once the deed has been turned over. It usually does invest a certain amount of its own funds as a tenants-in-common (perhaps 10 to 20 percent), so it continues with a voting decision. The Utah firm often invests as well.

The securities side of the industry would say that a sponsor would usually want to stay connected and involved in the deal, not just as a tenants-in-common, and that many of the investors may prefer that they stay on as well. The real estate side may answer that it is a selling principal or facilitator more than a sponsor. Some on the real estate side say they believe some of the real estate TIC deals out there are actually securities and aren't structured correctly, and they must bend over backwards to make sure they are doing everything right to not be a security.

There are certainly some dichotomies:

- The IRS defines TICs as real estate as far as the 1031 tax-deferred exchange is concerned. (However, it defers to an individual state's definitions of real estate.)
- The Security and Exchange Commission (SEC) believes TICs are securities and only securities-licensed individuals may offer to sell TICs and receive compensation for such. It states that TICs and their structure must follow the strict securities rules and regulations.
- The National Association of Realtors (NAR) and some in the real estate world believe that TICs are real estate by nature and should follow the real estate regulations of each state. NAR has stated it is in the consumer's best interest to work with a real estate professional in identifying any real estate investment opportunity, including a securitized TIC interest. It is studying the issues to see how realtors could be compensated for securitized TICs and have been in discussions with the SEC and others.

- The National Association of Securities Dealers (NASD), which regulates the securities Broker/Dealers and registered representatives, has ruled that only securities-licensed individuals may sell securitized TICs and receive any type of referral fee. In other words, real estate agents or others who are not securities-licensed may neither offer nor advise on securitized TICs, nor are they allowed to receive any referral fee or commission from a securities-licensed individual. (*Notice to Members 05-18,* issued March 2005).
- Real estate-based sponsors believe that TICs are real estate or that their offerings are compliant with the IRS ruling Rev Proc 2002-22, and in some cases they have attorney opinion letters that concur. They pay real estate brokers, not securities brokers or other non-real estate-licensed individuals for these sales. The subscription process is certainly less arduous than for a securities deal, but some question the amount of disclosure or protection for the investor, especially with less experienced real estate sponsors.

Utah legislature passed SB64 in March 2005 that modified the Utah Uniform Securities Act and Real Estate provisions, which exempts TIC transactions from the definition of a security and exempts real estate agents from needing to be securities licensed to receive compensation in that state.

The classification of the deal as a security or real estate does NOT affect the way investors are taxed or receive revenues. It also does NOT affect their 1031 tax-deferred exchange (at least at this writing). However, the securities world would argue that securitized deals are safer because it is following the Supreme Court rulings and SEC regulations. Additionally, it is safer because there is more scrutiny and accountability than in real estate deals. The SEC is all about protecting the investor. The real estate world counters that it is trained to understand real estate more than a typical securities representative. The real estate world sometimes says that the fees are lower in its deals.

Indeed, many sponsors may rather have their TIC property defined as real estate if they could due to the incredible amounts of time, money, and focus that are needed for the securitization process. However, TIC sponsors who believe TICs are securities undergo the extra paperwork, regulations, and considerable expense to have their TIC interests qualify. It is no small undertaking.

In order to qualify as a security, the project must comply with the rules and regulations set out and governed by the Securities and Exchange Commission (SEC). The requirements are arduous, expensive and time-consuming. The SEC is very protective of the investor. The organization itself was initially created to protect the investor from fraud and misrepresentation. Congress passed the Securities Act of 1933 in an era when there was little or no accountability or disclosure required by issuers or sponsors. (This is the period of time after the devastating crash of 1929.) The Securities Act of 1933 created the SEC in order to enforce laws and protect investors from unscrupulous behavior. Not only are securities laws designed for disclosure, they also emphasize suitability. Because real estate investments have risks and it is possible for investors to lose their money, the SEC wants to ensure that participants in these transactions have financial substance and a certain sophistication to understand the risks.

For securities-based TICs and other private placement offerings, one form of protection is to allow only accredited investors to participate, as stipulated in Regulation D of the 1933 Securities Act, or stipulate that only accredited investors will be allowed in their offerings. The accredited investor has the experience and sophistication to understand the offerings and its risks that the SEC is concerned about. (Chapter Five discusses this subject.) Some of the real estate offerings require that the investor be accredited, but some do not. Some have structured their offerings much like the securities deals, but some have not. Certainly, there are no requirements or regulations about full disclosure in the real estate world. It operates on the theory of "caveat emptor" (buyer beware).

The TIC securities industry has been very proactive. Its professional organization, Tenant in Common Association (TICA), was formed early on and brings together everyone involved in the TIC industry. The membership has grown dramatically each year. It holds highly attended conferences biannually; members have met and continue to meet with regulatory bodies; and they have subcommittees hard at work.

The Tenant in Common Real Estate Association (TICRE) has not been active yet, but it hopes to take off in 2006.

In a collaborative effort between securitized sponsors, broker/dealers, attorneys and third-party TIC Due Diligence professionals, groups met a number of times in 2005 through TICA to develop what it called *The Best Practices Memo*, which was presented at a fall 2005 TICA conference. The final twelve point memo was presented at the March 2006 TICA conference and addresses the best practices within the framework of applicable securities regulations and industry practices. It is meant to be a proactive approach to high standards, as everyone wants the TIC industry to be a long-standing, successful one for all. This document is still a work-in-progress.

Among the twelve key points of the Best Practices are:

- PPM disclosure enhancements (reserves, tenant lease disclosures, tax issues)
- A simplification and standardization of presentation on costs and loads
- Issues on general solicitation
- Clarification on due diligence (that is, what should be included in the due diligence studies sent to Broker/Dealers for approval and so forth)
- Timing flow of materials (including evaluation, contemplation, and cooling off periods for investors)
- Post-closing issues

In 2005, The TICA ethics subcommittee also published the *Code of Ethics* for the association, which was presented at the fall 2005 conference.

The author most usually sells TICs as securities, but has sold offerings as real estate (she is licensed for both). In her opinion, the securitized deals can offer more protection to the investor because of the SEC regulations, the oversight of the NASD and the self-regulation occurring in the securitized industry (TICA, Best Practices, and so on). And the Howey Decision is important. However, if a real estate offering is very strong in its real estate fundamentals and structure, the sponsor is experienced, and there is an attorney opinion letter showing that the offering is structured properly and that it complies with Rev Proc 2002-22, some investors may make the decision to go this way on an offering.

If looking at a real estate-based deal, investors must scrutinize the deal more closely and ask questions about anything that is not clear because full disclosure is not required in that industry, specifically:

- What involvement will the sponsor keep?
- How much experience does the sponsor have?

- Who is the manager, and what is his or her experience?
- What due diligence reports are available for study?

Look at the due diligence reports and verify information. Essentially, the most important issues when deciding on any TIC property lie in several factors, including the real estate fundamentals and strength (tenants, location, reserves & insurance, asset type, demographics, property manager, exit strategy, etc.), the strength of the sponsor (net worth, experience in TICs and experience in real estate), an opinion letter on the structure from an experienced attorney regarding the 1031 compliant structure, the long-term life of the property and its appreciation and how the financing plays into this.

It is then for the investor to decide, unless specific rulings or law change this situation.

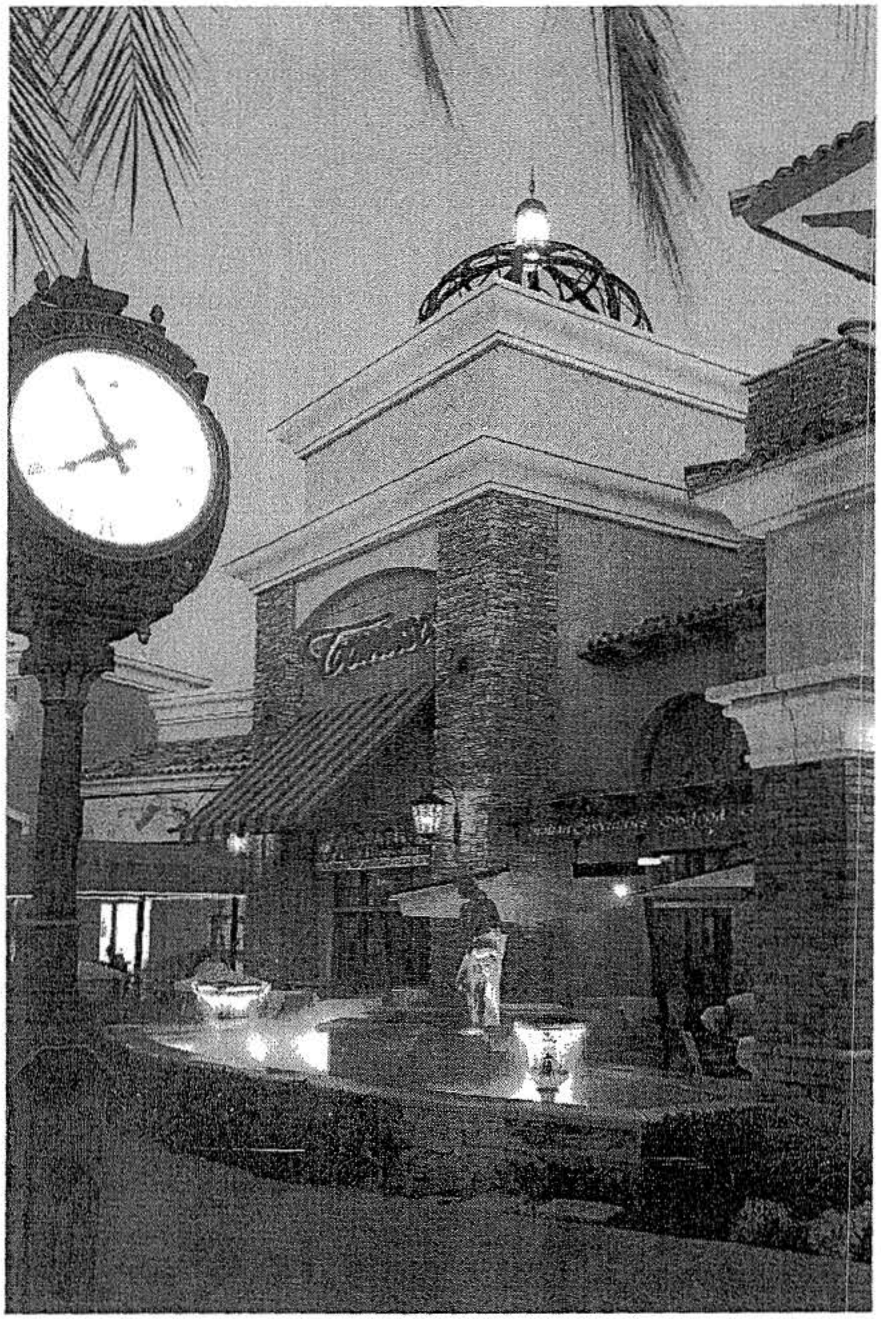


Photo 4. Sponsor: SCI Real Estate Investments. Casa Paloma, Chandler, AZ

Chapter 4

The Players in the TIC World

This chapter addresses the various professionals involved in the TIC transaction and a description of how they are involved in these investments. These 'players' include the sponsors, the Broker/Dealers and their registered representatives, the NASD, the qualified intermediaries, the real estate world, attorneys and escrow agents, lenders and property managers, and the professional associations.

TIC Sponsors

The TIC sponsors, as mentioned previously, are the companies that search, find and negotiate purchase on suitable property and then essentially 'syndicate' it. The word *syndicate* or *syndication* has tainted connotations from the limited partnership days of the 1980s. Today's TICs are not limited or general partnerships. We are referring to one of the dictionary definitions: syndication means a group of individuals or companies together undertaking a project that would not be feasible to pursue alone. It usually refers to underwriting or a private placement. This group of individuals or companies joins for a limited investment purpose. Real estate syndicates create, buy, sell, and operate real estate investments.

TIC sponsors (and/or their team) go through all of the due diligence studies on the property to ensure it is appropriate and suitable for a TIC offering. They negotiate and arrange the non-recourse financing, which is quite complicated and detailed. They arrange the complicated legalities and structure needed in order to sell the property as a Tenant in Common vehicle and as a security. Sponsors are responsible for arranging the property management, overseeing the monthly payments to the TIC investors, providing the required tax documentation for each investor, answering questions and handling investor relations and communications, and coordinating the eventual resale of the entire property for the co-owners. The sponsors sign for the financing (recourse to them, non-recourse to you). If there is a master lease structure, they may also act as the master lessee (or one of their affiliates may do so). Remember, most TIC sponsors offer securitized deals, while a few offer real estate-based properties. The real estate sponsors do not usually take all the same steps mentioned.

Some sponsors buy the property first and control it. Then they handle the securitization process and sales. It is more costly to them, but it is less risky for the investor. A larger number of sponsors tie up the property in a contract, work through the securitization process while placing sizable nonrefundable deposits on the property (after thorough due diligence), handle the TIC sales, and then arrange a simultaneous closing. This could be riskier to the investor if he or she is unable to close in a timely manner or not at all. However, the sponsor would usually not submit the property information to Broker/Dealers for approval unless—or until—it is at an advanced, "no turn back" stage.

The sponsor (and/or their team, including attorneys who specialize in securitized deals and/or a Managing Broker/Dealer) prepares the offering memorandum called the Private Placement Memorandum (PPM). The PPM contains all pertinent information about the property, location, demographics, sales comps, financing, sponsor, and examples of contracts (Tenant in Common Agreement, Management Agreement, etc.). It is a disclosure document and can be easily eighty pages or more. It is the collection of information that helps the investor decide whether or not to invest. This document goes to all interested accredited prospective investors. The real estate marketing information may be quite a bit shorter and less complete.

The sponsors themselves may be a real estate and management firm, a real estate investment trust subsidiary, or an entrepreneurial organization. The sponsor may own and manage a large portfolio of properties. The sponsor may have a very high net worth. Not only should the sponsor have extensive experience in various commercial real estate assets, it will also have specific experience in TIC transactions. This type of sponsor certainly has an edge. Some sponsors, especially the newer ones, may not have extensive holdings or a very high net worth. In this case, you would want to know their track record and experience, especially the Principal members driving the investment and company. Do they themselves have extensive experience, perhaps through another TIC sponsor that they previously worked with? Unlike Broker/Dealers, registered reps, attorneys, accountants, banks and escrow agents, Sponsors are not a professionally regulated group.

The TIC sponsor will make arrangements with the title company (often a nationally-recognized firm like Land America or Chicago Title) to set up the escrow accounts, to handle the deposits, to communicate with the QIs, and to handle or oversee the arduous closing paperwork in concert with the sponsor, lender, and Broker/Dealers. Most sponsors use attorneys, either in-house or from specialized firms, for various aspects of the closing and important documentation, such as the Tenant in Common agreement, the Management Agreement, the Purchase Contract, and lender paperwork. Most TIC offering memorandums will include an attorney opinion letter, addressing the structure of the TIC in relation to Rev Proc 2002-22 and the 1031 tax-deferred exchange. Attorneys are also very involved in the PPM and forming the single-member LLC entities. for investors.

The TIC sponsor will bring the property to market privately through Broker/Dealers and their registered representatives as a private placement security for 'sophisticated buyers' (with no advertising allowed if it is a security) or as a real estate-marketed property through real estate agents. Some sponsors will invest in a TIC position in the property, an investor, just like you.

The sponsor should be a factor in your decision to invest. Your ideal sponsor has a deep knowledge of real estate and understands the asset thoroughly from its due diligence and acquisition process. In addition, the sponsor can talk to you about it in a knowledgeable way and answer all questions. The ideal sponsor has TIC experience under its belt. The sponsor knows the pitfalls and has a handle on the process and how to manage it. You want the best asset possible, that is, one that has been studied and reviewed for all of its strengths and weaknesses. You want a smooth acquisition process. You want a smooth-running investment that you don't have to think about except to collect the monthly cash flow check. Your ideal sponsor has a high net worth and financial strength behind it in order to deal with issues and solutions and to run a smooth, high-level operation. Your ideal sponsor has a top team of experts and industry connections. You want excellent legal advice behind the offering. You want the best closing agents. You want the best acquisition team: those who can compete with the few good assets out there and win them. You want the best financing terms available in the market. You want excellent management and employees of the sponsor: those who can communicate clearly and in a timely manner, and who give you the correct answers and impeccable assistance you need. Obviously, you want those who are going to manage your asset to the highest levels, specifically the sponsor, an affiliate, or a company that the sponsor may choose. When it is time to resell, you want the knowledgeable sponsor who can help manage that as well. If any downturn in the market occurs or there is an issue with your asset (for example, a large tenant leaves unexpectedly, a fire, etc.), you want problem-solvers who act quickly and know the best solutions. These are some of the reasons why the sponsor matters.

Most sponsors use a Managing Broker-Dealer, which is discussed subsequently. The Managing Broker-Dealer will be involved in reviewing and/or assisting with the PPM and assisting on the placement, handling the mechanics of sending out the PPMs to interested investors, receiving and processing subscriptions for the sponsor, and ensuring all is compliant. Some Managing B/Ds also offer additional services for marketing and educate investors about the offering, including Webcasts or conference calls. Some help with the property closing.

Securities-licensed Registered Representatives

The individuals who are licensed to offer and sell securities are the registered representatives (also called private placement specialists or direct participation specialists; they may be a financial planner as well). The registered representative is affiliated with or 'hangs his license' with a brokerage firm (Broker/Dealer), who, in turn, is licensed by the SEC and is a member of NASD. The registered representatives are fingerprinted and undergo a very detailed process, courses, and tests before being licensed and accepted by a Broker/Dealer, and then they undergo training with that firm. They must disclose their financials, other business activities, education, and previous employment. Background checks are conducted. The registered representatives are like independent contractors, in regards to the Broker/Dealer. They usually have their own businesses.

You will work directly with a registered representative. He or she will be on the front lines with you in your acquisition of a TIC property. He or she is similar to a buyer's broker in the real estate world. The registered representative in the securities world must first understand your financial situation and goals. He or she must ascertain that you are an 'accredited' investor and that the TIC properties are suitable for you, the requirement he or she adheres to under the SEC and NASD rules. The representatives will then educate you on the investments, introduce properties, deliver the PPMs to you, and help you review and analyze the properties and their real estate fundamentals. They will assist you in the detailed subscription process (which is rather involved). They fight for your place in a property (as TICs often fill quickly and are in high demand). They help you with the closing documents and questions. They will interact with your qualified intermediary and help you meet your 1031 deadlines, if you are in an exchange. They are your link to the sponsor, closing agent, and lender or others involved in getting your questions answered and in getting the property closed. Much like a buyer's broker, the registered representative advocates for you. During your holding period, he or she usually stays informed on the asset and helps with any questions or issues.

The best representatives take time to educate you on the pros and cons of these investments and help prepare you for the time crunch of the 1031 tax-deferred exchange. They are your 'go-to' professionals who will help get your acquisition(s) completed in the stressful 1031 time constraints.

Like a buyer's broker, the representative is paid commission only if and when you close on a property. He or she is paid by the sponsor through the Broker/Dealer. Registered representatives for private placements/direct participation offerings must have the Series 22 and Series 63 licenses. Representatives who have the Series 7 are fully covered and may sell private placements and a wide array of products, including stocks, bonds, mutual funds, and so on. Representatives must complete several continuing education classes each year. They must always comply with the many rules and regulations, which their Broker/Dealer oversees.

When deciding to potentially invest in a TIC, you may want to speak with several registered representatives who specialize in this asset. Ask the following questions to gain insight into their experience:

- Do they specialize and concentrate in TICs?
- How much time do they spend with this investment type?
- How long have they been handling TICs? (Remember, the business took off after the 2002 ruling.)
- Are they invested in TICs themselves?
- Are they a member of TICA?

- Do they have commercial real estate experience?

You need to be comfortable with your representative along with his or her knowledge and style. You will work with your representative rather intensively for at least a month. You will have a long-term relationship, so you must have trust. You may check the Broker/Dealer's or representative's background with the NASD (www.nasd.com). Choose someone you feel a rapport with. Verify how accessible he or she is. Verify if he or she will take the time to educate you, discuss your concerns, listen to you, answer questions, and follow up. Most representatives who specialize in the field have access to most of the same TIC properties. Choose your representative with care. Then intensely concentrate on your work with your representative. For sponsors, it can be quite disconcerting to receive requests for the same PPM for the same client from three or four registered representatives. If you are dealing with several, it can become quite confusing to you and the representatives.

As mentioned, securities-registered representatives are affiliated with a Broker/Dealer. A handful of Broker/Dealers specialize heavily in TICs and private placements. Many representatives who specialize in TICs tend to "hang their license" with one of those firms.

As part of the acquisitions process, the representative will have you complete an account form with this Broker/Dealer because all securities are run through the B/D. He or she will need to show and document that you are an accredited investor and that this is a suitable investment for your overall situation. You may need to complete several mandated forms.

Securities Broker/Dealer (and Managing Broker/Dealers for Sponsors)

The industry-accepted definition of a Broker/Dealer is: any individual or firm in the business of buying and selling securities for itself and others. Broker/Dealers must register with the SEC, and they are members of the NASD. When acting as a broker, the Broker/Dealer executes orders on behalf of the client. When acting as a dealer, a Broker/Dealer executes trades or investments for his or her firm's own account. Securities bought for the firm's own account may be sold to clients or other firms, or become a part of the firm's holdings.

The NASD defines a member's parent office(s) as responsible for supervising an office or a group of offices. Any main or branch office of a member firm where one or more of the following take place must be supervised:

- Order execution or market making
- Public or private placements
- Holding of customers' funds or securities
- Approval and review of new accounts
- Approval of advertising or sales literature

To be involved in the buying, selling, or trading of securities, a person or firm must be registered with the National Association of Securities Dealers (NASD). The NASD is a self-regulatory organization created by the Securities and Exchange Commission (SEC). Brokers and dealers must follow all rules of the NASD and SEC, including the NASD's rules of conduct and its rules for arbitration and dealings with the public. Broker/Dealer status can be revoked for freely breaking securities rules; for having been expelled or suspended from any self-regulatory organization; for making misleading statements to the SEC or the NASD; or for having committed felonies or misdemeanors in the securities industry.

The Broker/Dealer has many roles other than investing or trading, including compliance duties. As mentioned, the registered representatives are like independent contractors with the Broker/Dealers, except the securities world is highly regulated. Hence, the B/D is essential in this regulation and oversight. Also, commissions are run through the B/D on every closed offering. (There will be a split, like in the real estate world, between the B/D and the representative.) By the way, these commissions cannot be shared with non-securities licensed parties, such as realtors or financial planners.

The B/D has an important role in the world of TICs. Sponsors send their TIC offering information and due diligence materials to the B/D, who reviews the materials and decides to approve the property before the registered representatives may offer the property to investors. Not every TIC deal is approved by every Broker/Dealer. If an offering is approved, the Broker/Dealer signs a 'selling agreement' with the sponsor. To give their products the most exposure, sponsors usually sign selling agreements with multiple Broker/Dealers.

In addition to overseeing the registered representatives, handling issues of compliance and myriad administrative details, and signing selling agreements for TICs, some Broker/Dealers also act as 'Managing Broker/Dealers.' That is, they handle the administrative portions of an offering for the TIC sponsor to the other reps and to the public. They essentially act as the point person for the deal. They also oversee and are involved in the PPM and all mechanics of the offering. They sometimes offer the services of marketing along with educational conference calls and sales, if the sponsor prefers or needs these services. Some sponsors concentrate only on the real estate. They are real estate companies and may let the securities professionals handle the other aspects. The Managing Broker dealers are involved by providing basic services to extra services to sell the offering. They are the entity "watching the store," that is, they ensure that the offering is compliant and handled correctly from the NASD perspective.

National Association of Securities Dealers (NASD)

As mentioned previously, nearly all Broker/Dealers are members of NASD, a self-regulatory organization authorized by Congress to regulate the activities of securities Broker/Dealers. NASD has long served as a primary private sector regulator and oversees more than fifty-two hundred brokerage firms and more than six hundred sixty thousand registered representatives.

The NASD licenses individuals and admits firms to the industry. It writes rules and governs behavior. It examines these individuals and firms for compliance and disciplines those who fail to comply. The NASD has jurisdiction over its member firms, but it does not have any power to enforce federal securities law on nonmembers, which rests with the SEC and various state agencies.

The NASD issues its Notice to Members (NTM) as communiqués on various subjects and issues. There have been several such notices regarding TICs. NTM 05-18 entitled *Private Placements of Tenant in Common Interests* addressed such issues as securities law status, application of NASD rules to TIC investments, suitability and due diligence, payment of referral, fees and general solicitations.

Qualified Intermediaries (QIs)

Qualified Intermediaries (QI) are also known as Exchange Accommodators or facilitators. The QI is crucial to a successful 1031 tax-deferred exchange. The QI is the agent who will hold your

1031 exchange funds in trust and assist you in all details of your exchange so it will not be disallowed.

A QI must be an independent party to the exchange transaction. Your QI cannot serve as your tax advisor, attorney, real estate broker or securities broker. He or she cannot be a relative. Violation of this rule could result in the exchange being disallowed by the IRS.

In 1990, the IRS issued Safe Harbor Regulations, which defined the QI rules of conducting business. Shortly after this period, QIs established an association called the Federation of Exchange Accommodators (FEA) to provide some regulation over its members and further its involvement in legislative matters and industry education. FEA also established a certified exchange specialist (CES) designation. CES designees must complete substantial requirements and demonstrate competence in the industry. All FEA members must comply with its code of ethics.

You will engage the services of a QI through a contractual agreement. Your sale proceeds will go directly to the QI at closing and will be held in order to acquire the replacement property. The QI will then deliver the funds directly to the closing agent, who deeds the property directly to you. Without a QI and the contractual exchange agreement, the IRS may not define a transaction as an exchange. The transaction could then become ineligible.

Because the qualified intermediary will be holding your money in trust or escrow, make sure you work with a reputable professional who has experience and is a member of Federation of Exchange Accommodators (FEA). A 1031 tax-deferred exchange can be complicated and stressful. A good accommodator will help you organize what you need to do to be compliant and accomplish your goal. Some of the QI firms are individual local offices. Others are national branches or even Internet firms.

You should look for a company with a track record and experience. A company that has been operating for several years would be important. Always discuss that you will be investing in properties anywhere in the United States. While some accommodators are more local or may not be used to the TIC transaction, others handle them everyday. Similar to the registered representative, work with a QI with whom you have a rapport, one who is available to you and can help you keep dates and forms on track. Make sure one person will be in charge of your trade, not a number of people with no control.

At this writing, the fees for the QI services vary from approximately $500 to more than $2,000. However, the cost can vary geographically. The fees for more complex transactions, such as reverse exchanges, are usually much higher. Some QI's will have very favorable interest-bearing accounts for your funds that can defer the costs and fees of their services. Discuss all fees before signing anything so you know what to expect. Review what services your fee will cover.

Finally, know that there are two other official safe harbors besides a QI for a trade. Rarely would a TIC investor or typical 1031 tax-deferred exchanger use these avenues, which are specifically security agreements or qualified trust accounts.

Real Estate Community

The real estate community is involved in TICs on several different levels. Real estate agents are sometimes the party presenting or representing suitable property to the TIC sponsors for acquisition (and subsequent structuring into TICs). These agents know what kinds of properties are suitable for the TIC structure.

As we know, many of the securitized TIC sponsors are actually real estate companies. Some real estate companies offer a real estate-based (non-securitized) TIC as well.

Real estate agents or brokers may present real estate-based TIC properties to clients. Some securities-licensed agents or brokers also hold a real estate license and may even specialize in commercial real estate.

Attorneys

Attorneys are involved in TIC deals on several levels. Specialized attorneys work with the sponsors, or for the sponsors, on the PPM and the attorney opinion letter concerning a specific offering and its compliancy to Rev Proc 2002-22. Attorneys are involved in the structuring of the TIC deals. They are also involved in the contracts and agreements you will be signing, including the Tenant in Common Agreement, Management Agreement, Purchase Agreement, and so forth. Attorneys are involved on the lender side and with the special purpose entity LLC that will most likely be formed for you in your acquisition. Because the securities world is highly regulated, attorneys are needed to assure correctness in the many aspects of the TIC deal.

The attorney legal opinion will have one of three opinion levels: 'Will," "Should," or "More Likely Than Not."

Most commonly, we see the "Should" opinion on TIC deals. This opinion refers to the compliancy of Rev Proc 2002-22 and the overall structure of the offering. The classification of the TIC interest, the disregarded entity, information in the PPM, and any specific issues, such as a master lease, will be covered in the opinion. You will want to see which law firm has written the opinion and review the specific assumptions and the Reliance and Section 230 references. The letter will definitely address how this TIC offering is *not* structured as a partnership. A partnership is disqualified as like-kind property for the 1031. Specific reference to the Rev Proc 2002-22 guidelines will be addressed.

Lenders

Several lenders are now comfortable with TICs, whereas this was not exactly the case earlier. The sponsor negotiates the loan with the lender on the TIC property and works out all of the details so that it is set when offered to you and other investors. These loans are non-recourse. Extensive documentation will be involved, all of which will be presented to you for review during the acquisition process. The lenders qualify you; that is, they complete a credit and background check and ensure you are an accredited investor. They may have questions for you during the subscription process. The lenders will complete the financing for the acquisition of your asset, and the debt service is a major expense of your property.

Lenders are important in the TIC acquisition process. Before agreeing to finance, the lender will conduct its own independent due diligence on each TIC offering. A lender does not take a sponsor's word for details on a property. It investigates independently to look for any flaws or issues in order to understand the performance of the cash flow and other financials. It reviews the sponsor, and it essentially conducts full due diligence. Of course, an appraisal, inspection reports, verification of insurance, surveys and other third party reports are part of the financing process. These are all important facets for investors. If the lender's due diligence fails, the property will not be financed or acquired. This is another layer of investor protection.

Title Companies and Closing Agents

The title companies work in concert with the lender and sponsor to handle your escrow deposits and your closing paperwork. They usually communicate with your QI. They coordinate myriad paperwork for investors all over the United States and pull everything together to get the deal closed for you. It sometimes seems like an impossible task.

Federation of Exchange Accommodators (FEA)

The Federation of Exchange Accommodators (FEA) is the only national trade organization formed to represent qualified intermediaries (QIs) or accommodators. The association also has affiliated members, such as legal/tax advisors, real estate brokers, title companies, and those who are directly involved in Section 1031 tax-deferred exchanges in their business. Formed in 1989, the FEA was organized to promote innovations in the industry, to establish and promote ethical standards of conduct for QIs, and to offer education to both the exchange industry and the general public. It has been active in legislative actions at the state and national level. The FEA provides timely input and updates legislation, IRS and Treasury Rulings, and court rulings to its members. It monitors events that could affect the 1031 industry.

Tenant in Common Association (TICA)

This is the active professional organization for the TIC industry. Those from the many fields in the industry come together in this organization. TICA's members include sponsors, Broker/Dealers, registered representatives, attorneys, lenders, title companies, QIs and real estate professionals. This professional organization has expanded each year since its inception (the then FEA President had initially convinced a group of TIC professionals to form an association). TICA is active in government issues, specifically meeting with the IRS, SEC, NASD, and Congress. It is active in educating its members. Two conferences are held each year in the fall and spring. Panel discussions, new issues, debates, round tables and exhibitions by sponsors are all part of the conferences for the industry. Subcommittees of TICA are also active in various areas such as ethics, liquidity and exit strategy, marketing, legislative, finance, and compliance. Several white papers have been issued by TICA including *Tax and Economic Analysis of Tenant-In-Common Interests and Treatment of Tenancy-In-Common Interests as Securities.*

TICA wants to show the public and official regulators that it is taking action and responsibility for its industry. TICA also wants to show it is self-regulating, compliant and proactive. While this organization includes real estate professionals, it is safe to say that TICA is securities-oriented and is a larger part of the membership is from the securitized world. TICA's Web site is www.ticassoc.org.

Another TIC player is **Real Estate Media**, which publishes a well-written, informative monthly newsletter for the securitized industry entitled *TIC Monthly*. There are industry updates, insider interviews, a sponsor profile each month, information on recent transactions, and other news. The editor, Michelle Napoli, has done a very good job on reporting.

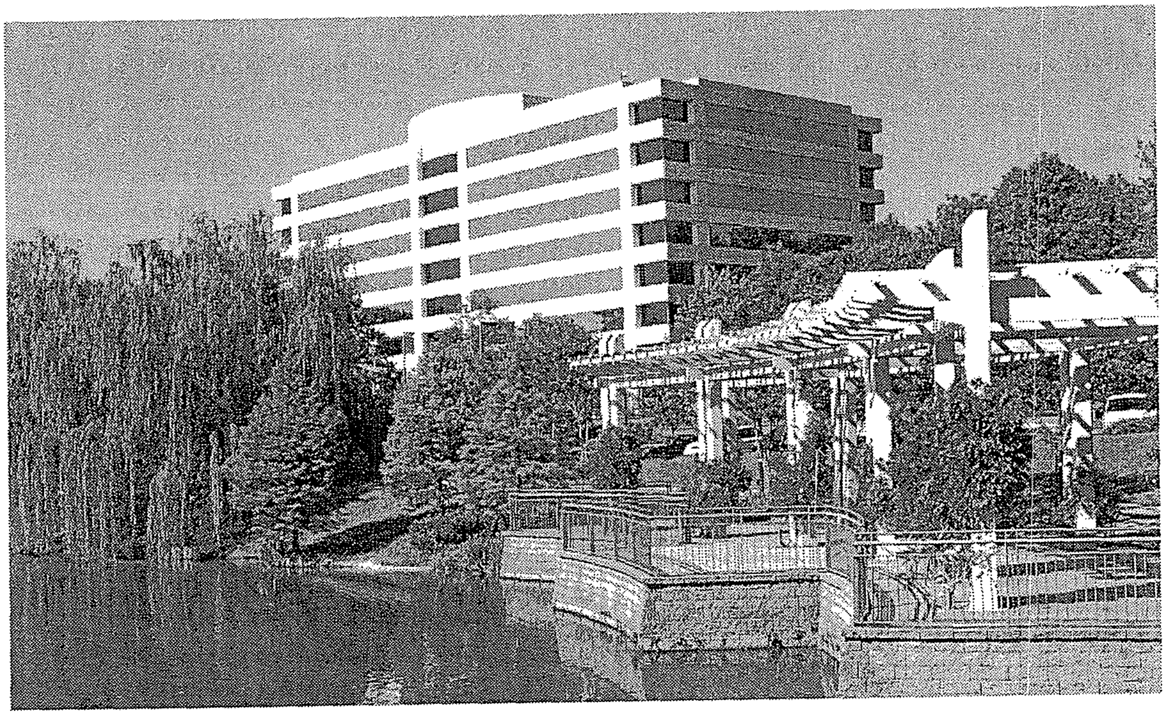


Photo 5. Sponsor: Griffin Capital. 900 Ashwood, Atlanta, GA which was part of a two building portfolio offering.

Chapter 5

Private Placements in Securities Regulation D Defined

The author is not a securities attorney, securities expert or tax expert. This chapter includes educational information on Regulation D and the Securities Act of 1933 for potential TIC investors. The purpose is to understand the background on the securitized private placements. While the author will directly refer to official publications, she recommends the reader consult one of the many professionals who specialize in this complex, specific subject if he or she wishes to know more. The information, while accurate, is not warranted.

A private placement is a direct offering of a security or securities to a limited number of sophisticated institutional investors, called accredited investors, as defined in the Securities & Exchange Commission (SEC) requirements for a Regulation D offering. In the United States, private offerings are exempt from public registration under the Securities Act of 1933 as stated in Section 3 (b) or 4 (2) of the Securities Act. A private placement is the opposite of a public offering, which would be registered.

To meet the requirement of Regulation D (private placement exemption), the issuer is required to make extensive disclosures regarding the nature, character, and risk factors relating to an offering. The Private Placement Memorandum (PPM), also called the offering memorandum, is the key disclosure document of the private offering. In this case, the private offering is a TIC property.

The PPM is detailed and considered a confidential sales document. It covers the all-important points of the offering, including:

- A description of the offering and its terms
- Risk factors
- Expenses and fees of the transaction
- Cash flow and proformas
- Lease abstracts or summaries
- Information on anchor tenants or tenants
- Details on the construction of the building
- Location and demographics
- A summary of the sponsor's principals and experience

The PPM discloses everything essential, including what the sponsor paid for the property, the sponsor's profit, and the loan terms. The Subscription Agreement and Purchase Agreement (documents used to invest) with instructions about subscribing are included. The Tenant in Common Agreement, Management Agreement, and/or Asset Agreement and other legal documents will be included for your review. These are used to help assess the investment. An attorney opinion letter is usually included as well. The PPM is provided to prospective investors in order to make an informed investment decision. Supporting documents, such as a lease or an appraisal, can be requested once the PPM is reviewed and there is contemplation to invest or the subscription form has been submitted.

During the course of the offering or prior to the closing, it may become necessary to update, correct, or add information, as originally published in the PPM. These changes must be clearly delivered to the investors through an Addendum that describes the changes or additions. Before the closing, the firm must verify that all such amendments have been received by the investors and that the files are accurate and complete.

The PPM can be a little overwhelming when you first receive it. It doesn't look like a marketing piece. It looks like a thesis! Very specific language must be used to follow SEC regulations, including much language about risk. When you first review the information, this can be frightening. However, the SEC and NASD want to ensure you understand that any investment is a risk. Once you have read a few PPMs, you will see that they are structured in much the same way. Thus, it becomes easier to make your way through. No matter how dry, boring, or overwhelming, you should read the entire document. You should then ask any questions you have about the particular investment. The author usually reviews the PPM with a highlighter to mark important issues or questions for the sponsor or to point out pros and cons for the investor.

So what is a Regulation D Offering?

Under the Securities Act of 1933, any offer to sell securities must either be registered with the SEC or meet an exemption. Exemptions have always been available under the Securities Act, but the original exemption provisions, described in sections 3(b) and 4(2) of the Act, were somewhat vague. Therefore, investors or their legal counsel considered them risky. On April 15, 1982, the SEC adopted Regulation D, commonly called Reg D, which set forth objectives and clearly stated rules for exemption. The private placement exemption is based on the theory that sophisticated investors with access to full information about an investment do not need the same protection afforded by registration. If you have a basic understanding of Reg D, you will understand why the PPM is written as it is, why certain rules must be followed, and how your TIC investment fits into all of this.

Reg D consists of six basic rules (Rules 501 to 506). The first three are concerned with definitions, conditions, exemptions, and notification requirements, including the definition of an accredited investor, calculation of the number of investors allowed per offering, and definition of purchaser representative. The last three rules deal with the specifics of raising money. Rule 504 generally pertains to securities sales up to $1 million. Rule 505 generally pertains for offerings up to $5 million. Rule 506 pertains to securities offerings with no limit or any dollar amount, including those offerings less than $5 million. Most TICs follow Rule 506.

The accredited investor definition is quite lengthy, as described in Rule 501. Investors in privately placed securities include insurance companies, mezzanine funds, banks, pension funds, equity funds, trusts, wealthy investors, and you, investors, in TIC properties. Most TIC investors qualify by having a net worth of more than $1 million or a salary of at least $200,000 in the last two most recent years or $300,000 per year if married. However, the full definition is as follows:

Reg. § 230.501.

As used in Regulation D [§§ 230.501-230.508], the following terms shall have the meaning indicated:

(a) *Accredited investor*. "Accredited investor" shall mean any person who comes within any of the following categories, or whom the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, business trusts, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

(4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000;
(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
(7) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in § 230.506(b)(2)(ii); and
(8) Any entity in which all of the equity owners are accredited investors.

Figure 3. Regulation D, section defining accredited investors.

The following are a few pertinent details of the many in Reg D:

- There can be no general solicitation or advertising to market a specific private placement security. (This is why you never see advertisements about specific offerings or properties that are sold as securities and why you would never receive a cold call.) Only generic ads or educational information can be used. After an offering is completed and sold, a general ad, such as a tombstone ad, or announcement can be made, if desired.
- The sponsor must be available to answer questions by prospective purchasers. All purchasers must have access to meaningful, current information.
- A purchaser must acquire the security for investment, not for the purpose of further distribution or resale. A purchaser must be accredited, but the investment must also be suitable for the purchaser's situation.
- The calculation of purchasers cannot exceed thirty-five investors, unless the lender has stipulated fewer. A husband and wife (or any relatives living at the same principal residence) are counted as one investor.

- Disclosure must be made to the extent that it is material to an understanding of the offering of the issuer, business, or security. If information is not material, it can be omitted.
- Corporations, LLCs, or other entities cannot be formed for the purpose of acquiring the property. In other words, the entity has to already have been formed and already be conducting its own business. (A disregarded LLC entity will most likely be formed for the investor as part of the acquisition, required by the lenders, in which to hold the property. This is different and will be explained in its own chapter.)
- There can be no fee-sharing with non-registered persons such as attorneys, accountants, investment advisors, or real estate agents.

While companies using the Rule 506 exemption do not have to register their securities and usually do not have to file reports with the SEC (most TICs follow Rule 506), they must file what is known as a Form D after they first sell their securities. Form D is a brief notice that includes the names and addresses of the company's owners and stock promoters.

Fees or Loads

According to Rev Proc 2002-22, sponsors must take their profits upfront *(item #15: fees 'may not depend, in whole or in part, on the income or the profits derived by any person from the Property')*. Unlike limited partnerships or other types of group investments in which the General partner or sponsor would take some profit on the backend at sale and perhaps during the investment life, the IRS does not allow this for TICs. The IRS stipulates that these costs must be at fair market value. Costs for due diligence studies, securities fees, commissions, legal, financing expenses, marketing, and other acquisition charges increase the property's overall price.

These fees are known as *load*. Load is essentially the markup the investor pays for a prepackaged investment. Front-end load is defined as the funds paid at the outset of a private placement that do not contribute materially to the actual investment. The NASD limits load to 15 percent. In return for these fees, the investor receives a professionally studied and prepared institutional-grade investment. The sponsor has taken on the responsibility of signing for and negotiating the loan, the cost of due diligence studies, deposits, setting up the legalities and structures, arranging the management, all of the various contracts, and the liability and responsibility for creating this passive income investment.

If you purchased something alone, you would have out-of-pocket costs, and you would spend much more time in acquiring a property. However, load is usually a higher amount with a TIC than in a single-ownership deal. The load will usually create a gap between the acquisition price and appraised price. Of course, increases in rent during the hold period and appreciation will help overcome that gap, but investors should know that load does exist on all TIC deals (even real estate-based deals). In the end, a no-management cash flow and prepackaged property may justify the end result for the investor. That is for the investor to review and decide.

The loads vary from sponsor to sponsor and transaction to transaction. They are disclosed in the PPM. To understand the pricing, though, if there is a 10 percent load on a TIC offering and the sponsor purchased the property at an 8.5 percent cap rate, it would be sold to the TIC investors at an approximate 7.5 percent cap rate. The sponsor lists the fees and explains the items or any special details in the PPM. The industry is working to standardize the fee presentation.

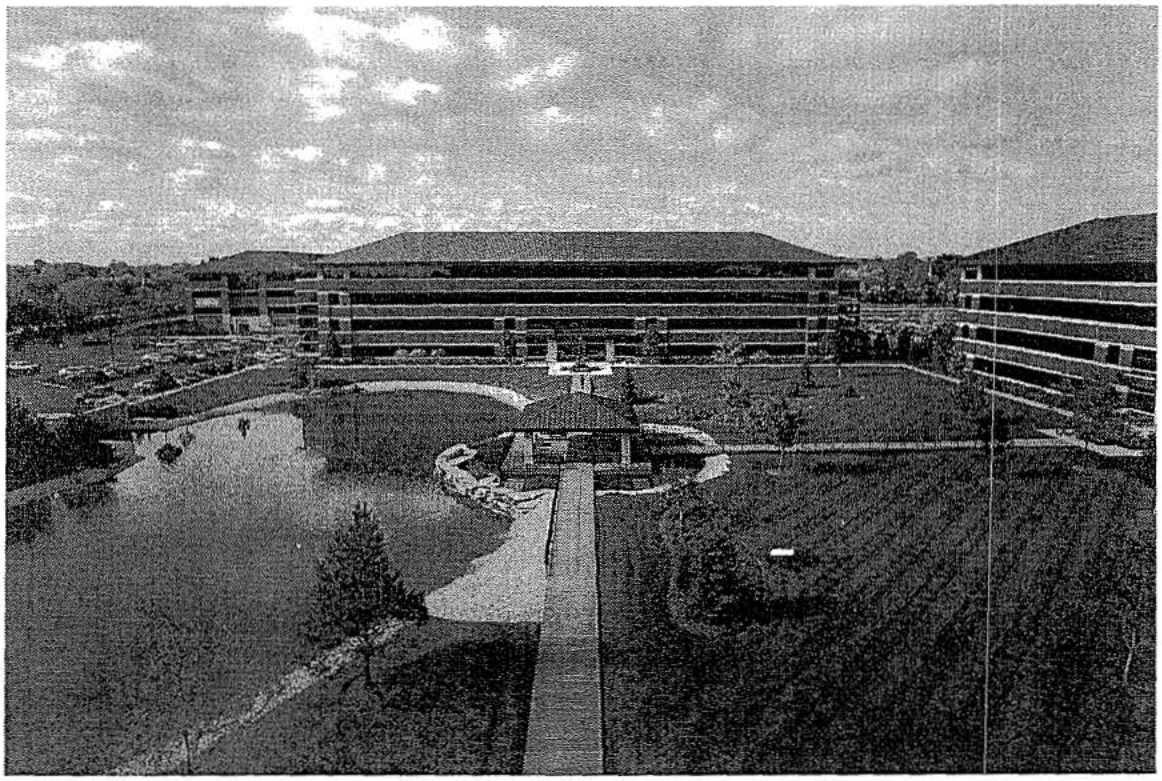


Photo 6. Sponsor: Geneva Exchange, LLC. Honey Creek Corporate I, Milwaukee, WI

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Chapter 6

Investing in a TIC: Part One
The PPM
Due Diligence on the Property

The quality of the asset being purchased is absolutely the most important factor. You obviously want to preserve your capital investment, which rests on the quality of the real estate. You want a cash flow, which rests with the tenant quality and structure. You want to avoid problems or a possible capital call. This also rests with the quality of the asset and the strength of the sponsor and/or professional property manager. You want to try to make some money at the sale of the property in future. It is hard to predict, but the quality, management of the asset, and the location will go a long way toward a positive outcome.

The sponsor has done extensive due diligence before purchasing the property. The lender has also conducted its own studies. Before you buy, you need to review the due diligence completed and do any of your own studies. Due diligence is defined as the reasonable investigation performed by a prospective purchaser prior to the final acquisition of a property. This can include studies of the asset, demographics, tenant, financials, the sponsor, etc. The due diligence information is included in the PPM, and certain further information can be provided upon request. For instance, the leases are not usually included page-for-page in the PPM, though an abstract or summary usually is, nor is the building inspection or appraisal. One commercial lease can easily be at least thirty pages or more, and other third party reports can each be as thick as the PPM itself.

Let's start with the PPM.

As you start to review a number of PPMs, you will see that they have much of the same structure. There will always be a similar format for the cover page and language. Sections may include the following:

- Who May Invest
- Risk Factors
- How to Subscribe
- Estimated Use of Proceeds
- Description of the Property
- Acquisition Terms and Financing
- Plan of Distribution
- The Property and Physical Characteristics
- The Tenants
- Demographics and Area Studies
- The Sponsor
- Conflicts of Interest
- Compensation of Sponsor and Property Manager
- Call Option

The PPM will also include a summary of the various agreements, such as Purchase, Management, TIC Agreement, etc. There is usually a section on federal income tax consequences, a legal opinion, and all proformas and projections.

Each PPM will be numbered on the cover page—the sponsor must keep records on which books went to which prospects and a Broker/Dealer form may request the PPM number. The text will immediately define a 1 percent interest in equity and debt for the TIC. The PPM cover page will include the name of the property (the legal name, which is usually an LLC). The required minimum investment is then stated, for instance, a 3 percent interest. The minimum and maximum offering amounts then follow. The maximum offering amount is the total equity that is being raised from investors.

Some PPMs will include definition of an LLC unit and the minimum units required for investment. Don't get confused. An LLC unit is not for a 1031 tax-deferred exchange. This is an all-cash investment into the property, usually at a much smaller investment amount. It may qualify for use of IRA funds. Actually, one tenants-in-common member will be this LLC. The investors will be members of the specific LLC. They will not be on the deed individually; the LLC will be. Not all offerings have LLC investment possibilities. Be clear when reading the subscription procedures for LLC units. They will be different from those for the TIC investment.

Securities-required language will appear on the early pages and throughout the PPM, including such language as "an investment in the interest or units hereby offered is highly speculative and involves substantial investment and tax risks." Language also states that the interests have not been approved or disapproved by the SEC or any regulatory body and cannot be presented as such. Language in the front section also emphasizes that interests are subject to restrictions on transferability. This means that interests are not liquid.

The front section will usually include a small chart showing price to purchasers, selling commissions, and proceeds to the company. There will be detailed information on use of funds and fees in the PPM. For easier comparison between offerings and a better understanding of all fees, members of TICA have proposed that all sponsors use the same language and fee lines. The Estimated Use of Proceeds will usually break down as marked below. (The actual amount (minimum and maximum) as well as the percentage of the overall offering price will be included.)

- **Gross Offering Proceeds:** The equity raised
- **Organization and Offering:** The PPM will state that the manager is entitled to be reimbursed for a certain amount or percentage of expenses in connection with the offering, as this is a securities requirement. This can include printing expenses, opinion letters, accounting, organization of the LLC and structuring fees, E&O insurance, etc. This line item normally ranges from 1 to 3 percent +/-. A Managing Broker/Dealer may be reimbursed for some marketing costs as well.
- **Selling Commissions:** The amount that will be paid to the Broker/Dealers and registered representatives
- **Marketing:** Some combine this with due diligence or other items, and others let it stand alone. Marketing can include payments to a wholesaler for marketing as well as reimbursement for marketing costs, materials, travel and mailing costs.

- **Due Diligence**: This includes fees for the due diligence studies, third-party reports, and work associated with the acquisition studies. Securities regulations provide for reimbursement due to the critical nature of the PPM and the disclosure requirements.

The preceding fees are required to be taken up front in the security offerings. There will be a line following these items, which is "Available for Investment." This is the gross equity raise less the preceding fees.

- **Down Payment**: The amount of equity that will be placed down
- **Sponsor Compensation**: You may see this as a line item. Some sponsors receive a commission or fee for acquiring the property. Some include this item in the use of proceeds while others will disclose the commission or their compensation elsewhere, perhaps as a commission they have received in buying the property, the management or asset management fee, or other.
- **Proceeds to Fund the Loan Reserves**: The lender often requires some reserves to be funded at Closing. These are the investor's monies, but they are held in trust for future potential use, such as capital improvements or releasing build-outs and fees. It is important to fund reserves to avoid potential capital calls and to properly care for the asset. Any unused reserves are refunded to investors at the time of the sale.
- **Loan Fee and Legal Lender Fees**: This will include whatever the lender is collecting for its services and/or for any mortgage broker who may have helped procure the loan. It may include the fees for credit checks, background checks, SPE LLC formation, and any carrying costs.
- **Closing Costs**: This is sometimes found within the loan fee line or a sponsor compensation line. It is for title insurance costs, closing documentation prep, recording fees, legal fees, escrow fees, and the like. Some sponsors will stipulate a certain percentage of the gross, such as 1 to 3 percent, for this line item. Others will estimate the amount.
- **Proceeds Utilized**: The amount of proceeds (out of 100 percent) utilized
- **Offering and Organization Expenses**: These are the expenses for the offering outside of the reimbursement required to be taken by the sponsor. This is why you will see this item

listed twice. This line may be about 10 to 12 percent of the acquisition. Depending on the deal some sponsor fees are lower, and some are higher.

Another section of the PPM usually describes the Compensation of Sponsor, showing the estimated amount of money the sponsor will—or could—earn.

When you acquire real estate on your own, you will have several out-of-pocket fees that you must pay to acquire or even just study for possible acquisition of a property. These include:

- A new survey
- An appraisal
- A Phase I environmental
- Title insurance
- Building insurance (and perhaps loss of rent insurance)
- Flood or wind insurance, and perhaps terrorism insurance
- Attorneys' fees (review the contract, leases and title)
- Closing costs

If you are going to finance your acquisition, you would interview or meet with banks or a mortgage broker, negotiate a loan, and supply myriad paperwork. You will incur a number of financing fees. No real estate acquisition is without fees and costs. The TIC acquisition does have additional fees, especially because of the legal structure. However, if your goal is a passive income into a higher level institutional-grade investment, this is the price you will pay for a prepackaged deal. Run the net numbers on the property you manage or would manage yourself. Factor in the hours of work and time involved. Review your bottom-line goals. Many find that TICs compare favorably.

Continuing with the PPM, there will be disclosure that subscriptions can be rejected for any or no reason. There will be disclosure that the information contained should not be construed as tax or legal advice. The sponsor recommends that your attorney or accountant give such advice because each investor's situation is different. Sections on general and tax risks as well as conflicts of interest are usually included. The building will be described in detail, including tenants, location, demographics, and financing. Everything about the offering will then follow. The Income and Expense reports, Proformas, estimates on resale, and other charts are usually found near the end of the book. A copy of the attorney opinion letter as well as copies of all subscription materials and contracts (for example, TIC Agreement, Management Agreement, Purchase Agreement, etc.) will be included for study.

What important facts should you investigate in your own due diligence or compare when choosing or reviewing the PPM on various TIC offerings? You should consider the following subjects. You should feel comfortable asking the sponsor, usually through your registered representative, for deeper answers and for any actual third-party report that you deem important.

Consider if the offering is a conservative property or not. Not all transactions are created equally. Some sponsors may take a more conservative approach while others are more aggressive. The securities Broker/Dealers must decide to approve an offering before it is released to be sold by its representatives. The reality is that most TIC properties are approved by the B/D because most sponsors would not package a property that doesn't seem to make sense and the lender would not approve something that doesn't pass its approval and due diligence.

However, just because a property is approved doesn't mean that it won't develop problems, whether it is conservative or not. Any real estate purchase, whether purchased on your own or in co-ownership as a TIC, could have problems down the road. We cannot foresee the future. We do not know that a long-term tenant may leave early or not renew. We do not know what may happen with the economy in seven years. It is not known today if a storm five years from now could damage the roof. With due diligence, you should look at all of the facts and make decisions based on those facts. At the same time, recognize that there will be unknowns.

You will want to choose the best property for you, based on your goals and expectations. Your goal may be to have a highly rated tenant anchor or have a building with at least twenty tenants to mitigate risk. Your goal may be to buy only in a certain state or to buy a medical office building. Your goal may be focused only on your cash flow income or the potential sales goal at the end of the offering. You may only feel comfortable with a multifamily apartment property while another investor only likes retail. You may only want a master-leased property, while another investor wants a proforma-based offering. You may only want an offering with a very experienced sponsor while another investor is more focused on other issues. There are many choices for your approach to this private placement investment.

Depending on your goals and focus, the following are items you will want to pay attention to. This is not a definitive list, but it does focus on areas of importance:

- Sponsor
- Tenants and tenant structure
- Location and the building itself
- Reserves, financials, and proforma
- Financing (terms, assumable, interest only)
- Attorney opinion letter
- Asset prognostication

The Sponsor

The PPM will include information on the sponsor and principals. Most sponsors also have a Web site with some information, including background, assets managed, and principals. A sponsor may send you brochures about the company. Some of the largest sponsors have been doing TICs even before the 2002 ruling and have long track records that are known. Several sponsors since 2002 have developed good track records and efficient organizations. They may have a healthy balance sheet. Some of the newer sponsors are unknown entities.

Why do we care about the sponsor? This was discussed in a previous chapter. You need a sponsor's expertise to acquire a good property. You need a sponsor's experience with TICs to ensure that everything has been structured properly and the learning curve on client satisfaction is seamless and professional. Many sponsors will have an affiliate company handling the property management. Other times, a top professional local company is hired. In any case, the sponsor will be responsible for keeping in touch with you, making sure payments are made, supplying tax forms you will need, answering questions, and helping to lead the show at time of resale. You will own the property(ies) for some time into the future, during cyclical real estate markets and economic turns. Hence, you will be dealing with the sponsor for some time.

For newer sponsors, the author usually runs a D&B (Dun and Bradstreet) report or other background report. She asks questions that are not addressed in the PPM or ask for more information on the company. Newer sponsors are often prepared for this and have information to provide. I like to get a feel for the principals' experience. A new sponsor may actually have experienced TIC players within the organization who perhaps worked with experienced sponsors previously. A group of well-known attorneys advise the TIC sponsors. If one of these attorneys or firms is working with the new sponsor, it can be a factor adding to the experience level and guidance of the inexperienced player. This is a new, young industry and there will be new sponsors every quarter. It would be unfair to entirely discount a sponsor because it is new, unless that is your strongest criteria in acquisition. You definitely must scrutinize the deal more closely if there is no track record, experience, or net worth.

How a sponsor handles the early stages of the subscription process can be an indication of its organization, as well as how it answers questions and follows up with you. Certainly, a few kinks can occur more easily with a new sponsor. For example, an investor could be confirmed in the deal, and he or she will have to be taken out due to miscalculation. Other kinks could involve not anticipating the time required for getting documents back for closing and the overall, very complex closing process.

Some investors like to meet the sponsor at its place of business and meet the key players in order to understand the sponsor better and gain an overall comfort level.

Tenants

This is a very important area of due diligence. After all, the tenants create the cash flow. Without tenants, you own a building with value but do not gain a cash flow from it.

Many investors like to see a tenant mix in a retail or office property, specifically a mix from different sectors of business. This lessens risk if certain sectors go sour. A tenant mix may also draw a wider array of customers to the building. Lease termination dates are important to review in due diligence. With several tenants, you ideally want staggered dates. If one tenant leaves but you have twenty others in place, you will feel the impact less. A building could sometimes have 80 percent of its leases coming due in the same year, which could be an enormous risk. If you have only a few or perhaps even a single tenant, you ideally want a very long lease in place. You will want to understand the options in the lease for renewal, specifically how much time in advance the tenant must notify the landlord of departure and so forth. Sometimes the sponsor will address this type of issue by approaching a tenant or tenants early and renegotiating a new (longer) lease to address a rollover issue.

You will want to know what type of guarantee each tenant offers, especially a larger anchor tenant on whom you would rely. Is it a corporate guarantee that will continue to pay the rent through the lease term, even if the tenant leaves early? You should know if there are any restrictive clauses. For instance, determine if certain types of tenants are not allowed to lease in the building. This sometimes happens if there is a tenant such as McDonald's on a retail site. McDonald's might stipulate that no other fast-food hamburger business can lease at the retail center.

Some investors like one main anchor tenant if this company is very strong (perhaps S&P rated) and has a longer lease. They feel comfortable with a base of income from a strong company with several smaller, even local, tenants supplementing the income. The anchor tenant lease in retail or even office may be NNN. That is, the tenant is responsible for all taxes, insurance, and maintenance. Some NNN leases are bondable, which can provide an even stronger sense of assurance. For the few single-tenant offerings that may be available, investors usually like to see a bondable lease in place or a highly rated tenant company, such as GE or the federal government.

It is easy to get information on publicly traded companies to review online. The PPM will usually include some information on the tenants. You will want to look at the tenant strength, specifically strength of the business, annual sales, sales growth rates, employee numbers, demand for that type of business, etc. You will also want to look at lease terms, probability of renewing, and the type of industry with its future potential. Every property will have its own tenant story, and each story will have strengths and weaknesses to review. Again, it will be up to you to feel comfortable with the facts.

Sometimes, it is actually better for a building if a tenant leaves. If the rent the tenant is paying is far below market value, you could gain a better cash flow with a new tenant. Alternatively, you could add more diversity at your building with a different tenant. There can be some upside for you in a tenant change. The general vacancy rate of the submarket and area, as well as competition and the general economy for your asset type, can give you an idea on the risks here and how long a vacancy may stand. The property manager will handle the tenants in place and find new tenants.

Some properties may have less of a tenant mix. For instance, an office building by the city courthouse will have a higher number of attorneys and title companies. In this case, the investment could be seen as strong because of the demand of that site (as long as the courthouse remains there). The same could be said for a medical center next to a hospital.

We look at different factors for tenancy at apartment properties, specifically:

- What is the type of property?
- Who is the property serving? Is it university students, blue-collar workers, retirees, or upscale young professionals?
- Do the local demographics bear this out?
- Do the projected demographics for the location over the next five years support the demand?
- How much competition is there for the apartment complex (and how many concessions are needed to attract new tenants)?
- Are there other new properties under construction or permits being requested?
- What are the occupancy/vacancy rates of the market and submarket, compared to the target property?
- Are there any nearby major employment centers that support the center (if the tenants are such that will be using an employment center)?
- How is the university enrollment and health if the property is catering to university students?
- Is the property easily assessable?
- What are the historical operating expenses for the property?
- Is there a possibility of a condo conversion in future?
- Is the area one of high growth or is everything moving to a different part of town?
- Who will manage the property? How experienced is that person or company?

Usually, one of three tenant structures is in place for TIC offerings:

1. **A long-term lease with a tenant or tenants (most likely a NNN lease)**: This structure requires minimal management. There is potential long-term stability with tenants such as a bank, a grocery or big-box retail anchor, or a Fortune 500 company in place for a long time. There may be an overriding master NNN lease from the sponsor or affiliate covering the

tenant lease. There is usually an overseeing property or asset manager, usually the sponsor or sponsor affiliate.

2. **Multiple tenants under a master lease:** This is more typical for apartment complexes or some multi-tenant commercial properties. The master lessee is often the sponsor or affiliated company, who effectively subleases to the current tenants. The master lessee is 'guaranteeing' the lease. A few sponsors have double guarantees—one from the sponsor and another from the tenant or seller of the property, who perhaps has given a year guarantee on rents. A master lease stabilizes the income and expenses for the investors. Imagine the monthly ups and downs of income and expenses for an apartment complex. Knowing that a 7 percent annual payment will be paid monthly in year one offers a stabilized income for the investor instead of a potential yo-yo effect. However, it is important to understand the strength of the guarantor/guarantee of that master lease, and know that there are some weaknesses to the structure. An on-site property manager, usually a professional company, a sponsor affiliate, or a successful company that was already in place at time of acquisition, is key. There is usually an asset manager on these offerings.
3. **Multiple leases and tenants in place but not under a master lease (a professional company or an affiliate of the sponsor is managing):** This could be called a proforma approach and is the most common. There is still a projected income and operation, but there could be changes in the income, either an increase or decrease. One of the positives from this type of approach is that, when a new tenant comes on board at a higher rent rate, you can benefit instead of being locked into the master lease payment rate. One of the negative realities is that your cash flow could move down with the property if the net moves down and the property performs below the proforma expectations.

When deciding between a master leased and proforma approach, you can't have it both ways. With a master lease, you are stabilized for good or bad. With a proforma, you can benefit with the ups and suffer with the downs, as you would in a single ownership property you managed yourself. A few master lease offerings offer a bonus program, a payment to the tenants-in-common if the performance is high and there is extra cash.

Location, Demographics, and the Building

The old adage of "location, location, location" still applies. The better the location of the real estate, the better tenants one can attract and the better the value or perceived value. The PPM usually provides detail about the location, the market and submarket, sales comparables, growth, and anticipated future growth of the area. Your registered representative may be able to provide further information on the area, if you wish. The sponsors are happy to discuss this and other details with you.

Be aware of the current and past uses of the building and if there are any environmental issues. Occupancy rates of the area, sales comps, and rental comps should be available for the location.

We ideally want a property in a growth area, whereby new construction, new residential properties, and new industries are expanding or growing. This can help with potential appreciation of the property price, and it can help with the assurance of tenants and desirability. On the other hand, with growth areas, new development could eventually occur in another part of town and draw tenants away.

Another ideal situation is a dense demographic area that is completely built out and in demand. Perhaps there is stability, but not new growth. There is usually competition for well-run buildings as well as a lessened chance of a new building being erected in the area to attract away your tenants. The demographics and stability of the area will be a factor.

Many investors want a primary or secondary city location. Many investors want to make sure the actual physical location of their asset is one that gives visibility and desirability today and in future. For example, the TIC property could be on corner location, visible from a major thoroughfare, or located next to another major asset or a major interstate. The location should provide easy access for tenants and customers. While some investors prefer non-tax states, others want to only concentrate in the high growth areas of the Southeast and Southwest. Other do not mind if the location is secondary or even tertiary as long as the tenant and the real estate story make sense.

You will always want to keep the end game in mind. How will this location's future seem to be in five to seven years or longer? How does it stack up now? Are there any known factors that could make it less desirable in the future? Alternatively, are there any known factors that could make it more desirable, such as a new transit line coming in by an apartment property, a new home development near a retail or office center, or a new airport near an industrial center?

Demographics matter on various asset types. If you are purchasing a multifamily property, you may want a medium income area for an asset that is filled with typical apartment dwellers. Some class A multifamily properties cater to upscale young professionals. There are those that handle corporation executives who move frequently. The demographics of the asset's area would be different from the medium income area.

Several sponsors specialize in university apartment housing. This means apartments that are near large universities and cater to undergraduate or graduate students or professors. These assets tend to be rented all year, and they are definitely nicer than the typical dorm. They may include a pool, tennis courts, study and computer rooms, and common rooms. However, there may be more repairs and maintenance in this type of investment, and the reserves should reflect that. A strong on-site management program is more essential as well. You would also want to check statistics on the university or universities that the property serves. Is the enrollment steady or increasing, or are there problems?

Finally, a few multifamily TIC properties have been offered that include retail and office on the ground floor. This could be a good way to diversify inside of one property.

The sponsors usually have checked on development in the area and any permits (or plans) in place to development new complexes, which could be competition for the asset. They will know which buildings are their competition. They will have studies on the demand in the area, the vacancy factor of the submarket, and information on condo conversions, if this has occurred in the submarket.

Traffic counts matter for your location, especially in retail. This is the indication of how busy the area is and how much traffic uses this thoroughfare. (It also tells your chances of capturing clients for the center.) You can review traffic counts of the area and see if your street is the highest, median range, or lowest. If not included in the PPM, ask about this. Your registered representative can also assist. The desired minimum traffic count in medium-sized cities is about 50,000 per day. A busier thoroughfare in a denser demographic in the Southeast or Southwest may be closer to 80,000–to 100,000 per day. A retail center in Los Angeles may have traffic counts of 150,000 to 250,000 or even more per day.

If a grocery anchors the retail center, check the location of other completing grocers, the visibility and ease of access (location) of your center, what retail supports the anchor, and what other retail is immediately nearby. Everyone needs to eat, but consider if the anchor caters to the area's specific demographic. Many grocers are in trouble due to competition from Wal-Mart (Winn Dixie and Albertsons are two to note). Verify the strength, sales, and situation of the tenant. Determine the location in relation to other retailers. Is it a highly retail-intensive area that draws many people? Is it a more isolated location that might run into trouble or be more difficult to refill if the tenant leaves? Is it the desirable retail section of the town? Is there another area where everything is being built and your building may become obsolete?

Demographics for office TICs should reflect upon the types of employees and clients that may be coming to the property. Is the location prime? Is it a main and main location? Is it visible? Is it desirable? What is the competition? What is the vacancy level of the submarket? How are the rents of your building compared to the other comparable office buildings in the market and submarket? These can give indications of the level of difficulty in placing a new tenant into a building, especially if this building has significant expected rollover. Some investors like that the building has rented under market value, so there is an upside.

As far as the building itself goes, certain facts bear review. Everyone certainly likes a new building. New buildings tend to be appealing, include up-to-date building code standards, and require less maintenance. If the TIC building is older, pay attention to the building inspection (you may want to request a copy) and to the sponsor's discussion of the property condition. What are the anticipated (and perhaps unanticipated) capital improvements? Do the reserves reflect handling this? Has the older building been completely or partially renovated? Buildings in large cities will sometimes undergo a total renovation, and that is a positive. What improvements are being made before the purchase is concluded? If this evaluation is off, you may have a capital call on your hands.

How functional is the building? How attractive is it, regardless of its age? Will it be in good form for resale? Has it been maintained well? Pay attention to details on the roof and HVAC units and compressors. These can be the larger ticket items for replacement. Double-check whether the tenant leases include any reimbursements for repairs and maintenance.

Reserves, Financials, and Proforma

These are usually the first pages the author examines when the PPM arrives. (These pages are usually found at the end of the PPM). Details on the income and projections as well as the expense lines are important. Consider the ratio of the expenses to income. It should be in a range of 30 to 40 percent. Are there any red flags? Were vacancy rates included as well as reserves? Does the proforma seem too aggressive or conservative? What cash flow is anticipated? Are there any increases in the rents and cash flow? Income properties are valued on their income (at least, this is one of the most important ways they are valued). Does the income have upside to keep up with the cost of living index and appreciation for resale? How does the debt service factor in? Most sponsors also make projections in the proforma section for resale prices in the exit strategy.

Look at the acquisition price, the loaded price, and the appraised value. There is usually a gap. Determine if this gap is reasonable or not. Consider projected appreciation and lease increases for value.

One of the very important factors to review is the reserves, as has been mentioned several times. Reserves are the monies put aside for future contingencies, such as capital improvements, build-out for new tenants and other expenses to lease up the property, etc. Reserves belong to the tenants-in-common, but they are held in a special bank account or trust fund. They are accounted for to you. The operating report will show a line item for reserves. Some lenders take a certain amount up front at closing to fund the reserves, and there is a usually monthly amount put aside out of the rent income.

A NNN property, whereby the tenant is responsible for all expenses and who may be long-term, would require a different reserve than a multi-tenant office building with several shorter-term leases in place. (Specifically, in this situation, there could be upcoming vacancies or more changeovers.) A newer building would require fewer reserves for capital improvements than an older building that may need a new roof in five years or other improvements due to age. While there may be a sweep of funds into the reserves at closing by the lender, there will usually be reserves set aside monthly from the tenant income. Unused reserves at the time of resale will be credited back to you as part of your profit proceeds.

Because we are dealing with the unknown, there should always be some sort of reserves set aside, regardless of the tenant or kind of building. A good reserve fund can help investors avoid a capital call of monies. It should be considered part of the operating plan to care for your asset.

One sponsor has a program in place whereby a mezzanine loan is negotiated in advance and accessible so the sponsor can lend to the tenants-in-common if the need would occur and the reserves were depleted. Investors have reacted well to this arrangement. One hopes it will never have to be used, but it provides an emergency net.

Financing

Virtually all of the financing on the TIC properties is non-recourse. Non-recourse is defined as a loan whose sole remedy in the event of failure to repay will be to foreclose against the property securing the loan. Investors are not responsible for the full loan. Only their equity invested is at risk. TIC sponsors negotiate these non-recourse loans, and they can get better interest rates and terms that you or I could get when we buy a local asset, often by 100 basis points or more. At this writing, while typical commercial loan interest rates are at 6.85 to 7 percent, the non-recourse interest rates are at 5.6 to 5.85 percent.

Review the loan-to-value. Does this replace the debt for your 1031? Most loans have an interest-only component for two or three years. You might be wary if the interest-only extends for five to ten years. If the interest-only component is for an extended period, ask the sponsor why this approach has been taken. See if the sponsor's strategy fits with yours. If you are not building equity in the property, you will need to catch up or keep up with appreciation. If the property needs to be refinanced (most likely at a higher interest rate), you need to know where that will leave you.

Find out the loan term (usually in the PPM). Many loans have had ten-year terms, but banks have started to shorten these terms, so you may see a five-or seven-year term. This can have a bearing on your exit strategy. Determine if the loan is assumable. This could be a benefit to an eventual buyer when interest rates are higher. It could be a sales point to sweeten the deal. Determine if there are any penalties if you resell the property early. Check to see if there are any—or could be any—mezzanine loans on the asset to get it closed. Find out the strategy and timing of the mezzanine loan.

Why are the loan details important? One thing to consider, among others, is exit strategy. If the loan has a seven-year term and the economy in year seven is such that you are not able to sell the TIC at a profit, you will have to refinance. Interest rates will most likely be higher in seven years. How will this affect your cash flow? In your opinion, does the loan make sense for the asset?

The loan will be one of the largest expenses on the TIC, and it is important to understand its structure.

Attorney Opinion Letter

Most PPMs of securitized TICs will include (or should include) the attorney opinion letter. The reason for the letter is that the particular TIC offering will be (or should be) treated as real property (like-kind) instead of an interest in a partnership to qualify for the 1031 tax-deferred exchange. The legal opinion is usually about six to twelve pages, even though some may be as long as forty pages. The letter will specify how the attorney formulated his or her opinion, specifically which documents were reviewed, which case studies were used, and so forth. The letter will cite sections of the IRS code and revenue procedures or rulings.

Most letters follow similar format and general content. It will indicate that the TIC covenants will not treat its ownership as interest in a partnership and that co-owners will not take any such position with the IRS. The letter lays out which areas the investors must unanimously approve and which areas can be less than unanimous and if the various offering agreements comply materially. Case law may be cited in the letter to support the opinion.

The letter usually explains how an interest in a partnership is defined in order to clarify the position and opinion. It also usually summarizes the fifteen point Rev Proc 2002-22 guidelines. The letter will address the TIC interests as a security. It should cite the state law in which the property is located and how a TIC interest is viewed in that state.

The conclusion will summarize the opinion and offers the TIC property will, should, or more likely than not be treated as real property for the 1031 tax-deferred exchange. (Should opinions are the most common). Some of the attorney firms that specialize in TIC transactions (and who write these letters often) are Hirschler Fleishcher, Jenner & Block, Greenberg Traurig, Snyder Kearney, Baker McKenzie, Foley & Lardner, and Luce Forward, among others.

If an attorney opinion letter is not in your PPM, ask the sponsor if one can be provided. (Perhaps it wasn't completed in time for the PPM or will appear in a supplement.) If one is not available and there is no plan to have one, be wary of the offering. In this case, you may want a specialized firm to look at the offering to render an opinion for you, which is expensive. Alternatively, you might want to pass on the offering. Even though the opinions are rather boilerplate and relate to the offering and not to you directly, you will know that a specialized attorney has taken the time to review the structure and documents of the offering. This is ammunition for you and can provide a comfort level.

Some real estate-based offerings may have an opinion letter. On the other hand, the company may have a generic letter or ruling regarding approval of the structure it uses for all deals.

Asset Type Prognostication

We do not know what will happen in the future, but we can look at historical trends and review the report of specialists. Past real estate cycles and data can help us prognosticate.

While the PPM may address future issues, there are several independent sources of information on general trends as well as market reports on certain cities, if the sponsor has not gone into detail. Your registered representative should be able to assist if the sponsor does not have specifics to supply, if this is important to you.

Very general comments on the 'three main food groups' (office, retail, and multifamily) are:

Multifamily apartment properties may have a good chance of upside, depending on its location, of course. Traditionally, as interest rates rise, families are less able to buy that first home. In a rising interest climate, multifamily becomes more valuable to investors and more in demand by tenants. Further, there have been a tremendous amount of condo conversions in many markets. Hence, a lower supply of apartments has been available for rent. Some areas of the country have experienced high growth rates, and apartments are very much in demand. Certainly, displacement by Hurricane Katrina placed demand on multifamily properties in Texas and elsewhere. Finally, in some markets, there was a moratorium on new development for some years, which has created a lower supply and higher demand in multifamily units. Multifamily TICs usually have a lower initial cash return than some other asset types, but they may catch up due to the nature of the tenant increases in rent. The upside in resale could be higher than the potential resale of a typical office or retail center. Apartments have a more aggressive depreciation schedule (and sheltering of your income) than commercial properties, if that is a factor in your tax situation.

Office properties are more dependent on the economy in general along with movements in their particular market. Compared to retail or large anchor tenants, leases tend to be relatively short. For a TIC investment, you may want to find a property that either has several long-term anchors or many tenants. You want to be careful of your market and submarket vacancy rates and demand. In addition, office tenants may want to move to better and newer sites in their market. Tenants that have put considerable amounts of money into the improvements or have specialized equipment or materials may have more compelling reasons to stay for a long-term period. Likewise, a building that served the only courthouse in town will most likely have long-term demand for attorneys, title companies, and others who work with the courthouse. Sometimes, a building is the signature location for a tenant, perhaps a bank. It has a long-term profile there with strong reasons to stay. Try to understand the tenants, especially the anchor or larger tenants, and the reasons why they would want to stay put. Understand the values of the area. Is this a building that should appreciate and stay desirable for resale, tenants and all?

Retail is at the height of its selling power in general, and it has been so for the last several years. Retail centers with excellent, strong tenants and that seem to have a long business life are ideal. Location is very important with retail buildings. Many factors can come into play. You may have an anchor tenant with a twenty-year lease in place. This is good for stability, but consider whether there are any increases in the rent during that period. Some TIC offerings may be portfolios of strip centers of smaller tenants, both national and local, next to such powerhouses as Wal-Mart or Target. (Being next to large centers would be referred to as shadow-anchored.) Others may be retail neighborhood shopping centers or power centers with large big-box retailers as anchors. While investors have favored retail for some time, there are fears that, when cap rates start to really rise, some value could be lost for resale unless the rents are increasing well and the location is very desirable. Retail centers that come to the market right (that is, not at the most expensive prices), that have good or better than average returns in place, and that have strong tenants have the best chance of doing well on resale in general.

For all asset types, look at the appraised value, and compare this to the loaded sales price. Factor in or estimate appreciation to see if the numbers seem too far apart. As we have said several times, in TIC deals, it is common for the all-in price to be higher than the appraisal. Appraisals always look backward at the historical facts and sales comps, not to the future. When you invest, you obviously want to invest in something that makes sense—something that gives you a cash flow now but will also potentially get you a profit at resale. Most sponsors include numbers projecting various potential sales prices in the future and what your rate of return would be. Review the numbers and compare this to other offerings. Remember, these are only projections.

Different areas of the country appreciate at different rates. Look at the incredible appreciation in recent years in California, Nevada, and Florida, to name a few. This probably will not continue at the same high rate, but it is a factor. Most TICs usually anticipate a 10 to 15 percent return on your money at resale conservatively, and perhaps, depending on market factors, up to a higher amount. A few lucky TIC investors experienced higher returns than others on some resale of properties. However, there are absolutely no guarantees!

Visiting the Property

Some investors do fly to the property to visit, whether in a prearranged TIC investor group tour (not very common) or as an individual. Always let the sponsor know that you want to visit the property so arrangements can be made to receive you for a property tour. There are no hard statistics on the number of investors who visit the TIC they will invest in, but the number seems to be quite low. Many investors feel they are buying a security with information that is fully disclosed and complete, along with photos and aerials. They feel everything they need to know is in front of them. Others feel they must see the property, the general area, and "kick the tires."

When visiting the property, do not ever speak with a tenant or employees directly at a property without clearance from the sponsor. Often the tenant(s), or at least the employees at the property, are not aware of the pending sale. This is common sense that most discreet real estate investors know, but there are enough new investors now that it bears mentioning. Lately, more than once, a sponsor has had the unfortunate circumstance of an investor arriving at a property and announcing he was buying it, thus creating chaos or heartache among the tenants who did not yet know of the sale. You do not want to potentially hurt your own investment!

Due Diligence on a Sole Ownership Property (NNN Passive Income) Vs. a TIC Property Acquisition for a 1031

Many investors who have considered or even own NNN single-tenant properties try to decide whether they should buy more NNNs for their next acquisition or buy a TIC. If you want total control of the property without any management, the typical choice has been a NNN investment. A triple-net lease means the tenant will be responsible for all charges and fees surrounding the property, including rent, insurance, taxes, and maintenance. (Some double-net leased properties also exist, in which the landlord/investor is responsible for a few items such as roof and structure, but the tenant is responsible for everything else. The lease is the ruling factor.) These types of properties require minimal management and have been popular with investors for a long time. However, the NNN property supply is relatively low and competitive, and it has been for several years.

Cap rates are historically low. This means the returns are less than they have been and the price per square foot (if you analyze it that way) is higher. For instance, if a property has an annual income of $160,000, you would buy it for $2 million if the cap rate was 8 percent. However, you would have to pay $2,666,666 if the same property had a cap rate of 6 percent. The lower the cap rate, the more expensive the property. A lower cap rate is also an indication of a seller's market. The NNN market uses the cap rate as the market comparison in the way that apartment properties use price per unit as the comparative figure. In the same manner, land uses price per acre or per square foot, and an empty commercial property uses price per square foot as the comparative standard. Cap rates have dropped consistently over the last two years, even though interest rates have started to rise.

Because so many people want no-management properties, it is not uncommon for a new NNN property to have a dozen full price offers on its first days on the market. Until the TIC properties became an alternate choice for no-management properties, the investor would be in the very competitive world of NNN properties. You could easily bid for several weeks on properties to get an accepted letter of intent (LOI). Sellers often favor all-cash deals and aggressive terms, by the way, as it is a Sellers market. Let's say you finally receive an LOI signed on a NNN property. You then commonly have up to ten days to get into contract. Once that contract is signed, hopefully without any negotiation impasses, you then receive the due diligence materials on the property for study, including leases, title, and so forth.

You may have already lost three to four weeks to get to this point, and you have a total of forty-five days to identify a property to purchase. You have to order the building inspection and new survey. (These can easily take a few weeks.) You and/or your attorney would need to study the leases, the tenant financials, the title, and all of the investigative studies to determine whether the purchase should move forward. What if your due diligence studies turn up some problems, for example, weak tenant sales or a title defect? What if you uncover issues you cannot change, for example, weaknesses in the lease or demographic issues? You would then have only another week to find another property to buy. (This is why 1031 buyers often bid on numerous properties at once). What if the property checks out, but the loan is not approved?

Let's say the due diligence studies were satisfactory. You would have completed a building inspection, an out-of-pocket expense. You would normally have paid an attorney to analyze the lease, review the title and survey (and order a new one), and review the Phase I environmental study (or order a new one). If you are financing the deal, you would have been talking to lenders and shopping for the best deal as well as supplying plenty of information on the property and your financials and credit. The lenders would require an appraisal, another out-of-pocket expense, and other reports. There would be financing fees, and you will probably pay a point. You would have out-of-pocket costs, closing costs, and, most likely, out-of-pocket lender fees. Additionally, there will be the time involved.

All of this is fine and part of the territory in acquiring real estate, but, for those who have decided on no-management, especially less-experienced investors, the road has been rough and very stressful to buy or tie up property in the short time frame and conduct proper due diligence for a successful trade. You will need to have the executed LOI on the properties you identify in that 45-day period. It does not matter that you have 180 days total to close. You can only close on a property that you identified in the first 45 days. For some investors, they were not able to get a no-management property and had to either pay capital gains taxes or buy a different type of property (perhaps a local residential rental) at the last moment.

Enter the TIC property choice and the due diligence solution for the 1031 investor. As you know by now, TIC properties are prepackaged and ready for purchase. The prepackaging includes all due diligence studies completed, loans negotiated, and market studies and location analysis done. You, the investor, only need to study the reports and facts on the property and complete necessary credit authorizations and paperwork for the loan and property acquisition. You may—or may not—want to physically visit the property. You don't have to find the various professionals, such as lenders, survey, inspectors, etc. You do not have to order the reports, pay for them, and then study them. The due diligence reports for TICs are done and available upon request at no charge. Finally, the TIC choice can offer the solution of diversification. Instead of trying to find one single ownership property, which probably will not be institutional-grade, with your equity, you could obtain several TICs. The forty-five-day period is more feasible.

The 1031 is still stressful. There is much to navigate in the property acquisition, but TICs have taken some of that stress out of the situation. Acquiring a NNN single-tenant property can definitely be a solution, but you have one tenant versus several tenants in an institutional-grade property with a TIC.

Photo 7. Sponsor: Rainier Capital Management. Baylor Medical Plaza, Garland (Dallas), Texas.

Chapter 7

Investing in a TIC: Part Two The Subscription Process

You have reviewed various TIC properties, read the PPMs (or marketing brochure, if a real estate offering), conducted your own due diligence, and received answers to your questions. You have decided on a property and are now ready to invest. You will be subscribing to the private placement offering. Most sponsors have very similar subscription forms and process.

Subscription Questionnaire or Purchaser Questionnaire

The subscription questionnaire is a set of questions that gather your personal information, QI information, and bank information. It also verifies your accredited status and confirms how you will take title. If you are taking title in a trust, LLC, partnership, or corporation, copies of your entity papers, including operating agreement and formation documents, will be requested and will accompany the document. Usually, a personal financial statement (PFS) will be requested at this time, along with your last two years of tax returns. (A few sponsors have recently asked for three years of returns.) Other forms that usually accompany the subscription questionnaire will be:

- Credit authorization and release
- Verification of any bankruptcies, pending lawsuits, or legal issues
- PFS (net worth)
- Entity papers

- Broker/Dealer Page (completed by your registered representative)
- QI authorization
- W-9 (request for taxpayer ID number and certification)
- Last two (or three) years of tax returns
- Escrow deposit made out to a title company

The escrow deposit may be refundable for a short time if at all. Once the sponsor starts incurring expenses (for example, credit checks) and forms your SPE LLC, the deposit is not—or probably is not—refundable. (The author is aware of only one sponsor that incurs a non-refundable deposit at this time). The escrow deposit shows your seriousness, and it will usually be your only out-of-pocket cost in the acquisition. The deposit is usually designated for the formation of your SPE LLC and for some closing costs. At this writing, that deposit tends to be between $2,500 and $5,000, though some offerings have required a $10,000 deposit. It could be more or less and will always be clearly described in the PPM and purchase contract. If you wrote a personal check for the deposit, you may be able to stipulate whether this can be refunded to you at closing and replaced with your trade funds that will be wire transferred at closing. Your QI can sometimes wire-transfer the escrow deposit. Otherwise, you will normally write a personal check, which many prefer to do anyway.

Purchase Agreement

All TIC acquisitions include a real estate sales contract, which tends to be rather standard. If you are used to purchasing commercial properties, these contracts hold very few surprises. You will be asked to initial and sign several different areas, acknowledging the escrow deposit policy, arbitration clause, the as-is purchase clause, the liquidated damages provision, how closing costs shall be handled, and termination of the purchase agreement itself. The contract is not negotiable. If you do not agree and do not sign, you do not proceed. Very few items, if any, are negotiable in these prepackaged offerings.

Forwarding the Subscription Packet

Normally, you send all of these forms, tax returns, personal financial statement, signed Purchase Agreement, paperwork, and payment to your registered representative for processing. The representative and his or her Broker/Dealer are required to have a full copy on record for compliance and audits. Your registered representative will make the various necessary copies (for example, entity papers, tax, etc.), review the forms before sending them to the sponsor to look for any mistakes or omissions, sign the Broker/Dealer page, and include a cover letter with additional information. (Sometimes, you may send the subscription materials directly to the sponsor, but your registered representative will clarify what needs to be done.) Your registered representative will usually handle everything by overnight mail.

You will receive notice shortly thereafter, usually through your registered representative, that you are confirmed into the property or not. The pre-closing process will begin. You will want to identify the property with your QI as you near day forty-five, if not before. Either you or your registered representative will forward the subscription materials and details to the QI for his or her records.

Closing and Pre-Closing Documentation

Depending on the offering and its schedule (and how the sponsor has structured their organization), you will receive the loan documents along with other closing documents several weeks to a month later. The loan documents are usually quite extensive and will require signatures and notarization. One signature requirement will be on the 'bad-boy' carve-out section, which details exactly what bad acts would cause you to lose your non-recourse status (see Chapter Eight for an explanation). Read through this section and understand it. Most lenders, title companies, or sponsors will clearly mark where you need to sign or initial, and if you need to notarize. They will include a return overnight envelope for you with clear instructions on deadlines. Most paperwork requires a turnaround of only a few days, perhaps a week. If you use your own attorney to review paperwork, make sure he is available. Line up a notary if you do not already have one. Many local banks have an notary on staff and you can find a notary in the local yellow pages or with your realtor. Check with your own bank for details.

Sometimes, the loan documents will be delivered to you with other closing documents through the title company or sponsor. Sometimes, the lender will send its paperwork directly, and the title company or sponsor will send the other forms separately. The pre-closing and final closing documents will usually include your LLC formation papers, TIC Agreement, Management Agreement, the call or option agreement, closing statement, QI form or release, title insurance documentation, and other closing materials.

Your registered representative will have already handled your customer account form previously—remember, all securities sales are run through a Broker/Dealer and verification of accredited status and suitability is important. The account form contains your personal information, proof of accredited status, your goals and suitability for the investment, and other information. A personal financial statement (PFS) is usually submitted or is part of the form. A driver's license photocopy will be required, as required by the Patriot Act.

In addition to this, many Broker/Dealers have an order ticket or sales form you may have to sign. It will outline the TIC property you are purchasing, confirm the amount of equity you are placing, cite your PPM number, and so forth. Some Broker/Dealers may have you sign off on a section that makes sure you understand that the TIC is an illiquid investment.

Usually, an e-mail goes out on the day of closing from the sponsor or managing Broker/Dealer, informing you of the closed transaction and congratulating you on the acquisition. A full book of all executed documents will normally come to you about a month to six weeks after the closing. This happens once the sale has been recorded, deeds have been produced and recorded, and all documents have been completed and compiled. Some sponsors scan everything onto a disk for easier management and send it to you and the registered representative. The packet or disk will usually include a cover letter explaining when to expect your first check. As with most real estate deals, the first payment is usually six weeks to two months forward.

You may find that your first distribution will be a check. Usually, a wire transfer to your bank account can be set up for all distributions forward. Sometimes, the wire can occur with the first distribution.

TIC Agreement

A copy of the TIC Agreement will be in the PPM for your review. You will receive a copy to sign for closing. This important document lays out your rights of ownership. The agreements are very similar from offering to offering. After defining the property and effective date of the agreement, there will be the recitals (a list of the undivided interest holders to be named in an exhibit) and wording to the effect that the investors are entering into the agreement for an orderly administration of their rights and responsibilities. The nature of the relationship between co-tenants is defined. The agreement emphasizes that this is not a partnership or joint venture.

The manager is named, along with the term of the management agreement (one year). It also provides instructions on how to renew or terminate the agreement. The management agreement is included as an exhibit.

Importantly, the issues of unanimous and majority consent are addressed. Unanimous consent of all tenants-in-common (as laid out in Rev Proc 2002-22) is required for any sale, exchange, lease, or refinancing on the property as well as anything else stipulated in the agreement. The procedure and number of days to approve or disapprove is included. Majority consent items, if any, will be included along with the procedure. Most agreements will stipulate that a tenants-in-common holding 50 percent or more may be required to approve or review such things as the annual budget.

Language that all tenants-in-common agree to perform their duties as necessary will be included, which usually addresses handling and signing documents in a timely manner, adding additional funds if necessary, procedures for sale of the property, and other issues.

Right of First Offer or Refusal is important. If one of the tenants-in-common wishes to sell his or her interest, then the other tenants-in-common must first be allowed to buy or make an offer to buy. This would address the issue of partition, which would be disastrous unless the TIC Agreement gives the other investors a right of first refusal. (Partition is a court action ordering a compulsory sale of real estate owned jointly between two or more owners. A partition action divides the proceeds of a real estate sale among the joint owners rather than physically dividing the real estate into separate undivided interests.) Several agreements include the limitation on the right of partition. First refusal is also important if an investor needs to sell his or her share. The other tenants-in-common should have the first right to enlarge their percentage share before the interest is taken to outside parties for potential acquisition.

A lengthy section about procedures is usually included. Most agreements include a section about the purchase option of a dissenting or defaulting tenant-in-common. This is usually written that, if a certain percentage (it will vary from property to property) have assented by vote on an item that requires a unanimous vote, then the dissenting tenants (those who dissented by vote on the matter) may be bought out at fair market value or other actions as described in the agreement, along with the procedures for doing so.

Issues such as arbitration, bankruptcy, and power of attorney are addressed. Determination of value is often included in the agreement.

The procedures at sale or encumbrance of the property are also described. For instance, most agreements will include the handling of proceeds following the sale of the property. Any loan balances will be paid off first. Any unsecured loans follow next. Proceeds to pay any outstanding costs or expenses will then be made. The remaining proceeds will be paid to each TIC, according to his or her percentage interest.

It is important to read through the TIC Agreement and ask questions on any issue you do not understand. Confer with your attorney, registered representative, or team members so, if you invest in the property, you understand what you may and may not do.

Property Management and/or Asset Management Agreement

These agreements will be the official documents between the investors and the property manager and/or asset manager, as they lay out all terms of service, fees, and important details. The commencement of the agreement, authority of the tenants-in-common are addressed and usually include collection of rents, repairs and maintenance, leasing, capital expenditures, compliance with laws, mortgage payments, service contracts, taxes and insurance, budgets, financial report, accounts, and tenant relations. There may be reimbursable as well as non-reimbursable costs listed. The financial reports will be furnished to all tenants-in-common in the way governed by the agreement, usually quarterly. The manager or asset manager will furnish tax information. The duties and timelines will be included.

The tenants-in-common have the right to audit or examine the books and records, as written in the agreement, along with any procedures for doing so. Security deposits, operating accounts, and related transactions are all described as well as requirements if the agreement is terminated. The property management fee is specified in the agreement. (It is usually about 5 percent of the monthly gross, but it could be as low as 3 percent or as high as 8 percent). There are differences in the management responsibilities depending on the tenants, often reflected in the fee. For instance, a building with one large NNN tenant would require far less management than a property with fifty tenants, most of which are not NNN. A smaller building versus larger building, or a newly constructed property versus an older one would require different attentions. The fee will also be dictated by the local market and customary commissions as well as the negotiations.

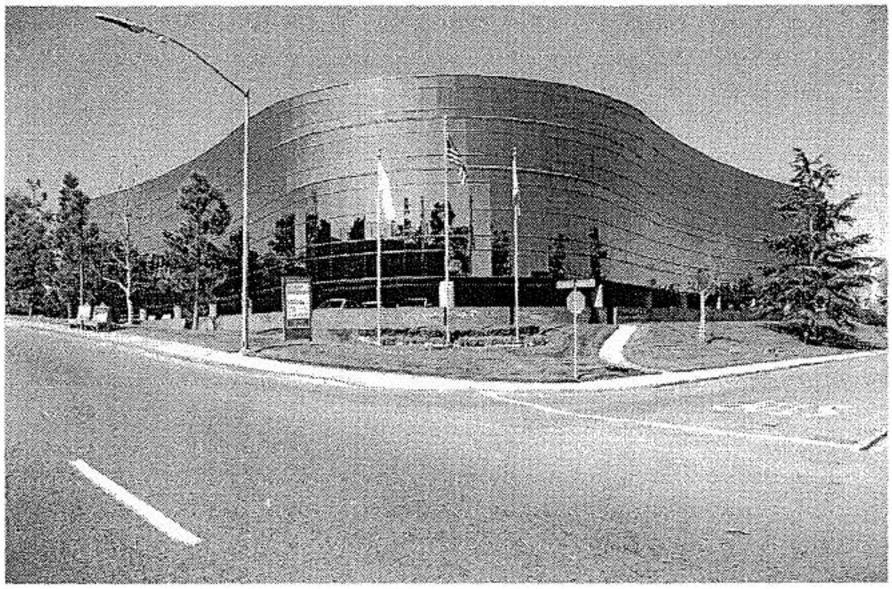
When leasing is required, there is usually a leasing commission paid. This is described as well. (It could be about 5 to 7 percent, depending on what is customary in that market and on negotiations). The asset manager fee is usually quite small. If the manager is a real estate company (or the sponsor itself), he or she may have negotiated a real estate commission for the future sale of the property, which will appear in this agreement or the PPM.

There is usually indemnification language in the agreement between the tenants-in-common and manager.

Call Agreement

This document explains the grant of call rights, the exercise of call rights, determination of value and payment, power of attorney, and the general provisions. Alternatively, it may be incorporated into another agreement. The contract is usually about four pages in length and is relatively simple. It will usually explain that TICs will have the right, but not the obligation, to purchase any interests of other investors who fail to pay expenses or do not consent to a sale, lease, refinancing, or other cases as written in the document. It will discuss the defaulting or selling tenants-in-common and if the agent (sponsor) has the right to purchase interests. Normally, it includes a phrase such as "bankruptcy, death, dissolution, liquidation, termination, incapacity, or incompetency of a tenants-in-common investor shall not cause termination of the agreement."

Be sure to read through the document. Discuss it with the sponsor, representative, or your attorney to fully understand it before you sign.



Photos 8. Sponsor: Argus Realty Investors. (Above) Chesapeake Park Plaza, San Diego, California. (Bottom) Pacific Bell, Anaheim Hills, California.

Chapter 8

The Non-Recourse Loan and the SPE LLCs Getting Paid, the Bank Account and LLC

The author is not an attorney or a professional in the lending field. The basic information in this chapter about the SPE LLC and TIC financing is being relayed for educational purposes. It is not intended to be a detailed treatise on the subject. The information is as current and accurate as possible, but it is not warranted. Investors should review specific legal questions or issues with their attorney and talk to the specific lender or sponsor of the TIC property for more details on the specific loan. (This can be done through the registered representative.)

Most TIC properties have financing, and this financing is almost always non-recourse. A non-recourse loan is the desirable type of loan because you are not personally responsible or liable. It is a type of loan in which the only remedy available to the lender in the event of the borrower's default is to foreclose on the collateral and not to look to the borrowers. A non-recourse loan is all about the building and its tenants as well as the sponsor or party who brings the property to the lender for financing. The actual recourse guarantor of the loan is often the sponsor, a principal(s) of the sponsor, or an entity. If this is not explained in the PPM, ask the sponsor. You should know who the guarantor is on the loan. (You should also know what their assets are.)

Each TIC property will have a specific loan negotiated on the offering. Many loan-to-values fall in the 60% to 65% range, but there are properties with only 50% loan-to-values or less. A few leverage up to 75%, especially multifamily apartment properties. Once in a great while, there is

:alifornia.

the all-cash deal in the securitized world. At least one real estate-based sponsor handles only all-cash deals on their TIC properties.

The PPM of your chosen TIC will go into detail about the loan, the lender, and its terms. They are usually fixed loans, usually with an interest-only component for the first few years. Amortization is usually thirty years. Sometimes the loans are assumable. This is a plus when considering the exit strategy and resale of the property. Because interest rates will most likely be higher in future, a lower interest loan could be a selling point.

While these are non-recourse loans, there will always be the 'bad-boy' carve-outs, lists of bad acts that, if committed by an investor, cause the investor to lose his or her non-recourse status. The loan would become recourse to the investor committing the act. Bad-boy acts include physically hurting or destroying the property or committing fraud or intentional misrepresentation. The lists of acts have started to become shorter since 2002 because lenders have become more comfortable with TICs and the structure has become more sophisticated. These documents will be sent for review and signature in the closing stages, but you can ask the sponsor about the carve-outs before you invest or during due diligence.

When the TIC industry started to take off in 2002, what initially frightened lenders when they considered financing these investments?

- Dealing with up to thirty-five investors/borrowers from many states and locations per purchase instead of one borrower
- A future personal bankruptcy of one of those investors could spark a problem with the asset, even a foreclosure
- The incredible amounts of paperwork and details needed because of the many borrowers and the legal structure of the asset

However, as lenders have actively worked with sponsors, many have become quite comfortable with the TIC industry and with the issues. The issue of bankruptcy risk has been addressed through the use of a special purpose bankruptcy-remote entity, the single-purpose entity LLC (SPE LLC), also commonly called single-member limited liability entities. Use of these entities has become widespread. It is now well established in TICs and other types of commercial real estate as well. Most lenders who handle multi-state, securitized, and structured financing now require the SPE LLC, which is good for you, the investor. Essentially, the lender segregates the sole asset of the SPE LLC in a way to minimize the undesirable effects of a bankruptcy. It is a form of protection for you and your asset, a kind of firewall around you and between you and each of the investors. It is an effective way to give you liability protection as well. For instance, without the SPE LLC, an unrelated claim against one of the TICs could have allowed a claimant to secure a judgment lien against the entire property. With the SPE LLC, this is not possible.

The lender usually requires specific covenants in the SPE LLC organizational documents, which you will receive as part of the closing process. Covenants include:

- Prohibition against any business activity other than operation of the property and against owning any other property in the SPE LLC
- Prohibition against any merger with another entity or acquisition of any subsidiary
- Separate SPE books and records, among other covenants

SPE LLCs are disregarded entities in most states. (They are invisible for tax purposes and are considered flow-through entities.) Each investor should check with his or her accountant, attorney, or sponsor on the matter. "In most cases, the IRS will recognize the separate identity of an unincorporated entity as long as the owner does NOT control the day-to-day affairs and otherwise deals with the entity in such a way that it is a mere agent or instrumentality of its owner," according to an article in *South Carolina Lawyer.*[2]

Many states have amended their LLC statutes to specifically permit the formation of single-member LLCs. Several TIC sponsors use the Delaware SPE LLC because it is favorable, but you may see other states used. Often, there could be two entities, specifically one in Delaware and one in the state of the property. This will be addressed in the PPM.

As mentioned, the entity is treated for federal tax purposes as if it was a sole proprietorship or division of the organization's owner. The regulations allow an individual or corporation to obtain the limited liability advantage of a corporation, along with the single-level "pass-through" tax advantage of a partnership with the single-member LLC.

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2 *Thomas Stanley, Fred Kingsmore Jr. and William G. Newsome III; 'Finally, Real Tax Simplication.* South Carolina Lawyer (Bar Publication), Sept/Oct 1997. page 20.

Usually, the lender's or sponsor's attorney will form these entities for you and take care of the formalities. You will receive paperwork for your signature and your files. You will be responsible for keeping the LLC up-to-date each year after that. Some sponsors pay the renewal fee and deduct it from your monthly distribution. Others have you take care of the paperwork and fee yourself directly. Annual renewal fees are usually between $200 and $600 for most states. (Sometimes, you are registered in two states.) It is essential that the SPE LLC fee be paid and updated each year, for your protection and that of the asset.

To summarize, each TIC investor will usually have a SPE LLC formed for him or her, which will wrap around his buying entity and will normally be a disregarded entity for tax purposes.

Your first distribution payment is often a hard copy check. The sponsor will provide forms for the bank transfer or wire option for further distributions. You sometimes complete bank wire instructions during the subscription or closing process, but some sponsors need to send a hard copy check for the first month anyway. Most TIC purchases are made in the name of your SPE LLC. Usually, your monthly checks or wire will come made out in that name. Hence, you will open a bank account in that name or talk to your bank about a subaccount to your own. Because the LLC is a disregarded, flow-through entity, it could be a subaccount of your own account, but each bank will have its own procedures. In fact, the lender of the TIC may require that a separate bank account be formed.

When you diversify into several TIC properties, you will have several accounts. That is, most TIC structures are such that they are legally separate from each other for protection. At the least, you will have different SPE LLCs for each investment. You will be responsible for their annual renewal, and you will probably have separate bank accounts for each investment.

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Photo 9. Sponsor: Cabot Investment Properties, LLC. BBT Building, Winston-Salem, North Carolina.

Chapter 9

The Delaware Statutory Trust (DST)

The author is not an attorney or a specialist in the DST. This chapter was written to inform the readers about the history and basics of the DST. Anyone interested in investing in this type of property should check with his or her attorney and discuss the structure and issues with the sponsor. He or she may want to look into the subject with specialists.

The IRS issued Revenue Ruling 2004-86 regarding use of the Delaware Statutory Trust (DST) for purchase of fractional interests in property and qualification for the 1031 tax-deferred exchange. What is the DST? Why does this matter?

A statutory trust is defined as a trust created and enacted by the effect of a statute, usually temporary in nature, which may bridge or create ownership of property to benefit a certain class of individuals that the statute is designed to protect. Statutory trusts have been recognized in Delaware since 1947. However, the passage of the Delaware Statutory Trust Act in 1988 clarified the statutory recognition of the trust. The act was further amended in September 2002 and renamed the Delaware Statutory Trust Act. This trust act codified Delaware law for use of trusts in business transactions. The DST is defined as an unincorporated association created by a trust instrument for which property is deposited, managed, administered, and operated. A trustee administers the trust and acts for its members or beneficiaries. The rights as well as obligations of those involved, including trustee and beneficiaries, is determined by contract instead of common law.

A DST property is not a TIC property. They are mutually exclusive. Legally, each stands on its own. Both are group ownership structures for passive income properties, prepackaged and usually institutional-grade. DSTs are securitized like most TICs, and some of the same sponsors offer both DST and TIC properties. However, DSTs are truly passive, even more passive than TICs. Why? The trust owns 100 percent of the property and is on the deed. You, the investor, are a member of that trust. Unlike a TIC investment, you will not be on the deed to the property. The trust makes all decisions about the property. Unlike a TIC, you will not make any decisions at all or have any voting rights. Some investors won't mind this. Others won't like it. The beneficiaries' (investors) only right with respect to the trust is to receive distributions. They have no vote or say on anything, whether it be to remove the property manager or whether it be regarding the sale of the property. Obviously, the sponsors who sell properties as a DST communicate with the investors closely and keep them informed and act in a fiduciary role. An investor will have to feel quite comfortable with the sponsor or trustee in the case of the DST investment because that trustee will be acting fully for him or her.

What is good about the DST?

What is good about the structure? Lenders like the DST. Instead of lending to up to thirty-five TIC investors, they lend to one entity, the trust. (Remember, #2 of the 15 point Rev Proc 2002-22 ruling stated that a TIC can have no more than 35 investors). Hence, the lender on a DST does not have to complete credit checks on all investors. It does not have to handle analysis of each buying entity nor gain myriad signatures or produce the loan documents for each investor. (Typical loan documents could be fifty pages per investor.) The lender does not need to form the SPE LLC entity for each investor, and there is no need for the bad-boy recourse carve-outs for each investor in the non-recourse loan. The lender only looks to the sponsor for the carve-outs. These items keep down the fees and cost of the loan, which can be a benefit to you.

The DST is bankruptcy-remote, a positive for the investor. Provisions exist that prevent the bankruptcy creditors of any beneficiary of the trust from reaching the property. This gives the lender and investors a level of security. The DST also shields the beneficiaries from liabilities regarding the property.

The DST is a disregarded entity. You can draw some comparison between it and the SPE LLC used in TIC investments. There is limited liability to the owners of both entities. They are both pass-through entities for tax purposes. They are both bankruptcy-remote.

Because the DST does not fall within the rule of limiting the number of investors to thirty-five, there is more latitude in accepting investors into a property with less equity or more investors per property than with a TIC. This can also be a benefit for an investor with a smaller amount of cash to invest.

What can be bad about the DST?

The IRS ruling named prohibitions on the powers of the trustee. These have come to be known as the 'Seven Deadly Sins'. If the trust commits one of the sins, it will lose its trust status and become an LLC via "the springing LLC" action. In this case, when the property is finally sold, the investors/beneficiaries would no longer be able to conduct a 1031 tax-deferred exchange because the LLC would be viewed as a partnership. Some have explained that the problem could be solved and the LLC could perhaps be converted back to a DST before re-sale, or do the 'swap and drop.' To date, no DST properties have had to dissolve to an LLC, as they are quite new, and there is no precedent. The Seven Deadly Sins are:

1. Once the offering is closed, no future contributions can be made to the DST by new or current beneficiaries.
2. The trustee cannot renegotiate the terms of the existing loan nor can it borrow any new funds from any party.
3. The trustee cannot reinvest the proceeds from the sale of its real estate.
4. The trustee is limited to making capital expenditures to the property except for normal wear and tear maintenance, minor nonstructural capital improvements, and those required by law.
5. Any cash held between distributions can only be invested in short-term debt obligations.
6. All cash, except for necessary reserves, must be distributed on a current basis.
7. The trustee cannot enter into new leases or renegotiate the current leases.

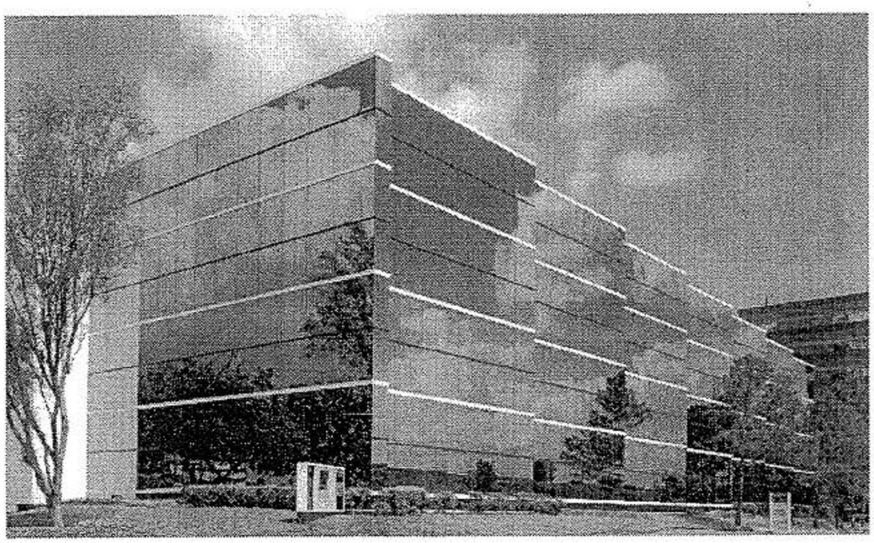
Because of several of these rules, master-leased properties are most appropriate for a DST whereby the tenant or master tenant takes on all operating responsibilities that the trust cannot take on via a long-term NNN lease. The DST could be a called a "do not vary the investment" investment structure.

Some of the Seven Deadly Sins could be of concern to investors. What if the loan has a seven-year term and the property has not been sold in seven years due to the economy and that loan has come due or will need to be refinanced? The DST does not allow refinancing or new loans. What if a major capital expenditure is needed? This would be something more than normal wear and tear, something unexpected, and something more than what insurance could handle. The DST does not allow this to occur. What if a beneficiary needs to exit the property before resale? One of the sins is that no new monies by current or future investors can be added. What if a tenant goes bankrupt and leaves the property? The DST does not allow for new leases. Potential investors should consider the Seven Deadly Sins, talk to the offering sponsor about any concerns, and see how they are addressed and what solutions exist. Then discuss the risks with an attorney, CPA, and representative.

One sponsor that frequently offers DST products handles the resale issue through a buyback option. Exercising the buyback option could offer a solution before the trust would commit several of the sins.

While there can be some instances where a DST can work and some advantages (for example, less fees, smaller equity possible, more investors per property, truly passive investment, etc.), the level of risk with the DST seems most linked to the deadly sins. Before proceeding, make sure to understand the offering and sponsor fully.

Photos 10. (Above) Sponsor: U.S. Advisor, LLC. The View at Encino Commons, San Antonio, Texas. (Below) Sponsor: U.S. Advisor, LLC. Briar Forest Crossing, Houston, Texas.



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Chapter 10

The LLC Placement
Smaller Equity Amounts, Non-1031 Investing, IRA Placement
Adding an Asset to Your Balance Sheet

The LLC investment might be for you if:

- You are not in a 1031 tax-deferred exchange and have a smaller amount of cash you wish to invest (perhaps $25,000 or $50,000)
- You want to place some IRA or retirement funds into a TIC (only for qualified property programs) to diversify your portfolio
- You do not want to personally leverage but want a cash flow from real estate

Several TIC property offerings have this LLC component. Essentially, an LLC is formed as one of the tenants-in-common. You personally will not be on the property deed. You will be a member of the LLC. This is an all-cash position. The minimum amount can be as low as $25,000. (Sometimes, this amount could be even lower.)

You will complete a subscription agreement certifying that you are an accredited investor. You will sign an LLC agreement, but you will not complete the myriad other documents that TIC investors must complete, such as credit authorization, vesting instructions, or lender paperwork, which often relate to the financing. Some sponsors, but not all, require the last two years of tax forms.

Cons

There will probably be a fee split between you and the LLC administrator when the property is eventually sold later. (Most, but not all, sponsors do this.) This is compensation after the fact for administering the LLC. There may also be a small administration fee. Please read the LLC document and PPM carefully. Make sure you or your registered representative get the details on the program you are considering.

Some TIC sponsors that allow IRA funds may require a specific escrow holder to administer those funds, and there may be some fees involved in setting up the account or an annual fee charged by the trust company. If the TIC sponsor does not require a specific escrow holder, you may find that your current IRA custodian does not allow use of IRA funds for TICs. In this case, you would need to transfer your funds to another trustee or escrow provider to complete the transaction. This sometimes takes longer than you would expect, and there will probably be fees involved. Note that there could be some UBIT risk as well.

For the non-IRA investors, know that you will not be able to do a 1031 when the property eventually sells. You are not in a deeded ownership position of like-kind property. Instead, you are a member of an LLC. Your portion of the LLC is nontransferable and not liquid. If you are investing funds, they will stay invested for the duration of the property hold. (Most TICs state a five-to seven-year hold, but it can vary.)

As with the TIC and DST properties, the contracts, terms, and structures are nonnegotiable. These are prepackaged investments. There are the usual and typical risks involved. If the market goes soft, you might not sell when you expected, or you might not get the proceeds at sale that you hoped.

Pros

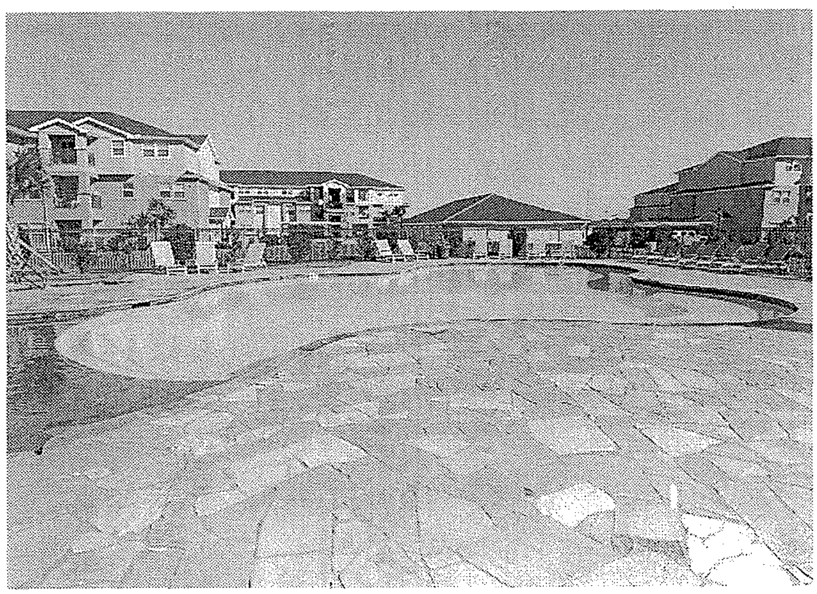
The LLC investment could be ideal for holding retirement funds because you will receive a monthly distribution into your retirement fund and can watch it grow consistently. Many mutual fund and stock investors have been dismayed over the last three years with slow growth. With an LLC position in a TIC or one of the alternatives, such as a note program, you normally have a relatively steady income, with the typical risks involved, of course. Some of the Note Programs are currently paying 8.5 to 9.5 percent annual returns.

The LLC can be good for those with smaller equity amounts who want passive income or perhaps want to diversify their portfolio with another type of income. Some investors use a small position in an LLC to get their feet wet before proceeding with a larger investment into a TIC or before adding an asset to their balance sheet. Post-closings into the LLC are often possible. This means a great TIC offering came and went and is closed out with TIC investors and is operating. Nevertheless, there is still room in the LLC for some investors for a period of time.

Other private placements that are not deeded real estate are also available in the private placement arena, such as note programs or real estate funds, oil and gas programs, equipment leasing programs, and other private placements. Some of the TIC sponsors offer such programs. The minimums on these programs can be as low as $25,000 or even less, even though some offerings require $100,000 minimums. Because they are private placements, all of the same Reg D rules apply. Investors must be accredited. There can be no advertising. The offering must be made by a PPM. There must be full disclosure.

If interested, talk to your registered representative about the choices. The returns are higher than some other investments, but the risks may be higher in some of the offerings. Some programs, like oil and gas, could give you excellent tax deductions and the possibility of high returns.

The author is invested in several LLC placements in TIC properties as well as several oil and gas programs.



Photos 11. Sponsor: Covington Realty Partners, LLC. Monte Lago Apartments, Houston, Texas.

Chapter 11

What Could Go Wrong?

Several of the following risks could occur to anyone who invests in any real estate, not just a TIC. However, some risks are specifically related to TICs. Every single investment has risk, and you must think about this before placing any of your hard-earned funds into any offering.

It is a bit unnerving to look at a chapter like this. If we looked at every single thing that could go wrong with any type of venture or investment, it would throw us into a panic. (If we thought of all the bad things that could happen to us in a given day, some of us would never want to leave the house.) For investors who have experience with real estate, they know the risks, the cycles, the ups and downs. They have probably experienced some downside over their investment life. Investors who may have experienced the syndicated general or limited partnerships of the 1980s may have a bad taste in their mouths about a syndicated investment, even if TICs are not exactly the same as the partnerships of old.

If you don't have real estate experience, you should know that regardless of how good a property seems and regardless of how much due diligence you do, unforeseen events occur. Your cash flow could be reduced, or it could even stop for a short or long time. No sponsor, investor, representative, or lender ever wants this to happen. But it can. It can, it has, and it will.

If the TIC interest is sold as a security, risks will be specified in the PPM, which includes some language required by the SEC. General risks will be listed, but every PPM will also have a laundry list of specific risks. This will include information concerning the particular offering and its story.

Because specific risks will be related to a specific property and will be disclosed in the PPM, the following are some of the more general risks. When you read the PPM on potential investments, pay attention to the specific risks, ask for explanations, and weigh the issues. Many of the risks may have a very small percentage chance of happening, but they must be pointed out. Others might have a higher percentage chance.

Certainly, the risk that most investors ask about is losing the cash flow. Cash flow is dependent upon the tenants and, to some degree, the management and sponsor. There have been a handful of instances in which cash flow has been reduced on a TIC investment, including periods of no distributions and there are some TICs that are distributing cash flow from the reserves. Reduced cash flow could occur when a major tenant or tenants departs a property without notice. Or a tenant could leave after the expiration of the lease, but it takes longer than expected to get a new tenant. In one actual case, reduced cash flow occurred in a multifamily apartment because the seller of the property loaded it up with marginal tenants and more concessions just before sale to the sponsor. The fallout of some of the marginal tenants months after the sale created a loss of cash flow. This situation can be turned around and the property is filling with good tenants, but nevertheless, the tenants-in-common suffered a lower cash flow than expected for a period of months.

Make sure to review the cash flow proforma and see what occupancy/vacancy rates have been accounted for, and make sure to discuss if the proforma is conservative or aggressive as regards the tenants and cash flow.

Closing Risk

A sponsor could have a delay in closing on the property. Worse, the sponsor could lose the property and be unable to close. This is by no means a common occurrence, but it could be a risk for a 1031 tax-deferred exchanger.

If the sponsor already owns the property, delays or loss would not occur, or it would be highly unlikely. However, many sponsors do a simultaneous close. That is, they put the property under contract, conduct all due diligence, arrange the loan, and put substantial nonrefundable monies down. Then they close/buy the property at the same time that all TICs close/buy into the offering. Most sponsors have enough experience to know at what stage it is safe to offer the property for sale.

(After all, thorough due diligence has been done so there should be no surprises.) However, there could be sponsors who are rushing to do the transaction and jump the gun.

Alternatively, some unexpected circumstance could arise. To date, the author is aware of a few delayed TIC closings, closing three or four weeks later than expected, but they did not jeopardize the 180-day deadline. These were due to late dropouts of investors, very late return of investor paperwork (signed and notarized), or a property title problem that needed to be cured. In fact, some sponsors will hold several closes on a property to minimize the risk. The author is not aware of any TIC property that was subscribed and ready to close but then not closing and placing anyone in peril. Nevertheless, the fact that this could happen should remind you to identify more than one property and have backup options for a 1031 tax-deferred exchange.

Subscription Risk

You could be confirmed into a property by a sponsor but then told a week or two later that you didn't make it in and are on a wait list, or are not in at all. If you are past your forty-five day identification period and have no other properties identified or available to you, this could be devastating. I am aware of this situation occurring, even though in those instances the investors were able to get into another identified property. It is not common, but it is a risk nevertheless. The situation would probably occur with less-experienced sponsors. Make sure to identify more than one property, and try to subscribe early enough so you are definitively confirmed before the forty-five day ID period is over.

In another situation, you could be confirmed into a subscription, but the lender could boot you out. I know of a few instances when this has occurred. If the net worth of an investor is just at $1 million, there is an imbalance between the investor's net worth and acquisition amount, or some bankruptcy or recent legal issue caused concern, the lender has the right to not accept you. Having had a bankruptcy in the past does not mean you will be rejected though. If asked, be prepared to explain it. Make sure that you have backup properties in your forty-five day period to identify in case something like this occurs.

Cash Flow Risk

This is the risk that the most investors ask about and was discussed earlier in the chapter. This risk is one of the reasons why only accredited investors are allowed to invest, and why registered representatives must understand your overall financial situation. If you wanted to live exclusively on the income from a TIC property, you can see the damage that could occur to your situation if that income was reduced or lost. That is why suitability is important and why you should never invest if this will be your only income.

The fact is, a property could underperform and hence the cash flow payments could be lowered from the expectations, or perhaps no payment would come for a period. We know that having good tenants, reserves, insurance, and the best managers in place will be essential. However, if the economy worsens in general, the market softens, or there are problems in the particular market where the property is located, this situation could become an issue no matter what.

In other cases, a tenant could unexpectedly break a lease or not renew. You may have difficulties getting a new tenant. Keep in mind that while your TIC property will have a non-recourse loan, which means you are not personally responsible for the entire loan and are only at risk for your portion, there is indeed risk in any income-producing property that tenant vacancy could reduce cash flow to the point where all rent would go to debt service.

Also, a property could have a call. This would be related to underperformance of the property, but it could also relate to a natural disaster or unforeseen circumstances. In this case, the tenants-in-common could be asked to add capital or equity to the property.

Management Risk

A property manager could do a horrible job. You, as a tenants-in-common, will have the right to vote out or change a manager. In general, property managers are of a high level. They see this work as serious business and invest their time and efforts accordingly. However, poor managers could exist. You should pay attention to the quarterly (or monthly) property reports and ask questions. The management company should have a proven track record of success and strong experience. It should know how to handle tenants and keep them happy while keeping the asset in top shape. It should know if a tenant is in trouble and is thinking of breaking a lease. It should know how to deal with tenants that leave early or do not renew a lease. It should also know how to attract strong new tenants and negotiate the best terms for you, the owners. Your cash flow depends on the tenants in place. Of course, one of the reasons you invest in a TIC is because you do not want to do the hard work of management. Remember, a good management company is a strong, positive factor in your decision to invest in a TIC. A poor company is a risk and negative factor.

Refinancing Problems

The loan has come due, but the real estate market is such that you have not been able to sell the property and, hence, need to refinance. Interest rates may be higher than when you purchased, hence perhaps cash flow could be affected. Maybe there are fewer tenants in the property, and the loan to value will not be as good, or the lender will require some hold-backs or more reserves.

Cross-collaterization, while positive on some levels, could be devastating if one of the properties within the cross-collaterization fails. The cross-collaterization could be in a portfolio offering, or it could be in an overall guarantee on the property, loan, or lease.

Resale

You could receive an offer to resell the property, but some of the tenants-in-common do not want to sell. There are usually ways to handle this, and a good sponsor or manager will lead an orderly process to show the investors why (or why not) a sale would be beneficial. Most investors go into the offering with the idea of collecting income for some time and then selling at a profit. One hopes that all investors are of like mind on this issue. However, there could be disagreement on a sale. The TIC Agreement will usually allow the assenting investors to buy out the dissenting investor(s), and the sponsor may have the right to buy some interests as well. However, this doesn't guarantee a solution, and there is some risk.

Market Risk

Keep in mind that if the economy or real estate market goes soft for the asset class or geographic location of your TIC, it is possible it would take some time to sell the building or, if exiting early, your share. You may have to sell at a discount. Perhaps you couldn't find a buyer and may decide to hold the property until the market recovers, which could be for some years. Interest rates in the market could also have an effect. This is the same for any type of real estate.

Other

A sponsor could go out of business or go bankrupt, and they may have been the recourse party to the loan or the master lessee.

The SEC or IRS could update or change regulations.

Because TICs are relatively new and there is no developed secondary market, another challenge or risk could be valuation should you decide you want to exit the property early. Even though the appraisal of the whole property being sold to and by a TIC sponsor is straightforward, valuing an individual TIC interest several years later might not be so straightforward. Many believe an interest would most likely be sold at par (the amount you originally invested), even though it could be sold for more or even sold at a discount.

There will be other specific risks named in each PPM for each TIC property, as required for securities offerings. These will be as vague as "tax laws could change and adversely affect you" to "tenant rollover risk could leave the building 50 percent unoccupied in year 2008 if tenants do not renew."

Review the risk section of the PPM. Pick out any risks that seem excessive, and discuss them with the sponsor and your team. There may be reasonable explanations—or not. In any case, it is important to contemplate the risks and invest with your eyes wide open.

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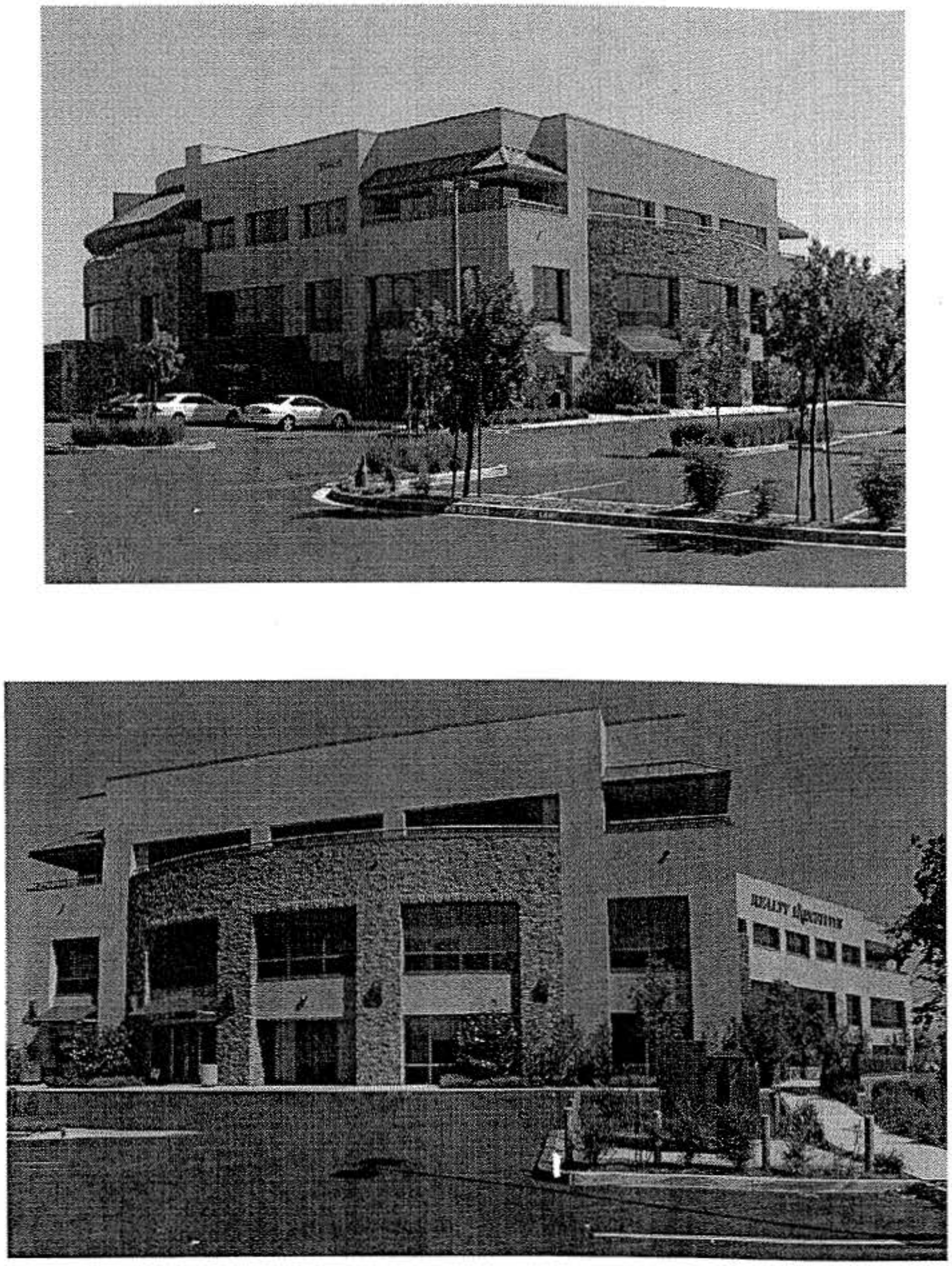

Photos 12. (Two views) Sponsor: CORE Realty Holdings, LLC. Westridge Executive Plaza, Valencia, California.

Chapter 12

Liquidity and Exit Strategy

TICs, like all real estate, are not liquid investments. Unlike stocks, CDs, bonds, and the like, you cannot decide today to cash out and have the funds tomorrow. Real estate takes longer to sell, even if there is a willing buyer and seller.

Investors should never place funds into a TIC that they wish to be liquid. All TIC investors should think of the investment as long-term, whether that means a three-year hold, a ten-year hold, or even longer. The investor should intend to hold his or her investment in the TIC property until the property sells in order to benefit from his or her pro rata share of the proceeds at sale. It seems that TIC investors understand this issue—to date, it has not been a deterrent, or vast amounts of equity would not have been invested.

There is not yet a developed secondary market for sales. However, an interesting statistic emerged at the 2005 TICA fall conference during the liquidity and exit strategy committee meeting. Among securitized TIC deals and more than 4,800 investors from 2001 to 2004, only ten investors in TIC properties exited early since 2002. That is from among the thousands of investors and millions of dollars of equity placed.[3] By the way, none of these exits were due to death. While most in the industry believe a secondary market may eventually develop, there hasn't been a great need or desire so far, especially because these are seen as long-term, private placement investments and are sold as such.

3. *Source: Manny Nogales, Omni Brokerage; sourced by an unscientific poll by contacting all securities sponsors. TICA Liquidity and Exit Strategy Committee. Fall 2005.*

In fact, if the securities-registered representatives, their Broker/Dealers, and the sponsors are doing their jobs, the fact that these investments are illiquid is made abundantly clear. Theoretically, the investors who do participate are well informed. Many of the investors are used to real estate investments, which are often long-term and always illiquid.

Most sponsors articulate a proposed exit strategy with the TIC property, which is most often five to seven years. Sometimes, they will clearly state a ten-year hold. Sometimes, they will say the market conditions may be such that they believe a shorter time frame (two years, for instance) is anticipated. This may be related to how the property was purchased, the loan terms, the tenant's leasing length or strategy, or the location.

What if an investor needs to liquidate due to divorce, financial situation, heir liquidation, or some other circumstance? Can you, an investor, sell your percentage interest? Yes, you can. This is real estate, and it can be sold. You, as a tenants-in-common, would first offer your share to your fellow tenants-in-common in the property. In fact, with a described procedure, the TIC Agreement usually stipulates that an investor must do this.

If none of your fellow investors wishes to buy your share, you could then talk to the sponsor and your registered representative. 1031 investors are always looking for replacement property. Quite possibly, a match could be found. Because this is your real estate, you can offer the property yourself, like placing a "For Sale" sign in front of your house. However, in any case, the new buyer must be an accredited investor and must also be approved by the lender, like you were approved at the time of your acquisition. The new investor may have to be approved by the tenants-in-common if the agreement stipulates this. Rev Proc 2002-22 guidelines regarding financing state that "restrictions on the right to transfer, partition, or encumber interests in the property that are required by a lender and that are consistent with customary commercial lending practices are not prohibited." Hence, lenders can include limitations designed to protect the investment. These can include:

- Prior approval before an investor transfers a TIC interest and before a new buyer can be accepted
- A specific holding period for larger investors
- A vote of other TIC investors agreeing to a sale

There will be a period when the new buyer's LLC will need to be formed and title work will need to be done for the sale. All of the documents you signed for closing will need to be handled for the new buyer. You will need to supply updated information on the asset to the buyer since a new PPM would not be published. Amendments to original documents would be required. For instance, the TIC Agreement includes a list of all investors, which would be amended.

The lender or sponsor may have a limited number of future transfers per deal stipulated. Very few understand what the associated costs of such a transfer may be until it happens, which would include loan assumption fee as well as costs for legal, closing, and title. In fact, the biggest questions about a developed secondary market right now seem to be costs, legal issues, assumption of the loan or right to transfer and the valuation issues.

There has been discussion on the sales price of the percentage interest and valuation. Many think a seller would probably sell at par, that is, the same equity amount they purchased. However, there may be a discounted price, or there could be negotiations for a higher price. The seller has to realize there will be closing costs and fees involved as well. If an interest is sold at par, the final proceeds will be less than par. It could be said that, while sponsors care about their investors, transfers are relatively difficult. (Most sponsors or representatives do not have the experience in this area.) A TIC transfer would be complex, time-consuming, and costly. It will involve dealing with the lender, Title Company, attorneys and others. It also includes updating legal documents or handling amendments to existing documents. This does not generate any profit, but it does involve costs. No commissions are built in for resales by the sponsor, so the buyer and/or seller may have to pay a broker or registered representative out of their pocket or build the fee into the sales price. Further, we already touched on the issues of valuation, which may be difficult. The original appraisal may be less valid if the resale occurs several years later.

Still, many do think a secondary market will eventually be in demand. Because the industry is still relatively new and the real estate has been strong, the need may not happen for some time. The demand for existing TIC interests could increase when new TIC offerings slow down because of soft markets and/or lower yields. Perhaps seasoned properties with a track record and high returns would be desirable and in demand, especially if the real estate yields continue to drop or do not move much. The TICRE Association founder has formed an MLS for TICs and reports he is in development on this project, which will be accessed through the Web site at www.ticassociation.org. Initially, the TICRE association says the MLS will be for real estate-based

TICs, but it hopes a secondary market will include securities TICs. The TICRE association has sought a legal opinion on this subject.

For the moment, resales of TICs are uncharted territory, but there may be specific procedures and sources that develop.

As far as resales of the TIC property, several sponsors have now gone full circle with their properties. The average returns to date seem to fall in the 10% to 15% or even 20% return range. A few have been lower, and a few have been higher.

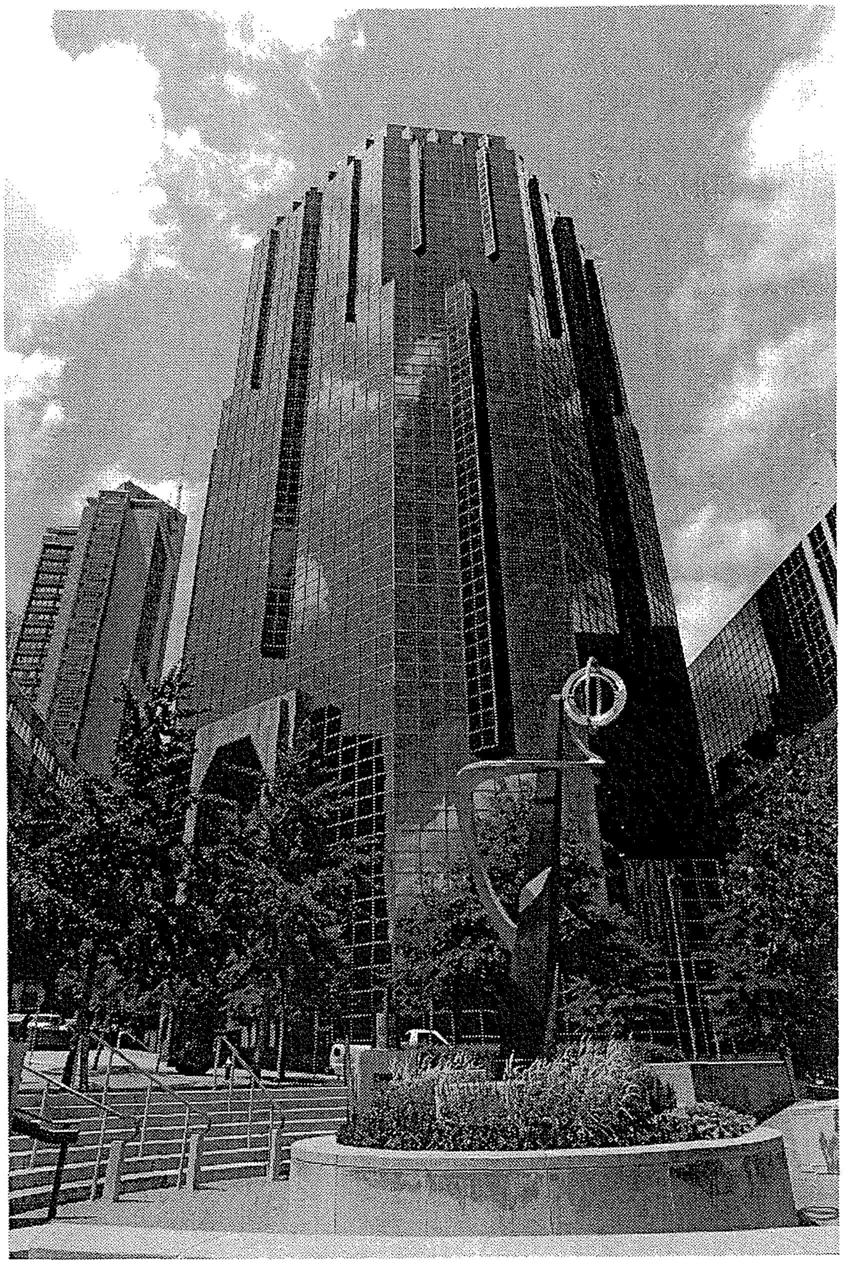

Photo 13. Sponsor: Triple Net Properties, LLC. One Nashville Place, Nashville, Tennessee.

Chapter 13

Recap: The Main Points
Pros and Cons
How Do I Prepare to Invest?

Let's review the basics on TIC properties. We have learned that the TIC business is a complex intermeshing of commercial real estate, securities laws and regulations, tax rulings, investments and finance.

Pros

- TICs have made the 1031 tax-deferred exchange easier, as the time and process to acquire them is streamlined and faster than most other real estate acquisitions.
- You will own deeded real estate with all of its tax benefits, but you will not have to manage it. You receive a monthly cash flow, and freedom of time.
- In most cases, you will "buy up" to a better asset class, an institutional-grade property.
- You can replace the debt for your 1031, and you will be leveraging your equity with non-recourse financing.
- If buying a securitized TIC, you will be provided with full due diligence information and full disclosure.
- If you have enough minimum equity, you can diversify your acquisitions.

- You can diversify your overall wealth portfolio. Real estate is a good diversification to your portfolio of mutual funds, stock, bonds, private placements, and business investments.
- You will receive effortless cash flow.

Cons

- The investment will not be liquid.
- There could be future market risks, or there could be a reduction or loss of your cash flow.
- There could be a capital call, or there could be future re-financing risks.
- You will be invested into a property with a group of people who are unknown to you and who may have different opinions about resale or management.
- You cannot refinance your own portion of the property.
- You will not be in management control of the property.
- You could lose your entire equity investment, in the worst case scenario.

Preparing to Invest

After all of your research and contemplation of the pros and cons, if you feel you might want to invest in a TIC, the following are some preparation tips:

1. If you are going to sell investment property, review the potential sale with your accountant, attorney, real estate agent, and/or financial planner. Calculate your potential capital gains. Consider if it makes sense to conduct a 1031 tax-deferred exchange. If so, determine your goals for the replacement property. If you want passive income and are considering a TIC, outline the most important goals for you—the type of asset you want, your minimum requirements on cash flow, the importance of capital preservation, diversity, the types of tenants you prefer, and other things of that nature.
2. Interview and find your QI if you will be doing a 1031. Ideally, do this before you go into contract on your relinquished property. Make sure to time the sale and trade well. Don't have your forty-five day identification period fall at the same time as a three-week cruise.
3. Interview, talk with, and discuss your upcoming trade with several registered representatives to see with whom you have a fit. (If you choose someone who is also a real estate-licensed broker, he or she may have access to properly structured real estate offerings as well.)

Determine his or her level of experience and knowledge of TICs. Determine if he or she is a member of TICA, and review his or her commercial real estate knowledge. (Having several representatives stumbling over each other only creates confusion with sponsors and each other, and it could even involve a dispute.) Choose your representative and then focus on the task with him or her. Most of the representatives who specialize in TICs have the same offerings available, and they are working without compensation for you. They are only paid if and when you close on a property.

4. Prepare your personal paperwork. To do so, you should:
   - Update your Personal Financial Statement (PFS), which the registered representative will need to show that you are an accredited investor. It also will be required by the lender and sponsor when you subscribe for the same reason. The PFS will also give a snapshot into the suitability requirement. The industry players must follow the Reg D rules to be sure that all investors are qualified and suitable. Many good registered representatives can help you with your PFS if you or your accountant do not have one.
   - Make a copy of your last two years of tax returns. This is the lender requirement. You will be asked for this at time of subscription or shortly thereafter. Most Broker/Dealers are required to have this information on file as well as with the registered representatives. (Recently a few lenders have asked for three years of tax returns.)
   - If you are buying your TIC in an entity, make a copy of your trust, LLC, or corporation papers. (You will acquire title in the same entity as for that you sold in a 1031 tax-deferred exchange.) The sponsor, registered representative, and lender will need to review it. One copy can usually be supplied to your registered representative. He or she will make copies for the other parties who require it.
   - Make a copy of your driver's license. This is a Patriot Act requirement for identification verification.
   - Keep a copy of your QI statement and all QI contact information. At subscription, you will be supplying the contact information of your QI, but some sponsors also ask for proof of the closing and amount of funds available. You will be in close contact with your QI during the trade.

5. Plan your timing. You need time to focus and study your replacement options. You also need to receive and read the hefty PPMs, complete subscription documents, and so forth. You need to be available for receipt of the closing documents, that is, to review, sign, and notarize before returning them in a very timely fashion. If you will be leaving the country during this period or are going on a cruise or business trip during the time you will be receiving the closing documents, try to rearrange the sale of your relinquished property so the timing works, or make alternate arrangements. TIC closing paperwork can be delivered to an alternate location, but this requires coordination. If you are leaving the country, consider a power of attorney. Realize that the 1031 time frames are short and you will be making important decisions for property that you will hold for some time. Make time for the process and be ready. It always takes longer than you think it will.
6. If you are not online and using e-mail and the Internet, arrange this now. It is almost impossible to conduct 1031 business and transmit important TIC information in a very timely fashion without online access. In the TIC industry and 1031 business, you and the sellers need information in a timely fashion. Basic information on currently available TICs could be outdated by the time you receive the information by regular mail, for instance. Many forms are transmitted via e-mail. Not only that, most TIC sponsors stay in touch with investors via e-mail updates. Many will offer access to information on your new asset through a Web site with a password.

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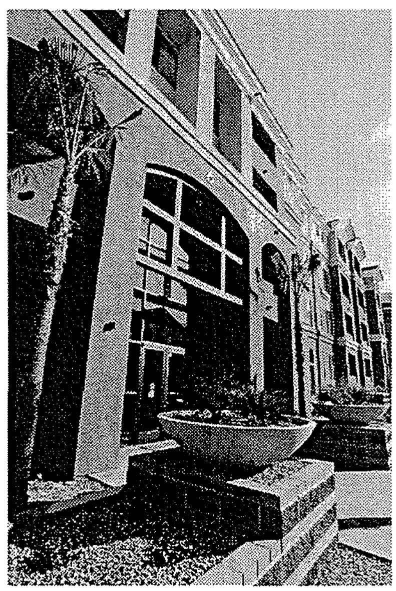


Photos 14. (Two views) Sponsor: Passco Real Estate Enterprises, Inc. Alanza Place, Phoenix, Arizona.

Glossary of Terms

1031: the Internal Revenue Code (IRC) section 1031 addresses the tax-deferred exchange of like-kind property. A 1031 or 1031 tax-deferred exchange is the act of selling an investment property and placing the proceeds into another investment property through a qualified intermediary in order to defer capital gains tax.

accommodator: the qualified intermediary or accommodator. The party who handles the 1031 tax-deferred exchange funds, following rules set by the Treasury Department. See qualified intermediary.

accredited investor: as defined in Regulation D, individuals are defined as sophisticated investors if they have a minimum of $1 million net worth or salary of $200,000 in the last two years ($300,000 if married). Accreditation is necessary for investment into private placements or TICs.

appreciation: an increase in an asset's value.

boot: in a 1031 tax-deferred exchange, boot is anything of value exchanged that is not like-kind to the relinquished property. This is usually cash or mortgage debt used to equalize the transaction.

broker/dealer: any individual or firm in the business of buying and selling securities for itself and others. Broker/Dealers must register with the SEC, and they are members of the National Association of Securities Dealers (NASD). When acting as a broker, the Broker/Dealer executes orders on behalf of his or her client. When acting as a dealer, a Broker/Dealer executes trades or investments for his or her firm's own account.

capital call: whereby it could be required that each co-owner adds capital to the property.

cash flow, cash-on-cash return, yield: when you invest in an income-producing property, your cash flow is the income paid to you after expenses. Cash flow will be quoted as an annual percentage, such as a seven percent return on your equity (paid monthly). If you invested $500,000 into a TIC that starts with a seven percent annual cash flow return, you would receive $35,000 annually or $2,916.66 monthly.

capital gain: difference between the sales price of the relinquished property less the selling expenses and the adjusted basis of the property.

capitalization (cap) rate: one of the ways in which income-producing investment properties are compared. A capitalization (cap) rate is the annual net income divided by the sales price. Cap rates may be noted when discussing the acquisition price of an income and/or a NNN property.

Delaware Statutory Trust (DST): an unincorporated association created by a trust instrument for which property is deposited, managed, administered, and operated. A trustee administers the trust for the members or beneficiaries. DSTs are not TICs, but they are very similar.

due diligence: the diligence or studies that are conducted before deciding to purchase or acquire a property.

equity and debt, minimum equity required: equity is cash, or the cash portion of an acquisition. A certain amount of equity will be raised to close on a TIC, and the minimum equity required to invest by each investor will always be stated. The sales price or acquisition price is usually defined by both the debt and equity amounts.

exchange accommodator: the qualified intermediary, QI, or facilitator.

FEA: Federation of Exchange Accommodators. www.1031.org

Form 8824 for Like-Kind Exchanges: the IRS form you will file at tax time regarding the 1031 tax-deferred exchange.

fractional interests: the percentage interest held by each co-owner in a TIC property.

Howey decision: a Supreme Court decision in which it was determined that an investment contract is included in the definition of a security. An investment contract is defined as an investment of money into a common enterprise with the expectation of profits derived primarily from the effort of others. Because of this (and other rulings), many believe TICs are securities and should be sold as such.

ID period: one of the 1031 tax-deferred exchange rules. From the day you sell the relinquished property, you have forty-five days to identify the property or properties you wish to acquire in the tax-deferred exchange. The QI works with you on the ID procedures and deadlines.

institutional-grade: trophy properties of high standard, good design, and construction that are class A and large enough to merit the attention of institutional investors, such as pension funds, life insurance companies, foundations, endowments, foreign governments, and so forth. They are usually located in primary (or perhaps secondary) markets and a prime demographic location. They may have a name anchor tenant or tenants. They are considered to be less risky than other real estate due to the strength of the tenants, the construction, the location, and the street appeal.

institutional investors: the large money investors such as pension funds, life insurance companies, foundations, endowments, and foreign governments.

leverage: financing; one leverages his or her cash to buy a larger property than with cash only.

like-kind property: any valid investment property held for productive use in trade, business, or investment purposes that can be exchanged in a 1031 tax-deferred exchange for valid investment property.

liquidity: the ability of an asset to be converted into cash quickly.

LLC placement: a placement of funds into an LLC structure of an income-producing property or investment that is usually a private placement security. Some TIC properties have an LLC placement component whereby an investor can place funds with a much lower minimum (perhaps $25,000). He or she would be a member of the LLC, not a deeded owner of the property. He or she would not take on debt for the TIC property. It can work for some IRA and retirement fund placements. It usually produces monthly cash flow.

load: the front-end fees. Load is the markup paid at the outset of a private placement that does not contribute materially to the actual investment. Certain fees must be taken up front by regulation, not at the back-end or during the investment. These fees will be fully disclosed in the PPM.

NASD: National Association of Securities Dealers.

NNN: triple-net, refers to the lease of a tenant. In a NNN lease, the tenants pay for everything regarding the property including rent, taxes, insurance, maintenance, utilities, and so forth. The only landlord charge would be debt service, if there is a loan. NNN leases are common with single-tenant retail properties such as Applebee's, Burger King, Advance Auto, 7-Eleven, Walgreen's, and so forth. NNN or double net means the landlord would be responsible for the roof and structure (plus any other items mentioned in the lease) while the tenant is responsible for everything else except debt service. Some TIC tenants have NNN leases.

non-recourse loan: a loan whose terms include the lender agreeing that its sole remedy in the event of failure to repay will be to foreclose against the property securing the loan. TIC properties usually have non-recourse loans, meaning each investor is not responsible for the large overriding loan. They are only at risk for his or her portion. A recourse loan would be one whereby the person who borrowed money would be responsible for that loan and its payments, whether or not the tenant is in place and paying its rent.

non-recourse carve-outs: also known as the bad-boy carve-outs. The carve-outs are the bad acts that, if committed by an investor, cause him or her to lose his or her non-recourse status. The loan would become recourse to the investor committing the act. Bad-boy acts include physically hurting or destroying the property or committing fraud or intentional misrepresentation.

passive income: Income derived from business or real estate investments in which the individual is not actively involved. Income-producing real estate is a prime example of a passive income vehicle. The three types of income are earned income (salary), portfolio income (stocks and bonds), and passive income (real estate, LLCs, or limited partnerships).

percentage interest: in a TIC property, the investors will hold a percentage interest of the property, or fractional interest.

PPM: private placement memorandum, or offering memorandum. This is the book of disclosure regarding the TIC or DST offering. Private placements in securities, such as TICs, must disclose all information and may be offered for sale through the PPM only.

private placement: a direct offering of a security or securities to a limited number of sophisticated institutional investors or accredited investors, as defined in the SEC requirements for a Reg D offering.

qualified intermediary (QI): qualified intermediary. Also known as an exchange accommodator or facilitator. This is the professional provider of the required mechanics for a 1031 tax-deferred exchange. The use of a QI as an independent party to facilitate the exchange was established by Treasury regulations as a safe harbor. The QI cannot be a related party to the exchanger, must receive a fee, holds the funds in trust, and acquires the relinquished property while acquiring the replacement property and transfers it to the exchanger.

registered representative: the securities-licensed individual who will assist you in the acquisition of the TIC property or other securities or private placements. A registered representative is affiliated with a Broker/Dealer, which is, in turn, licensed by the SEC and NASD. The representative is subject to securities compliance, rules, and regulations. He or she is much like a buyer's broker in the real estate world.

Regulation D (Reg D): the SEC adopted Regulation D (Reg D) in April 1982, which set forth objectives and clearly stated rules for private placement exemptions. Under the Securities Act of 1933, any offer to sell securities must either be registered with the SEC or meet an exemption. Reg D lays out the basic rules for exemption (Rules 501 to 506).

relinquished property: property that is being sold by the exchanger in a 1031 tax-deferred exchange. (Formally called the down-leg property or may be called a Phase I property.)

replacement property: new property being acquired or the target property being bought by or identified to be purchased by the exchanger. (Formally called the upleg property or may be called a Phase II property.)

Rev Proc 2002-22: the IRS Revenue Procedure ruling that set forth the guidelines whereby a TIC would be recognized as real estate, not as a partnership. Hence, it could be used in a 1031 tax-deferred exchange.

SEC: the Securities and Exchange Commission. Because most TICs are sold as securities, regulation and compliance comes under SEC rules as well as NASD rules. The SEC is the primary federal agency for the securities industry.

Securities and Exchange Commission (SEC): the primary federal regulatory agency for the securities industry whose responsibility is to promote full disclosure and protect investors against fraudulent and manipulative practices in the securities markets.

Securities Investor Protection Corporation (SIPC): a nonprofit membership corporation established by Congress that insures securities and cash in customer accounts up to $500,000 (up to $100,000 in cash) in the event of brokerage bankruptcy.

shadow-anchored: a retail property next to a major retailer, such as Wal-Mart or a grocery store, which is not part of the property nor owned by the same party.

single-member entity LLC: a disregarded entity (flow-through or invisible for tax purposes) that isolates the asset and makes it bankruptcy-remote and adds liability protection. Many lenders use this entity for each investor into a TIC.

SPE LLC: single-purpose or special-purchase entity LLC. It is the same as the single-member entity LLC.

sponsor: the company that buys or ties up and prepares a property for sale as a TIC. The sponsor conducts the due diligence, negotiates the loan, has all legal documents prepared, etc. for the TIC acquisition sale. The sponsor may be a real estate company or an entrepreneurial company.

subscription: one subscribes to a TIC investment. The subscription process includes completing a subscription questionnaire, completing credit authorization materials, supplying tax returns and net worth statements, and supplying information on the 1031 tax-deferred exchange

syndicate, syndication: a group of individuals or companies together undertaking a project that would not be feasible to pursue alone. It usually refers to underwriting or a private placement. This group of individuals or companies joins for a limited investment purpose. Real estate syndicates create, buy, sell, and operate real estate investments.

Tenant in Common (TIC) property: a property in which two or more individuals hold undivided percentage ownership. While a TIC property could theoretically refer to any property held by tenants-in-common, a TIC property has evolved into being defined as an institutional-grade property offered by a sponsor to investors as a legally-prepared property structured to comply with the IRS Rev Proc 2002-22 for a 1031. Most TICs are offered as private placements in securities though a few are offered strictly as real estate-based.

tenants-in-common: the investors who hold co-ownership in a TIC property. A legal arrangement whereby two individuals or more can share undivided ownership of a property. Unlike joint tenancy, tenancy-in-common allows a deceased person's property or property share to be passed to his or her beneficiaries instead of to the other owner(s).

Tenant in Common Association (TICA): the active professional association comprised of securities broker/dealers, registered representatives, sponsors, attorneys, lenders, real estate professionals, title companies, and others who deal in the TIC industry (www.ticassoc.org).

TIC Agreement: the operating agreement that sets the rules and guidelines for the rights of ownership in each TIC property. The agreement explains which decisions must be unanimous in vote, how to handle the manager and management agreement on the property, inspection of books and records, right of first refusal, and other important issues.

TIC best practices memo: established players in the TIC industry wish to standardize practices among all players for ethical and fair dealing and to ensure the industry is not tarnished by new players or experienced players not following the rules. This is not a static document and is a work in progress.

Photo 15. Sponsor: Evergreen Development. College Station University Heights, Texas.

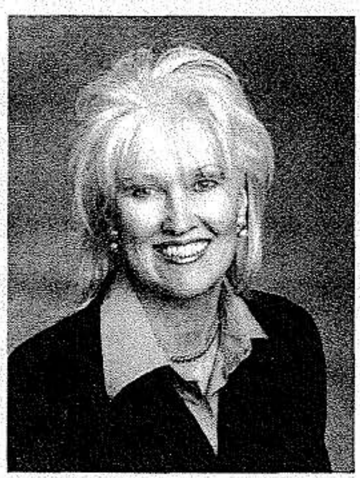
BUSINESS & ECONOMICS / REAL ESTATE

EFFORTLESS CASH FLOW

If you are considering investing in a pre-packaged commercial property such as an office tower or a retail shopping center, *Effortless Cash Flow: The ABC's of TICs (Tenant in Common properties)* will guide you through the process and help you weigh the pros and cons of this type of investment.

The worlds of commercial real estate, securities, finance, and law are intricately woven together in a TIC investment. Author Kathy Heshelow is a seasoned commercial real estate broker and licensed securities representative who shares varied personal experiences as she leads you through the complex structure of TIC investments. Heshelow provides basic overviews and thoroughly answers such common questions as:

- Why are TIC properties so popular?
- What is the 1031 Tax Deferred Exchange?
- Are TIC properties considered real estate or securities?
- Who are the professionals involved in the TIC transaction?
- What are the pros, cons, and steps to investment?



Today's world offers more for investors than ever before. If you are contemplating a TIC investment, *Effortless Cash Flow: The ABC's of TICs (Tenant in Common properties)* will help you make an educated investment decision and decipher the inherent advantages and disadvantages.

Kathy Heshelow is a registered representative with CapWest Securities, Inc. (member NASD, SIPC, MSRB) and works daily with Tenant in Common (TIC) properties. She is president of Legacy Real Estate & Investments and is invested in several TIC properties. Heshelow resides in Florida. Website: www.tic-investments.org

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