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As filed with the Securities and Exchange Commission on October 25, 2002

Registration No. 333-85848

# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

**POST-EFFECTIVE AMENDMENT NO. 1 TO**

# FORM S-11

**REGISTRATION STATEMENT**

**Under**

**The Securities Act of 1933**

# WELLS REAL ESTATE INVESTMENT TRUST, INC.

**(Exact name of registrant as specified in governing instruments)**

**6200 The Corners Parkway, Suite 250**
**Atlanta, Georgia 30092**
**(770) 449-7800**
**(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)**

**Donald Kennicott, Esq.**
**Michael K. Rafter, Esq.**
**Holland & Knight LLP**
**One Atlantic Center, Suite 2000**
**1201 West Peachtree Street, N.W.**
**Atlanta, Georgia 30309-3400**
**(404) 817-8500**
**(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Agent for Service)**

| **Maryland** | **58-2328421** |
|---|---|
| **(State or other Jurisdiction of Incorporation)** | **(I.R.S. Employer Identification Number)** |

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ _____

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ _____

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. ☐ _____

**Approximate date of commencement of proposed sale to the public:** As soon as practicable following effectiveness of this Registration Statement.

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**[The following is text to a sticker to be attached to the front cover page of the prospectus in a manner that will not obscure the Risk Factors:]**

**SUPPLEMENTAL INFORMATION –** The prospectus of Wells Real Estate Investment Trust, Inc. consists of this sticker, the prospectus dated July 26, 2002, Supplement No. 1 dated August 14, 2002, Supplement No. 2 dated August 29, 2002, and Supplement No. 3 dated October 15, 2002. Supplement No. 1 includes descriptions of acquisitions of buildings in San Antonio, Texas; Houston, Texas; Duncan, South Carolina; and Suwanee, Georgia, updated unaudited financial statements and certain other revisions to the prospectus. Supplement No. 2 includes descriptions of acquisitions of buildings in Irving, Texas; and Austin, Texas, description of a lease of a build-to-suit office building in Chandler, Arizona, declaration of fourth quarter dividends and certain other revisions to the prospectus. Supplement No. 3 includes descriptions of acquisitions of buildings in Holtsville, New York; Parsippany, New Jersey; Indianapolis, Indiana; Colorado Springs, Colorado; Des Moines, Iowa; Plano Texas; and Westlake, Texas, description of a build-to-suit office building in Chandler, Arizona, audited financial statements relating to acquisitions of buildings in Austin, Texas; Holtsville, New York; and Parsippany, New Jersey, and certain other revisions to the prospectus.

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**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

Up to 300,000,000 shares offered to the public

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Wells Real Estate Investment Trust, Inc. (Wells REIT) is a real estate investment trust. We invest in commercial real estate properties primarily consisting of high grade office and industrial buildings leased to large corporate tenants. As of July 1, 2002, we owned interests in 53 real estate properties located in 19 states.

We are offering and selling to the public up to 300,000,000 shares for $10 per share and up to 30,000,000 shares to be issued pursuant to our dividend reinvestment plan at a purchase price of $10 per share. We are registering an additional 6,600,000 shares for issuance at $12 per share to participating broker-dealers upon their exercise of warrants.

You must purchase at least 100 shares for $1,000.

**The most significant risks relating to your investment include the following:**

- lack of a public trading market for the shares;
- reliance on Wells Capital, Inc., our advisor, to select properties and conduct our operations;
- authorization of substantial fees to the advisor and its affiliates;
- borrowing—which increases the risk of loss of our investments; and
- conflicts of interest facing the advisor and its affiliates.

**You should see the complete discussion of the risk factors beginning on page 17.**

*The Offering:*

- The shares will be offered on a best efforts basis to investors at $10 per share.
- We will pay selling commissions to broker-dealers of 7% and a dealer manager fee of 2.5% out of the offering proceeds raised.
- We will invest approximately 84% of the offering proceeds raised in real estate properties, and the balance will be used to pay fees and expenses.
- This offering will terminate on or before July 25, 2004.

**Neither the Securities and Exchange Commission, the Attorney General of the State of New York nor any other state securities regulator has approved or disapproved of these securities or determined if this prospectus is truthful or complete. It is a criminal offense if someone tells you otherwise.**

**The use of projections or forecasts in this offering is prohibited. No one is permitted to make any oral or written predictions about the cash benefits or tax consequences you will receive from your investment.**

**WELLS INVESTMENT SECURITIES, INC.**

July 26, 2002

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## QUESTIONS AND ANSWERS ABOUT THIS OFFERING

Below we have provided some of the more frequently asked questions and answers relating to an offering of this type. Please see the "Prospectus Summary" and the remainder of this prospectus for more detailed information about this offering.

**Q: What is a REIT?**

A: In general, a REIT is a company that:

- combines the capital of many investors to acquire or provide financing for real estate properties;
- pays dividends to investors of at least 90% of its taxable income;
- avoids the "double taxation" treatment of income that would normally result from investments in a corporation because a REIT is not generally subject to federal corporate income taxes on its net income, provided certain income tax requirements are satisfied; and
- allows individual investors to invest in a large-scale diversified real estate portfolio through the purchase of interests, typically shares, in the REIT.

**Q: What is Wells Real Estate Investment Trust, Inc.?**

A: Wells Real Estate Investment Trust, Inc. is a non-traded REIT formed with the intent to provide investors the potential for income and growth through the acquisition and operation of high-grade commercial office and industrial buildings leased long-term to high net worth companies (typically having a minimum net worth of $100,000,000). The Wells REIT was incorporated in the State of Maryland in 1997.

**Q: Who will choose which real estate properties to invest in?**

A: Wells Capital, Inc. (Wells Capital) is the advisor to the Wells REIT and, as such, manages our daily affairs and makes recommendations on all property acquisitions to our board of directors. Our board of directors must approve all of our property acquisitions.

**Q: Who is Wells Capital?**

A: Wells Capital, as our advisor, provides investment advisory and management, marketing, sales and client services on our behalf. Wells Capital was incorporated in the State of Georgia in 1984. As of June 30, 2002, Wells Capital had sponsored public real estate programs which have raised in excess of $1,795,000,000 from approximately 65,000 investors and which own and operate a total of 78 commercial real estate properties.

**Q: What are the specific criteria Wells Capital uses when selecting a potential property acquisition?**

A: Wells Capital generally seeks to acquire high quality office and industrial buildings located in densely populated metropolitan markets on an economically "triple-net" basis leased to large companies having a net worth in excess of $100,000,000. Current tenants of public real estate programs sponsored by Wells Capital include The Coca-Cola Company, State Street Bank, AT&T, Siemens Automotive, PricewaterhouseCoopers, Novartis and SYSCO Corporation.

To find properties that best meet our selection criteria for investment, Wells Capital's property acquisition team studies regional demographics and market conditions and interviews local brokers to gain the practical knowledge that these studies sometimes lack. An experienced commercial construction engineer inspects the structural soundness and the operating systems of each building, and an environmental firm investigates all environmental issues to ensure each property meets our quality specifications.

**Q. How many real estate properties do you currently own?**

A. As of July 1, 2002, we had acquired and owned interests in 53 real estate properties, all of which were 100% leased to tenants. We own the following properties directly:

| Property Name | Tenant | Building Type | Location |
|---|---|---|---|
| ISS Atlanta | Internet Security Systems, Inc. | Office Buildings | Atlanta, GA |
| MFS Phoenix | Massachusetts Financial Services Company | Office Building | Phoenix, AZ |
| TRW Denver | TRW, Inc. | Office Building | Aurora, CO |
| Agilent Boston | Agilent Technologies, Inc. | Office Building | Boxborough, MA |
| Experian/TRW | Experian Information Solutions, Inc. | Office Buildings | Allen, TX |
| BellSouth Ft. Lauderdale | BellSouth Advertising and Publishing Corporation | Office Building | Ft. Lauderdale, FL |
| Agilent Atlanta | Agilent Technologies, Inc. and Koninklijke Philips Electronics N.V. | Office Building | Alpharetta, GA |
| Travelers Express Denver | Travelers Express Company, Inc. | Office Buildings | Lakewood, CO |
| Dana Kalamazoo | Dana Corporation | Office and Industrial Building | Kalamazoo, MI |
| Dana Detroit | Dana Corporation | Office and Research and Development Building | Farmington Hills, MI |
| Novartis Atlanta | Novartis Opthalmics, Inc. | Office Building | Duluth, GA |
| Transocean Houston | Transocean Deepwater Offshore Drilling, Inc. and Newpark Drilling Fluids, Inc. | Office Building | Houston, TX |
| Arthur Andersen | Arthur Andersen LLP | Office Building | Sarasota, FL |
| Windy Point I | TCI Great Lakes, Inc., The Apollo Group, Inc., and Global Knowledge Network, Inc. | Office Building | Schaumburg, IL |
| Windy Point II | Zurich American Insurance Company, Inc. | Office Building | Schaumburg, IL |
| Convergys | Convergys Customer Management Group, Inc. | Office Building | Tamarac, FL |
| Lucent | Lucent Technologies, Inc. | Office Building | Cary, NC |
| Ingram Micro | Ingram Micro L.P. | Distribution Facility | Millington, TN |
| Nissan | Nissan Motor Acceptance Corporation | Office Building | Irving, TX |

| Property Name | Tenant | Building Type | Location |
|---|---|---|---|
| IKON | IKON Office Solutions, Inc. | Office Buildings | Houston, TX |
| State Street | SSB Realty LLC | Office Building | Quincy, MA |
| Metris Minnesota | Metris Direct, Inc. | Office Building | Minnetonka, MN |
| Stone & Webster | Stone & Webster, Inc. and SYSCO Corporation | Office Building | Houston, TX |
| Motorola Plainfield | Motorola, Inc. | Office Building | S. Plainfield, NJ |
| Delphi | Delphi Automotive Systems, Inc. | Office Building | Troy, MI |
| Avnet | Avnet, Inc. | Office Building | Tempe, AZ |
| Motorola Tempe | Motorola, Inc. | Office Building | Tempe, AZ |
| ASML | ASM Lithography, Inc. | Office and Warehouse Building | Tempe, AZ |
| Dial | Dial Corporation | Office Building | Scottsdale, AZ |
| Metris Tulsa | Metris Direct, Inc. | Office Building | Tulsa, OK |
| Cinemark | Cinemark USA, Inc. and The Coca-Cola Company | Office Building | Plano, TX |
| Videojet Technologies Chicago | Videojet Technologies, Inc. | Office, Assembly and Manufacturing Building | Wood Dale, IL |
| Alstom Power Richmond | Alstom Power, Inc. | Office Building | Midlothian, VA |
| Matsushita | Matsushita Avionics Systems Corporation | Office Building | Lake Forest, CA |
| PwC | PricewaterhouseCoopers | Office Building | Tampa, FL |

We own interests in the following real estate properties through joint ventures with affiliates:

| Property Name | Tenant | Building Type | Location |
|---|---|---|---|
| ADIC | Advanced Digital Information Corporation | Office Buildings | Parker, CO 1/8 |
| AmeriCredit | AmeriCredit Financial Services Corporation | Office Building | Orange Park, FL |
| Comdata | Comdata Network, Inc. | Office Building | Brentwood, TN |
| AT&T Oklahoma | AT&T Corp. and Jordan Associates | Office Buildings | Oklahoma City, OK |
| Quest | Quest Software, Inc. | Office Building | Irvine, CA |
| Siemens | Siemens Automotive Corporation | Office Building | Troy, MI |
| Gartner | Gartner Group, Inc. | Office Building | Fort Myers, FL |
| Johnson Matthey | Johnson Matthey, Inc. | Research and Development, Office and Warehouse Building | Wayne, PA |
| Sprint | Sprint Communications Company L.P. | Office Building | Leawood, KS |
| EYBL CarTex | EYBL CarTex, Inc. | Manufacturing and Office Building | Fountain Inn, SC |
| Cort Furniture | Cort Furniture Rental Corporation | Office and Warehouse Building | Fountain Valley, CA |
| Fairchild | Fairchild Technologies U.S.A., Inc. | Manufacturing and Office Building | Fremont, CA |
| Avaya | Avaya, Inc. | Office Building | Oklahoma City, OK |
| Iomega | Iomega Corporation | Office and Warehouse Building | Ogden, UT |
| Interlocken | ODS Technologies, L.P. and GAIAM, Inc. | Office Building | Broomfield, CO |
| Ohmeda | Ohmeda, Inc. | Office Building | Louisville, CO |
| Alstom Power Knoxville | Alstom Power, Inc. | Office Building | Knoxville, TN |

If you want to read more detailed information about each of these properties, see the “Description of Real Estate Investments” section of this prospectus.

**Q: Why do you acquire properties in joint ventures?**

A: We acquire some of our properties in joint ventures in order to diversify our portfolio of properties in terms of geographic region, property type and industry group of our tenants.

**Q: What steps do you take to make sure you purchase environmentally compliant property?**

A: We always obtain a Phase I environmental assessment of each property purchased. In addition, we generally obtain a representation from the seller that, to its knowledge, the property is not contaminated with hazardous materials.

**Q: What are the terms of your leases?**

A: We seek to secure leases with creditworthy tenants prior to or at the time of the acquisition of a property. Our leases are generally economically "triple-net" leases, which means that the tenant is responsible for the cost of repairs, maintenance, property taxes, utilities, insurance and other operating costs. In most of our leases, we are responsible for replacement of specific structural components of a property such as the roof of the building or the parking lot. Our leases generally have terms of eight to 10 years, many of which have renewal options for additional five-year terms.

**Q: How does the Wells REIT own its real estate properties?**

A: We own all of our real estate properties through an "UPREIT" called Wells Operating Partnership, L.P. (Wells OP). Wells OP was organized to own, operate and manage real properties on our behalf. The Wells REIT is the sole general partner of Wells OP.

**Q: What is an "UPREIT"?**

A: UPREIT stands for "Umbrella Partnership Real Estate Investment Trust." The UPREIT structure is used because a sale of property directly to the REIT is generally a taxable transaction to the selling property owner. In an UPREIT structure, a seller of a property who desires to defer taxable gain on the sale of his property may transfer the property to the UPREIT in exchange for limited partnership units in the UPREIT and defer taxation of gain until the seller later exchanges his UPREIT units on a one-for-one basis for REIT shares. If the REIT shares are publicly traded, the former property owner will achieve liquidity for his investment. Using an UPREIT structure gives us an advantage in acquiring desired properties from persons who may not otherwise sell their properties because of unfavorable tax results.

**Q: If I buy shares, will I receive dividends and how often?**

A: We have been making and intend to continue to make dividend distributions on a quarterly basis to our stockholders. The amount of each dividend distribution is determined by our board of directors and typically depends on the amount of distributable funds, current and projected cash

requirements, tax considerations and other factors. However, in order to remain qualified as a REIT, we must make distributions of at least 90% of our REIT taxable income.

**Q: How do you calculate the payment of dividends to stockholders?**

A: We calculate our quarterly dividends on a daily basis to stockholders of record so your dividend benefits will begin to accrue immediately upon becoming a stockholder.

**Q: What have your dividend payments been since you began operations on June 5, 1998?**

A: We have paid the following dividends since we began operations:

| Quarter | Approximate Amount (Rounded) | Annualized Percentage Return on an Investment of $10 per Share |
|---|---|---|
| 3rd Qtr. 1998 | $0.150 per share | 6.00% |
| 4th Qtr. 1998 | $0.163 per share | 6.50% |
| 1st Qtr. 1999 | $0.175 per share | 7.00% |
| 2nd Qtr. 1999 | $0.175 per share | 7.00% |
| 3rd Qtr. 1999 | $0.175 per share | 7.00% |
| 4th Qtr. 1999 | $0.175 per share | 7.00% |
| 1st Qtr. 2000 | $0.175 per share | 7.00% |
| 2nd Qtr. 2000 | $0.181 per share | 7.25% |
| 3rd Qtr. 2000 | $0.188 per share | 7.50% |
| 4th Qtr. 2000 | $0.188 per share | 7.50% |
| 1st Qtr. 2001 | $0.188 per share | 7.50% |
| 2nd Qtr. 2001 | $0.188 per share | 7.50% |
| 3rd Qtr. 2001 | $0.188 per share | 7.50% |
| 4th Qtr. 2001 | $0.194 per share | 7.75% |
| 1st Qtr. 2002 | $0.194 per share | 7.75% |
| 2nd Qtr. 2002 | $0.194 per share | 7.75% |
| 3rd Qtr. 2002 | $0.194 per share | 7.75% |

**Q: May I reinvest my dividends in shares of the Wells REIT?**

A: Yes. You may participate in our dividend reinvestment plan by checking the appropriate box on the Subscription Agreement or by filling out an enrollment form we will provide to you at your request. The purchase price for shares purchased under the dividend reinvestment plan is currently $10 per share.

**Q: Will the dividends I receive be taxable as ordinary income?**

A: Yes and No. Generally, dividends that you receive, including dividends that are reinvested pursuant to our dividend reinvestment plan, will be taxed as ordinary income to the extent they are from current or accumulated earnings and profits. We expect that some portion of your dividends will not be subject to tax in the year in which they are received because depreciation expenses reduce the amount of taxable income but do not reduce cash available for distribution. The portion of your distribution which is not subject to tax immediately is considered a return of capital for tax purposes and will reduce the tax basis of your investment. This, in effect, defers a portion of your tax until your investment is sold or the Wells REIT is liquidated, at which time you will be taxed at capital gains rates. However, because each investor's tax considerations are different, we suggest that you consult with your tax advisor. You should also review the section of the prospectus entitled "Federal Income Tax Considerations."

**Q: What will you do with the money raised in this offering?**

A: We will use your investment proceeds to purchase high-grade commercial office and industrial buildings. We intend to invest a minimum of 84% of the proceeds from this offering to acquire real estate properties, and the remaining proceeds will be used to pay fees and expenses of this offering and acquisition-related expenses. The payment of these fees and expenses will not reduce your invested capital. Your initial invested capital amount will remain $10 per share, and your dividend yield will be based on your $10 per share investment.

Until we invest the proceeds of this offering in real estate, we may invest in short-term, highly liquid or other authorized investments. Such short-term investments will not earn as high of a return as we expect to earn on our real estate investments, and we cannot guarantee how long it will take to fully invest the proceeds in real estate.

We received approximately $132,181,919 in gross offering proceeds from the sale of 13,218,192 shares of common stock in our initial public offering, which commenced on January 30, 1998 and was terminated on December 19, 1999. Of the $132,181,919 raised in the initial offering, we invested a total of $111,032,812 in real estate properties. We received approximately $175,229,193 in gross offering proceeds from the sale of 17,522,920 shares of common stock in our second public offering, which commenced on December 20, 1999 and was terminated on December 19, 2000. Of the $175,229,193 raised in the second offering, we invested a total of $147,192,522 in real estate properties. As of June 30, 2002, we had received approximately $1,148,480,414 in gross offering proceeds from the sale of 114,895,413 shares of common stock in our third offering, which commenced on December 20, 2000. Of this additional $1,148,480,414 raised in the third offering, we have invested $627,067,589 in real estate properties and, as of June 30, 2002, we have $344,269,118 available for investment in properties.

**Q: What kind of offering is this?**

A: We are offering the public up to 300,000,000 shares of common stock on a "best efforts" basis.

**Q: How does a "best efforts" offering work?**

A: When shares are offered to the public on a "best efforts" basis, the brokers participating in the offering are only required to use their best efforts to sell the shares and have no firm commitment or obligation to purchase any of the shares.

**Q: How long will this offering last?**

A: The offering will not last beyond July 25, 2004.

**Q: Who can buy shares?**

A: You can buy shares pursuant to this prospectus provided that you have either (1) a net worth of at least $45,000 and an annual gross income of at least $45,000, or (2) a net worth of at least $150,000. For this purpose, net worth does not include your home, home furnishings or personal automobiles. These minimum levels may be higher in certain states, so you should carefully read the more detailed description in the "Suitability Standards" section of this prospectus.

**Q: Is there any minimum investment required?**

A: Yes. Generally, you must invest at least $1,000. Except in Maine, Minnesota, Nebraska and Washington, investors who already own our shares or who have purchased units from an affiliated Wells public real estate program can make purchases for less than the minimum investment. These minimum investment levels may be higher in certain states, so you should carefully read the more detailed description of the minimum investment requirements appearing later in the "Suitability Standards" section of this prospectus.

**Q: How do I subscribe for shares?**

A: If you choose to purchase shares in this offering, you will need to fill out a Subscription Agreement, like the one contained in this prospectus as Exhibit A, for a specific number of shares and pay for the shares at the time you subscribe.

**Q: If I buy shares in this offering, how may I later sell them?**

A: At the time you purchase the shares, they will not be listed for trading on any national securities exchange or over-the-counter market. In fact, we expect that there will not be any public market for the shares when you purchase them, and we cannot be sure if one will ever develop. As a result, you may find it difficult to find a buyer for your shares and realize a return on your investment. You may sell your shares to any buyer unless such sale would cause the buyer to own more than 9.8% of our outstanding stock. See "Description of Shares—Restriction on Ownership of Shares."

In addition, after you have held your shares for at least one year, you may be able to have your shares repurchased by the Wells REIT pursuant to our share redemption program. See the "Description of Shares—Share Redemption Program" section of the prospectus.

If we have not listed the shares on a national securities exchange or over-the-counter market by January 30, 2008, our articles of incorporation require us to begin selling our properties and other assets and return the net proceeds from these sales to our stockholders through distributions.

**Q: What is the experience of your officers and directors?**

A: Our management team has extensive previous experience investing in and managing commercial real estate. Below is a short description of the background of each of our directors. See the "Management—Executive Officers and Directors" section on page 34 of this prospectus for a more detailed description of the background and experience of each of our directors.

- Leo F. Wells, III—President of the Wells REIT and founder of Wells Real Estate Funds and has been involved in real estate sales, management and brokerage services for over 30 years
- Douglas P. Williams—Executive Vice President, Secretary and Treasurer of the Wells REIT and former accounting executive at OneSource, Inc., a supplier of janitorial and landscape services
- John L. Bell—Former owner and Chairman of Bell-Mann, Inc., the largest flooring contractor in the Southeast
- Michael R. Buchanan—Former Managing Director of the Real Estate Banking Group of Bank of America
- Richard W. Carpenter—Former President and Chairman of the Board of Southmark Properties, an Atlanta-based REIT investing in commercial properties
- Bud Carter—Former broadcast news director and anchorman and current Senior Vice President for The Executive Committee, an organization established to aid corporate presidents and CEOs
- William H. Keogler, Jr.—Founder and former executive officer and director of Keogler, Morgan & Company, Inc., a full service brokerage firm
- Donald S. Moss—Former executive officer of Avon Products, Inc.
- Walter W. Sessoms—Former executive officer of BellSouth Telecommunications, Inc.
- Neil H. Strickland—Founder of Strickland General Agency, Inc., a property and casualty general insurance agency concentrating on commercial customers

**Q: Will I be notified of how my investment is doing?**

A: Yes, you will receive periodic updates on the performance of your investment with us, including:

- Four detailed quarterly dividend reports;
- An annual report;
- An annual IRS Form 1099;
- Supplements to the prospectus;
- A quarterly investor newsletter; and
- Regular acquisition reports detailing our latest property acquisitions.

**Q: When will I get my detailed tax information?**

A: Your Form 1099 tax information will be placed in the mail by January 31 of each year.

**Q: Who can help answer my questions?**

A: If you have more questions about the offering or if you would like additional copies of this prospectus, you should contact your registered representative or contact:

Client Services Department
Wells Real Estate Funds, Inc.
Suite 250
6200 The Corners Parkway
Atlanta, Georgia 30092
(800) 557-4830 or (770) 243-8282
www.wellsref.com

## PROSPECTUS SUMMARY

*This prospectus summary highlights selected information contained elsewhere in this prospectus. It is not complete and does not contain all of the information that is important to your decision whether to invest in the Wells REIT. To understand this offering fully, you should read the entire prospectus carefully, including the "Risk Factors" section and the financial statements.*

**Wells Real Estate Investment Trust, Inc.**

Wells Real Estate Investment Trust, Inc. is a REIT that owns net leased commercial real estate properties. As of July 1, 2002, we owned interests in 53 commercial real estate properties located in 19 states. Our office is located at 6200 The Corners Parkway, Suite 250, Atlanta, Georgia 30092. Our telephone number outside the State of Georgia is 800-557-4830 (770-243-8282 in Georgia). We refer to Wells Real Estate Investment Trust, Inc. as the Wells REIT in this prospectus.

**Our Advisor**

Our advisor is Wells Capital, Inc., which is responsible for managing our affairs on a day-to-day basis and for identifying and making acquisitions on our behalf. We refer to Wells Capital, Inc. as Wells Capital in this prospectus.

**Our Management**

Our board of directors must approve each real property acquisition proposed by Wells Capital, as well as certain other matters set forth in our articles of incorporation. We have ten members on our board of directors. Eight of our directors are independent of Wells Capital and have responsibility for reviewing its performance. Our directors are elected annually by the stockholders.

**Our REIT Status**

As a REIT, we generally are not subject to federal income tax on income that we distribute to our stockholders. Under the Internal Revenue Code, REITs are subject to numerous organizational and operational requirements, including a requirement that they distribute at least 90% of their taxable income to their stockholders. If we fail to qualify for taxation as a REIT in any year, our income will be taxed at regular corporate rates, and we may be precluded from qualifying for treatment as a REIT for the four-year period following our failure to qualify. Even if we qualify as a REIT for federal income tax purposes, we may still be subject to state and local taxes on our income and property and to federal income and excise taxes on our undistributed income.

**Summary Risk Factors**

Following are the most significant risks relating to your investment:

- There is no public trading market for the shares, and we cannot assure you that one will ever develop. Until the shares are publicly traded, you will have a difficult time trying to sell your shares.
- You must rely on Wells Capital, our advisor, for the day-to-day management of our business and the selection of our real estate properties.

- To ensure that we continue to qualify as a REIT, our articles of incorporation prohibit any stockholder from owning more than 9.8% of our outstanding shares.
- We may not remain qualified as a REIT for federal income tax purposes, which would subject us to the payment of tax on our income at corporate rates and reduce the amount of funds available for payment of dividends to our stockholders.
- You will not have preemptive rights as a stockholder, so any shares we issue in the future may dilute your interest in the Wells REIT.
- We will pay significant fees to Wells Capital and its affiliates.
- Real estate investments are subject to cyclical trends that are out of our control.
- You will not have an opportunity to evaluate all of the properties that will be in our portfolio prior to investing.
- Loans we obtain will be secured by some of our properties, which will put those properties at risk of forfeiture if we are unable to pay our debts.
- Our investment in vacant land to be developed may create risks relating to the builder's ability to control construction costs, failure to perform or failure to build in conformity with plans, specifications and timetables.
- The vote of stockholders owning at least a majority of our shares will bind all of the stockholders as to certain matters such as the election of our directors and amendment of our articles of incorporation.
- If we do not obtain listing of the shares on a national exchange by January 30, 2008, our articles of incorporation provide that we must begin to sell all of our properties and distribute the net proceeds to our stockholders.
- Our advisor will face various conflicts of interest resulting from its activities with affiliated entities.

Before you invest in the Wells REIT, you should see the complete discussion of the "Risk Factors" beginning on page 17 of this prospectus.

**Description of Real Estate Investments**

Please refer to the "Description of Real Estate Investments" section of this prospectus for a description of the real estate properties we have purchased to date and the various real estate loans we have outstanding. Wells Capital is currently evaluating additional potential property acquisitions. As we acquire new properties, we will provide supplements to this prospectus to describe these properties.

**Estimated Use of Proceeds of Offering**

We anticipate that we will invest at least 84% of the proceeds of this offering in real estate properties. We will use the remainder of the offering proceeds to pay selling commissions, fees and expenses relating to the selection and acquisition of properties and the costs of the offering.

**Investment Objectives**

Our investment objectives are:

- to maximize cash dividends paid to you;
- to preserve, protect and return your capital contribution;
- to realize growth in the value of our properties upon our ultimate sale of such properties; and
- to provide you with liquidity of your investment by listing the shares on a national exchange or, if we do not obtain listing of the shares by January 30, 2008, by selling our properties and distributing the cash to you.

We may only change these investment objectives by a vote of our stockholders holding a majority of our outstanding shares. See the "Investment Objectives and Criteria" section of this prospectus for a more complete description of our business and objectives.

**Conflicts of Interest**

Wells Capital, as our advisor, will experience conflicts of interest in connection with the management of our business affairs, including the following:

- Wells Capital will have to allocate its time between the Wells REIT and other real estate programs and activities in which it is involved;
- Wells Capital must determine which properties the Wells REIT or another Wells program or joint venture should acquire and which Wells program or other entity should enter into a joint venture with the Wells REIT for the acquisition and operation of specific properties;
- Wells Capital may compete with other Wells programs for the same tenants in negotiating leases or in selling similar properties at the same time; and
- Wells Capital and its affiliates will receive fees in connection with transactions involving the purchase, management and sale of our properties regardless of the quality of the property acquired or the services provided to us.

See the "Conflicts of Interest" section of this prospectus on page 54 for a detailed discussion of the various conflicts of interest relating to your investment, as well as the procedures that we have established to resolve a number of these potential conflicts.

The following chart shows the ownership structure of the various Wells entities that are affiliated with Wells Capital.

**[INSERT GRAPHIC HERE]**

**Prior Offering Summary**

Wells Capital and its affiliates have previously sponsored 14 publicly offered real estate limited partnerships and the Wells REIT on an unspecified property or "blind pool" basis. As of June 30, 2002, they have raised approximately $1,795,000,000 from approximately 65,000 investors in these 15 public real estate programs. The "Prior Performance Summary" on page 108 of this prospectus contains a discussion of the Wells programs sponsored to date. Certain statistical data relating to the Wells programs with investment objectives similar to ours is also provided in the "Prior Performance Tables" included at the end of this prospectus.

**The Offering**

We are offering up to 300,000,000 shares to the public at $10 per share and up to 30,000,000 shares pursuant to our dividend reinvestment plan at $10 per share. We reserve the right in the future to reallocate additional dividend reinvestment shares out of the shares we are offering to the public, if necessary. We are also offering up to 6,600,000 shares to broker-dealers pursuant to warrants whereby participating broker-dealers will have the right to purchase one share for every 50 shares they sell in this offering. The exercise price for shares purchased pursuant to the warrants is $12 per share.

**Terms of the Offering**

We will begin selling shares in this offering upon the effective date of this prospectus, and this offering will terminate on or before July 25, 2004. However, we may terminate this offering at any time prior to such termination date. We will hold your investment proceeds in our account until we withdraw funds for the acquisition of real estate properties or the payment of fees and expenses. We generally admit stockholders to the Wells REIT on a daily basis.

**Compensation to Wells Capital**

Wells Capital and its affiliates will receive compensation and fees for services relating to this offering and the investment and management of our assets. The most significant items of compensation are included in the following table:

| Type of Compensation | Form of Compensation | Estimated $$ Amount for Maximum Offering (330,000,000 shares) |
|---|---|---|
| | ***Offering Stage*** | |
| Selling Commissions | 7.0% of gross offering proceeds | $231,000,000 |
| Dealer Manager Fee | 2.5% of gross offering proceeds | $82,500,000 |
| Organization and Offering Expenses | 3.0% of gross offering proceeds | $49,500,000 (estimated) |
| | ***Acquisition and Development Stage*** | |
| Acquisition and Advisory Fees | 3.0% of gross offering proceeds | $99,000,000 |
| Acquisition Expenses | 0.5% of gross offering proceeds | $16,500,000 |
| | ***Operational Stage*** | |
| Property Management | 4.5% of gross revenues | N/A |
| Initial Lease-Up Fee for Newly Constructed Property | Competitive fee for geographic location of property based on a survey of brokers and agents (customarily equal to the first month's rent) | N/A |
| Real Estate Commissions | 3.0% of contract price for properties sold after investors receive a return of capital plus an 8.0% return on capital | N/A |
| Subordinated Participation In Net Sale Proceeds (Payable only if the Wells REIT is not listed on an exchange) | 10.0% of remaining amounts of net sale proceeds after return of capital plus payment to investors of an 8.0% cumulative non-compounded return on the capital contributed by investors | N/A |
| Subordinated Incentive Listing Fee (Payable only if the Wells REIT is listed on an exchange) | 10.0% of the amount by which the adjusted market value of the Wells REIT exceeds the aggregate capital contributions contributed by investors | N/A |

There are many additional conditions and restrictions on the amount of compensation Wells Capital and its affiliates may receive. There are also some smaller items of compensation and expense reimbursements that Wells Capital may receive. For a more detailed explanation of these fees and expenses payable to Wells Capital and its affiliates, please see the "Management Compensation" section of this prospectus on page 49.

**Dividend Policy**

In order to remain qualified as a REIT, we are required to distribute 90% of our annual taxable income to our stockholders. We have paid dividends to our stockholders at least quarterly since the first quarter after we commenced operations on June 5, 1998. We calculate our quarterly dividends based upon daily record and dividend declaration dates so investors will be entitled to dividends immediately upon purchasing our shares. We expect to pay dividends to you on a quarterly basis.

**Listing**

Our articles of incorporation allow us to list our shares on a national securities exchange on or before January 30, 2008. In the event we do not obtain listing prior to that date, our articles of incorporation require us to begin selling our properties and liquidating our assets.

**Dividend Reinvestment Plan**

You may participate in our dividend reinvestment plan pursuant to which you may have the dividends you receive reinvested in shares of the Wells REIT. If you participate, you will be taxed on your share of our taxable income even though you will not receive the cash from your dividends. As a result, you may have a tax liability without receiving cash dividends to pay such liability. We may terminate the dividend reinvestment plan at our discretion at any time upon 10 days notice to you. (See "Description of Shares—Dividend Reinvestment Plan.")

**Share Redemption Program**

We may use proceeds received from the sale of shares pursuant to our dividend reinvestment plan to redeem your shares. After you have held your shares for a minimum of one year, our share redemption program provides an opportunity for you to redeem your shares, subject to certain restrictions and limitations, for the lesser of $10 per share or the price you actually paid for your shares. Our board of directors reserves the right to amend or terminate the share redemption program at any time. Our board of directors has delegated to our officers the right to (1) waive the one-year holding period in the event of the death or bankruptcy of a stockholder or other exigent circumstances, or (2) reject any request for redemption at any time and for any reason. You will have no right to request redemption of your shares should our shares become listed on a national exchange. (See "Description of Shares—Share Redemption Program.")

**Wells Operating Partnership, L.P.**

We own all of our real estate properties through Wells Operating Partnership, L.P. (Wells OP), our operating partnership. We are the sole general partner of Wells OP. Wells Capital is currently the only limited partner based on its initial contribution of $200,000. Our ownership of properties in Wells OP is referred to as an "UPREIT." The UPREIT structure allows us to acquire real estate properties in exchange for limited partnership units in Wells OP. This structure will also allow sellers of properties to transfer their properties to Wells OP in exchange for units of Wells OP

and defer gain recognition for tax purposes with respect to such transfers of properties. At present, we have no plans to acquire any specific properties in exchange for units of Wells OP. The holders of units in Wells OP may have their units redeemed for cash under certain circumstances. (See "The Operating Partnership Agreement.")

**ERISA Considerations**

The section of this prospectus entitled "ERISA Considerations" describes the effect the purchase of shares will have on individual retirement accounts (IRAs) and retirement plans subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA), and/or the Internal Revenue Code. ERISA is a federal law that regulates the operation of certain tax-advantaged retirement plans. Any retirement plan trustee or individual considering purchasing shares for a retirement plan or an IRA should read this section of the prospectus very carefully.

**Description of Shares**

*General*

Your investment will be recorded on our books only. We will not issue stock certificates. If you wish to transfer your shares, you are required to send us an executed transfer form. We will provide you the required form upon request.

*Stockholder Voting Rights and Limitations*

We hold annual meetings of our stockholders for the purpose of electing our directors or conducting other business matters that may be presented at such meetings. We may also call a special meeting of stockholders from time to time for the purpose of conducting certain matters. You are entitled to one vote for each share you own at any of these meetings.

*Restriction on Share Ownership*

Our articles of incorporation contain restrictions on ownership of the shares that prevents one person from owning more than 9.8% of our outstanding shares. These restrictions are designed to enable us to comply with share accumulation restrictions imposed on REITs by the Internal Revenue Code. (See "Description of Shares—Restriction on Ownership of Shares.")

For a more complete description of the shares, including restrictions on the ownership of shares, please see the "Description of Shares" section of this prospectus on page 137.

## RISK FACTORS

Your purchase of shares involves a number of risks. In addition to other risks discussed in this prospectus, you should specifically consider the following:

**Investment Risks**

*Marketability Risk*

***There is no public trading market for your shares.***

There is no current public market for the shares and, therefore, it will be difficult for you to sell your shares promptly. In addition, the price received for any shares sold is likely to be less than the proportionate value of the real estate we own. Therefore, you should purchase the shares only as a long-term investment. See "Description of Shares—Share Redemption Program" for a description of our share redemption program.

*Management Risks*

***You must rely on Wells Capital for selection of properties.***

Our ability to achieve our investment objectives and to pay dividends is dependent upon the performance of Wells Capital, our advisor, in the quality and timeliness of our acquisitions of real estate properties, the selection of tenants and the determination of any financing arrangements. Except for the investments described in this prospectus, you will have no opportunity to evaluate the terms of transactions or other economic or financial data concerning our investments. You must rely entirely on the management ability of Wells Capital and the oversight of our board of directors.

***We depend on key personnel.***

Our success depends to a significant degree upon the continued contributions of certain key personnel, including Leo F. Wells, III, Douglas P. Williams, M. Scott Meadows, David H. Steinwedell, and John G. Oliver, each of whom would be difficult to replace. None of our key personnel are currently subject to employment agreements, nor do we maintain any key person life insurance on our key personnel. If any of our key personnel were to cease employment with us, our operating results could suffer. We also believe that our future success depends, in large part, upon our ability to hire and retain highly skilled managerial, operational and marketing personnel. Competition for such personnel is intense, and we cannot assure you that we will be successful in attracting and retaining such skilled personnel.

*Conflicts of Interest Risks*

***Wells Capital will face conflicts of interest relating to time management.***

Wells Capital, our advisor, and its affiliates are general partners and sponsors of other real estate programs having investment objectives and legal and financial obligations similar to the Wells REIT. Because Wells Capital and its affiliates have interests in other real estate programs and also engage in other business activities, they may have conflicts of interest in allocating their time between our business and these other activities. During times of intense activity in other programs and ventures, they may devote less time and resources to our business than is necessary or appropriate. (See "Conflicts of Interest.") If Wells Capital, for any reason, is not able to provide investment opportunities to us consistent with our investment objectives in a timely manner, we may have lower returns on our investments.

***Wells Capital will face conflicts of interest relating to the purchase and leasing of properties.***

We may be buying properties at the same time as one or more of the other Wells programs are buying properties. There is a risk that Wells Capital will choose a property that provides lower returns to us than a property purchased by another Wells program. We may acquire properties in geographic areas where other Wells programs own properties. If one of the Wells programs attracts a tenant that we are competing for, we could suffer a loss of revenue due to delays in locating another suitable tenant. (See "Conflicts of Interest.")

***Certain of our officers and directors face conflicts of interest relating to the positions they hold with other entities.***

Certain of our executive officers and directors are also officers and directors of Wells Capital, our advisor and the general partner of various other Wells programs, Wells Management Company, Inc., our Property Manager, and Wells Investment Securities, Inc., our Dealer Manager, and, as such, owe fiduciary duties to these various entities and their stockholders and limited partners. Such fiduciary duties may from time to time conflict with the fiduciary duties owed to the Wells REIT and its stockholders. (See "Conflicts of Interest.")

***We will be subject to additional risks as a result of our joint ventures with affiliates.***

We have entered in the past and are likely to continue in the future to enter into joint ventures with other Wells programs for the acquisition, development or improvement of properties. We may also purchase and develop properties in joint ventures or in partnerships, co-tenancies or other co-ownership arrangements with sellers of properties, affiliates of sellers, developers or other persons. Such investments may involve risks not otherwise present with an investment in real estate, including, for example:

- the possibility that our co-venturer, co-tenant or partner in an investment might become bankrupt;
- that such co-venturer, co-tenant or partner may at any time have economic or business interests or goals which are or which become inconsistent with our business interests or goals; or
- that such co-venturer, co-tenant or partner may be in a position to take action contrary to our instructions or requests or contrary to our policies or objectives.

Actions by such a co-venturer, co-tenant or partner might have the result of subjecting the property to liabilities in excess of those contemplated and may have the effect of reducing your returns.

***Wells Capital will face conflicts of interest relating to joint ventures with affiliates.***

Wells Capital, our advisor, is currently sponsoring a public offering on behalf of Wells Real Estate Fund XIII, L.P. (Wells Fund XIII), which is an unspecified property real estate program. (See "Prior Performance Summary.") In the event that we enter into a joint venture with Wells Fund XIII or any other Wells program or joint venture, we may face certain additional risks and potential conflicts of interest. For example, securities issued by Wells Fund XIII and the other Wells public limited partnerships will never have an active trading market. Therefore, if we were to become listed on a national exchange, we may no longer have similar goals and objectives with respect to the resale of properties in the future. In addition, in the event that the Wells REIT is not listed on a securities exchange

by January 30, 2008, our organizational documents provide for an orderly liquidation of our assets. In the event of such liquidation, any joint venture between the Wells REIT and another Wells program may be required to sell its properties at such time. Our joint venture partners may not desire to sell the properties at that time. Although the terms of any joint venture agreement between the Wells REIT and another Wells program would grant the other Wells program a right of first refusal to buy such properties, it is unlikely that any such program would have sufficient funds to exercise its right of first refusal under these circumstances.

Agreements and transactions between the parties with respect to joint ventures between the Wells REIT and other Wells programs will not have the benefit of arm's length negotiation of the type normally conducted between unrelated co-venturers. Under these joint venture agreements, none of the co-venturers may have the power to control the venture, and an impasse could be reached regarding matters pertaining to the joint venture, which might have a negative impact on the joint venture and decrease potential returns to you. In the event that a co-venturer has a right of first refusal to buy out the other co-venturer, it may be unable to finance such buy-out at that time. It may also be difficult for us to sell our interest in any such joint venture or partnership or as a co-tenant in property. In addition, to the extent that our co-venturer, partner or co-tenant is an affiliate of Wells Capital, certain conflicts of interest will exist. (See "Conflicts of Interest—Joint Ventures with Affiliates of Wells Capital.")

*General Investment Risks*

***A limit on the number of shares a person may own may discourage a takeover.***

Our articles of incorporation restrict ownership by one person to no more than 9.8% of the outstanding shares. This restriction may discourage a change of control of the Wells REIT and may deter individuals or entities from making tender offers for shares, which offers might be financially attractive to stockholders or which may cause a change in the management of the Wells REIT. (See "Description of Shares—Restriction on Ownership of Shares.")

***We will not be afforded the protection of Maryland Corporation Law relating to business combinations.***

Provisions of Maryland Corporation Law prohibit business combinations, unless prior approval of the board of directors is obtained before the person became an interested stockholder, with:

- any person who beneficially owns 10% or more of the voting power of our outstanding shares;
- any of our affiliates who, at any time within the two year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of our outstanding shares (interested stockholder); or
- an affiliate of an interested stockholder.

These prohibitions are intended to prevent a change of control by interested stockholders who do not have the support of our board of directors. Since our articles of incorporation contain limitations on ownership of 9.8% or more of our common stock, we opted out of the business combinations statute in our articles of incorporation. Therefore, we will not be afforded the protections of this statute and, accordingly, there is no guarantee that the ownership limitations in our articles of incorporation would provide the same measure of protection as the business combinations statute and prevent an undesired change of control by an interested stockholder. (See "Description of Shares—Restriction on Ownership of Shares" and "Description of Shares—Business Combinations.")

***You are bound by the majority vote on matters on which you are entitled to vote.***

You may vote on certain matters at any annual or special meeting of our stockholders, including the election of our directors or amendments to our articles of incorporation. However, you will be bound by the majority vote on matters requiring approval of a majority of our stockholders even if you do not vote with the majority on any such matter.

***You are limited in your ability to sell your shares pursuant to our share redemption program.***

Even though our share redemption program provides you with the opportunity to redeem your shares for $10 per share (or the price you paid for the shares, if lower than $10) after you have held them for a period of one year, you should be fully aware that our share redemption program contains certain restrictions and limitations. Shares will be redeemed on a first-come, first-served basis and will be limited to the lesser of (1) during any calendar year, three percent (3%) of the weighted average number of shares outstanding during the prior calendar year, or (2) the proceeds we receive from the sale of shares under our dividend reinvestment plan such that in no event shall the aggregate amount of redemptions under our share redemption program exceed aggregate proceeds received from the sale of shares pursuant to our dividend reinvestment plan. Our board of directors reserves the right to amend or terminate the share redemption program at any time. In addition, the board of directors has delegated authority to our officers to reject any request for redemption for any reason at any time. Therefore, in making a decision to purchase shares of the Wells REIT, you should not assume that you will be able to sell any of your shares back to us pursuant to our share redemption program. (See “Description of Shares—Share Redemption Program.”)

***We established the offering price on an arbitrary basis.***

Our board of directors has arbitrarily determined the selling price of the shares, and such price bears no relationship to any established criteria for valuing issued or outstanding shares.

***Your interest in the Wells REIT may be diluted if we issue additional shares.***

Existing stockholders and potential investors in this offering do not have preemptive rights to any shares issued by the Wells REIT in the future. Therefore, existing stockholders and investors purchasing shares in this offering may experience dilution of their equity investment in the Wells REIT in the event that we:

- sell shares in this offering or sell additional shares in the future, including those issued pursuant to the dividend reinvestment plan;
- sell securities that are convertible into shares;
- issue shares in a private offering of securities to institutional investors;
- issue shares of common stock upon the exercise of the options granted to our independent directors or employees of Wells Capital and Wells Management Company, Inc. (Wells Management) or the warrants issued and to be issued to participating broker-dealers or our independent directors; or
- issue shares to sellers of properties acquired by us in connection with an exchange of limited partnership units from Wells OP.

***Payment of fees to Wells Capital and its affiliates will reduce cash available for investment and distribution.***

Wells Capital and its affiliates will perform services for us in connection with the offer and sale of the shares, the selection and acquisition of our properties, and the management and leasing of our properties. They will be paid substantial fees for these services, which will reduce the amount of cash available for investment in properties or distribution to our stockholders. (See "Management Compensation.")

***The availability and timing of cash dividends is uncertain.***

We bear all expenses incurred in our operations, which are deducted from cash funds generated by operations prior to computing the amount of cash dividends to be distributed to our stockholders. In addition, our board of directors, in its discretion, may retain any portion of such funds for working capital. We cannot assure you that sufficient cash will be available to pay dividends to you.

***We are uncertain of our sources for funding of future capital needs.***

Substantially all of the gross proceeds of the offering will be used for investment in properties and for payment of various fees and expenses. (See "Estimated Use of Proceeds.") In addition, we do not anticipate that we will maintain any permanent working capital reserves. Accordingly, in the event that we develop a need for additional capital in the future for the improvement of our properties or for any other reason, we have not identified any sources for such funding, and we cannot assure you that such sources of funding will be available to us for potential capital needs in the future.

***You will not have the benefit of independent due diligence review in connection with this offering.***

Since Wells Investment Securities, our Dealer Manager, is an affiliate of Wells Capital, you will not have the benefit of independent due diligence review and investigation of the type normally performed by unaffiliated, independent underwriters in connection with securities offerings.

***The conviction of Arthur Andersen LLP and recent events related thereto may adversely affect your ability to recover potential claims against Arthur Andersen in connection with their audits of our financials statements.***

In June 2002, our former independent auditor, Arthur Andersen LLP (Andersen), was tried and convicted on federal obstruction of justice charges arising from its involvement as auditors for Enron Corporation. Events arising out of the conviction or other events relating to the financial condition of Andersen may adversely affect the ability of Andersen to satisfy any potential claims that may arise out of Andersen's audits of the financial statements contained in this prospectus. In addition, Andersen has notified us that it will no longer be able to provide us with the necessary consents related to previously audited financial statements in our prospectus. Our inability to obtain such consents may also adversely affect your ability to pursue potential claims against Andersen.

**Real Estate Risks**

*General Real Estate Risks*

***Your investment will be affected by adverse economic and regulatory changes.***

We will be subject to risks generally incident to the ownership of real estate, including:

- changes in general economic or local conditions;
- changes in supply of or demand for similar or competing properties in an area;
- changes in interest rates and availability of permanent mortgage funds which may render the sale of a property difficult or unattractive;
- changes in tax, real estate, environmental and zoning laws; and
- periods of high interest rates and tight money supply.

For these and other reasons, we cannot assure you that we will be profitable or that we will realize growth in the value of our real estate properties.

***A property that incurs a vacancy could be difficult to sell or re-lease.***

A property may incur a vacancy either by the continued default of a tenant under its lease or the expiration of one of our leases. A number of our properties may be specifically suited to the particular needs of our tenants. Therefore, we may have difficulty obtaining a new tenant for any vacant space we have in our properties. If the vacancy continues for a long period of time, we may suffer reduced revenues resulting in less cash dividends to be distributed to stockholders. In addition, the resale value of the property could be diminished because the market value of a particular property will depend principally upon the value of the leases of such property.

***We are dependent on tenants for our revenue.***

Most of our properties are occupied by a single tenant and, therefore, the success of our investments are materially dependent on the financial stability of our tenants. Lease payment defaults by tenants would most likely cause us to reduce the amount of distributions to stockholders. A default of a tenant on its lease payments to us would cause us to lose the revenue from the property and cause us to have to find one or more additional tenants. If there are a substantial number of tenants that are in default at any one time, we could have difficulty making mortgage payments that could result in foreclosures of properties subject to a mortgage. In the event of a default, we may experience delays in enforcing our rights as landlord and may incur substantial costs in protecting our investment and re-letting our property. If a lease is terminated, we cannot assure you that we will be able to lease the property for the rent previously received or sell the property without incurring a loss.

***We rely on certain tenants.***

As of July 1, 2002, our most substantial tenants based on rental income are SSB Realty, LLC (approximately 6.3%), Metris Direct, Inc. (approximately 5.6%), Motorola, Inc. (approximately 4.7%), and Zurich American Insurance Company, Inc. (approximately 4.6%). The revenues generated by the properties these tenants occupy are substantially reliant upon the financial condition of these tenants and, accordingly, any event of bankruptcy, insolvency or a general downturn in the business of any of these tenants may result in the failure or delay of such tenant's rental payments which may have a substantial

adverse effect on our financial performance. (See "Description of Real Estate Investments" and "Management's Discussion and Analysis of Financial Condition and Results of Operations.")

***We may not have funding for future tenant improvements.***

When a tenant at one of our properties does not renew its lease or otherwise vacates its space in one of our buildings, it is likely that, in order to attract one or more new tenants, we will be required to expend substantial funds for tenant improvements and tenant refurbishments to the vacated space. Substantially all of our net offering proceeds will be invested in real estate properties, and we do not anticipate that we will maintain permanent working capital reserves. We also have no identified funding source to provide funds which may be required in the future for tenant improvements and tenant refurbishments in order to attract new tenants. We cannot assure you that we will have any sources of funding available to us for such purposes in the future.

***Uninsured losses relating to real property may adversely affect your returns.***

In the event that any of our properties incurs a casualty loss that is not fully covered by insurance, the value of our assets will be reduced by any such uninsured loss. In addition, we have no current source of funding to repair or reconstruct the damaged property and cannot assure you that any such source of funding will be available to us for such purposes in the future.

***Development and construction of properties may result in delays and increased costs and risks.***

We may invest some or all of the proceeds available for investment in the acquisition and development of properties upon which we will develop and construct improvements at a fixed contract price. We will be subject to risks relating to the builder's ability to control construction costs or to build in conformity with plans, specifications and timetables. The builder's failure to perform may necessitate legal action by us to rescind the purchase or the construction contract or to compel performance. Performance may also be affected or delayed by conditions beyond the builder's control. Delays in completion of construction could also give tenants the right to terminate preconstruction leases for space at a newly developed project. We may incur additional risks when we make periodic progress payments or other advances to such builders prior to completion of construction. Factors such as those discussed above can result in increased costs of a project or loss of our investment. In addition, we will be subject to normal lease-up risks relating to newly constructed projects. Furthermore, we must rely upon projections of rental income and expenses and estimates of the fair market value of property upon completion of construction when agreeing upon a price to be paid for the property at the time of acquisition of the property. If our projections are inaccurate, we may pay too much for a property.

***Competition for investments may increase costs and reduce returns.***

We will experience competition for real property investments from individuals, corporations and bank and insurance company investment accounts, as well as other real estate investment trusts, real estate limited partnerships, and other entities engaged in real estate investment activities. Competition for investments may have the effect of increasing costs and reducing your returns.

***Delays in acquisitions of properties may have an adverse effect on your investment.***

Delays we encounter in the selection, acquisition and development of properties could adversely affect your returns. Where we acquire properties prior to the start of construction or during the early stages of construction, it will typically take several months to complete construction and rent available space. Therefore, you could suffer delays in the distribution of cash dividends attributable to those

particular properties. In addition, if we are unable to invest our offering proceeds in income producing real properties in a timely manner, we may not be able to continue to pay the dividend rates we are currently paying to our stockholders.

***We may not be able to immediately invest proceeds in real estate.***

Until we invest the proceeds of this offering in real estate investments, we may invest in short-term, highly liquid or other authorized investments. Such short-term investments are not likely to earn as high a return as we expect to earn on our real estate investments, and we cannot guarantee how long it will take us to fully invest the proceeds of this offering in real estate investments.

***Uncertain market conditions and Wells Capital's broad discretion relating to the future disposition of properties could adversely affect the return on your investment.***

We generally will hold the various real properties in which we invest until such time as Wells Capital determines that a sale or other disposition appears to be advantageous to achieve our investment objectives or until it appears that such objectives will not be met. Otherwise, Wells Capital, subject to the approval of our board of directors, may exercise its discretion as to whether and when to sell a property, and we will have no obligation to sell properties at any particular time, except upon a liquidation of the Wells REIT if we do not list the shares by January 30, 2008. We cannot predict with any certainty the various market conditions affecting real estate investments that will exist at any particular time in the future. Due to the uncertainty of market conditions that may affect the future disposition of our properties, we cannot assure you that we will be able to sell our properties at a profit in the future. Accordingly, the extent to which you will receive cash distributions and realize potential appreciation on our real estate investments will be dependent upon fluctuating market conditions.

***Discovery of previously undetected environmentally hazardous conditions may adversely affect our operating results.***

Under various federal, state and local environmental laws, ordinances and regulations, a current or previous owner or operator of real property may be liable for the cost of removal or remediation of hazardous or toxic substances on such property. Such laws often impose liability whether or not the owner or operator knew of, or was responsible for, the presence of such hazardous or toxic substances. Environmental laws also may impose restrictions on the manner in which properties may be used or businesses may be operated, and these restrictions may require expenditures. Environmental laws provide for sanctions in the event of noncompliance and may be enforced by governmental agencies or, in certain circumstances, by private parties. We may be potentially liable for such costs in connection with the acquisition and ownership of our properties. The cost of defending against claims of liability, of compliance with environmental regulatory requirements or of remediating any contaminated property could materially adversely affect the business, assets or results of operations of the Wells REIT and, consequently, amounts available for distribution to you.

*Financing Risks*

***If we fail to make our debt payments, we could lose our investment in a property.***

We generally secure the loans we obtain to fund property acquisitions with first priority mortgages on some of our properties. If we are unable to make our debt payments as required, a lender could foreclose on the property or properties securing its debt. This could cause us to lose part or all of our investment which in turn could cause a reduction in the value of the shares and the dividends payable to our stockholders. (See "Description of Real Estate Investments —Real Estate Loans.")

***Lenders may require us to enter into restrictive covenants relating to our operations.***

In connection with obtaining certain financing, a lender could impose restrictions on us that would affect our ability to incur additional debt and our distribution and operating policies. Loan documents we enter into may contain customary negative covenants which may limit our ability to further mortgage the property, to discontinue insurance coverage, replace Wells Capital as our advisor or impose other limitations.

***If we enter into financing arrangements involving balloon payment obligations, it may adversely affect our ability to pay dividends.***

Some of our financing arrangements may require us to make a lump-sum or "balloon" payment at maturity. We may finance more properties in this manner. Our ability to make a balloon payment at maturity is uncertain and may depend upon our ability to obtain additional financing or our ability to sell the property. At the time the balloon payment is due, we may or may not be able to refinance the balloon payment on terms as favorable as the original loan or sell the property at a price sufficient to make the balloon payment. A refinancing or sale under these circumstances could affect the rate of return to stockholders and the projected time of disposition of our assets. In addition, payments of principal and interest made to service our debts may leave us with insufficient cash to pay the distributions that we are required to pay to maintain our qualification as a REIT.

**Section 1031 Exchange Program Risks**

***We may have increased exposure to liabilities from litigation as a result of our participation in the Section 1031 Exchange Program.***

Wells Development Corporation, an affiliate of Wells Capital, our advisor, is forming a series of single member limited liability companies (each of which is referred to in this prospectus as Wells Exchange) for the purpose of facilitating the acquisition of real estate properties to be owned in co-tenancy arrangements with persons (1031 Participants) who are looking to invest proceeds from a sale of real estate to qualify for like-kind exchange treatment under Section 1031 of the Internal Revenue Code (Section 1031 Exchange Program). There will be significant tax and securities disclosure risks associated with the private placement offerings of co-tenancy interests by Wells Exchange to 1031 Participants. For example, in the event that the Internal Revenue Service conducts an audit of the purchasers of co-tenancy interests and successfully challenges the qualification of the transaction as a like-kind exchange under Section 1031 of the Internal Revenue Code, even though it is anticipated that this tax risk will be fully disclosed to investors, purchasers of co-tenancy interests may file a lawsuit against Wells Exchange and its sponsors. In such event, even though Wells OP is not acting as a sponsor of the offering, is not commonly controlled with Wells Exchange, and is not recommending that 1031 Participants buy co-tenancy interests from Wells Exchange, as a result of our participation in the Section 1031 Exchange Program, and since Wells OP will be receiving fees in connection with the Section 1031 Exchange Program, we may be named in or otherwise required to defend against lawsuits brought by 1031 Participants. Any amounts we are required to expend for any such litigation claims may reduce the amount of funds available for distribution to stockholders of the Wells REIT. In addition, disclosure of any such litigation may adversely affect our ability to raise additional capital in the future through the sale of stock. (See "Investment Objectives and Criteria—Section 1031 Exchange Program.")

*We will be subject to risks associated with co-tenancy arrangements that are not otherwise present in a real estate investment.*

At the closing of each property Wells Exchange acquires pursuant to the Section 1031 Exchange Program, we anticipate that Wells OP will enter into a contractual arrangement providing that, in the event that Wells Exchange is unable to sell all of the co-tenancy interests in that particular property by the completion of its private placement offering, Wells OP will purchase, at Wells Exchange's cost, any co-tenancy interests remaining unsold. Accordingly, in the event that Wells Exchange is unable to sell all co-tenancy interests in one or more of its properties, Wells OP will be required to purchase the unsold co-tenancy interests in such property or properties and, thus, will be subject to the risks of ownership of properties in a co-tenancy arrangement with unrelated third parties. (See "Investment Objectives and Criteria—Section 1031 Exchange Program. ")

Ownership of co-tenancy interests involves risks not otherwise present with an investment in real estate such as the following:

- the risk that a co-tenant may at any time have economic or business interests or goals which are or which become inconsistent with our business interests or goals;
- the risk that a co-tenant may be in a position to take action contrary to our instructions or requests or contrary to our policies or objectives; or
- the possibility that a co-tenant might become insolvent or bankrupt, which may be an event of default under mortgage loan financing documents or allow the bankruptcy court to reject the tenants in common agreement or management agreement entered into by the co-tenants owning interests in the property.

Actions by a co-tenant may subject the property to liabilities in excess of those contemplated and may have the effect of reducing your returns.

In the event that our interests become adverse to those of the other co-tenants, we will not have the contractual right to purchase the co-tenancy interests from the other co-tenants. Even if we are given the opportunity to purchase such co-tenancy interests in the future, we cannot guarantee that we will have sufficient funds available at the time to purchase co-tenancy interests from the 1031 Participants.

We might want to sell our co-tenancy interests in a given property at a time when the other co-tenants in such property do not desire to sell their interests. Therefore, we may not be able to sell our interest in a property at the time we would like to sell. In addition, we anticipate that it will be much more difficult to find a willing buyer for our co-tenancy interests in a property than it would be to find a buyer for a property we owned outright.

*Our participation in the Section 1031 Exchange Program may limit our ability to borrow funds in the future.*

Institutional lenders may view our obligations under agreements to acquire unsold co-tenancy interests in properties as a contingent liability against our cash or other assets, which may limit our ability to borrow funds in the future. Further, such obligations may be viewed by our lenders in such a manner as to limit our ability to borrow funds based on regulatory restrictions on lenders limiting the amount of loans they can make to any one borrower. (See "Investment Objectives and Criteria—Section 1031 Exchange Program.")

**Federal Income Tax Risks**

*Failure to qualify as a REIT could adversely affect our operations and our ability to make distributions.*

In order for us to qualify as a REIT, we must satisfy certain requirements set forth in the Internal Revenue Code and Treasury Regulations and various factual matters and circumstances which are not entirely within our control. We have and will continue to structure our activities in a manner designed to satisfy all of these requirements, however, if certain of our operations were to be recharacterized by the Internal Revenue Service, such recharacterization could jeopardize our ability to satisfy all of the requirements for qualification as a REIT. In addition, new legislation, regulations, administrative interpretations or court decisions could change the tax laws relating to our qualification as a REIT or the federal income tax consequences of our being a REIT.

If we fail to qualify as a REIT for any taxable year, we will be subject to federal income tax on our taxable income at corporate rates with no offsetting deductions for distributions made to stockholders. Further, in such event, we would generally be disqualified from treatment as a REIT for the four taxable years following the year in which we lose our REIT status. Accordingly, the loss of our REIT status would reduce our net earnings available for investment or distribution to stockholders because of the substantial tax liabilities that would be imposed on us. We might also be required to borrow funds or liquidate some investments in order to pay the applicable tax.

*Certain fees paid to Wells OP may affect our REIT status.*

In connection with the Section 1031 Exchange Program, Wells OP will enter into a number of contractual arrangements with Wells Exchange that will, in effect, guarantee the sale of the co-tenancy interests being offered by Wells Exchange. (See "Investment Objectives and Criteria—Section 1031 Exchange Program.") In consideration for entering into these agreements, Wells OP will be paid fees which could be characterized by the IRS as non-qualifying income for purposes of satisfying the "income tests" required for REIT qualification. (See "Federal Income Tax Consequences—Operational Requirements—Gross Income Tests.") If this fee income were, in fact, treated as non-qualifying, and if the aggregate of such fee income and any other non-qualifying income in any taxable year ever exceeded 5.0% of our gross revenues for such year, we could lose our REIT status for that taxable year and the four ensuing taxable years. As set forth above, we will use all reasonable efforts to structure our activities in a manner intended to satisfy the requirements for our continued qualification as a REIT.

*Recharacterization of the Section 1031 Exchange Program may result in taxation of income from a prohibited transaction.*

In the event that the Internal Revenue Service were to recharacterize the Section 1031 Exchange Program such that Wells OP, rather than Wells Exchange, is treated as the bona fide owner, for tax purposes, of properties acquired and resold by Wells Exchange in connection with the Section 1031 Exchange Program, such characterization could result in the fees paid to Wells OP by Wells Exchange as being deemed income from a prohibited transaction, in which event all such fee income paid to us in connection with the Section 1031 Exchange Program would be subject to a 100% tax. (See "Investment Objectives and Criteria—Section 1031 Exchange Program.")

*Legislative or regulatory action could adversely affect investors.*

In recent years, numerous legislative, judicial and administrative changes have been made in the provisions of the federal income tax laws applicable to investments similar to an investment in shares of the Wells REIT. Additional changes to tax laws are likely to continue to occur in the future, and we cannot assure you that any such changes will not adversely affect the taxation of our stockholders. Any such changes could have an adverse effect on an investment in shares or on the market value or the resale potential of our properties. You are urged to consult with your own tax advisor with respect to the impact of recent legislation on your investment in shares and the status of legislative, regulatory or administrative developments and proposals and their potential effect on an investment in shares.

**Retirement Plan Risks**

*There are special considerations that apply to pension or profit sharing trusts or IRAs investing in shares.*

If you are investing the assets of a pension, profit sharing, 401(k), Keogh or other qualified retirement plan or the assets of an IRA in the Wells REIT, you should satisfy yourself that:

- your investment is consistent with your fiduciary obligations under ERISA and the Internal Revenue Code;
- your investment is made in accordance with the documents and instruments governing your plan or IRA, including your plan's investment policy;
- your investment satisfies the prudence and diversification requirements of Sections 404(a)(1)(B) and 404(a)(1)(C) of ERISA;
- your investment will not impair the liquidity of the plan or IRA;
- your investment will not produce "unrelated business taxable income" for the plan or IRA;
- you will be able to value the assets of the plan annually in accordance with ERISA requirements; and
- your investment will not constitute a prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code.

For a more complete discussion of the foregoing issues and other risks associated with an investment in shares by retirement plans, please see the "ERISA Considerations" section of this prospectus on page 132.

## SUITABILITY STANDARDS

The shares we are offering are suitable only as a long-term investment for persons of adequate financial means. Initially, we do not expect to have a public market for the shares, which means that you may have difficulty selling your shares. You should not buy these shares if you need to sell them immediately or will need to sell them quickly in the future. In consideration of these factors, we have established suitability standards for initial stockholders and subsequent transferees. These suitability standards require that a purchaser of shares have either:

- a net worth of at least $150,000; or
- gross annual income of at least $45,000 and a net worth of at least $45,000.

The minimum purchase is 100 shares ($1,000), except in certain states as described below. You may not transfer fewer shares than the minimum purchase requirement. In addition, you may not transfer, fractionalize or subdivide your shares so as to retain less than the number of shares required for the minimum purchase. In order to satisfy the minimum purchase requirements for retirement plans, unless otherwise prohibited by state law, a husband and wife may jointly contribute funds from their separate IRAs, provided that each such contribution is made in increments of $100. You should note that an investment in shares of the Wells REIT will not, in itself, create a retirement plan and that, in order to create a retirement plan, you must comply with all applicable provisions of the Internal Revenue Code.

The minimum purchase for Maine, New York and North Carolina residents is 250 shares ($2,500), except for IRAs which must purchase a minimum of 100 shares ($1,000). The minimum purchase for Minnesota residents is 250 shares ($2,500), except for IRAs and other qualified retirement plans which must purchase a minimum of 200 shares ($2,000).

Except in the states of Maine, Minnesota, Nebraska and Washington, if you have satisfied the minimum purchase requirements and have purchased units in other Wells programs or units or shares in other public real estate programs, you may purchase less than the minimum number of shares set forth above, but in no event less than 2.5 shares ($25). After you have purchased the minimum investment, any additional purchase must be in increments of at least 2.5 shares ($25), except for (1) purchases made by residents of Maine and Minnesota, who must still meet the minimum investment requirements set forth above, and (2) purchases of shares pursuant to the dividend reinvestment plan of the Wells REIT or reinvestment plans of other public real estate programs, which may be in lesser amounts.

Several states have established suitability standards different from those we have established. Shares will be sold only to investors in these states who meet the special suitability standards set forth below.

**Iowa, Massachusetts, Michigan, Missouri and Tennessee**—Investors must have either (1) a net worth of at least $225,000, or (2) gross annual income of at least $60,000 and a net worth of at least $60,000.

**Maine**—Investors must have either (1) a net worth of at least $200,000, or (2) gross annual income of at least $50,000 and a net worth of at least $50,000.

**Iowa, Missouri, Ohio and Pennsylvania**—In addition to our suitability requirements, investors must have a net worth of at least 10 times their investment in the Wells REIT.

For purposes of determining suitability of an investor, net worth in all cases should be calculated excluding the value of an investor's home, furnishings and automobiles.

In the case of sales to fiduciary accounts, these suitability standards must be met by the fiduciary account, by the person who directly or indirectly supplied the funds for the purchase of the shares or by the beneficiary of the account. These suitability standards are intended to help ensure that, given the long-term nature of an investment in our shares, our investment objectives and the relative illiquidity of our shares, shares of the Wells REIT are an appropriate investment for those of you desiring to become stockholders. Each participating broker-dealer must make every reasonable effort to determine that the purchase of shares is a suitable and appropriate investment for each stockholder based on information provided by the stockholder in the Subscription Agreement or otherwise. Each participating broker-dealer is required to maintain records of the information used to determine that an investment in shares is suitable and appropriate for each stockholder for a period of six years.

## ESTIMATED USE OF PROCEEDS

The following tables set forth information about how we intend to use the proceeds raised in this offering assuming that we sell 165,000,000 shares and 330,000,000 shares, respectively, pursuant to this offering. Many of the figures set forth below represent management's best estimate since they cannot be precisely calculated at this time. We expect that at least 84.0% of the money you invest will be used to buy real estate, while the remaining up to 16.0% will be used for working capital and to pay expenses and fees, including the payment of fees to Wells Capital, our advisor, and Wells Investment Securities, our Dealer Manager.

| | 165,000,000 Shares | | 330,000,000 Shares | |
|---|---|---|---|---|
| | Amount(1) | Percent | Amount(2) | Percent |
| Gross Offering Proceeds | $ 1,650,000,000 | 100% | $ 3,300,000,000 | 100.0% |
| Less Public Offering Expenses: | | | | |
| Selling Commissions and Dealer Manager Fee(3) | 156,750,000 | 9.5% | 313,500,000 | 9.5% |
| Organization and Offering Expenses(4) | 49,500,000 | 3.0% | 49,500,000 | 1.5% |
| Amount Available for Investment(5) | $ 1,443,750,000 | 87.5% | $ 2,937,000,000 | 89.0% |
| Acquisition and Development: | | | | |
| Acquisition and Advisory Fees(6) | 49,500,000 | 3.0% | 99,000,000 | 3.0% |
| Acquisition Expenses(7) | 8,250,000 | 0.5% | 16,500,000 | 0.5% |
| Initial Working Capital Reserve(8) | (8) | — | (8) | — |
| Amount Invested in Properties(5)(9) | $ 1,386,000,000 | 84.0% | $ 2,821,500,000 | 85.5% |

(Footnotes to "Estimated Use of Proceeds")

1. Assumes that an aggregate of $1,650,000,000 will be raised in this offering for purposes of illustrating the percentage of estimated organization and offering expenses at two different sales levels. See Note 4 below.
2. Assumes the maximum offering is sold which includes 300,000,000 shares offered to the public at $10 per share and 30,000,000 shares offered pursuant to our dividend reinvestment plan at $10 per share. Excludes 6,600,000 shares to be issued upon exercise of the soliciting dealer warrants.
3. Includes *selling commissions* equal to 7.0% of aggregate gross offering proceeds which commissions may be reduced under certain circumstances and a *dealer manager fee* equal to 2.5% of aggregate gross offering proceeds, both of which are payable to the Dealer Manager, an affiliate of our advisor. The Dealer Manager, in its sole discretion, may reallow selling commissions of up to 7.0% of gross offering proceeds to other broker-dealers participating in this offering (Participating Dealers) attributable to the amount of shares sold by them. In addition, the Dealer Manager may reallow a portion of its dealer manager fee to Participating Dealers in the aggregate amount of up to 1.5% of gross offering proceeds to be paid to such Participating Dealers as marketing fees, or to reimburse representatives of such Participating Dealers the costs and expenses of attending our educational conferences and seminars. The amount of selling commissions may often be reduced under certain circumstances for volume discounts. See the "Plan of Distribution" section of this prospectus for a description of such provisions.
4. *Organization and offering expenses* consist of reimbursement of actual legal, accounting, printing and other accountable offering expenses, other than selling commissions and the dealer manager fee, including amounts to reimburse Wells Capital, our advisor, for all marketing related costs and expenses, including, but not limited to, salaries and direct expenses of our advisor's employees while engaged in registering and marketing the shares and other marketing and organization costs, technology costs and expenses attributable to the offering, costs and expenses of conducting our

educational conferences and seminars, payment or reimbursement of bona fide due diligence expenses, and costs and expenses we incur for attending retail seminars conducted by broker-dealers. Wells Capital and its affiliates will be responsible for the payment of organization and offering expenses, other than selling commissions and the dealer manager fee, to the extent they exceed 3.0% of aggregate gross offering proceeds from all of our offerings without recourse against or reimbursement by the Wells REIT. We currently estimate that approximately $49,500,000 of organization and offering costs will be incurred if the maximum offering of 330,000,000 shares is sold. Notwithstanding the above, in no event shall organization and offering expenses, including selling commissions, the dealer manager fee and all other underwriting compensation, exceed 15% of gross offering proceeds.

5. Until required in connection with the acquisition and development of properties, substantially all of the net proceeds of the offering and, thereafter, the working capital reserves of the Wells REIT, may be invested in short-term, highly-liquid investments including government obligations, bank certificates of deposit, short-term debt obligations and interest-bearing accounts or other authorized investments as determined by our board of directors.
6. *Acquisition and advisory fees* are defined generally as fees and commissions paid by any party to any person in connection with the purchase, development or construction of properties. We will pay Wells Capital, as our advisor, acquisition and advisory fees up to a maximum amount of 3.0% of gross offering proceeds in connection with the acquisition of the real estate properties. Acquisition and advisory fees do not include acquisition expenses.
7. *Acquisition expenses* include legal fees and expenses, travel expenses, costs of appraisals, nonrefundable option payments on property not acquired, accounting fees and expenses, title insurance premiums and other closing costs and miscellaneous expenses relating to the selection, acquisition and development of real estate properties. We will pay Wells Capital, our advisor, acquisition expenses up to a maximum of 0.5% of gross offering proceeds as reimbursement for the payment of such expenses.
8. Because the vast majority of leases for the properties acquired by the Wells REIT will provide for tenant reimbursement of operating expenses, we do not anticipate that a permanent reserve for maintenance and repairs of real estate properties will be established. However, to the extent that we have insufficient funds for such purposes, we may apply an amount of up to 1.0% of gross offering proceeds for maintenance and repairs of real estate properties. We also may, but are not required to, establish reserves from gross offering proceeds, out of cash flow generated by operating properties or out of nonliquidating net sale proceeds, defined generally to mean the net cash proceeds received by the Wells REIT from any sale or exchange of properties.
9. Includes amounts anticipated to be invested in properties net of fees and expenses. We estimate that at least 84.0% of the proceeds received from the sale of shares will be used to acquire properties.

## MANAGEMENT

### General

We operate under the direction of our board of directors, the members of which are accountable to us and our stockholders as fiduciaries. The board is responsible for the management and control of our affairs. The board has retained Wells Capital to manage our day-to-day affairs and the acquisition and disposition of our investments, subject to the board's supervision. Our articles of incorporation were reviewed and ratified by our board of directors, including the independent directors, at their initial meeting. This ratification by our board of directors was required by the NASAA Guidelines.

Our articles of incorporation and bylaws provide that the number of directors of the Wells REIT may be established by a majority of the entire board of directors but may not be fewer than three nor more than 15. We currently have a total of ten directors. Our articles of incorporation also provide that a majority of the directors must be independent directors. An "independent director" is a person who is not an officer or employee of the Wells REIT, Wells Capital or their affiliates and has not otherwise been affiliated with such entities for the previous two years. Of the ten current directors, eight of our directors are considered independent directors.

Proposed transactions are often discussed before being brought to a final board vote. During these discussions, independent directors often offer ideas for ways in which deals can be changed to make them acceptable and these suggestions are taken into consideration when structuring transactions. Each director will serve until the next annual meeting of stockholders or until his successor has been duly elected and qualified. Although the number of directors may be increased or decreased, a decrease shall not have the effect of shortening the term of any incumbent director.

Any director may resign at any time and may be removed with or without cause by the stockholders upon the affirmative vote of at least a majority of all the votes entitled to be cast at a meeting called for the purpose of the proposed removal. The notice of the meeting shall indicate that the purpose, or one of the purposes, of the meeting is to determine if the director shall be removed.

Unless filled by a vote of the stockholders as permitted by Maryland Corporation Law, a vacancy created by an increase in the number of directors or the death, resignation, removal, adjudicated incompetence or other incapacity of a director shall be filled by a vote of a majority of the remaining directors and,

- in the case of a director who is not an independent director (affiliated director), by a vote of a majority of the remaining affiliated directors, or
- in the case of an independent director, by a vote of a majority of the remaining independent directors,

unless there are no remaining affiliated directors or independent directors, as the case may be. In such case a majority vote of the remaining directors shall be sufficient. If at any time there are no independent or affiliated directors in office, successor directors shall be elected by the stockholders. Each director will be bound by our articles of incorporation and bylaws.

Our directors are not required to devote all of their time to our business and are only required to devote the time to our affairs as their duties may require. Our directors will meet quarterly or more frequently if necessary in order to discharge their duties as directors. We do not expect that our directors will be required to devote a substantial portion of their time in discharging such duties. Consequently, in the exercise of their fiduciary responsibilities, our directors will be relying heavily on Wells Capital. Our board is empowered to fix the compensation of all officers that it selects and may pay compensation to directors for services rendered to us in any other capacity.

Our general investment and borrowing policies are set forth in this prospectus. Our directors may establish further written policies on investments and borrowings and shall monitor our administrative procedures, investment operations and performance to ensure that the policies are fulfilled and are in the best interest of the stockholders. We will follow the policies on investments and borrowings set forth in this prospectus unless and until they are modified by our directors.

Our board is responsible for reviewing our fees and expenses on at least an annual basis and with sufficient frequency to determine that the expenses incurred are in the best interest of the stockholders. In

addition, a majority of the independent directors, and a majority of directors not otherwise interested in the transaction, must approve all transactions with Wells Capital or its affiliates. The independent directors will also be responsible for reviewing the performance of Wells Capital and Wells Management and determining that the compensation to be paid to Wells Capital and Wells Management is reasonable in relation to the nature and quality of services to be performed and that the provisions of the advisory agreement and the property management agreement are being carried out. Specifically, the independent directors will consider factors such as:

- the amount of the fee paid to Wells Capital and Wells Management in relation to the size, composition and performance of our investments;
- the success of Wells Capital in generating appropriate investment opportunities;
- rates charged to other REITs and other investors by advisors performing similar services;
- additional revenues realized by Wells Capital and Wells Management through their relationship with us, whether we pay them or they are paid by others with whom we do business;
- the quality and extent of service and advice furnished by Wells Capital and Wells Management and the performance of our investment portfolio; and
- the quality of our portfolio relative to the investments generated by Wells Capital and managed by Wells Management for their other clients.

Neither our directors nor their affiliates will vote or consent to the voting of shares they now own or hereafter acquire on matters submitted to the stockholders regarding either (1) the removal of Wells Capital, any director or any affiliate, or (2) any transaction between us and Wells Capital, any director or any affiliate.

**Committees of the Board of Directors**

Our entire board of directors considers all major decisions concerning our business, including all property acquisitions. However, our board has established an Audit Committee, a Compensation Committee and various advisory committees so that important items within the purview of these committees can be addressed in more depth than may be possible at a full board meeting.

*Audit Committee*

Under our Audit Committee Charter, our Audit Committee's primary function is to assist the board of directors in fulfilling its oversight responsibilities by reviewing the financial information to be provided to the stockholders and others, the system of internal controls which management has established, and the audit and financial reporting process. The members of our Audit Committee are Messrs. Bell, Carpenter, Carter, Keogler, Moss, Sessoms and Strickland.

*Compensation Committee*

Our board of directors has established a Compensation Committee to administer the 2000 Employee Stock Option Plan, as described below, which was approved by the stockholders at our annual stockholders meeting held June 28, 2000. The Compensation Committee is comprised of Messrs. Bell, Carpenter, Carter, Keogler, Moss, Sessoms and Strickland. The primary function of the Compensation Committee is to administer the granting of stock options to selected employees of Wells Capital and

Wells Management based upon recommendations from Wells Capital, and to set the terms and conditions of such options in accordance with the 2000 Employee Stock Option Plan. To date, we have not issued any stock options under our 2000 Employee Stock Option Plan.

*Advisory Committees*

The board of directors has established various advisory committees in which certain members of the board sit on these advisory committees to assist Wells Capital and its affiliates in the following areas which have a direct impact on the operations of the Wells REIT: asset management; new business development; personnel supervision; and budgeting.

**Executive Officers and Directors**

We have provided below certain information about our executive officers and directors.

| Name | Position(s) | Age |
|---|---|---|
| Leo F. Wells, III | President and Director | 58 |
| Douglas P. Williams | Executive Vice President, Secretary, Treasurer and Director | 51 |
| John L. Bell | Director | 62 |
| Michael R. Buchanan | Director | 55 |
| Richard W. Carpenter | Director | 65 |
| Bud Carter | Director | 63 |
| William H. Keogler, Jr. | Director | 57 |
| Donald S. Moss | Director | 66 |
| Walter W. Sessoms | Director | 68 |
| Neil H. Strickland | Director | 66 |

**Leo F. Wells, III** is the President and a director of the Wells REIT and the President, Treasurer and sole director of Wells Capital, our advisor. He is also the sole stockholder and sole director of Wells Real Estate Funds, Inc., the parent corporation of Wells Capital. Mr. Wells is President of Wells & Associates, Inc., a real estate brokerage and investment company formed in 1976 and incorporated in 1978, for which he serves as principal broker. He is also the President, Treasurer and sole director of:

- Wells Management Company, Inc., our Property Manager;
- Wells Investment Securities, Inc., our Dealer Manager;
- Wells Advisors, Inc., a company he organized in 1991 to act as a non-bank custodian for IRAs; and
- Wells Development Corporation, a company he organized in 1997 to develop real properties. (See “Conflicts of Interest.”)

Mr. Wells was a real estate salesman and property manager from 1970 to 1973 for Roy D. Warren & Company, an Atlanta-based real estate company, and he was associated from 1973 to 1976 with Sax Gaskin Real Estate Company, during which time he became a Life Member of the Atlanta Board of Realtors Million Dollar Club. From 1980 to February 1985 he served as Vice President of Hill-Johnson, Inc., a Georgia corporation engaged in the construction business. Mr. Wells holds a Bachelor of Business Administration degree in economics from the University of Georgia. Mr. Wells is a member of the International Association for Financial Planning (IAFP) and a registered NASD principal.

Mr. Wells has over 30 years of experience in real estate sales, management and brokerage services. In addition to being the President and a director of the Wells REIT, he is currently a co-general

partner in a total of 27 real estate limited partnerships formed for the purpose of acquiring, developing and operating office buildings and other commercial properties. As of June 30, 2002, these 27 real estate limited partnerships represented investments totaling approximately $347,154,000 from approximately 28,000 investors.

**Douglas P. Williams** is the Executive Vice President, Secretary, Treasurer and a director of the Wells REIT. He is also a Senior Vice President of Wells Capital, our advisor, and is also a Vice President of:

- Wells Investment Securities, Inc., our Dealer Manager;
- Wells Real Estate Funds, Inc.; and
- Wells Advisors, Inc. (See "Conflicts of Interest.")

Mr. Williams previously served as Vice President, Controller of OneSource, Inc., a leading supplier of janitorial and landscape services, from 1996 to 1999 where he was responsible for corporate-wide accounting activities and financial analysis. Mr. Williams was employed by ECC International Inc. (ECC), a supplier to the paper industry and to the paint, rubber and plastic industries, from 1982 to 1995. While at ECC, Mr. Williams served in a number of key accounting positions, including: Corporate Accounting Manager, U.S. Operations; Division Controller, Americas Region; and Corporate Controller, America/Pacific Division. Prior to joining ECC and for one year after leaving ECC, Mr. Williams was employed by Lithonia Lighting, a manufacturer of lighting fixtures, as a Cost and General Accounting Manager and Director of Planning and Control. Mr. Williams started his professional career as an auditor for KPMG Peat Marwick LLP.

Mr. Williams is a member of the American Institute of Certified Public Accountants and the Georgia Society of Certified Public Accountants and is licensed with the NASD as a financial and operations principal. Mr. Williams received a Bachelor of Arts degree from Dartmouth College and a Masters of Business Administration degree from the Amos Tuck School of Graduate Business Administration at Dartmouth College.

**John L. Bell** was the owner and Chairman of Bell-Mann, Inc., the largest commercial flooring contractor in the Southeast from February 1971 to February 1996. Mr. Bell also served on the board of directors of Realty South Investors, a REIT traded on the American Stock Exchange, and was the founder and served as a director of both the Chattahoochee Bank and the Buckhead Bank. In 1997, Mr. Bell initiated and implemented a "Dealer Acquisition Plan" for Shaw Industries, Inc., a floor covering manufacturer and distributor, which plan included the acquisition of Bell-Mann.

Mr. Bell currently serves on the Board of Directors of Electronic Commerce Systems, Inc. and the Cullasaja Club of Highlands, North Carolina. Mr. Bell is also extensively involved in buying and selling real estate both individually and in partnership with others. Mr. Bell graduated from Florida State University majoring in accounting and marketing.

**Michael R. Buchanan** was employed by Bank of America, N.A. and its predecessor banks, NationsBank and C&S National Bank, from 1972 until his retirement in March 2002. Mr. Buchanan has over 30 years of real estate banking and financial experience and, while at Bank of America, he held several key positions including Managing Director of the Real Estate Banking Group from 1998 until his retirement where he managed approximately 1,100 associates in 90 offices. This group was responsible for providing real estate loans including construction, acquisition, development and bridge financing for the commercial and residential real estate industry, as well as providing structured financing for REITs.

Mr. Buchanan is a graduate of the University of Kentucky where he earned a Bachelor of Economics degree and a Masters of Business Administration degree. He also attended Harvard University in the graduate program for management development.

**Richard W. Carpenter** served as General Vice President of Real Estate Finance of The Citizens and Southern National Bank from 1975 to 1979, during which time his duties included the establishment and supervision of the United Kingdom Pension Fund, U.K.-American Properties, Inc. which was established primarily for investment in commercial real estate within the United States.

Mr. Carpenter is a managing partner of Carpenter Properties, L.P., a real estate limited partnership. He is also President and director of Commonwealth Oil Refining Company, Inc., a position he has held since 1984.

Mr. Carpenter previously served as Vice Chairman of the board of directors of both First Liberty Financial Corp. and Liberty Savings Bank, F.S.B. and Chairman of the Audit Committee of First Liberty Financial Corp. He has been a member of The National Association of Real Estate Investment Trusts and formerly served as President and Chairman of the Board of Southmark Properties, an Atlanta-based REIT which invested in commercial properties. Mr. Carpenter is a past Chairman of the American Bankers Association Housing and Real Estate Finance Division Executive Committee. Mr. Carpenter holds a Bachelor of Science degree from Florida State University, where he was named the outstanding alumnus of the School of Business in 1973.

**Bud Carter** was an award-winning broadcast news director and anchorman for several radio and television stations in the Midwest for over 20 years. From 1975 to 1980, Mr. Carter served as General Manager of WTAZ-FM, a radio station in Peoria, Illinois and served as editor and publisher of The Peoria Press, a weekly business and political journal in Peoria, Illinois. From 1981 until 1989, Mr. Carter was also an owner and General Manager of Transitions, Inc., a corporate outplacement company in Atlanta, Georgia.

Mr. Carter currently serves as Senior Vice President for The Executive Committee, an international organization established to aid presidents and CEOs to share ideas on ways to improve the management and profitability of their respective companies. The Executive Committee operates in numerous large cities throughout the United States, Canada, Australia, France, Italy, Malaysia, Brazil, the United Kingdom and Japan. The Executive Committee has more than 7,000 presidents and CEOs who are members. In addition, Mr. Carter was the first Chairman of the organization recruited in Atlanta and still serves as Chairman of the first two groups formed in Atlanta, each comprised of 16 noncompeting CEOs and presidents. Mr. Carter serves on the board of directors of Creative Storage Systems, Inc., DiversiTech Coporation and Wavebase9. He is a graduate of the University of Missouri where he earned degrees in journalism and social psychology.

**William H. Keogler, Jr.** was employed by Brooke Bond Foods, Inc. as a Sales Manager from June 1965 to September 1968. From July 1968 to December 1974, Mr. Keogler was employed by Kidder Peabody & Company, Inc. and Dupont, Glore, Forgan as a corporate bond salesman responsible for managing the industrial corporate bond desk and the utility bond area. From December 1974 to July 1982, Mr. Keogler was employed by Robinson-Humphrey, Inc. as the Director of Fixed Income Trading Departments responsible for all municipal bond trading and municipal research, corporate and government bond trading, unit trusts and SBA/FHA loans, as well as the oversight of the publishing of the Robinson-Humphrey Southeast Unit Trust, a quarterly newsletter. Mr. Keogler was elected to the Board of Directors of Robinson-Humphrey, Inc. in 1982. From July 1982 to October 1984, Mr. Keogler was Executive Vice President, Chief Operating Officer, Chairman of the Executive Investment Committee and member of the board of directors and Chairman of the MFA Advisory Board for the Financial Service

Corporation. He was responsible for the creation of a full service trading department specializing in general securities with emphasis on municipal bonds and municipal trusts. Under his leadership, Financial Service Corporation grew to over 1,000 registered representatives and over 650 branch offices. In March 1985, Mr. Keogler founded Keogler, Morgan & Company, Inc., a full service brokerage firm, and Keogler Investment Advisory, Inc., in which he served as Chairman of the Board, President and Chief Executive Officer. In January 1997, both companies were sold to SunAmerica, Inc., a publicly traded New York Stock Exchange company. Mr. Keogler continued to serve as President and Chief Executive Officer of these companies until his retirement in January 1998.

Mr. Keogler serves on the Board of Trustees of Senior Citizens Services of Atlanta. He graduated from Adelphi University in New York where he earned a degree in psychology.

**Donald S. Moss** was employed by Avon Products, Inc. from 1957 until his retirement in 1986. While at Avon, Mr. Moss served in a number of key positions, including Vice President and Controller from 1973 to 1976, Group Vice President of Operations-Worldwide from 1976 to 1979, Group Vice President of Sales-Worldwide from 1979 to 1980, Senior Vice President-International from 1980 to 1983 and Group Vice President-Human Resources and Administration from 1983 until his retirement in 1986. Mr. Moss was also a member of the board of directors of Avon Canada, Avon Japan, Avon Thailand, and Avon Malaysia from 1980-1983.

Mr. Moss is currently a director of The Atlanta Athletic Club. He formerly was the National Treasurer and a director of the Girls Clubs of America from 1973 to 1976. Mr. Moss graduated from the University of Illinois where he received a degree in business.

**Walter W. Sessoms** was employed by Southern Bell and its successor company, BellSouth, from 1956 until his retirement in June 1997. While at BellSouth, Mr. Sessoms served in a number of key positions, including Vice President-Residence for the State of Georgia from June 1979 to July 1981, Vice President-Transitional Planning Officer from July 1981 to February 1982, Vice President-Georgia from February 1982 to June 1989, Senior Vice President-Regulatory and External Affairs from June 1989 to November 1991, and Group President-Services from December 1991 until his retirement on June 30, 1997.

Mr. Sessoms currently serves as a director of the Georgia Chamber of Commerce for which he is a past Chairman of the Board, the Atlanta Civic Enterprises and the Salvation Army's Board of Visitors of the Southeast Region. Mr. Sessoms is also a past executive advisory council member for the University of Georgia College of Business Administration and past member of the executive committee of the Atlanta Chamber of Commerce. Mr. Sessoms is a graduate of Wofford College where he earned a degree in economics and business administration, and is currently a member of the Wofford College Board of Trustees. He is a member of the Governor's Education Reform Commission. In addition, Mr. Sessoms is a member of the Board of Trustees of the Southern Center for International Studies and is currently President of the Atlanta Rotary Club.

**Neil H. Strickland** was employed by Loyalty Group Insurance (which subsequently merged with America Fore Loyalty Group and is now known as The Continental Group) as an automobile insurance underwriter. From 1957 to 1961, Mr. Strickland served as Assistant Supervisor of the Casualty Large Lines Retrospective Rating Department. From 1961 to 1964, Mr. Strickland served as Branch Manager of Wolverine Insurance Company, a full service property and casualty service company, where he had full responsibility for underwriting of insurance and office administration in the State of Georgia. In 1964, Mr. Strickland and a non-active partner started Superior Insurance Service, Inc., a property and casualty wholesale general insurance agency. Mr. Strickland served as President and was responsible for the underwriting and all other operations of the agency. In 1967, Mr. Strickland sold his interest in

Superior Insurance Service, Inc. and started Strickland General Agency, Inc., a property and casualty general insurance agency concentrating on commercial customers. Mr. Strickland is currently the Senior Operation Executive of Strickland General Agency, Inc. and devotes most of his time to long-term planning, policy development and senior administration.

Mr. Strickland is a past President of the Norcross Kiwanis Club and served as both Vice President and President of the Georgia Surplus Lines Association. He also served as President and a director of the National Association of Professional Surplus Lines Offices. Mr. Strickland currently serves as a director of First Capital Bank, a community bank located in the State of Georgia. Mr. Strickland attended Georgia State University where he majored in business administration. He received his L.L.B. degree from Atlanta Law School.

**Compensation of Directors**

We pay each of our independent directors $3,000 per regularly scheduled quarterly board meeting attended, $1,000 per regularly scheduled advisory committee meeting attended and $250 per special board meeting attended whether held in person or by telephone conference. In addition, we have reserved 100,000 shares of common stock for future issuance upon the exercise of stock options granted to the independent directors pursuant to our Independent Director Stock Option Plan and 500,000 shares for future issuance upon the exercise of warrants to be granted to the independent directors pursuant to our Independent Director Warrant Plan. All directors receive reimbursement of reasonable out-of-pocket expenses incurred in connection with attendance at meetings of the board of directors. If a director also is an officer of the Wells REIT, we do not pay separate compensation for services rendered as a director.

**Independent Director Stock Option Plan**

Our Independent Director Stock Option Plan (Director Option Plan) was approved by our stockholders at the annual stockholders meeting held June 16, 1999. We issued non-qualified stock options to purchase 2,500 shares (Initial Options) to each independent director pursuant to our Director Option Plan. In addition, we issued options to purchase 1,000 shares to each independent director then in office in connection with the 2000, 2001 and 2002 annual meeting of stockholders and will continue to issue options to purchase 1,000 shares (Subsequent Options) to each independent director then in office on the date of each annual stockholders' meeting. The Initial Options and the Subsequent Options are collectively referred to as the "Director Options." Director Options may not be granted at any time when the grant, along with grants to other independent directors, would exceed 10% of our issued and outstanding shares. As of the date of this prospectus, each independent director (except for Michael R. Buchanan, who was recently appointed as an independent director and will be awarded 2,500 Initial Options) had been granted options to purchase a total of 5,500 shares under the Director Option Plan, of which 3,000 of those options were exercisable.

The exercise price for the Initial Options is $12.00 per share. The exercise price for the Subsequent Options is the greater of (1) $12.00 per share or (2) the fair market value of the shares on the date they are granted. Fair market value is defined generally to mean:

- the average closing price for the five consecutive trading days ending on such date if the shares are traded on a national exchange;
- the average of the high bid and low asked prices if the shares are quoted on NASDAQ;
- the average of the last 10 sales made pursuant to a public offering if there is a current public offering and no market maker for the shares;

- the average of the last 10 purchases (or fewer if less than 10 purchases) under our share redemption program if there is no current public offering; or

- the price per share under the dividend reinvestment plan if there are no purchases under the share redemption program.

One-fifth of the Initial Options were exercisable beginning on the date we granted them, one-fifth of the Initial Options became exercisable beginning in July 2000, one-fifth of the Initial Options became exercisable beginning in July 2001, one fifth of the Initial Options became exercisable beginning in July 2002 and the remaining one-fifth of the Initial Options will become exercisable beginning in July 2003. The Subsequent Options granted in connection with the 2000 annual stockholders' meeting became exercisable in June 2002. The remaining Subsequent Options granted under the Director Option Plan will become exercisable on the second anniversary of the date we grant them.

A total of 100,000 shares have been authorized and reserved for issuance under the Director Option Plan. If the number of outstanding shares is changed into a different number or kind of shares or securities through a reorganization or merger in which the Wells REIT is the surviving entity, or through a combination, recapitalization or otherwise, an appropriate adjustment will be made in the number and kind of shares that may be issued pursuant to exercise of the Director Options. A corresponding adjustment to the exercise price of the Director Options granted prior to any change will also be made. Any such adjustment, however, will not change the total payment, if any, applicable to the portion of the Director Options not exercised, but will change only the exercise price for each share.

Options granted under the Director Option Plan shall lapse on the first to occur of (1) the tenth anniversary of the date we grant them, (2) the removal for cause of the independent director as a member of the board of directors, or (3) three months following the date the independent director ceases to be a director for any reason other than death or disability, and may be exercised by payment of cash or through the delivery of common stock. Director Options granted under the Director Option Plan are generally exercisable in the case of death or disability for a period of one year after death or the disabling event. No Director Option issued may be exercised if such exercise would jeopardize our status as a REIT under the Internal Revenue Code.

The independent directors may not sell, pledge, assign or transfer their options other than by will or the laws of descent or distribution.

Upon the dissolution or liquidation of the Wells REIT, upon our reorganization, merger or consolidation with one or more corporations as a result of which we are not the surviving corporation or upon sale of all or substantially all of our properties, the Director Option Plan will terminate, and any outstanding Director Options will terminate and be forfeited. The board of directors may provide in writing in connection with any such transaction for any or all of the following alternatives:

- for the assumption by the successor corporation of the Director Options granted or the replacement of the Director Options with options covering the stock of the successor corporation, or a parent or subsidiary of such corporation, with appropriate adjustments as to the number and kind of shares and exercise prices;

- for the continuance of the Director Option Plan and the Director Options by such successor corporation under the original terms; or

- for the payment in cash or shares of common stock in lieu of and in complete satisfaction of such options.

**Independent Director Warrant Plan**

Our Independent Director Warrant Plan (Director Warrant Plan) was approved by our stockholders at the annual stockholders meeting held June 28, 2000. Our Director Warrant Plan provides for the issuance of warrants to purchase shares of our common stock (Warrants) to independent directors based on the number of shares of common stock that they purchase. The purpose of the Director Warrant Plan is to encourage our independent directors to purchase shares of our common stock. Beginning on the effective date of the Director Warrant Plan and continuing until the earlier to occur of (1) the termination of the Director Warrant Plan by action of the board of directors or otherwise, or (2) 5:00 p.m. EST on the date of listing of our shares on a national securities exchange, each independent director will receive one Warrant for every 25 shares of common stock he purchases. The exercise price of the Warrants will be $12.00 per share.

A total of 500,000 Warrants have been authorized and reserved for issuance under the Director Warrant Plan, each of which will be redeemable for one share of our common stock. Upon our dissolution or liquidation, or upon a reorganization, merger or consolidation, where we are not the surviving corporation, or upon our sale of all or substantially all of our properties, the Director Warrant Plan shall terminate, and any outstanding Warrants shall terminate and be forfeited; provided, however, that holders of Warrants may exercise any Warrants that are otherwise exercisable immediately prior to the effective date of the dissolution, liquidation, consolidation or merger. Notwithstanding the above, our board of directors may provide in writing in connection with any such transaction for any or all of the following alternatives: (1) for the assumption by the successor corporation of the Warrants theretofore granted or the substitution by such corporation for such Warrants of awards covering the stock of the successor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices; (2) for the continuance of the Director Warrant Plan by such successor corporation in which event the Director Warrant Plan and the Warrants shall continue in the manner and under the terms so provided; or (3) for the payment in cash or shares in lieu of and in complete satisfaction of such Warrants.

No Warrant may be sold, pledged, assigned or transferred by an independent director in any manner other than by will or the laws of descent or distribution. All Warrants exercised during the independent director's lifetime shall be exercised only by the independent director or his legal representative. Any transfer contrary to the Director Warrant Plan will nullify and render void the Warrant. Notwithstanding any other provisions of the Director Warrant Plan, Warrants granted under the Director Warrant Plan shall continue to be exercisable in the case of death or disability of the independent director for a period of one year after the death or disabling event, provided that the death or disabling event occurs while the person is an independent director. No Warrant issued may be exercised if such exercise would jeopardize our status as a REIT under the Internal Revenue Code.

**Employee Stock Option Plan**

Our 2000 Employee Stock Option Plan (Employee Option Plan) was approved by our stockholders at the annual stockholders meeting held June 28, 2000. Our Employee Option Plan is designed to enable Wells Capital and Wells Management to obtain or retain the services of employees considered essential to our long range success and the success of Wells Capital and Wells Management by offering such employees an opportunity to participate in the growth of the Wells REIT through ownership of our common stock.

Our Employee Option Plan provides for the formation of a Compensation Committee consisting of two or more of our independent directors. (See "Committees of the Board of Directors.") The Compensation Committee shall conduct the general administration of the Employee Option Plan. The

Compensation Committee is authorized to grant "non-qualified" stock options (Employee Options) to selected employees of Wells Capital and Wells Management based upon the recommendation of Wells Capital and subject to the absolute discretion of the Compensation Committee and applicable limitations of the Employee Option Plan. The exercise price for the Employee Options shall be the greater of (1) $11.00 per share, or (2) the fair market value of the shares on the date the option is granted. A total of 750,000 shares have been authorized and reserved for issuance under our Employee Option Plan. To date, we have not issued any stock options under our Employee Option Plan.

The Compensation Committee shall set the term of the Employee Options in its discretion, although no Employee Option shall have a term greater than five years from the later of (1) the date our shares become listed on a national securities exchange, or (2) the date the Employee Option is granted. The employee receiving Employee Options shall agree to remain in employment with his employer for a period of one year after the Employee Option is granted. The Compensation Committee shall set the period during which the right to exercise an option vests in the holder of the option. No Employee Option issued may be exercised, however, if such exercise would jeopardize our status as a REIT under the Internal Revenue Code. In addition, no option may be sold, pledged, assigned or transferred by an employee in any manner other than by will or the laws of descent or distribution.

In the event that the Compensation Committee determines that any dividend or other distribution, recapitalization, stock split, reorganization, merger, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of our assets, or other similar corporate transaction or event, affects the shares such that an adjustment is determined by the Compensation Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Employee Option Plan or with respect to an Employee Option, then the Compensation Committee shall, in such manner as it may deem equitable, adjust the number and kind of shares or the exercise price with respect to any option.

**Limited Liability and Indemnification of Directors, Officers, Employees and Other Agents**

Our organizational documents limit the personal liability of our stockholders, directors and officers for monetary damages to the fullest extent permitted under current Maryland Corporation Law. We also maintain a directors and officers liability insurance policy. Maryland Corporation Law allows directors and officers to be indemnified against judgments, penalties, fines, settlements and expenses actually incurred in a proceeding unless the following can be established:

- an act or omission of the director or officer was material to the cause of action adjudicated in the proceeding, and was committed in bad faith or was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- with respect to any criminal proceeding, the director or officer had reasonable cause to believe his act or omission was unlawful.

Any indemnification or any agreement to hold harmless is recoverable only out of our assets and not from our stockholders. Indemnification could reduce the legal remedies available to us and our stockholders against the indemnified individuals, however.

This provision does not reduce the exposure of our directors and officers to liability under federal or state securities laws, nor does it limit our stockholder's ability to obtain injunctive relief or other

equitable remedies for a violation of a director's or an officer's duties to us or our stockholders, although the equitable remedies may not be an effective remedy in some circumstances.

In spite of the above provisions of Maryland Corporation Law, our articles of incorporation provide that our directors, Wells Capital and its affiliates will be indemnified by us for losses arising from our operation only if all of the following conditions are met:

- our directors, Wells Capital or its affiliates have determined, in good faith, that the course of conduct which caused the loss or liability was in our best interests;
- our directors, Wells Capital or its affiliates were acting on our behalf or performing services for us;
- in the case of affiliated directors, Wells Capital or its affiliates, the liability or loss was not the result of negligence or misconduct by the party seeking indemnification;
- in the case of independent directors, the liability or loss was not the result of gross negligence or willful misconduct by the party seeking indemnification; and
- the indemnification or agreement to hold harmless is recoverable only out of our net assets and not from the stockholders.

We have agreed to indemnify and hold harmless Wells Capital and its affiliates performing services for us from specific claims and liabilities arising out of the performance of its obligations under the advisory agreement. As a result, we and our stockholders may be entitled to a more limited right of action than they would otherwise have if these indemnification rights were not included in the advisory agreement.

The general effect to investors of any arrangement under which any of our controlling persons, directors or officers are insured or indemnified against liability is a potential reduction in distributions resulting from our payment of premiums associated with insurance. In addition, indemnification could reduce the legal remedies available to the Wells REIT and our stockholders against the officers and directors.

The Securities and Exchange Commission takes the position that indemnification against liabilities arising under the Securities Act of 1933 is against public policy and unenforceable. Indemnification of our directors, officers, Wells Capital or its affiliates will not be allowed for liabilities arising from or out of a violation of state or federal securities laws, unless one or more of the following conditions are met:

- there has been a successful adjudication on the merits of each count involving alleged securities law violations;
- such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction; or
- a court of competent jurisdiction approves a settlement of the claims against the indemnitee and finds that indemnification of the settlement and the related costs should be made, and the court considering the request for indemnification has been advised of the position of the Securities and Exchange Commission and of the published position of any state securities regulatory authority in which the securities were offered as to indemnification for violations of securities laws.

Indemnification will be allowed for settlements and related expenses of lawsuits alleging securities laws violations and for expenses incurred in successfully defending any lawsuits, provided that a court either:

- approves the settlement and finds that indemnification of the settlement and related costs should be made; or
- dismisses with prejudice or there is a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee and a court approves the indemnification.

**The Advisor**

The advisor of the Wells REIT is Wells Capital. Wells Capital has contractual responsibilities to the Wells REIT and its stockholders pursuant to the advisory agreement. Some of our officers and directors are also officers and directors of Wells Capital. (See "Conflicts of Interest.")

The directors and executive officers of Wells Capital are as follows:

| Name | Age | Positions |
|---|---|---|
| Leo F. Wells, III | 58 | President, Treasurer and sole director |
| Douglas P. Williams | 51 | Senior Vice President and Assistant Secretary |
| Stephen G. Franklin | 54 | Senior Vice President |
| Kim R. Comer | 48 | Vice President |
| Claire C. Janssen | 39 | Vice President |
| David H. Steinwedell | 42 | Vice President |

The backgrounds of Messrs. Wells and Williams are described in the "Management—Executive Officers and Directors" section of this prospectus. Below is a brief description of the other executive officers of Wells Capital.

**Stephen G. Franklin, Ph.D.** is a Senior Vice President of Wells Capital. Mr. Franklin is responsible for marketing, sales and coordination of broker-dealer relations. Mr. Franklin also serves as Vice President of Wells Real Estate Funds, Inc. Prior to joining Wells Capital in 1999, Mr. Franklin served as President of Global Access Learning, an international executive education and management development firm. From 1997 to 1999, Mr. Franklin served as President, Chief Academic Officer and Director of EduTrek International, a publicly traded provider of international post-secondary education that owns the American InterContinental University, with campuses in Atlanta, Ft. Lauderdale, Los Angeles, Washington, D.C., London and Dubai. While at EduTrek, he was instrumental in developing the Masters and Bachelors of Information Technology, International MBA and Adult Evening BBA programs. Prior to joining EduTrek, Mr. Franklin was Associate Dean of the Goizueta Business School at Emory University and a former tenured Associate Professor of Business Administration. He served on the founding Executive MBA faculty, and has taught graduate, undergraduate and executive courses in management and organizational behavior, human resources management and entrepreneurship. He is also co-founder and Director of the Center for Healthcare Leadership in the Emory University School of Medicine. Mr. Franklin was a frequent guest lecturer at universities throughout North America, Europe and South Africa.

In 1984, Mr. Franklin took a sabbatical from Emory University and became Executive Vice President and a principal stockholder of Financial Service Corporation (FSC), an independent financial planning broker-dealer. Mr. Franklin and the other stockholders of FSC later sold their interests in FSC to Mutual of New York Life Insurance Company.

**Kim R. Comer** is a Vice President of Wells Capital. He is primarily responsible for developing, implementing and monitoring initiatives to further the strategic objectives of Wells Capital. He rejoined Wells Capital as National Vice President of Marketing in April 1997 after working for Wells Capital in similar capacities from January 1992 through September 1995. In prior positions with Wells Capital, he served as both Vice President and Director of Customer Care Services and Vice President of Marketing for the southeast and northeast regions. Mr. Comer has over 10 years experience in the securities industry and is a registered representative and financial principal with the NASD. Additionally, he has substantial financial experience including experience as controller and chief financial officer of two regional broker-dealers. In 1976, Mr. Comer graduated with honors from Georgia State University with a BBA degree in accounting.

**Claire C. Janssen** is a Vice President of Wells Capital. She is primarily responsible for managing the corporate, real estate, investment and investor accounting areas of the company. Ms. Janssen also serves as a Vice President of Wells Management Company, Inc., our Property Manager. Prior to joining Wells Capital in 2001, Ms. Janssen served as a Vice President of Lend Lease Real Estate (formerly, Equitable Real Estate). From 1990 to 2000, she held various management positions, including Vice President of Institutional Accounting, Vice President of Business/Credit Analysis and Director of Tax/Corporate Accounting. From 1985 to 1990, Ms. Janssen served in management positions for Beers and Cutler, a Washington, D.C. based accounting firm, where she provided both audit and tax services for clients.

Ms. Janssen received a B.S. in business administration with a major in accounting from George Mason University. She is a Certified Public Accountant and a member of American Institute of Certified Public Accountants, Georgia Society of Certified Public Accountants and National Association of Real Estate Companies.

**David H. Steinwedell** is a Vice President of Wells Capital. He is primarily responsible for the acquisition of real estate properties. Prior to joining Wells Capital in 2001, Mr. Steinwedell served as a principal in Steinwedell and Associates, a capital markets advisory firm specializing in transactions and strategic planning for commercial real estate firms. His background also includes experience as the Executive Vice President of Investment Banking at Jones Lang LaSalle and as Managing Director for Real Estate Investments at Aetna Life and Casualty. He graduated from Hamilton College with a B.S. in Economics. Mr. Steinwedell is a licensed real estate broker in Georgia and is a member of the Urban Land Institute and NAIOP.

Wells Capital employs personnel, in addition to the directors and executive officers listed above, who have extensive experience in selecting and managing commercial properties similar to the properties sought to be acquired by the Wells REIT.

**The Advisory Agreement**

Many of the services to be performed by Wells Capital in managing our day-to-day activities are summarized below. This summary is provided to illustrate the material functions which Wells Capital will perform for us as our advisor, and it is not intended to include all of the services which may be provided to us by Wells Capital or by third parties. Under the terms of the advisory agreement, Wells Capital undertakes to use its best efforts to present to us investment opportunities consistent with our investment policies and objectives as adopted by our board of directors. In its performance of this undertaking, Wells Capital, either directly or indirectly by engaging an affiliate, shall, subject to the authority of the board:

- find, present and recommend to us real estate investment opportunities consistent with our investment policies and objectives;
- structure the terms and conditions of transactions pursuant to which acquisitions of properties will be made;
- acquire properties on our behalf in compliance with our investment objectives and policies;
- arrange for financing and refinancing of properties; and
- enter into leases and service contracts for the properties acquired.

The term of the current advisory agreement ends on January 30, 2003 and may be renewed for an unlimited number of successive one-year periods. Additionally, the advisory agreement may be terminated:

- immediately by us for "cause" or upon the bankruptcy of Wells Capital or a material breach of the advisory agreement by Wells Capital;
- without cause by a majority of the independent directors of the Wells REIT or a majority of the directors of Wells Capital upon 60 days' written notice; or
- immediately with "good reason" by Wells Capital.

"Good reason" is defined in the advisory agreement to mean either:

- any failure by us to obtain a satisfactory agreement from our successor to assume and agree to perform our obligations under the advisory agreement; or
- any material breach of the advisory agreement of any nature whatsoever by us.

"Cause" is defined in the advisory agreement to mean fraud, criminal conduct, willful misconduct or willful or negligent breach of fiduciary duty by Wells Capital or a breach of the advisory agreement by Wells Capital.

Wells Capital and its affiliates expect to engage in other business ventures and, as a result, their resources will not be dedicated exclusively to our business. However, pursuant to the advisory agreement, Wells Capital must devote sufficient resources to the administration of the Wells REIT to discharge its obligations. Wells Capital may assign the advisory agreement to an affiliate upon approval of a majority of the independent directors. We may assign or transfer the advisory agreement to a successor entity.

Wells Capital may not make any acquisition of property or financing of such acquisition on our behalf without the prior approval of a majority of our board of directors. The actual terms and conditions of transactions involving investments in properties shall be determined in the sole discretion of Wells Capital, subject at all times to such board approval.

We will reimburse Wells Capital for all of the costs it incurs in connection with the services it provides to us, including, but not limited to:

- organization and offering expenses in an amount up to 3.0% of gross offering proceeds, which include actual legal, accounting, printing and expenses attributable to preparing the SEC registration statement, qualification of the shares for sale in the states and filing fees incurred by Wells Capital, as well as reimbursements for marketing, salaries and

direct expenses of its employees while engaged in registering and marketing the shares and other marketing and organization costs, other than selling commissions and the dealer manager fee;

- the annual cost of goods and materials used by us and obtained from entities not affiliated with Wells Capital, including brokerage fees paid in connection with the purchase and sale of securities;
- administrative services including personnel costs, provided, however, that no reimbursement shall be made for costs of personnel to the extent that personnel are used in transactions for which Wells Capital receives a separate fee; and
- acquisition expenses, which are defined to include expenses related to the selection and acquisition of properties.

Wells Capital must reimburse us at least annually for amounts paid to Wells Capital in any year to the extent that such payments cause our operating expenses to exceed the greater of (1) 2% of our average invested assets, which consists of the average book value of our real estate properties, both equity interests in and loans secured by real estate, before reserves for depreciation or bad debts or other similar non-cash reserves, or (2) 25% of our net income, which is defined as our total revenues less total operating expenses for any given period. Operating expenses includes all expenses paid or incurred by the Wells REIT as determined by generally accepted accounting principles, such as (1) real estate operating costs, net of reimbursements, (2) management and leasing fees, (3) general and administrative expenses, and (4) legal and accounting expenses, but excludes (A) expenses of raising capital such as organizational and offering expenses, (B) interest payments, (C) taxes, (D) non-cash expenditures such as depreciation, amortization and bad debt reserves, and (E) amounts payable out of capital contributions which are not treated as operating expenses under generally accepted accounting principles such as the acquisition and advisory fees payable to Wells Capital. To the extent that operating expenses payable or reimbursable by us exceed this limit and the independent directors determine that the excess expenses were justified based on unusual and nonrecurring factors which they deem sufficient, Wells Capital may be reimbursed in future years for the full amount of the excess expenses, or any portion thereof, but only to the extent the reimbursement would not cause our operating expenses to exceed the limitation in any year. Within 60 days after the end of any of our fiscal quarters for which total operating expenses for the 12 months then ended exceed the limitation, there shall be sent to the stockholders a written disclosure, together with an explanation of the factors the independent directors considered in arriving at the conclusion that the excess expenses were justified.

Wells Capital and its affiliates will be paid fees in connection with services provided to us. (See “Management Compensation.”) In the event the advisory agreement is terminated, Wells Capital will be paid all accrued and unpaid fees and expense reimbursements, and any subordinated acquisition fees earned prior to the termination. We will not reimburse Wells Capital or its affiliates for services for which Wells Capital or its affiliates are entitled to compensation in the form of a separate fee.

**Shareholdings**

Wells Capital currently owns 20,000 limited partnership units of Wells OP, our operating partnership, for which it contributed $200,000 and which constitutes 100% of the limited partner units outstanding at this time. Wells Capital may not sell any of these units during the period it serves as our advisor. Any resale of shares that Wells Capital or its affiliates may acquire in the future will be subject to the provisions of Rule 144 promulgated under the Securities Act of 1933, which rule limits the number of shares that may be sold at any one time and the manner of such resale. Although Wells Capital and its affiliates are not prohibited from acquiring shares of the Wells REIT, Wells Capital currently has no

options or warrants to acquire any shares and has no current plans to acquire shares. Wells Capital has agreed to abstain from voting any shares it acquires in any vote for the election of directors or any vote regarding the approval or termination of any contract with Wells Capital or any of its affiliates.

**Affiliated Companies**

*Property Manager*

Our properties will be managed and leased initially by Wells Management Company, Inc. (Wells Management), our Property Manager. Wells Management is a wholly owned subsidiary of Wells Real Estate Funds, Inc., and Mr. Wells is the sole director of Wells Management. (See "Conflicts of Interest.") The principal officers of Wells Management are as follows:

| Name | Age | Positions |
|---|---|---|
| Leo F. Wells, III | 58 | President and Treasurer |
| M. Scott Meadows | 38 | Senior Vice President and Secretary |
| John G. Oliver | 53 | Vice President |
| Michael L. Watson | 59 | Vice President |

The background of Mr. Wells is described in the "Management—Executive Officers and Directors" section of this prospectus. Below is a brief description of the other executive officers of Wells Management.

**M. Scott Meadows** is a Senior Vice President and Secretary of Wells Management. He is primarily responsible for the acquisition, operation, management and disposition of real estate investments. Prior to joining Wells Management in 1996, Mr. Meadows served as Senior Property Manager for The Griffin Company, a full-service commercial real estate firm in Atlanta, where he was responsible for managing a 500,000 square foot office and retail portfolio. Mr. Meadows previously managed real estate as a Property Manager for Sea Pines Plantation Company. He graduated from University of Georgia with a B.B.A. in management. Mr. Meadows is a Georgia real estate broker and holds a Real Property Administrator (RPA) designation from the Building Owners and Managers Institute International and a Certified Property Manager (CPM) designation from the Institute of Real Estate Management.

**John G. Oliver** is a Vice President of Wells Management. He is primarily responsible for operation and management of real estate properties. Prior to joining Wells Management in July 2000, Mr. Oliver served as Vice President with C.B. Richard Ellis where he was responsible for the management of properties occupied by Delta Airlines. Mr. Oliver previously was the Vice President of Property Management for Grubb and Ellis for their southeast region and served on their Executive Property Management Council. He graduated from Georgia State University with a B.S. in real estate. Mr. Oliver is a past President of the Atlanta chapter of BOMA (Building Owners and Managers Association) and holds a Certified Property Manager (CPM) designation from the Institute of Real Estate Management.

**Michael L. Watson** is a Vice President of Wells Management. He is primarily responsible for performing due diligence investigations on our properties and overseeing construction and tenant improvement projects including design, engineering, and progress-monitoring functions. Prior to joining Wells Management in 1995, Mr. Watson was Senior Project Manager with Abrams Construction in Atlanta from 1982 to 1995. His primary responsibilities included supervising a variety of projects consisting of high-rise office buildings, military bases, state projects and neighborhood shopping centers. He graduated from the University of Miami with a B.S. in civil engineering.

Wells Management is engaged in the business of real estate management. It was organized and commenced active operations in 1983 to lease and manage real estate projects that Wells Capital and its affiliates operate or in which they own an interest. As of June 30, 2002, Wells Management was managing in excess of 8,800,000 square feet of office and industrial buildings and shopping centers. We will pay Wells Management property management and leasing fees not exceeding the lesser of: (A) 4.5% of gross revenues, or (B) 0.6% of the net asset value of the properties (excluding vacant properties) owned by the Wells REIT, calculated on an annual basis. For purposes of this calculation, net asset value shall be defined as the excess of (1) the aggregate of the fair market value of all properties owned by the Wells REIT (excluding vacant properties), over (2) the aggregate outstanding debt of the Wells REIT (excluding debts having maturities of one year or less). In addition, we may pay Wells Management a separate fee for the one-time initial rent-up or leasing-up of newly constructed properties in an amount not to exceed the fee customarily charged in arm's length transactions by others rendering similar services in the same geographic area for similar properties as determined by a survey of brokers and agents in such area (customarily equal to the first month's rent). Wells Management will also retain third-party property managers or subcontract manager services to third-party property managers as it deems appropriate for certain of our properties.

In the event that Wells Management assists a tenant with tenant improvements, a separate fee may be charged to the tenant and paid by the tenant. This fee will not exceed 5.0% of the cost of the tenant improvements.

Wells Management will hire, direct and establish policies for employees who will have direct responsibility for each property's operations, including resident managers and assistant managers, as well as building and maintenance personnel. Some or all of the other employees may be employed on a part-time basis and may also be employed by one or more of the following:

- Wells Capital;
- Wells Management;
- partnerships organized by Wells Management and its affiliates; and
- other persons or entities owning properties managed by Wells Management.

Wells Management will direct the purchase of equipment and supplies and will supervise all maintenance activity.

The management fees to be paid to Wells Management will cover, without additional expense to the Wells REIT, the property manager's general overhead costs such as its expenses for rent and utilities.

The principal office of Wells Management is located at 6200 The Corners Parkway, Suite 250, Atlanta, Georgia 30092.

*Dealer Manager*

Wells Investment Securities, Inc. (Wells Investment Securities), our Dealer Manager, is a member firm of the NASD, Inc. (NASD). Wells Investment Securities was organized in May 1984 for the purpose of participating in and facilitating the distribution of securities of Wells programs.

Wells Investment Securities will provide certain wholesaling, sales promotional and marketing assistance services to the Wells REIT in connection with the distribution of the shares offered pursuant to this prospectus. It may also sell shares at the retail level. (See "Plan of Distribution" and "Management Compensation.")

Wells Real Estate Funds, Inc. is the sole stockholder and Mr. Wells is the President, Treasurer and sole director of Wells Investment Securities. (See "Conflicts of Interest.")

*IRA Custodian*

Wells Advisors, Inc. (Wells Advisors) was organized in 1991 for the purpose of acting as a non-bank custodian for IRAs investing in the securities of Wells real estate programs. Wells Advisors currently charges no fees for such services. Wells Advisors was approved by the Internal Revenue Service to act as a qualified non-bank custodian for IRAs on March 20, 1992. In circumstances where Wells Advisors acts as an IRA custodian, the authority of Wells Advisors is limited to holding limited partnership units or REIT shares on behalf of the beneficiary of the IRA and making distributions or reinvestments in such units or shares solely at the direction of the beneficiary of the IRA. Well Advisors is not authorized to vote any of such units or shares held in any IRA except in accordance with the written instructions of the beneficiary of the IRA. Mr. Wells is the President and sole director and owns 50% of the common stock and all of the preferred stock of Wells Advisors. As of June 30, 2002, Wells Advisors was acting as the IRA custodian for in excess of $373,442,000 in Wells real estate program investments.

**Management Decisions**

The primary responsibility for the management decisions of Wells Capital and its affiliates, including the selection of investment properties to be recommended to our board of directors, the negotiation for these investments, and the property management and leasing of these investment properties, will reside in Leo F. Wells, III, Douglas P. Williams, M. Scott Meadows, David H. Steinwedell and John G. Oliver. Wells Capital seeks to invest in commercial properties that satisfy our investment objectives, typically office and industrial buildings located in densely populated metropolitan markets in which the major tenant is a company with a net worth of in excess of $100,000,000. Our board of directors must approve all acquisitions of real estate properties.

## MANAGEMENT COMPENSATION

The following table summarizes and discloses all of the compensation and fees, including reimbursement of expenses, to be paid by the Wells REIT to Wells Capital and its affiliates.

| Form of Compensation and Entity Receiving | Determination of Amount | | Estimated Maximum Dollar Amount(1) |
|---|---|---|---|
| | ***Organizational and Offering Stage*** | | |
| Selling Commissions —Wells Investment Securities | Up to 7.0% of gross offering proceeds before reallowance of commissions earned by participating broker-dealers. Wells Investment Securities, our Dealer Manager, intends to reallow 100% of commissions earned for those transactions that involve participating broker-dealers. | $ | 231,000,000 |
| Dealer Manager Fee —Wells Investment Securities | Up to 2.5% of gross offering proceeds before reallowance to participating broker-dealers. Wells Investment Securities, in its sole discretion, may reallow a portion of its dealer manager fee of up to 1.5% of the gross offering proceeds to be paid to such participating broker-dealers. | $ | 82,500,000 |

| Form of Compensation and Entity Receiving | Determination of Amount | Estimated Maximum Dollar Amount(1) |
|---|---|---|
| Reimbursement of Organization and Offering Expenses—Wells Capital or its Affiliates(2) | Up to 3.0% of gross offering proceeds. All organization and offering expenses (excluding selling commissions and the dealer manager fee) will be advanced by Wells Capital or its affiliates and reimbursed by the Wells REIT up to 3.0% of aggregate gross offering proceeds. We currently estimate that approximately $49,500,000 of organization and offering costs will be incurred if the maximum offering of 330,000,000 shares is sold. | $ 49,500,000 (estimated) |
| | ***Acquisition and Development Stage*** | |
| Acquisition and Advisory Fees—Wells Capital or its Affiliates(3) | Up to 3.0% of gross offering proceeds for the review and evaluation of potential real property acquisitions. | $ 99,000,000 |
| Reimbursement of Acquisition Expenses—Wells Capital or its Affiliates(3) | Up to 0.5% of gross offering proceeds for reimbursement of expenses related to real property acquisitions, such as legal fees, travel expenses, property appraisals, title insurance premium expenses and other closing costs. | $ 16,500,000 |
| | ***Operational Stage*** | |
| Property Management and Leasing Fees—Wells Management | For the management and leasing of our properties, we will pay Wells Management, our Property Manager, property management and leasing fees of up to 4.5% of gross revenues; provided, however, that aggregate property management and leasing fees payable to Wells Management may not exceed the lesser of: (A) 4.5% of gross revenues; or (B) 0.6% of the net asset value of the properties (excluding vacant properties) owned by the Wells REIT, calculated on an annual basis. For purposes of this calculation, net asset value shall be defined as the excess of (1) the aggregate of the fair market value of all properties owned by the Wells REIT (excluding vacant properties), over (2) the aggregate outstanding debt of the Wells REIT (excluding debts having maturities of one year or less). In addition, we may pay Wells Management a separate fee for the one-time initial rent-up or leasing-up of newly constructed properties in an amount not to exceed the fee customarily charged in arm's length transactions by others rendering similar services in the same geographic area for similar properties as determined by a survey of brokers and agents in such area (customarily equal to the first month's rent). | Actual amounts are dependent upon results of operations and therefore cannot be determined at the present time. |

| Form of Compensation and Entity Receiving | Determination of Amount | Estimated Maximum Dollar Amount(1) |
|---|---|---|
| Real Estate Commissions— Wells Capital or its Affiliates | In connection with the sale of properties, an amount not exceeding the lesser of: (A) 50% of the reasonable, customary and competitive real estate brokerage commissions customarily paid for the sale of a comparable property in light of the size, type and location of the property; or (B) 3.0% of the contract price of each property sold, subordinated to distributions to investors from sale proceeds of an amount which, together with prior distributions to the investors, will equal (1) 100% of their capital contributions, plus (2) an 8.0% annual cumulative, noncompounded return on their net capital contributions; provided however, in no event will the amounts paid under (A) or (B) exceed an amount equal to 6.0% of the contract sales price when combined with real estate commissions paid to unaffiliated third parties. | Actual amounts are dependent upon results of operations and therefore cannot be determined at the present time. |
| Subordinated Participation in Net Sale Proceeds— Wells Capital(4) | After investors have received a return of their net capital contributions and an 8.0% per year cumulative, noncompounded return, then Wells Capital is entitled to receive 10.0% of remaining net sale proceeds. | Actual amounts are dependent upon results of operations and therefore cannot be determined at the present time. |
| Subordinated Incentive Listing Fee— Wells Capital(5)(6) | Upon listing, a fee equal to 10.0% of the amount by which (1) the market value of the outstanding stock of the Wells REIT plus distributions paid by the Wells REIT prior to listing, exceeds (2) the sum of the total amount of capital raised from investors and the amount of cash flow necessary to generate an 8.0% per year cumulative, noncompounded return to investors. | Actual amounts are dependent upon results of operations and therefore cannot be determined at the present time. |

***The Wells REIT may not reimburse any entity for operating expenses in excess of the greater of 2% of our average invested assets or 25% of our net income for the year.***

(Footnotes to "Management Compensation")

(1) The estimated maximum dollar amounts are based on the sale of a maximum of 300,000,000 shares to the public at $10 per share and the sale of 30,000,000 shares at $10 per share pursuant to our dividend reinvestment plan.

(2) These reimbursements will include organization and offering expenses previously advanced by Wells Capital with regards to prior offerings of our shares, to the extent not reimbursed out of proceeds from prior offerings, and subject for the 3.0% of gross offering proceeds overall limitation.

(3) Notwithstanding the method by which we calculate the payment of acquisition fees and expenses, as described in the table, the total of all such acquisition fees and acquisition expenses shall not exceed, in the aggregate, an amount equal to 6.0% of the contract price of all of the properties which we will purchase, as required by the NASAA Guidelines.

(4) The subordinated participation in net sale proceeds and the subordinated incentive listing fee to be received by Wells Capital are mutually exclusive of each other. In the event that the Wells REIT becomes listed and Wells Capital receives the subordinated incentive listing fee prior to its

receipt of the subordinated participation in net sale proceeds, Wells Capital shall not be entitled to any such participation in net sale proceeds.

(5) If at any time the shares become listed on a national securities exchange or included for quotation on NASDAQ, we will negotiate in good faith with Wells Capital a fee structure appropriate for an entity with a perpetual life. A majority of the independent directors must approve the new fee structure negotiated with Wells Capital. In negotiating a new fee structure, the independent directors shall consider all of the factors they deem relevant, including but not limited to:

- the size of the advisory fee in relation to the size, composition and profitability of our portfolio;
- the success of Wells Capital in generating opportunities that meet our investment objectives;
- the rates charged to other REITs and to investors other than REITs by advisors performing similar services;
- additional revenues realized by Wells Capital through their relationship with us;
- the quality and extent of service and advice furnished by Wells Capital;
- the performance of our investment portfolio, including income, conservation or appreciation of capital, frequency of problem investments and competence in dealing with distress situations; and
- the quality of our portfolio in relationship to the investments generated by Wells Capital for the account of other clients.

Our board of directors, including a majority of the independent directors, may not approve a new fee structure that is, in its judgment, more favorable to Wells Capital than the current fee structure.

(6) The market value of the outstanding stock of the Wells REIT will be calculated based on the average market value of the shares issued and outstanding at listing over the 30 trading days beginning 180 days after the shares are first listed on a stock exchange.

We have the option to pay the listing fee in the form of stock, cash, a promissory note or any combination thereof. In the event the subordinated incentive listing fee is paid to Wells Capital as a result of the listing of the shares, we will not be required to pay Wells Capital any further subordinated participation in net sale proceeds.

In addition, Wells Capital and its affiliates will be reimbursed only for the actual cost of goods, services and materials used for or by the Wells REIT. Wells Capital may be reimbursed for the administrative services necessary to the prudent operation of the Wells REIT provided that the reimbursement shall not be for services for which it is entitled to compensation by way of a separate fee.

Since Wells Capital and its affiliates are entitled to differing levels of compensation for undertaking different transactions on behalf of the Wells REIT such as the property management fees for operating the properties and the subordinated participation in net sale proceeds, Wells Capital has the ability to affect the nature of the compensation it receives by undertaking different transactions. However, Wells Capital is obligated to exercise good faith and integrity in all its dealings with respect to our affairs pursuant to the advisory agreement. (See “Management—The Advisory Agreement.”) Because these fees or expenses are payable only with respect to certain transactions or services, they may not be recovered by Wells Capital or its affiliates by reclassifying them under a different category.

## STOCK OWNERSHIP

The following table shows, as of June 30, 2002, the amount of our common stock beneficially owned (unless otherwise indicated) by (1) any person who is known by us to be the beneficial owner of more than 5% of the outstanding shares of our common stock, (2) our directors, (3) our executive officers, and (4) all of our directors and executive officers as a group.

| | Shares Beneficially Owned | |
|---|---|---|
| **Name and Address of Beneficial Owner** | **Shares** | **Percentage** |
| Leo F. Wells, III<br>6200 The Corners Parkway, Suite 250<br>Atlanta, GA 30092 | 698 | * |
| Douglas P. Williams<br>6200 The Corners Parkway, Suite 250<br>Atlanta, GA 30092 | None | N/A |
| John L. Bell(1)<br>800 Mt. Vernon Highway, Suite 230<br>Atlanta, GA 30328 | 3,000 | * |
| Michael R. Buchanan<br>1630 Misty Oaks Drive<br>Atlanta, GA 30350 | None | N/A |
| Richard W. Carpenter(1)<br>Realmark Holdings Corporation<br>P.O. Box 421669 (30342)<br>5570 Glenridge Drive<br>Atlanta, GA 30342 | 3,000 | * |
| Bud Carter(1)<br>The Executive Committee<br>100 Mount Shasta Lane<br>Alpharetta, GA 30022-5440 | 8,373 | * |
| William H. Keogler, Jr.(1)<br>469 Atlanta Country Club Drive<br>Marietta, GA 30067 | 3,000 | * |
| Donald S. Moss(1)<br>114 Summerour Vale<br>Duluth, GA 30097 | 80,717 | * |
| Walter W. Sessoms(1)<br>5995 River Chase Circle NW<br>Atlanta, GA 30328 | 40,243 | * |
| Neil H. Strickland(1)<br>Strickland General Agency, Inc.<br>3109 Crossing Park<br>P.O. Box 129<br>Norcross, GA 30091 | 3,285 | * |
| All directors and executive officers as a group(2) | 142,316 | * |

* Less than 1% of the outstanding common stock.

(1) Includes options to purchase up to 3,000 shares of common stock, which are exercisable within 60 days of June 30, 2002.

(2) Includes options to purchase an aggregate of up to 21,000 shares of common stock, which are exercisable within 60 days of June 30, 2002.

## CONFLICTS OF INTEREST

We are subject to various conflicts of interest arising out of our relationship with Wells Capital, our advisor, and its affiliates, including conflicts related to the arrangements pursuant to which Wells Capital and its affiliates will be compensated by the Wells REIT. (See "Management Compensation.")

The independent directors have an obligation to function on our behalf in all situations in which a conflict of interest may arise and have a statutory obligation to act in the best interest of the stockholders. (See "Management—Limited Liability and Indemnification of Directors, Officers, Employees and Other Agents.") These conflicts include, but are not limited to, the following:

**Interests in Other Real Estate Programs**

Wells Capital and its affiliates are general partners of other Wells programs, including partnerships which have investment objectives similar to those of the Wells REIT, and we expect that they will organize other such partnerships and programs in the future. Wells Capital and such affiliates have legal and financial obligations with respect to these partnerships that are similar to their obligations to the Wells REIT. As general partners, they may have contingent liability for the obligations of such partnerships as well as those of the Wells REIT that, if such obligations were enforced against them, could result in substantial reduction of their net worth.

Wells Capital and its affiliates are currently sponsoring a real estate program known as Wells Real Estate Fund XIII, L.P. (Wells Fund XIII). The registration statement of Wells Fund XIII was declared effective by the Securities and Exchange Commission (SEC) on March 29, 2001 for the offer and sale to the public of up to 4,500,000 units of limited partnership interest at a price of $10.00 per unit.

As described in the "Prior Performance Summary," Wells Capital and its affiliates have sponsored the following 14 public real estate programs with substantially identical investment objectives as those of the Wells REIT:

1. Wells Real Estate Fund I (Wells Fund I),
2. Wells Real Estate Fund II (Wells Fund II),
3. Wells Real Estate Fund II-OW (Wells Fund II-OW),
4. Wells Real Estate Fund III, L.P. (Wells Fund III),
5. Wells Real Estate Fund IV, L.P. (Wells Fund IV),
6. Wells Real Estate Fund V, L.P. (Wells Fund V),
7. Wells Real Estate Fund VI, L.P. (Wells Fund VI),
8. Wells Real Estate Fund VII, L.P. (Wells Fund VII),
9. Wells Real Estate Fund VIII, L.P. (Wells Fund VIII),
10. Wells Real Estate Fund IX, L.P. (Wells Fund IX),
11. Wells Real Estate Fund X, L.P. (Wells Fund X),
12. Wells Real Estate Fund XI, L.P. (Wells Fund XI),
13. Wells Real Estate Fund XII, L.P. (Wells Fund XII), and
14. Wells Real Estate Fund XIII, L.P. (Wells Fund XIII).

In the event that the Wells REIT, or any other Wells program or other entity formed or managed by Wells Capital or its affiliates is in the market for similar properties, Wells Capital will review the investment portfolio of each such affiliated entity prior to making a decision as to which Wells program will purchase such properties. (See "Certain Conflict Resolution Procedures.")

Wells Capital or one of its affiliates may acquire, for its own account or for private placement, properties which it deems not suitable for purchase by the Wells REIT, whether because of the greater degree of risk, the complexity of structuring inherent in such transactions, financing considerations or for other reasons, including properties with potential for attractive investment returns.

**Other Activities of Wells Capital and its Affiliates**

We rely on Wells Capital for the day-to-day operation of our business. As a result of its interests in other Wells programs and the fact that it has also engaged and will continue to engage in other business activities, Wells Capital and its affiliates will have conflicts of interest in allocating their time between the Wells REIT and other Wells programs and activities in which they are involved. (See "Risk Factors—Investment Risks.") However, Wells Capital believes that it and its affiliates have sufficient personnel to discharge fully their responsibilities to all of the Wells programs and ventures in which they are involved.

In addition, certain of our executive officers and directors are also officers and directors of Wells Capital, our advisor and the general partner of the various real estate programs sponsored by Wells Capital and its affiliates described above, Wells Management, our Property Manager, and Wells Investment Securities, our Dealer Manager, and as such, owe fiduciary duties to these various entities and their stockholders and limited partners. Such fiduciary duties may from time to time conflict with the fiduciary duties owed to the Wells REIT and its stockholders. (See "Risk Factors—Investment Risks.")

In addition to the real estate programs sponsored by Wells Capital and its affiliates described above, Wells Capital and its affiliates are also sponsoring an index mutual fund that invests in various REIT stocks known as the Wells S&P REIT Index Fund (REIT Index Fund). The REIT Index Fund is a mutual fund which seeks to provide investment results corresponding to the performance of the S&P REIT Index by investing in the REIT stocks included in the S&P REIT Index.

We may purchase or lease a property from Wells Capital or its affiliates upon a finding by a majority of our board of directors, including a majority of the independent directors, not otherwise interested in the transaction, that such transaction is competitive and commercially reasonable to the Wells REIT and at a price no greater than the cost of the property; provided, however, if the price is in excess of the cost of such property, that substantial justification for such excess exists and such excess is reasonable and the acquisition is disclosed. In no event may the Wells REIT:

- loan funds to Wells Capital or any of its affiliates; or
- enter into agreements with Wells Capital or its affiliates for the provision of insurance covering the Wells REIT or any of our properties.

**Competition**

Conflicts of interest will exist to the extent that we may acquire properties in the same geographic areas where other Wells programs own properties. In such a case, a conflict could arise in the leasing of properties in the event that the Wells REIT and another Wells program were to compete for the same tenants in negotiating leases, or a conflict could arise in connection with the resale of properties in the event that the Wells REIT and another Wells program were to attempt to sell similar properties at the same time. (See "Risk Factors—Investment Risks"). Conflicts of interest may also exist at such time as the Wells REIT or our affiliates managing property on our behalf seek to employ developers, contractors or building managers as well as under other circumstances. Wells Capital will seek to reduce conflicts relating to the employment of developers, contractors or building managers by making prospective employees aware of all such properties seeking to employ such persons. In addition, Wells Capital will seek to reduce conflicts which may arise with respect to properties available for sale or rent by making

prospective purchasers or tenants aware of all such properties. However, these conflicts cannot be fully avoided in that Wells Capital may establish differing compensation arrangements for employees at different properties or differing terms for resales or leasing of the various properties.

**Affiliated Dealer Manager**

Since Wells Investment Securities, our Dealer Manager, is an affiliate of Wells Capital, we will not have the benefit of an independent due diligence review and investigation of the type normally performed by an unaffiliated, independent underwriter in connection with the offering of securities. (See "Plan of Distribution.")

**Affiliated Property Manager**

Since we anticipate that properties we acquire will be managed and leased by Wells Management, our Property Manager, we will not have the benefit of independent property management. (See "Management—Affiliated Companies.")

**Lack of Separate Representation**

Holland & Knight LLP is counsel to the Wells REIT, Wells Capital, Wells Investment Securities and their affiliates in connection with this offering and may in the future act as counsel to the Wells REIT, Wells Capital, Wells Investment Securities and their various affiliates. There is a possibility that in the future the interests of the various parties may become adverse. In the event that a dispute were to arise between the Wells REIT and Wells Capital, Wells Investment Securities or any of their affiliates, separate counsel for such matters will be retained as and when appropriate.

**Joint Ventures with Affiliates of Wells Capital**

We have entered into joint ventures with other Wells programs to acquire and own properties and are likely to enter into one or more joint venture agreements with other Wells programs for the acquisition, development or improvement of properties. (See "Investment Objectives and Criteria—Joint Venture Investments.") Wells Capital and its affiliates may have conflicts of interest in determining which Wells program should enter into any particular joint venture agreement. The co-venturer may have economic or business interests or goals which are or which may become inconsistent with our business interests or goals. In addition, should any such joint venture be consummated, Wells Capital may face a conflict in structuring the terms of the relationship between our interests and the interest of the affiliated co-venturer and in managing the joint venture. Since Wells Capital and its affiliates will control both the affiliated co-venturer and, to a certain extent, the Wells REIT, agreements and transactions between the co-venturers with respect to any such joint venture will not have the benefit of arm's-length negotiation of the type normally conducted between unrelated co-venturers. (See "Risk Factors—Investment Risks.")

**Receipt of Fees and Other Compensation by Wells Capital and its Affiliates**

A transaction involving the purchase and sale of properties may result in the receipt of commissions, fees and other compensation by Wells Capital and its affiliates, including acquisition and advisory fees, the dealer manager fee, property management and leasing fees, real estate brokerage commissions, and participation in nonliquidating net sale proceeds. However, the fees and compensation payable to Wells Capital and its affiliates relating to the sale of properties are subordinated to the return to the stockholders of their capital contributions plus cumulative returns on such capital. Subject to oversight by our board of directors, Wells Capital has considerable discretion with respect to all decisions relating to the terms and timing of all transactions. Therefore, Wells Capital may have conflicts of

interest concerning certain actions taken on our behalf, particularly due to the fact that such fees will generally be payable to Wells Capital and its affiliates regardless of the quality of the properties acquired or the services provided to the Wells REIT. (See "Management Compensation.")

Every transaction we enter into with Wells Capital or its affiliates is subject to an inherent conflict of interest. The board may encounter conflicts of interest in enforcing our rights against any affiliate in the event of a default by or disagreement with an affiliate or in invoking powers, rights or options pursuant to any agreement between us and any affiliate. A majority of the independent directors who are otherwise disinterested in the transaction must approve each transaction between us and Wells Capital or any of its affiliates as being fair and reasonable to us and on terms and conditions no less favorable to us than those available from unaffiliated third parties.

**Certain Conflict Resolution Procedures**

In order to reduce or eliminate certain potential conflicts of interest, our articles of incorporation contain a number of restrictions relating to (1) transactions we enter into with Wells Capital and its affiliates, (2) certain future offerings, and (3) allocation of properties among affiliated entities. These restrictions include, among others, the following:

- Except as otherwise described in this prospectus, we will not accept goods or services from Wells Capital or its affiliates unless a majority of our directors, including a majority of the independent directors, not otherwise interested in the transactions, approve such transactions as fair and reasonable to the Wells REIT and on terms and conditions not less favorable to the Wells REIT than those available from unaffiliated third parties.

- We will not purchase or lease properties in which Wells Capital or its affiliates has an interest without a determination by a majority of our directors, including a majority of the independent directors, not otherwise interested in such transaction, that such transaction is competitive and commercially reasonable to the Wells REIT and at a price to the Wells REIT no greater than the cost of the property to Wells Capital or its affiliates, unless there is substantial justification for any amount that exceeds such cost and such excess amount is determined to be reasonable. In no event will we acquire any such property at an amount in excess of its appraised value. We will not sell or lease properties to Wells Capital or its affiliates or to our directors unless a majority of our directors, including a majority of the independent directors, not otherwise interested in the transaction, determine the transaction is fair and reasonable to the Wells REIT.

- We will not make any loans to Wells Capital or its affiliates or to our directors. In addition, Wells Capital and its affiliates will not make loans to us or to joint ventures in which we are a joint venture partner for the purpose of acquiring properties. Any loans made to us by Wells Capital or its affiliates or our directors for other purposes must be approved by a majority of our directors, including a majority of the independent directors, not otherwise interested in the transaction, as fair, competitive and commercially reasonable, and no less favorable to the Wells REIT than comparable loans between unaffiliated parties. Wells Capital and its affiliates shall be entitled to reimbursement, at cost, for actual expenses incurred by them on behalf of the Wells REIT or joint ventures in which we are a joint venture partner, subject to the limitation on reimbursement of operating expenses to the extent that they exceed the greater of 2% of our average invested assets or 25% of our net income, as described in the "Management—The Advisory Agreement" section of this prospectus.

- In the event that an investment opportunity becomes available which is suitable, under all of the factors considered by Wells Capital, for the Wells REIT and one or more other public or private entities affiliated with Wells Capital and its affiliates, then the entity which has had the longest period of time elapse since it was offered an investment opportunity will first be offered such investment opportunity. In determining whether or not an investment opportunity is suitable for more than one program, Wells Capital, subject to approval by our board of directors, shall examine, among others, the following factors:

    - the cash requirements of each program;

    - the effect of the acquisition both on diversification of each program's investments by type of commercial property and geographic area, and on diversification of the tenants of its properties;

    - the policy of each program relating to leverage of properties;

    - the anticipated cash flow of each program;

    - the income tax effects of the purchase of each program;

    - the size of the investment; and

    - the amount of funds available to each program and the length of time such funds have been available for investment.

If a subsequent event or development, such as a delay in the closing of a property or a delay in the construction of a property, causes any such investment, in the opinion of our board of directors and Wells Capital, to be more appropriate for a program other than the program that committed to make the investment, Wells Capital may determine that another program affiliated with Wells Capital or its affiliates will make the investment. Our board of directors has a duty to ensure that the method used by Wells Capital for the allocation of the acquisition of properties by two or more affiliated programs seeking to acquire similar types of properties shall be reasonable.

## INVESTMENT OBJECTIVES AND CRITERIA

### General

We invest in commercial real estate properties, including properties that are under development or construction, are newly constructed or have been constructed and have operating histories. Our investment objectives are:

- to maximize cash dividends paid to you;

- to preserve, protect and return your capital contributions;

- to realize growth in the value of our properties upon our ultimate sale of such properties; and

- to provide you with liquidity of your investment by listing the shares on a national exchange or, if we do not obtain listing of the shares by January 30, 2008, our articles of incorporation require us to begin the process of selling our properties and distributing the net proceeds from such sales to you.

We cannot assure you that we will attain these objectives or that our capital will not decrease. We may not change our investment objectives, except upon approval of stockholders holding a majority of our outstanding shares. (See "Description of Shares.")

Decisions relating to the purchase or sale of properties will be made by Wells Capital, as our advisor, subject to approval by our board of directors. See "Management" for a description of the background and experience of our directors and executive officers.

**Acquisition and Investment Policies**

We will seek to invest substantially all of the offering proceeds available for investment after the payment of fees and expenses in the acquisition of high-grade commercial office and industrial buildings located in densely populated metropolitan markets, which are newly constructed, under construction, or which have been previously constructed and have operating histories. We are not limited to such investments, however. We may invest in other real estate investments, including, but not limited to, warehouse and distribution facilities, shopping centers, business and industrial parks, manufacturing facilities and other types of real estate properties. To date, we have invested primarily in office and industrial buildings located in densely populated suburban markets. (See "Description of Real Estate Investments" and "Prior Performance Summary.") We will primarily attempt to acquire commercial properties that are less than five years old, the space in which has been leased or preleased to one or more large corporate tenants who satisfy our standards of creditworthiness. (See "Terms of Leases and Tenant Creditworthiness.")

We will seek to invest in properties that will satisfy the primary objective of providing cash dividends to our stockholders. However, because a significant factor in the valuation of income-producing real properties is their potential for future income, we anticipate that the majority of properties we acquire will have both the potential for growth in value and providing cash dividends to our stockholders. To the extent feasible, we will strive to invest in a diversified portfolio of properties in terms of geography, type of property and industry group of our tenants, that will satisfy our investment objectives of maximizing cash available for payment of dividends, preserving our capital and realizing growth in value upon the ultimate sale of our properties.

We anticipate that a minimum of 84% of the proceeds from the sale of shares will be used to acquire real estate properties and the balance will be used to pay various fees and expenses. (See "Estimated Use of Proceeds.")

We anticipate purchasing land for the purpose of developing the types of commercial buildings described above. We will not invest more than 10% of the net offering proceeds available for investment in properties in unimproved or non-income producing properties. A property: (1) not acquired for the purpose of producing rental or other operating income, or (2) with no development or construction in process or planned in good faith to commence within one year will be considered unimproved property for purposes of this limitation.

Although we are not limited as to the form our investments may take, our investments in real estate will generally take the form of holding fee title or a long-term leasehold estate in the properties we acquire. We will acquire such interests either directly in Wells OP (See "The Operating Partnership Agreement") or indirectly by acquiring membership interests in or acquisitions of property through limited liability companies or through investments in joint ventures, partnerships, co-tenancies or other co-ownership arrangements with developers of properties, affiliates of Wells Capital or other persons. (See "Joint Venture Investments" below.) We may invest in or make mortgage loans, junior debt or subordinated mortgage loans or combinations of debt and equity, subject to the limitations contained in

our articles of incorporation. In addition, we may purchase properties and lease them back to the sellers of such properties. While we will use our best efforts to structure any such sale-leaseback transaction such that the lease will be characterized as a "true lease" so that we will be treated as the owner of the property for federal income tax purposes, we cannot assure you that the IRS will not challenge such characterization. In the event that any such sale-leaseback transaction is recharacterized as a financing transaction for federal income tax purposes, deductions for depreciation and cost recovery relating to such property would be disallowed. (See "Federal Income Tax Considerations—Sale-Leaseback Transactions.")

Although we are not limited as to the geographic area where we may conduct our operations, we currently intend to invest in properties located in the United States.

We are not specifically limited in the number or size of properties we may acquire or on the percentage of net proceeds of this offering that we may invest in a single property. The number and mix of properties we acquire will depend upon real estate and market conditions and other circumstances existing at the time we are acquiring our properties and the amount of proceeds we raise in this offering.

In making investment decisions for us, Wells Capital will consider relevant real estate property and financial factors, including the creditworthiness of major tenants, the location of the property, its suitability for any development contemplated or in progress, its income-producing capacity, the prospects for long-range appreciation, its liquidity and income tax considerations. In this regard, Wells Capital will have substantial discretion with respect to the selection of specific investments.

Our obligation to close the purchase of any investment will generally be conditioned upon the delivery and verification of certain documents from the seller or developer, including, where appropriate:

- plans and specifications;
- environmental reports;
- surveys;
- evidence of marketable title subject to such liens and encumbrances as are acceptable to Wells Capital;
- title and liability insurance policies; and
- audited financial statements covering recent operations of properties having operating histories unless such statements are not required to be filed with the Securities and Exchange Commission.

We will not close the purchase of any property unless and until we obtain an environmental assessment, a minimum of a Phase I review, for each property purchased and are generally satisfied with the environmental status of the property.

We may also enter into arrangements with the seller or developer of a property whereby the seller or developer agrees that if during a stated period the property does not generate a specified cash flow, the seller or developer will pay in cash to the Wells REIT a sum necessary to reach the specified cash flow level, subject in some cases to negotiated dollar limitations.

In determining whether to purchase a particular property, we may, in accordance with customary practices, obtain an option on such property. The amount paid for an option, if any, is normally

surrendered if the property is not purchased and is normally credited against the purchase price if the property is purchased.

In purchasing, leasing and developing real estate properties, we will be subject to risks generally incident to the ownership of real estate, including:

- changes in general economic or local conditions;
- changes in supply of or demand for similar or competing properties in an area;
- changes in interest rates and availability of permanent mortgage funds which may render the sale of a property difficult or unattractive;
- changes in tax, real estate, environmental and zoning laws;
- periods of high interest rates and tight money supply which may make the sale of properties more difficult;
- tenant turnover; and
- general overbuilding or excess supply in the market area.

**Development and Construction of Properties**

We may invest substantially all of the proceeds available for investment in properties on which improvements are to be constructed or completed although we may not invest in excess of 10% of the offering proceeds available for investment in properties with respect to which construction is not planned in good faith to commence within one year from the date of their acquisition. To help ensure performance by the builders of properties that are under construction, completion of properties under construction may be guaranteed at the price contracted either by an adequate completion bond or performance bond. We may rely, however, upon the substantial net worth of the contractor or developer or a personal guarantee accompanied by financial statements showing a substantial net worth provided by an affiliate of the person entering into the construction or development contract as an alternative to a completion bond or performance bond. Development of real estate properties is subject to risks relating to a builder's ability to control construction costs or to build in conformity with plans, specifications and timetables. (See "Risk Factors—Real Estate Risks.")

We may directly employ one or more project managers to plan, supervise and implement the development of any unimproved properties that we may acquire. In such event, such persons would be compensated directly by the Wells REIT.

**Terms of Leases and Tenant Creditworthiness**

The terms and conditions of any lease we enter into with our tenants may vary substantially from those we describe in this prospectus. However, we expect that a majority of our leases will be economically what is generally referred to as "triple net" leases. A "triple net" lease provides that in addition to making its lease payments, the tenant will be required to pay or reimburse the Wells REIT for all real estate taxes, sales and use taxes, special assessments, utilities, insurance and building repairs, and other building operation and management costs.

Wells Capital has developed specific standards for determining the creditworthiness of potential tenants of our properties. While authorized to enter into leases with any type of tenant, we anticipate that a majority of our tenants will be large corporations or other entities which have a net worth in excess of

$100,000,000 or whose lease obligations are guaranteed by another corporation or entity with a net worth in excess of $100,000,000. As of June 30, 2002, approximately 95% of the aggregate gross rental income of the Wells REIT was derived from tenants which are corporations, each of which at the time of lease execution had a net worth of at least $100,000,000 or whose lease obligations were guaranteed by another corporation having a net worth of at least $100,000,000.

In an attempt to limit or avoid speculative purchases, to the extent possible, Wells Capital will seek to secure, on our behalf, leases with tenants at or prior to the closing of our acquisitions of properties.

We anticipate that tenant improvements required to be funded by the landlord in connection with newly acquired properties will be funded from our offering proceeds. However, at such time as a tenant at one of our properties does not renew its lease or otherwise vacates its space in one of our buildings, it is likely that, in order to attract new tenants, we will be required to expend substantial funds for tenant improvements and tenant refurbishments to the vacated space. Since we do not anticipate maintaining permanent working capital reserves, we may not have access to funds required in the future for tenant improvements and tenant refurbishments in order to attract new tenants to lease vacated space. (See "Risk Factors—Real Estate Risks.")

**Joint Venture Investments**

We have entered into joint ventures in the past, and are likely to enter into joint ventures in the future, with affiliated entities for the acquisition, development or improvement of properties for the purpose of diversifying our portfolio of assets. (See "Description of Real Estate Investments—Joint Ventures with Affiliates.") In this connection, we will likely enter into joint ventures with Wells Fund XIII or other Wells programs. We may also enter into joint ventures, partnerships, co-tenancies and other co-ownership arrangements or participations with real estate developers, owners and other affiliated third-parties for the purpose of developing, owning and operating real properties. (See "Conflicts of Interest.") In determining whether to invest in a particular joint venture, Wells Capital will evaluate the real property that such joint venture owns or is being formed to own under the same criteria described elsewhere in this prospectus for the selection of real estate property investments of the Wells REIT. (See generally "Investment Objectives and Criteria.")

At such time as Wells Capital enters into a joint venture with another Wells program for the acquisition or development of a specific property, this prospectus will be supplemented to disclose the terms of such investment transaction. We may only enter into joint ventures with other Wells programs for the acquisition of properties if:

- a majority of our directors, including a majority of the independent directors, approve the transaction as being fair and reasonable to the Wells REIT;
- the investment by the Wells REIT and such affiliate are on substantially the same terms and conditions; and
- we will have a right of first refusal to buy if such co-venturer elects to sell its interest in the property held by the joint venture.

In the event that the co-venturer were to elect to sell property held in any such joint venture, however, we may not have sufficient funds to exercise our right of first refusal to buy the other co-venturer's interest in the property held by the joint venture. In the event that any joint venture with an affiliated entity holds interests in more than one property, the interest in each such property may be specially allocated based upon the respective proportion of funds invested by each co-venturer in each such property. Our entering

into joint ventures with other Wells programs will result in certain conflicts of interest. (See "Conflicts of Interest—Joint Ventures with Affiliates of Wells Capital.")

**Section 1031 Exchange Program**

Wells Development Corporation (Wells Development), an affiliate of Wells Management, our Property Manager, and Wells Capital, our advisor, intends to form a series of single member limited liability companies (each of which is referred to in this prospectus as Wells Exchange) for the purpose of facilitating the acquisition of real estate properties to be owned in co-tenancy arrangements with persons (1031 Participants) who are looking to invest the proceeds from a sale of real estate held for investment in another real estate investment for purposes of qualifying for like-kind exchange treatment under Section 1031 of the Internal Revenue Code. We anticipate that Wells Development will sponsor a series of private placement offerings of interests in limited liability companies owning co-tenancy interests in various properties to 1031 Participants.

Wells Development anticipates that properties acquired in connection with the Section 1031 Exchange Program will be financed by obtaining a new first mortgage secured by the property acquired. In order to finance the remainder of the purchase price for properties to be acquired by Wells Exchange, it is anticipated that Wells Exchange will obtain a short-term loan from an institutional lender for each property. Following its acquisition of a property, Wells Exchange will attempt to sell co-tenancy interests to 1031 Participants, the proceeds of which will be used to pay off the short-term loan. At the closing of each property to be acquired by Wells Exchange, we anticipate that Wells OP, our operating partnership, will enter into a contractual arrangement providing that, in the event that Wells Exchange is unable to sell all of the co-tenancy interests in that particular property to 1031 Participants, Wells OP will purchase, at Wells Exchange's cost, any co-tenancy interests remaining unsold. (See "Risk Factors—Section 1031 Exchange Program.") In addition, Wells OP may enter into one or more additional contractual arrangements obligating it to purchase co-tenancy interests in a particular property directly from the 1031 Participants. In consideration for such obligations, Wells Exchange will pay Wells OP a fee (Take Out Fee) in an amount currently anticipated to range between 1.0% and 1.5% of the amount of the short-term loan being obtained by Wells Exchange. (See "Risk Factors—Federal Income Tax Risks.")

Our board of directors, including a majority of our independent directors, will be required to approve each property acquired pursuant to the Section 1031 Exchange Program in the event that Wells OP has any obligation to potentially acquire any interest in the property. Accordingly, Wells Exchange intends to purchase only real estate properties which otherwise meet the investment objectives of the Wells REIT. Wells OP may execute an agreement providing for the potential purchase of the unsold co-tenancy interests from Wells Exchange only after a majority of our directors, including a majority of our independent directors, not otherwise interested in the transaction, approve of the transaction as being fair, competitive and commercially reasonable to Wells OP and at a price to Wells OP no greater than the cost of the co-tenancy interests to Wells Exchange. If the price to Wells OP is in excess of such cost, our directors must find substantial justification for such excess and that such excess is reasonable. In addition, a fair market value appraisal for each property must be obtained from an independent expert selected by our independent directors, and in no event may Wells OP purchase co-tenancy interests at a price that exceeds the current appraised value for the property interests.

As set forth above, pursuant to the terms of these contractual arrangements, Wells OP may be obligated to purchase co-tenancy interests in certain properties offered to 1031 Participants to the extent co-tenancy interests remain unsold at the end of the offering. All purchasers of co-tenancy interests, including Wells OP in the event that it is required to purchase co-tenancy interests, will be required to execute a tenants in common agreement with the other purchasers of co-tenancy interests in that particular property and a property management agreement providing for the property management and leasing of the

property by Wells Management and the payment of property management and leasing fees to Wells Management equal to 4.5% of gross revenues. Accordingly, in the event that Wells OP is required to purchase co-tenancy interests pursuant to one or more of these contractual arrangements, we will be subject to various risks associated with co-tenancy arrangements which are not otherwise present in real estate investments such as the risk that the interests of the 1031 Participants will become adverse to our interests. (See "Risk Factors—Section 1031 Exchange Program.")

**Borrowing Policies**

While we strive for diversification, the number of different properties we can acquire will be affected by the amount of funds available to us. See "Description of Real Estate Investments—Real Estate Loans" for a description of our existing loans and the outstanding loan balances.

Our ability to increase our diversification through borrowing could be adversely impacted by banks and other lending institutions reducing the amount of funds available for loans secured by real estate. When interest rates on mortgage loans are high or financing is otherwise unavailable on a timely basis, we may purchase certain properties for cash with the intention of obtaining a mortgage loan for a portion of the purchase price at a later time.

There is no limitation on the amount we may invest in any single improved property or on the amount we can borrow for the purchase of any property. The NASAA Guidelines only limit our borrowing to 75% of the value of all properties unless any excess borrowing is approved by a majority of the independent directors and is disclosed to stockholders in our next quarterly report. However, under our articles of incorporation, we have a self-imposed limitation on borrowing which precludes us from borrowing in the aggregate in excess of 50% of the value of all of our properties. As of June 30, 2002, we had an aggregate debt leverage ratio of 1.76% of the value of our properties.

By operating on a leveraged basis, we will have more funds available for investment in properties. This will allow us to make more investments than would otherwise be possible, resulting in a more diversified portfolio. Although our liability for the repayment of indebtedness is expected to be limited to the value of the property securing the liability and the rents or profits derived therefrom, our use of leveraging increases the risk of default on the mortgage payments and a resulting foreclosure of a particular property. (See "Risk Factors—Real Estate Risks.") To the extent that we do not obtain mortgage loans on our properties, our ability to acquire additional properties will be restricted. Wells Capital will use its best efforts to obtain financing on our behalf on the most favorable terms available. Lenders may have recourse to assets not securing the repayment of the indebtedness.

Wells Capital will refinance properties during the term of a loan only in limited circumstances, such as when a decline in interest rates makes it beneficial to prepay an existing mortgage, when an existing mortgage matures or if an attractive investment becomes available and the proceeds from the refinancing can be used to purchase such investment. The benefits of the refinancing may include an increased cash flow resulting from reduced debt service requirements, an increase in dividend distributions from proceeds of the refinancing, if any, and/or an increase in property ownership if some refinancing proceeds are reinvested in real estate.

We may not borrow money from any of our directors or from Wells Capital and its affiliates for the purpose of acquiring real properties. Any loans by such parties for other purposes must be approved by a majority of our directors, including a majority of the independent directors, not otherwise interested in the transaction, as fair, competitive and commercially reasonable and no less favorable to the Wells REIT than comparable loans between unaffiliated parties.

**Disposition Policies**

We intend to hold each property we acquire for an extended period. However, circumstances might arise which could result in the early sale of some properties. We may sell a property before the end of the expected holding period if, among other reasons:

- the tenant has involuntarily liquidated;
- in the judgment of Wells Capital, the value of a property might decline substantially;
- an opportunity has arisen to improve other properties;
- we can increase cash flow through the disposition of the property;
- the tenant is in default under the lease; or
- in our judgment, the sale of the property is in the best interests of our stockholders.

The determination of whether a particular property should be sold or otherwise disposed of will be made after consideration of relevant factors, including prevailing economic conditions, with a view to achieving maximum capital appreciation. We cannot assure you that this objective will be realized. The selling price of a property that is net leased will be determined in large part by the amount of rent payable under the lease. If a tenant has a repurchase option at a formula price, we may be limited in realizing any appreciation. In connection with our sales of properties we may lend the purchaser all or a portion of the purchase price. In these instances, our taxable income may exceed the cash received in the sale. (See "Federal Income Tax Considerations—Failure to Qualify as a REIT.") The terms of payment will be affected by custom in the area in which the property being sold is located and the then-prevailing economic conditions.

If our shares are not listed for trading on a national securities exchange or included for quotation on NASDAQ by January 30, 2008, our articles of incorporation require us to begin the process of selling our properties and distributing the net sale proceeds to you in liquidation of the Wells REIT. In making the decision to apply for listing of our shares, our directors will try to determine whether listing our shares or liquidating our assets will result in greater value for the stockholders. We cannot determine at this time the circumstances, if any, under which our directors will agree to list our shares. Even if our shares are not listed or included for quotation, we are under no obligation to actually sell our portfolio within this time period since the precise timing will depend on real estate and financial markets, economic conditions of the areas in which the properties are located and federal income tax effects on stockholders which may be applicable in the future. Furthermore, we cannot assure you that we will be able to liquidate our assets, and it should be noted that we will continue in existence until all properties are sold and our other assets are liquidated. In addition, we may consider other business strategies such as reorganizations or mergers with other entities if our board of directors determines such strategies would be in the best interests of our stockholders. Any change in the investment objectives set forth in our articles of incorporation would require the vote of stockholders holding a majority of our outstanding shares.

**Investment Limitations**

Our articles of incorporation place numerous limitations on us with respect to the manner in which we may invest our funds, most of which are required by various provisions of the NASAA Guidelines. These limitations cannot be changed unless our articles of incorporation are amended, which requires approval of our stockholders. Unless our articles are amended, we will not:

- borrow in excess of 50% of the aggregate value of all properties owned by us, provided that we may borrow in excess of 50% of the value of an individual property;

- invest in equity securities unless a majority of our directors, including a majority of the independent directors, not otherwise interested in the transaction, approve such investment as being fair, competitive and commercially reasonable;
- invest in commodities or commodity futures contracts, except for futures contracts when used solely for the purpose of hedging in connection with our ordinary business of investing in real estate assets and mortgages;
- invest in real estate contracts of sale, otherwise known as land sale contracts, unless the contract is in recordable form and is appropriately recorded in the chain of title;
- make or invest in mortgage loans except in connection with a sale or other disposition of a property;
- make or invest in mortgage loans unless an appraisal is obtained concerning the underlying property except for those mortgage loans insured or guaranteed by a government or government agency. Mortgage debt on any property shall not exceed such property's appraised value. In cases where our board of directors determines, and in all cases in which the transaction is with any of our directors or Wells Capital and its affiliates, such appraisal shall be obtained from an independent appraiser. We will maintain such appraisal in our records for at least five years and it will be available for your inspection and duplication. We will also obtain a mortgagee's or owner's title insurance policy as to the priority of the mortgage;
- make or invest in mortgage loans, including construction loans, on any one property if the aggregate amount of all mortgage loans on such property would exceed an amount equal to 85% of the appraised value of such property as determined by appraisal unless substantial justification exists for exceeding such limit because of the presence of other underwriting criteria;
- make or invest in mortgage loans that are subordinate to any mortgage or equity interest of any of our directors, Wells Capital or its affiliates;
- invest in junior debt secured by a mortgage on real property which is subordinate to the lien or other senior debt except where the amount of such junior debt plus any senior debt exceeds 90% of the appraised value of such property, if after giving effect thereto, the value of all such mortgage loans of the Wells REIT would not then exceed 25% of our net assets, which shall mean our total assets less our total liabilities;
- engage in any short sale or borrow on an unsecured basis, if the borrowing will result in asset coverage of less than 300%. "Asset coverage," for the purpose of this clause, means the ratio which the value of our total assets, less all liabilities and indebtedness for unsecured borrowings, bears to the aggregate amount of all of our unsecured borrowings;
- make investments in unimproved property or indebtedness secured by a deed of trust or mortgage loans on unimproved property in excess of 10% of our total assets;
- issue equity securities on a deferred payment basis or other similar arrangement;
- issue debt securities in the absence of adequate cash flow to cover debt service;
- issue equity securities which are non-voting or assessable;

- issue "redeemable securities," as defined in Section 2(a)(32) of the Investment Company Act of 1940, except pursuant to our share redemption program;
- grant warrants or options to purchase shares to Wells Capital or its affiliates or to officers or directors affiliated with Wells Capital except on the same terms as the options or warrants are sold to the general public and the amount of the options or warrants does not exceed an amount equal to 10% of the outstanding shares on the date of grant of the warrants and options;
- engage in trading, as compared with investment activities, or engage in the business of underwriting or the agency distribution of securities issued by other persons;
- invest more than 5% of the value of our assets in the securities of any one issuer if the investment would cause us to fail to qualify as a REIT;
- invest in securities representing more than 10% of the outstanding voting securities of any one issuer if the investment would cause us to fail to qualify as a REIT; or
- lend money to our directors or to Wells Capital or its affiliates.

Wells Capital will continually review our investment activity to attempt to ensure that we do not come within the application of the Investment Company Act of 1940. Among other things, Wells Capital will attempt to monitor the proportion of our portfolio that is placed in various investments so that we do not come within the definition of an "investment company" under the Act. If at any time the character of our investments could cause us to be deemed an investment company for purposes of the Investment Company Act of 1940, we will take the necessary action to attempt to ensure that we are not deemed to be an "investment company."

**Change in Investment Objectives and Limitations**

Our articles of incorporation require that the independent directors review our investment policies at least annually to determine that the policies we are following are in the best interests of our stockholders. Each determination and the basis therefore is required to be set forth in our minutes. The methods of implementing our investment policies also may vary as new investment techniques are developed. The methods of implementing our investment objectives and policies, except as otherwise provided in the organizational documents, may be altered by a majority of our directors, including a majority of the independent directors, without the approval of the stockholders. Our investment objectives themselves, however, may only be amended by a vote of the stockholders holding a majority of our outstanding shares.

## DESCRIPTION OF REAL ESTATE INVESTMENTS

**General**

As of July 1, 2002, we had purchased interests in 53 real estate properties located in 19 states, most of which are leased to tenants on an economicly triple-net basis. As of July 1, 2002, all of these properties were 100% leased to tenants. The cost of each of the properties will be depreciated for tax purposes over a 40-year period on a straight-line basis. We believe all of the properties are adequately covered by insurance and are suitable for their intended purposes. The following table provides certain additional information about these properties.

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| Property Name | Tenant | Property Location | % Owned | Purchase Price | Square Feet | Annual Rent |
|---|---|---|---|---|---|---|
| ISS Atlanta | Internet Security Systems, Inc. | Atlanta, GA | 100% | $ 40,500,000 | 238,600 | $ 4,623,445 |
| MFS Phoenix | Massachusetts Financial Services Company | Phoenix, AZ | 100% | $ 25,800,000 | 148,605 | $ 2,347,959 |
| TRW Denver | TRW, Inc. | Aurora, CO | 100% | $ 21,060,000 | 108,240 | $ 2,870,709 |
| Agilent Boston | Agilent Technologies, Inc. | Boxborough, MA | 100% | $ 31,742,274 | 174,585 | $ 3,578,993 |
| Experian/TRW | Experian Information Solutions, Inc. | Allen, TX | 100% | $ 35,150,000 | 292,700 | $ 3,438,277 |
| BellSouth Ft. Lauderdale | BellSouth Advertising and Publishing Corporation | Ft. Lauderdale, FL | 100% | $ 6,850,000 | 47,400 | $ 747,033 |
| Agilent Atlanta | Agilent Technologies, Inc. Koninklijke Philips Electronics N.V. | Alpharetta, GA | 100% | $ 15,100,000 | 66,811<br>34,396 | $ 1,344,905<br>$ 692,391 |
| Travelers Express Denver | Travelers Express Company, Inc. | Lakewood, CO | 100% | $ 10,395,845 | 68,165 | $ 1,012,250 |
| Dana Kalamazoo | Dana Corporation | Kalamazoo, MI | 100% | $41,950,000(1) | 147,004 | $ 1,842,800 |
| Dana Detroit | Dana Corporation | Farmington Hills, MI | 100% | (see above) (1) | 112,480 | $ 2,330,600 |
| Novartis Atlanta | Novartis Opthalmics, Inc. | Duluth, GA | 100% | $ 15,000,000 | 100,087 | $ 1,426,240 |
| Transocean Houston | Transocean Deepwater Offshore Drilling, Inc. | Houston, TX | 100% | $ 22,000,000 | 103,260 | $ 2,110,035 |
| | Newpark Drilling Fluids, Inc. | | | | 52,731 | $ 1,153,227 |
| Arthur Andersen | Arthur Andersen LLP | Sarasota, FL | 100% | $ 21,400,000 | 157,700 | $ 1,988,454 |
| Windy Point I | TCI Great Lakes, Inc.<br>The Apollo Group, Inc.<br>Global Knowledge Network<br>Various other tenants | Schaumburg, IL | 100% | $32,225,000(2) | 129,157<br>28,322<br>22,028<br>8,884 | $ 2,067,204<br>$ 477,226<br>$ 393,776<br>$ 160,000 |
| Windy Point II | Zurich American Insurance | Schaumburg, IL | 100% | $57,050,000(2) | 300,034 | $ 5,091,577 |
| Convergys | Convergys Customer Management Group, Inc. | Tamarac, FL | 100% | $ 13,255,000 | 100,000 | $ 1,248,192 |
| ADIC | Advanced Digital Information Corporation | Parker, CO | 68.2% | $ 12,954,213 | 148,204 | $ 1,222,683 |
| Lucent | Lucent Technologies, Inc. | Cary, NC | 100% | $ 17,650,000 | 120,000 | $ 1,800,000 |
| Ingram Micro | Ingram Micro, L.P. | Millington, TN | 100% | $ 21,050,000 | 701,819 | $ 2,035,275 |
| Nissan (3) | Nissan Motor Acceptance Corporation | Irving, TX | 100% | $42,259,000(4) | 268,290 | $4,225,860(5) |
| IKON | IKON Office Solutions, Inc. | Houston, TX | 100% | $ 20,650,000 | 157,790 | $ 2,015,767 |
| State Street | SSB Realty, LLC | Quincy, MA | 100% | $ 49,563,000 | 234,668 | $ 6,922,706 |
| AmeriCredit | AmeriCredit Financial Services Corporation | Orange Park, FL | 68.2% | $ 12,500,000 | 85,000 | $ 1,336,200 |
| Comdata | Comdata Network, Inc. | Brentwood, TN | 55.0% | $ 24,950,000 | 201,237 | $ 2,458,638 |
| AT&T Oklahoma | AT&T Corp.<br>Jordan Associates, Inc. | Oklahoma City, OK | 55.0% | $ 15,300,000 | 103,500<br>25,000 | $ 1,242,000<br>$ 294,500 |
| Metris Minnesota | Metris Direct, Inc. | Minnetonka, MN | 100% | $ 52,800,000 | 300,633 | $ 4,960,445 |
| Stone & Webster | Stone & Webster, Inc.<br>SYSCO Corporation | Houston, TX | 100% | $ 44,970,000 | 206,048<br>106,516 | $ 4,533,056<br>$ 2,130,320 |
| Motorola Plainfield | Motorola, Inc. | S. Plainfield, NJ | 100% | $ 33,648,156 | 236,710 | $ 3,324,428 |
| Quest | Quest Software, Inc. | Irvine, CA | 15.8% | $ 7,193,000 | 65,006 | $ 1,287,119 |

| Property Name | Tenant | Property Location | % Owned | Purchase Price | Square Feet | Annual Rent |
|---|---|---|---|---|---|---|
| Delphi | Delphi Automotive Systems, LLC | Troy, MI | 100% | $ 19,800,000 | 107,193 | $ 1,955,524 |
| Avnet | Avnet, Inc. | Tempe, AZ | 100% | $ 13,250,000 | 132,070 | $ 1,516,164 |
| Siemens | Siemens Automotive Corp. | Troy, MI | 56.8% | $ 14,265,000 | 77,054 | $ 1,374,643 |
| Motorola Tempe | Motorola, Inc. | Tempe, AZ | 100% | $ 16,000,000 | 133,225 | $ 1,843,834 |
| ASML | ASM Lithography, Inc. | Tempe, AZ | 100% | $ 17,355,000 | 95,133 | $ 1,927,788 |
| Dial | Dial Corporation | Scottsdale, AZ | 100% | $ 14,250,000 | 129,689 | $ 1,387,672 |
| Metris Tulsa | Metris Direct, Inc. | Tulsa, OK | 100% | $ 12,700,000 | 101,100 | $ 1,187,925 |
| Cinemark | Cinemark USA, Inc. | | | | 65,521 | $ 1,366,491 |
| | The Coca-Cola Company | Plano, TX | 100% | $ 21,800,000 | 52,587 | $ 1,354,184 |
| Gartner | The Gartner Group, Inc. | Ft. Myers, FL | 56.8% | $ 8,320,000 | 62,400 | $ 830,656 |
| Videojet Technologies Chicago | Videojet Technologies, Inc. | Wood Dale, IL | 100% | $ 32,630,940 | 250,354 | $ 3,376,746 |
| Johnson Matthey | Johnson Matthey, Inc. | Wayne, PA | 56.8% | $ 8,000,000 | 130,000 | $ 854,748 |
| Alstom Power Richmond (3) | Alstom Power, Inc. | Midlothian, VA | 100% | $ 11,400,000 | 99,057 | $ 1,213,324 |
| Sprint | Sprint Communications Company, L.P. | Leawood, KS | 56.8% | $ 9,500,000 | 68,900 | $ 1,102,404 |
| EYBL CarTex | EYBL CarTex, Inc. | Fountain Inn, SC | 56.8% | $ 5,085,000 | 169,510 | $ 550,908 |
| Matsushita (3) | Matsushita Avionics Systems Corporation | Lake Forest, CA | 100% | $ 18,431,206 | 144,906 | $ 2,005,464 |
| AT&T Pennsylvania | Pennsylvania Cellular Telephone Corp. | Harrisburg, PA | 100% | $ 12,291,200 | 81,859 | $ 1,442,116 |
| PwC | PricewaterhouseCoopers, LLP | Tampa, FL | 100% | $ 21,127,854 | 130,091 | $ 2,093,382 |
| Cort Furniture | Cort Furniture Rental Corporation | Fountain Valley, CA | 44.0% | $ 6,400,000 | 52,000 | $ 834,888 |
| Fairchild | Fairchild Technologies U.S.A., Inc. | Fremont, CA | 77.5% | $ 8,900,000 | 58,424 | $ 920,144 |
| Avaya | Avaya, Inc. | Oklahoma City, OK | 3.7% | $ 5,504,276 | 57,186 | $ 536,977 |
| Iomega | Iomega Corporation | Ogden, UT | 3.7% | $ 5,025,000 | 108,250 | $ 659,868 |
| Interlocken | ODS Technologies, L.P. and GAIAM, Inc. | Broomfield, CO | 3.7% | $ 8,275,000 | 51,975 | $ 1,070,515 |
| Ohmeda | Ohmeda, Inc. | Louisville, CO | 3.7% | $ 10,325,000 | 106,750 | $ 1,004,520 |
| Alstom Power Knoxville | Alstom Power, Inc. | Knoxville, TN | 3.7% | $ 7,900,000 | 84,404 | $ 1,106,520 |
| TOTALS | | | | **$1,053,500,964** | **7,951,248** | **$110,025,835(5)** |

(1) Dana Kalamazoo and Dana Detroit were purchased for an aggregate purchase price of $41,950,000.
(2) Windy Point I and Windy Point II were purchased for an aggregate purchase price of $89,275,000.
(3) Includes the actual costs incurred or estimated to be incurred by Wells OP to develop and construct the building in addition to the purchase price of the land.
(4) Purchase price includes estimated costs for the planning, design, development, construction and completion of the Nissan Property.
(5) Total annual rent does not include $4,225,860 annual rent for Nissan Property, which does not take effect until construction of the building is completed and the tenant is occupying the building.

As of July 1, 2002, no tenant leasing our properties accounted for more than 10% of our aggregate annual rental income. As of July 1, 2002, our most substantial tenants, based on annual rental income, were SSB Realty, LLC (approximately 6.3%), Metris Direct, Inc. (approximately 5.6%), Motorola, Inc. (approximately 4.7%), and Zurich American Insurance Company, Inc. (approximately 4.6%).

*Geographic Diversification Table*

The following table shows a list of 53 real estate investments we owned as of July 1, 2002, grouped by the state where each of our investments is located.

| State | No. of Properties | Aggregate Purchase Price | Approx. % | Aggregate Square Feet | Approx. % | Aggregate Annual Rent | Approx. % |
|---|---|---|---|---|---|---|---|
| Arizona | 5 | $ 86,655,000 | 8.2% | 638,722 | 8.0% | $ 9,023,417 | 8.2% |
| California | 4 | $ 40,924,206 | 3.9% | 320,336 | 4.0% | $ 5,047,615 | 4.6% |
| Colorado | 5 | $ 63,010,058 | 6.0% | 483,334 | 6.1% | $ 7,180,677 | 6.5% |
| Florida | 6 | $ 83,452,854 | 7.9% | 582,591 | 7.3% | $ 8,243,917 | 7.5% |
| Georgia | 3 | $ 70,600,000 | 6.7% | 439,894 | 5.5% | $ 8,086,981 | 7.4% |
| Illinois | 3 | $ 121,905,940 | 11.6% | 738,779 | 9.3% | $ 11,566,529 | 10.5% |
| Kansas | 1 | $ 9,500,000 | 0.9% | 68,900 | 0.9% | $ 1,102,404 | 1.0% |
| Massachusetts | 2 | $ 81,305,274 | 7.7% | 409,253 | 5.1% | $ 10,501,699 | 9.5% |
| Michigan | 4 | $ 76,015,000 | 7.2% | 443,731 | 5.6% | $ 7,503,567 | 6.8% |
| Minnesota | 1 | $ 52,800,000 | 5.0% | 300,633 | 3.8% | $ 4,960,445 | 4.5% |
| New Jersey | 1 | $ 33,648,156 | 3.0% | 236,710 | 3.0% | $ 3,324,428 | 3.0% |
| North Carolina | 1 | $ 17,650,000 | 1.7% | 120,000 | 1.5% | $ 1,800,000 | 1.6% |
| Oklahoma | 3 | $ 33,504,276 | 3.2% | 286,786 | 3.6% | $ 3,261,402 | 3.0% |
| Pennsylvania | 2 | $ 20,291,200 | 1.9% | 211,859 | 2.7% | $ 2,296,864 | 2.1% |
| South Carolina | 1 | $ 5,085,000 | 0.5% | 169,510 | 2.1% | $ 550,908 | 0.5% |
| Tennessee | 3 | $ 53,900,000 | 5.1% | 987,460 | 12.4% | $ 5,600,433 | 5.1% |
| Texas | 6 | $ 186,829,000 | 17.7% | 1,305,443 | 16.4% | $ 18,101,357* | 16.5% |
| Utah | 1 | $ 5,025,000 | 0.5% | 108,250 | 1.4% | $ 659,868 | 0.6% |
| Virginia | 1 | $ 11,400,000 | 1.1% | 99,057 | 1.2% | $ 1,213,324 | 1.1% |
| **Total** | **53** | **$1,053,500,964** | **100%** | **7,951,248** | **100%** | **$110,025,835*** | **100%** |

* Does not include $4,225,860 annual rent from the Nissan Project, located in Irving, Texas, which is not yet completed.

*Lease Expiration Table*

The following table shows lease expirations during each of the next ten years for all our leases as of July 1, 2002, assuming no exercise of renewal options or termination rights:

| Year of Lease Expiration | Square Feet Expiring | Percentage of Total Square Feet Expiring | Annualized Base Base Rent Expiring(1) | Percentage of Total Annualized Base Rent | Wells REIT Share of Annualized Base Rent Expiring(1) | Percentage of Wells REIT Share of Total Annualized Base Rent |
|---|---|---|---|---|---|---|
| 2002 | 8,074 | 0.10% | $ 104,408 | $ 0.09% | $ 3,874 | 0.00% |
| 2003 | 64,223 | 0.81% | 1,040,723 | 0.95% | 372,232 | 0.37% |
| 2004 | 123,430 | 1.55% | 2,207,263 | 2.01% | 916,348 | 0.92% |
| 2005 | 280,537 | 3.53% | 3,768,626 | 3.43% | 2,069,308 | 2.08% |
| 2006 | 52,587 | 0.66% | 1,354,184 | 1.23% | 1,354,184 | 1.36% |
| 2007 | 742,700 | 9.34% | 11,108,693 | 10.10% | 9,197,835 | 9.26% |
| 2008 | 837,973 | 10.54% | 10,490,790 | 9.53% | 9,244,256 | 9.30% |
| 2009 | 513,359 | 6.46% | 7,235,244 | 6.58% | 6,599,857 | 6.64% |
| 2010 | 1,329,000 | 16.71% | 19,026,036 | 17.29% | 17,847,500 | 17.96% |
| 2011 | 2,868,456 | 36.08% | 39,494,347 | 35.90% | 38,680,622 | 38.92% |
| 2012-2021 | 1,130,909 | 14.22% | 14,195,521 | 12.89% | 13,088,150 | 13.17% |
| Total | 7,951,248 | 100% | $110,025,835 | 100% | $99,374,066 | 100% |

(1) Average monthly gross rent over the life of the lease, annualized.

**Joint Ventures with Affiliates**

Wells OP owns some of its properties through ownership interests in the seven joint ventures listed below. Wells OP does not have control over the operations of the joint ventures; however, it does exercise significant influence. Accordingly, investments in joint ventures are recorded for accounting purposes using the equity method.

| Joint Venture | Joint Venture Partners | Properties Held by Joint Venture |
|---|---|---|
| Fund XIII-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund XIII, L.P. | AmeriCredit Building<br>ADIC Buildings |
| Fund XII-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund XII, L.P. | Siemens Building<br>AT&T Oklahoma Buildings<br>Comdata Building |
| Fund XI-XII-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund XI, L.P.<br>Wells Real Estate Fund XII, L.P. | EYBL CarTex Building<br>Sprint Building<br>Johnson Matthey Building<br>Gartner Building |
| Fund IX-X-XI-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund IX, L.P.<br>Wells Real Estate Fund X, L.P.<br>Wells Real Estate Fund XI, L.P. | Alstom Power Knoxville Building<br>Ohmeda Building<br>Interlocken Building<br>Avaya Building<br>Iomega Building |
| Wells/Freemont Associates Joint Venture (Freemont Joint Venture) | Wells Operating Partnership, L.P.<br>Fund X-XI Joint Venture | Fairchild Building |
| Wells/Orange County Associates Joint Venture (Orange County Joint Venture) | Wells Operating Partnership, L.P.<br>Fund X-XI Joint Venture | Cort Furniture Building |
| Fund VIII-IX-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Fund VIII-IX Joint Venture | Quest Building |

*The Wells Fund XIII—REIT Joint Venture*

Wells OP and Wells Fund XIII entered into a joint venture partnership known as the Wells Fund XIII-REIT Joint Venture Partnership (XIII-REIT Joint Venture). The investment objectives of Wells Fund XIII are substantially identical to our investment objectives. As of December 31, 2001, the joint venture partners of the XIII-REIT Joint Venture had made the following contributions and held the following equity percentage interests:

| Joint Venture Partner | Capital Contributions | Equity Interest |
|---|---|---|
| Wells OP | $ 17,359,875 | 68.2% |
| Wells Fund XIII | $ 8,491,069 | 31.8% |

*The Wells Fund XII-REIT Joint Venture*

Wells OP and Wells Fund XII entered into a joint venture partnership known as the Wells Fund XII-REIT Joint Venture Partnership (XII-REIT Joint Venture). The investment objectives of Wells Fund XII are substantially identical to our investment objectives. As of December 31, 2001, the joint venture partners of the XII-REIT Joint Venture had made the following contributions and held the following equity percentage interests:

| Joint Venture Partner | Capital Contributions | Equity Interest |
|---|---|---|
| Wells OP | $ 29,950,668 | 55.0% |
| Wells Fund XII | $ 24,613,401 | 45.0% |

*The Wells Fund XI-Fund XII-REIT Joint Venture*

Wells OP entered into a joint venture partnership with Wells Fund XI and Wells Fund XII known as The Wells Fund XI-Fund XII-REIT Joint Venture (XI-XII-REIT Joint Venture). The XI-XII-REIT Joint Venture was originally formed on May 1, 1999 between Wells OP and Wells Fund XI. On June 21, 1999, Wells Fund XII was admitted to the XI-XII-REIT Joint Venture as a joint venture partner. The investment objectives of Wells Fund XI and Wells Fund XII are substantially identical to our investment objectives. As of December 31, 2001, the joint venture partners of the XI-XII-REIT Joint Venture had made the following contributions and held the following equity percentage interests:

| Joint Venture Partner | Capital Contributions | Equity Interest |
|---|---|---|
| Wells OP | $ 17,641,211 | 56.8% |
| Wells Fund XI | $ 8,131,351 | 26.1% |
| Wells Fund XII | $ 5,300,000 | 17.1% |

*The Fund IX, Fund X, Fund XI and REIT Joint Venture*

Wells OP entered into a joint venture partnership with Wells Fund IX, Wells Fund X and Wells Fund XI, known as The Fund IX, Fund X, Fund XI and REIT Joint Venture (IX-X-XI-REIT Joint Venture). The IX-X-XI-REIT Joint Venture was originally formed on March 20, 1997 between Wells Fund IX and Wells Fund X. On June 11, 1998, Wells OP and Wells Fund XI were admitted as joint venture partners to the IX-X-XI-REIT Joint Venture. The investment objectives of Wells Fund IX, Wells Fund X and Wells Fund XI are substantially identical to our investment objectives. As of December 31, 2001, the joint venture partners of the IX-X-XI-REIT Joint Venture had made the following contributions and held the following equity percentage interests:

| Joint Venture Partner | Capital Contributions | Equity Interest |
|---|---|---|
| Wells OP | $ 1,421,466 | 3.7% |
| Wells Fund IX | $ 14,982,435 | 39.1% |
| Wells Fund X | $ 18,501,185 | 48.4% |
| Wells Fund XI | $ 3,357,436 | 8.8% |

*The Fremont Joint Venture*

Wells OP entered into a joint venture partnership known as Wells/Fremont Associates (Fremont Joint Venture) with Fund X and Fund XI Associates (X-XI Joint Venture), a joint venture between Wells Fund X and Wells Fund XI. The purpose of the Fremont Joint Venture is the acquisition, ownership, leasing, operation, sale and management of the Fairchild Building. As of December 31, 2001, the joint venture partners of the Fremont Joint Venture had made the following contributions and held the following equity percentage interests:

| Joint Venture Partner | Capital Contributions | Equity Interest |
|---|---|---|
| Wells OP | $ 6,983,111 | 77.5% |
| X-XI Joint Venture | $ 2,000,000 | 22.5% |

*The Cort Joint Venture*

Wells OP entered into a joint venture partnership with the X-XI Joint Venture known as Wells/Orange County Associates (Cort Joint Venture) for the purpose of the acquisition, ownership, leasing, operation, sale and management of the Cort Furniture Building. As of December 31, 2001, the joint venture partners of the Cort Joint Venture had made the following contributions and held the following equity percentage interests:

| Joint Venture Partner | Capital Contributions | Equity Interest |
|---|---|---|
| Wells OP | $ 2,871,430 | 43.7% |
| X-XI Joint Venture | $ 3,695,000 | 56.3% |

*The Wells Fund VIII-Fund IX-REIT Joint Venture*

Wells OP entered into a joint venture partnership with the Fund VIII-IX Joint Venture known as the Wells Fund VIII-Fund IX-REIT Joint Venture (VIII-IX-REIT Joint Venture) for the purpose of the ownership, leasing, operation, sale and management of the Quest Building. The investment objectives of Wells Fund VIII and Wells Fund IX are substantially identical to our investment objectives. As of December 31, 2001, the joint venture partners of the VIII-IX-REIT Joint Venture had made the following contributions and held the following equity percentage interests:

| Joint Venture Partner | Capital Contributions | Equity Interest |
|---|---|---|
| Wells OP | $ 1,282,111 | 15.8% |
| Wells Fund VIII | $ 3,608,109 | 46.1% |
| Wells Fund IX | $ 3,620,316 | 38.1% |

*General Provisions of Joint Venture Agreements*

Wells OP is acting as the initial Administrative Venturer of each of the joint ventures described above and, as such, is responsible for establishing policies and operating procedures with respect to the business and affairs of each of these joint ventures. However, approval of the other joint venture partners will be required for any major decision or any action that materially affects these joint ventures or their real property investments.

The XIII-REIT Joint Venture Agreement, the XII-REIT Joint Venture Agreement, the XI-XII-REIT Joint Venture Agreement and the IX-X-XI-REIT Joint Venture Agreement each allow any joint venture partner to make a buy/sell election upon receipt by any other joint venture partner of a bona fide third-party offer to purchase all or substantially all of the properties or the last remaining property of the respective joint venture. Upon receipt of notice of such third-party offer, each joint venture partner must elect within 30 days after receipt of the notice to either (1) purchase the entire interest of each venture partner that wishes to accept the offer on the same terms and conditions as the third-party offer to purchase, or (2) consent to the sale of the properties or last remaining property pursuant to such third-party offer.

**Description of Properties**

*ISS Atlanta Buildings*

Wells OP acquired the ISS Atlanta Buildings on July 1, 2002 for a purchase price of $40,500,000. The ISS Atlanta Buildings, which were built in 2001, consist of two five-story buildings containing a total of 238,600 rentable square feet located in Atlanta, Georgia and were acquired by assigning to Wells OP an existing ground lease with the Development Authority of Fulton County (Development Authority). Fee simple title to the land upon which the ISS Atlanta Buildings are located is held by the Development Authority, which issued Development Authority of Fulton County Taxable Revenue Bonds (Bonds) totaling $32,500,000 in connection with the construction of these buildings. The Bonds, which entitle Wells OP to certain real property tax abatement benefits, were also assigned to Wells OP at the closing. Fee title interest to the land will be transferred to Wells OP upon payment of the outstanding balance on the Bonds, either upon a prepayment by Wells OP or at the expiration of the ground lease on December 1, 2015.

The entire rentable area of the ISS Atlanta Buildings is leased to Internet Security Systems, Inc., a Georgia corporation (ISS). The ISS Atlanta lease is guaranteed by the parent of ISS, Internet Security Systems, Inc., a Delaware corporation (ISS, Inc.), whose shares are traded on NASDAQ. ISS, Inc. has operations throughout America, Asia, Australia, Europe and the Middle East. ISS, Inc. provides computer security solutions to networks, servers and desktop computers for organizational customers, including corporate customers and governmental units. ISS, Inc. reported a net worth, as of March 31, 2002, of approximately $435 million.

The ISS Atlanta lease is a net lease that commenced in November 2000 and expires in May 2013. The current annual base rent payable under the ISS Atlanta lease is $4,623,445. ISS, at its option, has the right to extend the initial term of its lease for three additional five-year periods at 95% of the then-current market rental rate. In addition, ISS has obtained an $8,000,000 letter of credit from First Union National Bank to guarantee payments under the lease.

*MFS Phoenix Building*

Wells OP purchased the MFS Phoenix Building on June 5, 2002 for a purchase price of $25,800,000. The MFS Phoenix Building, which was built in 2000, is a three-story office building containing 148,605 rentable square feet located in Phoenix, Arizona.

The entire MFS Phoenix Building is leased to Massachusetts Financial Services Company (MFS). MFS is a Massachusetts corporation having its corporate headquarters in Boston, Massachusetts with offices in London, Tokyo and Singapore. MFS is an investment management firm which offers annuities, institutional products, insurance services, mutual funds and retirement products. MFS reported a net worth, as of December 31, 2001, of approximately $440 million.

The MFS Phoenix lease is a net lease that commenced in April 2001 and expires in July 2011. The current annual base rent payable under the MFS Phoenix lease is $2,347,959. MFS, at its option, has the right to extend the initial term of its lease for two additional five-year periods at 95% of the then-current market rental rate.

*TRW Denver Building*

Wells OP purchased the TRW Denver Building on May 29, 2002 for a purchase price of $21,060,000. The TRW Denver Building, which was built in 1997, is a three-story office building containing 108,240 rentable square feet located in Aurora, Colorado.

The entire TRW Denver Building is leased to TRW, Inc. (TRW), a global technology, manufacturing and service company that provides advanced technology, systems and services to customers worldwide. TRW reported a net worth, as of March 31, 2002, of approximately $2.24 billion.

The TRW Denver lease is a net lease that commenced in October 1997 and expires in September 2007. The current annual base rent payable under the TRW Denver lease is $2,870,709. TRW, at its option, has the right to extend the initial term of its lease for two additional five-year periods at 95% of the then-current market rental rate.

*Agilent Boston Building*

Wells OP purchased the Agilent Boston Building on May 3, 2002 for a purchase price of $31,742,274. The Agilent Boston Building, which was built in 2002, is a three-story office building containing 174,585 rentable square feet located in Boxborough, Massachusetts. Wells OP assumed the obligation, as the landlord under the Agilent Boston lease described below, to provide Agilent $3,407,496 for tenant improvements.

The entire Agilent Boston Building is leased to Agilent Technologies, Inc. (Agilent). Agilent is a major producer of measuring and monitoring devices, semiconductor products and chemical analysis tools for communications and life sciences companies, such as Internet service providers and biopharmaceutical companies. Agilent reported a net worth, as of January 31, 2002, of approximately $5.4 billion.

The Agilent Boston lease is a net lease that commenced in September 2001 and expires in September 2011. The current annual base rent payable under the Agilent Boston lease is $3,578,993. Agilent, at its option, has the right to extend the initial term of its lease for one additional five-year period at a rate equal to the greater of (1) the then-current market rental rate, or (2) 75% of the annual base rent in the final year of the initial term of the Agilent Boston lease. In addition, Agilent may terminate the lease at the end of the seventh lease year by paying a $4,190,000 termination fee.

*Experian/TRW Buildings*

Wells OP purchased the Experian/TRW Buildings on May 1, 2002 for a purchase price of $35,150,000. The Experian/TRW Buildings, which were built in 1982 and 1993, respectively, are two two-story office buildings containing a total of 292,700 rentable square feet located in Allen, Texas.

The Experian/TRW Buildings are both leased to Experian Information Solutions, Inc. (Experian). Experian is an information services company that uses decision-making software and comprehensive databases of information on consumers, businesses, motor vehicles and property to provide companies with information about their customers. TRW, the original tenant on the Experian/TRW lease, assigned its interest in the Experian/TRW lease to Experian in 1996 but remains as an obligor of the Experian/TRW lease. TRW is a global technology, manufacturing and service company that provides advanced technology, systems, and services to customers worldwide. TRW reported a net worth, as of March 31, 2002, of approximately $2.24 billion.

The Experian/TRW lease is a net lease that commenced in April 1993 and expires in October 2010. The current annual base rent payable under the Experian lease is $3,438,277. Experian, at its option, has the right to extend the initial term of its lease for four additional five-year periods at 95% of the then-current market rental rate.

*BellSouth Ft. Lauderdale Building*

Wells OP purchased the BellSouth Ft. Lauderdale Building on April 18, 2002 for a purchase price of $6,850,000. The BellSouth Ft. Lauderdale Building, which was built in 2001, is a one-story office building containing 47,400 rentable square feet located in Ft. Lauderdale, Florida.

The entire BellSouth Ft. Lauderdale Building is leased to BellSouth Advertising and Publishing Corporation (BellSouth Advertising). BellSouth Advertising is a major provider of print directories throughout the southeastern states and markets served by BellSouth Corporation, which is the parent company of BellSouth Advertising.

The BellSouth Advertising lease is a net lease that commenced in July 2001 and expires in July 2008. The current annual base rent payable under the BellSouth Advertising lease is $747,033. BellSouth Advertising, at its option, has the right to extend the initial term of its lease for three additional five-year periods at 95% of the then-current market rental rate.

*Agilent Atlanta Building*

Wells OP purchased the Agilent Atlanta Building on April 18, 2002 for a purchase price of $15,100,000. The Agilent Atlanta Building, which was built in 2001, is a two-story office building containing 101,207 rentable square feet located in Alpharetta, Georgia.

Agilent leases 66,811 rentable square feet of the Agilent Atlanta Building (66%). The Agilent Atlanta lease commenced in September 2001 and expires in September 2011. The initial annual base rent payable under the Agilent Atlanta lease is $1,344,905. Agilent, at its option, has the right to extend the initial term of its lease for either (1) one additional three-year period, or (2) one additional five-year period, at the then-current market rental rate. In addition, Agilent may terminate the lease at the end of the seventh lease year by paying a $763,650 termination fee.

Koninklijke Philips Electronics N.V. (Philips) leases the remaining 34,396 rentable square feet of the Agilent Atlanta Building (34%). Philips is one of the world's largest electronics companies and is a global leader in color television sets, lighting, electric shavers, medical diagnostic imaging, patient monitoring and one-chip TV products. Philips reported a net worth, as of March 31, 2002, of approximately $16.47 billion.

The Philips lease commenced in September 2001 and expires in September 2011. The current annual base rent payable under the Philips lease is $692,391. Philips, at its option, has the right to extend the initial term of its lease for either (1) one additional three-year period, or (2) one additional five-year period, at the then-current market rental rate. In addition, Philips may terminate the lease at the end of the seventh lease year by paying a $393,146 termination fee.

*Travelers Express Denver Buildings*

Wells OP purchased the Travelers Express Denver Buildings on April 10, 2002 for a purchase price of $10,395,845. The Travelers Express Denver Buildings, which were built in 2002, are two connected one-story office buildings containing 68,165 rentable square feet located in Lakewood, Colorado.

The Travelers Express Denver Buildings are leased to Travelers Express Company, Inc. (Travelers). Travelers is the largest money order processor and second largest money-wire transfer company in the nation, processing more than 775 million transactions per year, including official checks and share drafts for financial institutions. Travelers is a wholly owned subsidiary of Viad Corporation, a public company whose shares are traded on the NYSE.

The Travelers lease commenced in April 2002 and expires in March 2012. The current annual base rent payable under the Travelers lease is $1,012,250. Travelers, at its option, has the right to extend the initial term of its lease for two additional five-year periods. The annual base rent for the first three years of the first renewal term shall be $19 per rentable square foot and the annual base rent for the last two years shall be $20.50 per rentable square foot. The annual base rent for the second renewal term shall be at the then-current market rental rate for each year of the renewal term. In addition, Travelers may terminate the Travelers lease at the end of the seventh lease year by paying a termination fee of $1,040,880. Travelers also has the right to expand the Travelers Express Denver Buildings between 10% and 20% by providing notice on or before May 1, 2004, subject to certain limitations and potential acceleration.

*Dana Corporation Buildings*

Wells OP purchased the Dana Corporation Buildings on March 29, 2001 for a purchase price of $41,950,000. The Dana Kalamazoo Building, which was built in 1999, is a two-story office and industrial building containing 147,004 rentable square feet located in Kalamazoo, Michigan. The Dana Detroit Building, which was built in 1999, is a three-story office and research and development building containing 112,480 rentable square feet located in Farmington Hills, Michigan. Wells OP purchased the Dana Corporation Buildings by purchasing all of the membership interests in two Delaware limited liability companies each of which owned title to one of the buildings.

The Dana Corporation Buildings are leased to Dana Corporation (Dana). Dana is one of the world's largest suppliers of components, modules and complete systems to global vehicle manufacturers and their related aftermarkets. Dana operates approximately 300 major facilities in 34 countries and employs approximately 70,000 people. Dana reported a net worth, as of December 31, 2001, of approximately $1.9 billion.

The Dana Kalamazoo lease commenced in October 2001 and expires in October 2021. The current annual base rent payable under the Dana Kalamazoo lease is $1,842,800. Dana, at its option, has the right to extend the initial term of its lease for six additional five-year periods at the then-current market rental rate. Dana may terminate the lease at any time during the initial lease term after the sixth lease year and before the 19th lease year, subject to certain conditions.

The Dana Detroit lease commenced in October 2001 and expires in October 2021. The current annual base rent payable under the Dana Detroit lease is $2,330,600. Dana, at its option, has the right to extend the initial term of its lease for six additional five-year periods at the then-current market rental rate. Dana may terminate the lease at any time during the initial lease term after the 11th lease year, subject to certain conditions.

*Novartis Atlanta Building*

Wells OP purchased the Novartis Atlanta Building on March 28, 2002 for a purchase price of $15,000,000. The Novartis Atlanta Building, which was built in 2001, is a four-story office building containing 100,087 rentable square feet located in Duluth, Georgia.

The Novartis Atlanta Building is leased to Novartis Opthalmics, Inc. (Novartis). The Novartis lease is guaranteed by Novartis' parent company, Novartis Corporation. Novartis Corporation, a public company whose shares are traded on the NYSE, is a world leader in healthcare with core businesses in pharmaceuticals, consumer health, generics, eye-care and animal health. Novartis Corporation reported a net worth, as of December 31, 2001, of approximately $28.1 billion.

The Novartis lease commenced in August 2001 and expires in July 2011. The current annual base rent payable under the Novartis lease is $1,426,240. Novartis, at its option, has the right to extend the initial term of its lease for three additional five-year periods at the then-current market rental rate. In addition, Novartis may terminate the lease at the end of the fifth lease year by paying a $1,500,000 termination fee.

*Transocean Houston Building*

Wells OP purchased the Transocean Houston Building on March 15, 2002 for a purchase price of $22,000,000. The Transocean Houston Building, which was built in 1999, is a six-story office building containing 155,991 rentable square feet located in Houston, Texas.

Transocean Deepwater Offshore Drilling, Inc. (Transocean) leases 103,260 rentable square feet (67%) of the Transocean Houston Building. Transocean is an offshore drilling company specializing in technically demanding segments of the offshore drilling industry. The Transocean lease is guaranteed by Transocean Sedco Forex, Inc., one of the world's largest offshore drilling companies whose shares are traded on the NASDAQ. Transocean Sedco Forex, Inc. reported a net worth, as of September 30, 2001, of approximately $10.86 billion.

The Transocean lease commenced in December 2001 and expires in March 2011. Transocean, at its option, has the right to extend the initial term of its lease for either (1) two additional five-year periods, or (2) one additional ten-year period, at the then-current market rental rate. In addition, Transocean has an expansion option and a right of first refusal for up to an additional 52,731 rentable square feet. The current annual base rent payable under the Transocean lease is $2,110,035.

Newpark Drilling Fluids, Inc. (Newpark) leases the remaining 52,731 rentable square feet (33%) of the Transocean Houston Building. Newpark is a full service drilling fluids processing, management and waste disposal company. The Newpark lease is guaranteed by Newpark Resources, Inc., which provides drilling fluids services to the oil and gas production industry, primarily in North America. Newpark Resources, Inc. reported a net worth, as of December 31, 2001, of approximately $294 million.

The Newpark lease commenced in August 1999 and expires in October 2009. The current annual base rent payable for the Newpark lease is $1,153,227.

*Arthur Andersen Building*

Wells OP purchased the Arthur Andersen Building on January 11, 2002 for a purchase price of $21,400,000. The Arthur Andersen Building, which was built in 1999, is a three-story office building containing 157,700 rentable square feet located in Sarasota, Florida. Wells OP purchased the Arthur Andersen Building from Sarasota Haskell, LLC, which is not in any way affiliated with the Wells REIT, our advisor, Wells Capital, or Arthur Andersen, LLP, the tenant at the property.

The Arthur Andersen Building is leased to Arthur Andersen LLP (Andersen). In June 2002, Andersen was tried and convicted of federal obstruction of justice charges arising from its involvement as auditors for Enron Corporation. There may be a substantial risk that events arising out of this conviction or other events relating to the financial condition of Andersen could adversely affect the ability of Andersen to fulfill its obligations as tenant under the Andersen lease. The Andersen lease commenced in November 1998 and expires in October 2009. Andersen has the right to extend the initial 10-year term of this lease for two additional five-year periods at 90% of the then-current market rental rate. The current annual base rent payable under the Andersen lease is $1,988,454.

Andersen has the option to purchase the Arthur Andersen Building for a purchase price of $23,250,000 prior to the end of the fifth lease year. In addition, Andersen has the option to purchase the Arthur Andersen Building for a purchase price of $25,148,000 after the fifth lease year and prior to the expiration of the current lease term.

*Windy Point Buildings*

Wells OP purchased the Windy Point Buildings on December 31, 2001 for a purchase price of $89,275,000. The Windy Point Buildings, which were built in 1999 and 2001, respectively, consist of a seven-story office building containing 188,391 rentable square feet (Windy Point I) and an eleven-story office building containing 300,034 rentable square feet (Windy Point II) located in Schaumburg, Illinois.

The Windy Point Buildings are subject to a 20-year annexation agreement originally executed on December 12, 1995 with the Village of Schaumburg, Illinois (Annexation Agreement). The Annexation Agreement covers a 235-acre tract of land that includes a portion of the site of the Windy Point Buildings' parking facilities relating to the potential construction of a new eastbound on-ramp interchange for I-90. Wells OP issued a $382,556 letter of credit pursuant to the request of the Village of Schaumburg, Illinois, representing the estimated costs of demolition and restoration of constructed parking and landscaped areas and protecting pipelines in connection with the potential construction. The obligation to maintain the letter of credit will continue until the costs of demolition and restoration are paid if the project proceeds or until the Annexation Agreement expires in December 2015. If Wells OP is unable to restore the parking spaces due to structural issues related to the utilities underground, Wells OP would then be required to construct a new parking garage on the site to accommodate the parking needs of its tenants. The cost for this construction is currently estimated at approximately $3,581,000. In addition, if the interchange is constructed, Wells OP will be required to pay for its share of the costs for widening Meacham Road as part of the project, which potential obligation is currently estimated to be approximately $288,300.

***Windy Point I building***

The Windy Point I building is currently leased as follows:

| Tenant | Rentable Sq. Ft. | Percentage of Building |
|---|---|---|
| TCI Great Lakes, Inc. | 129,157 | 69% |
| The Apollo Group, Inc. | 28,322 | 15% |
| Global Knowledge Network, Inc. | 22,028 | 12% |
| Multiple Tenants | 8,884 | 4% |

TCI Great Lakes, Inc. (TCI) occupies 129,157 rentable square feet (69%) of the Windy Point I building. The TCI lease commenced in December 1999 and expires in November 2009. TCI has the right to extend the initial 10-year term of its lease for two additional five-year periods at 95% of the then-current market rental rate. TCI may terminate certain portions of the TCI lease on the last day of the seventh lease year by providing 12 months prior written notice and paying Wells OP a termination fee of approximately $4,119,500. The current annual base rent payable under the TCI lease is $2,067,204.

TCI is a wholly-owned subsidiary of AT&T Broadband. AT&T Broadband provides basic cable and digital television services, as well as high-speed Internet access and cable telephony, with video-on-demand and other advanced services.

The Apollo Group, Inc. (Apollo) leases28,322 rentable square feet (15%) of the Windy Point I building. The Apollo lease commenced in April 2002 and expires in June 2008. Apollo has the right to extend the initial term of its lease for one additional five-year period at 95% of the then-current market rental rate. The current annual base rent payable under the Apollo lease is $477,226.

Apollo is an Arizona corporation having its corporate headquarters in Phoenix, Arizona. Apollo provides higher education programs to working adults through its subsidiaries, the University of Phoenix, Inc., the Institute for Professional Development, the College for Financial Planning Institutes Corporation and Western International University, Inc. Apollo offers educational programs and services at 58 campuses and 102 learning centers in 36 states, Puerto Rico, and Vancouver, British Columbia. Apollo reported a net worth, as of February 28, 2002, of approximately $559 million.

Global Knowledge Network, Inc. (Global) leases 22,028 rentable square feet (12%) of the Windy Point I building. The Global lease commenced in May 2000 and expires in April 2010. Global has the right to extend the initial 10-year term of its lease for one additional five-year period at the then-current market rental rate. Wells OP has the right to terminate the Global lease on December 31, 2005 by giving Global written notice on or before April 30, 2005. The current annual base rent payable under the Global lease is $393,776.

Global is a privately held corporation with its corporate headquarters in Cary, North Carolina and international offices in Tokyo, London and Singapore. Global is owned by New York-based investment firm Welsh, Carson, Anderson and Stowe, a New York limited partnership which acts as a private equity investor in information services, telecommunications and healthcare. Global provides information technology education solutions and certification programs, offering more than 700 courses in more than 60 international locations and in 15 languages. Global has posted a $100,000 letter of credit as security for the Global lease.

***Windy Point II building***

Zurich American Insurance Company, Inc. (Zurich) leases the entire 300,034 rentable square feet of the Windy Point II building. The Zurich lease commenced in September 2001 and expires in August 2011. Zurich has the right to extend the initial 10-year term of its lease for two additional five-year

periods at 95% of the then-current market rental rate. The current annual base rent payable under the Zurich lease is $5,091,577.

Zurich is headquartered in Schaumburg, Illinois and is a wholly-owned subsidiary of Zurich Financial Services Group (ZFSG). ZFSG, which has its corporate headquarters in Zurich, Switzerland, is a leading provider of financial protection and wealth accumulation solutions for some 35 million customers in over 60 countries. Zurich provides commercial property-casualty insurance and serves the multinational, middle market and small business sectors in the United States and Canada.

Zurich has the right to terminate the Zurich lease for up to 25% of the rentable square feet leased by Zurich at the end of the fifth lease year. If Zurich terminates a portion of the Zurich lease, it will be required to pay a termination fee to Wells OP equal to three months of the current monthly rent for the terminated space plus additional costs related to the space leased by Zurich. In addition, Zurich may terminate the entire Zurich lease at the end of the seventh lease year by providing Wells OP 18 months prior written notice and paying Wells OP a termination fee of approximately $8,625,000.

*Convergys Building*

Wells OP purchased the Convergys Building on December 21, 2001 for a purchase price of $13,255,000. The Convergys Building, which was built in 2001, is a two-story office building containing 100,000 rentable square feet located in Tamarac, Florida.

The Convergys Building is leased to Convergys Customer Management Group, Inc. (Convergys). The Convergys lease is guaranteed by Convergys' parent company, Convergys Corporation, which is an Ohio corporation whose shares are traded on the NYSE having its corporate headquarters in Cincinnati, Ohio. Convergys Corporation provides outsourced billing and customer care services in the United States, Canada, Latin America, Israel and Europe. Convergys Corporation reported a net worth, as of December 31, 2001, of approximately $1.23 billion.

The Convergys lease commenced in September 2001 and expires in September 2011. Convergys has the right to extend the initial 10-year term of this lease for three additional five-year periods at 95% of the then-current market rental rate. Convergys may terminate the Convergys lease at the end of the seventh lease year (September 30, 2008) by providing 12 months prior written notice and paying Wells OP a termination fee of approximately $1,341,000. The current annual base rent payable under the Convergys lease is $1,248,192.

*ADIC Buildings*

Wells Fund XIII-REIT Joint Venture purchased the ADIC Buildings and an undeveloped 3.43 acre tract of land adjacent to the ADIC Buildings (Additional ADIC Land) on December 21, 2001 for a purchase price of $12,954,213. The ADIC Buildings, which were built in 2001, consist of two connected one-story office and assembly buildings containing a total of 148,204 rentable square feet located in Parker, Colorado.

The ADIC Buildings are currently leased to Advanced Digital Information Corporation (ADIC), which lease does not include the Additional ADIC Land. ADIC is a Washington corporation whose shares are traded on NASDAQ having its corporate headquarters in Redmond, Washington and regional management centers in Englewood, Colorado; Böhmenkirch, Germany; and Paris, France. ADIC manufactures data storage systems and specialized storage management software and distributes these products through its relationships with original equipment manufacturers such as IBM, Sony, Fujitsu,

Siemens and Hewlett-Packard. ADIC reported a net worth, as of January 31, 2002, of approximately $335 million.

The ADIC lease commenced in December 2001 and expires in December 2011. ADIC has the right to extend the term of its lease for two additional five-year periods at the then-current fair market rental rate for the first year of each five-year extension. The annual base rent will increase 2.5% for each subsequent year of each five-year extension. The current annual base rent payable under the ADIC lease is $1,222,683.

*Lucent Building*

Wells OP purchased the Lucent Building from Lucent Technologies, Inc. (Lucent Technologies) in a sale-lease back transaction on September 28, 2001 for a purchase price of $17,650,000. The Lucent Building, which was built in 1999, is a four-story office building with 120,000 rentable square feet, which includes a 17.34 acre undeveloped tract of land, located in Cary, North Carolina.

The Lucent Building is leased to Lucent Technologies, whose shares are traded on the NYSE and has its corporate headquarters in Murray Hill, New Jersey. Lucent Technologies designs, develops and manufactures communications systems, software and other products. Lucent Technologies reported a net worth, as of December 31, 2001, of approximately $10.6 billion.

The Lucent lease commenced in September 2001 and expires in September 2011. Lucent Technologies has the right to extend the term of this lease for three additional five-year periods at the then-current fair market rental rate. The current annual base rent payable under the Lucent lease is $1,800,000.

*Ingram Micro Building*

On September 27, 2001, Wells OP acquired a ground leasehold interest in a 701,819 square foot distribution facility located in Millington, Tennessee, pursuant to a Bond Real Property Lease dated as of December 20, 1995 (Bond Lease). The ground leasehold interest under the Bond Lease, along with the Bond and the Bond Deed of Trust, were purchased from Ingram Micro L.P. (Ingram) in a sale-lease back transaction for a purchase price of $21,050,000. The Bond Lease expires in December 2026. Construction of the Ingram Micro Building was completed in 1997.

Fee simple title to the land upon which the Ingram Micro Building is located is held by the Industrial Development Board of the City of Millington, Tennessee (Industrial Development Board), which originally entered into the Bond Lease with Lease Plan North America, Inc. (Lease Plan). The Industrial Development Board issued an Industrial Development Revenue Note Ingram Micro L.P. Series 1995 (Bond) in a principal amount of $22,000,000 to Lease Plan in order to finance the construction of the Ingram Micro Building. The Bond is secured by a Fee Construction Mortgage Deed of Trust and Assignment of Rents and Leases (Bond Deed of Trust) executed by the Industrial Development Board for the benefit of Lease Plan. Lease Plan assigned to Ingram its ground leasehold interest in the Ingram Micro Building under the Bond Lease. Lease Plan also assigned all of its rights and interest in the Bond and the Bond Deed of Trust to Ingram.

Wells OP also acquired the Bond and the Bond Deed of Trust from Ingram at closing. Beginning in 2006, Wells OP has the option under the Bond Lease to purchase the land underlying the Ingram Micro Building from the Industrial Development Board for $100 plus satisfaction of the indebtedness evidenced by the Bond which, as set forth above, was acquired and is currently held by Wells OP.

Ingram Micro, Inc. (Micro) is the general partner of Ingram and a guarantor on the Ingram lease. Micro, whose shares are traded on the NYSE, has its corporate headquarters in Santa Ana, California.

Micro provides technology products and supply chain management services through wholesale distribution. It targets three different market segments, including corporate resellers, direct and consumer marketers, and value-added resellers. Micro's worldwide business consists of approximately 14,000 associates and operations in 36 countries. Micro reported a net worth, as of December 29, 2001, of approximately $1.87 billion.

The Ingram lease has a current term of 10 years with two successive options to extend for 10 years each at an annual rate equal to the greater of (1) 95% of the then-current fair market rental rate, or (2) the annual rental payment effective for the final year of the term immediately prior to such extension. Annual rent, as determined for each extended term, is also increased by 15% beginning in the 61st month of each extended term. The current annual base rent payable for the Ingram lease is $2,035,275.

*Nissan Property*

*Purchase of the Nissan Property*. The Nissan Property is a build-to-suit property located in Irving, Texas which we purchased on September 19, 2001 for a purchase price of $5,545,700. We commenced construction on a three-story office building containing approximately 268,000 rentable square feet (Nissan Project) in January 2002. Wells OP obtained a construction loan in the amount of $32,400,000 from Bank of America, N.A. (BOA), which is more particularly described in the "Real Estate Loans" section of the prospectus, to fund the construction of a building on the Nissan Project.

Wells OP entered into a development agreement, an architect agreement and a design and build agreement to construct the Nissan Project on the Nissan Property.

*Development Agreement*. Wells OP entered into a development agreement (Development Agreement) with Champion Partners, Ltd., a Texas limited partnership (Developer), as the exclusive development manager to supervise, manage and coordinate the planning, design, construction and completion of the Nissan Project. As compensation for the services to be rendered by the Developer under the Development Agreement, Wells OP is paying a development fee of $1,250,000. The fee is due and payable ratably as the construction and development of the Nissan Project is completed.

We anticipate that the aggregate of all costs and expenses to be incurred by Wells OP with respect to the acquisition of the Nissan Property and the planning, design, development, construction and completion of the Nissan Project will total approximately $42,259,000. Under the terms of the Development Agreement, the Developer has agreed that in the event that the total of all such costs and expenses exceeds $42,258,600, subject to certain adjustments, the amount of fees payable to the Developer shall be reduced by the amount of any such excess.

*Construction Agreement*. Wells OP entered into a design and build construction agreement (Construction Agreement) with Thos. S. Byrne, Inc. (Contractor) for the construction of the Nissan Project. The Contractor is based in Ft. Worth, Texas and specializes in commercial, industrial and high-end residential buildings. The Contractor commenced operations in 1923 and has completed over 200 projects for a total of approximately 60 clients. The Contractor is presently engaged in the construction of over 20 projects with a total construction value of in excess of $235 million.

The Construction Agreement provides that Wells OP will pay the Contractor a maximum of $25,326,017 for the construction of the Nissan Project that includes all estimated fees and costs including the architect fees. The Contractor will be responsible for all costs of labor, materials, construction equipment and machinery necessary for completion of the Nissan Project. In addition, the Contractor will be required to secure and pay for any additional business licenses, tap fees and building permits which may be necessary for construction of the Nissan Project.

*Nissan Lease*. The Nissan Property is leased to Nissan Motor Acceptance Corporation (Nissan), a California corporation with its corporate headquarters in Torrance, California. Nissan is a wholly-owned subsidiary of Nissan North America, Inc. (NNA), a guarantor of Nissan's lease. NNA is a California corporation, with headquarters in Gardenia, California. NNA handles the North American business sector of its Japanese parent, Nissan Motor Company, Ltd. NNA's business activities include design, development, manufacturing and marketing of Nissan vehicles in North America. As a subsidiary of NNA, Nissan purchases retail and lease contracts from, and provides wholesale inventory and mortgage loan financing to, Nissan and Infiniti retailers.

The Nissan lease will extend 10 years beyond the rent commencement date. Construction on the building began in January 2002 and is expected to be completed by December 2003. The rent commencement date will occur shortly after completion. Nissan has the right to extend the initial 10-year term of this lease for an additional two years, upon written notice. Nissan also has the right to extend the lease for two additional five-year periods at 95% of the then-current market rental rate, upon written notice. The annual base rent payable for the Nissan lease beginning on the rent commencement date is expected to be $4,225,860.

*IKON Buildings*

Wells OP purchased the IKON Buildings on September 7, 2001 for a purchase price of $20,650,000. The IKON Buildings, which were built in 2000, consist of two one-story office buildings aggregating 157,790 rentable square feet located in Houston, Texas.

The IKON Buildings are leased to IKON Office Solutions, Inc. (IKON). IKON provides business communication products such as copiers and printers, as well as services such as distributed printing, facilities management, network design, e-business development and technology training. IKON's customers include various sized businesses, professional firms and government agencies. IKON distributes products manufactured by companies such as Microsoft, IBM, Canon, Novell and Hewlett-Packard. IKON reported a net worth, as of December 31, 2001, of approximately $1.43 billion.

The IKON lease commenced in May 2000 and expires in April 2010. IKON has the right to extend the term of this lease for two additional five-year periods at the then-current fair market rental rate. The current annual base rent payable for the IKON lease is $2,015,767.

*State Street Building*

Wells OP purchased the State Street Building on July 30, 2001 for a purchase price of $49,563,000. The State Street Building, which was built in 1990, is a seven-story office building with 234,668 rentable square feet located in Quincy, Massachusetts.

The State Street Building is leased to SSB Realty, LLC (SSB Realty). SSB Realty is a wholly-owned subsidiary of State Street Corporation, a Massachusetts corporation (State Street). State Street, a guarantor of the SSB Realty lease, is a world leader in providing financial services to investment managers, corporations, public pension funds, unions, not-for-profit organizations and individuals. State Street's services range from investment research and professional investment management to trading and brokerage services to fund accounting and administration. State Street reported a net worth, as of December 31, 2001, of approximately $3.8 billion.

The SSB Realty lease commenced in February 2001 and expires in March 2011. SSB has the right to extend the term of this lease for one additional five-year period at the then-current fair market rental rate. Pursuant to the SSB Realty lease, Wells OP is obligated to provide SSB Realty an allowance of up to

approximately $2,112,000 for tenant, building and architectural improvements. The current annual base rent payable for the SSB Realty lease is $6,922,706.

*AmeriCredit Building*

The XIII-REIT Joint Venture purchased the AmeriCredit Building on July 16, 2001 for a purchase price of $12,500,000. The AmeriCredit Building, which was built in 2001, is a two-story office building containing 85,000 rentable square feet located in Orange Park, Florida.

The AmeriCredit Building is leased to AmeriCredit Financial Services Corporation (AmeriCredit). AmeriCredit is wholly-owned by, and serves as the primary operating subsidiary for, AmeriCredit Corp., a Texas corporation whose common stock is publicly traded on the NYSE. AmeriCredit Corp. is the guarantor of the lease. AmeriCredit is the world's largest independent middle-market automobile finance company. AmeriCredit purchases loans made by franchised and select independent dealers to consumers buying late model used and, to a lesser extent, new automobiles. AmeriCredit Corp. reported a net worth, as of December 31, 2001, of approximately $1.2 billion.

The AmeriCredit lease commenced in June 2001 and expires in May 2011. AmeriCredit has the right to extend the AmeriCredit lease for two additional five-year periods of time. Each extension option must be exercised by giving written notice to the landlord at least 12 months prior to the expiration date of the then-current lease term. The monthly base rent payable for each extended term of the AmeriCredit lease will be equal to 95% of the then-current market rate. The AmeriCredit lease contains a termination option that may be exercised by AmeriCredit effective as of the end of the seventh lease year and requires AmeriCredit to pay the joint venture a termination payment estimated at approximately $1.9 million. AmeriCredit also has an expansion option for an additional 15,000 square feet of office space and 120 parking spaces. AmeriCredit may exercise this expansion option at any time during the first seven lease years. The current annual base rent payable under the AmeriCredit lease is $1,336,200.

*Comdata Building*

The XII-REIT Joint Venture purchased the Comdata Building on May 15, 2001 for a purchase price of $24,950,000. The Comdata Building, which was built in 1989 and expanded in 1997, is a three-story office building containing 201,237 rentable square feet located in Brentwood, Tennessee.

The Comdata Building is leased to Comdata Network, Inc. (Comdata). Comdata is a leading provider of transaction processing and information services to the transportation and other industries. Comdata provides trucking companies with fuel cards, electronic cash access, permit and licensing services, routing software, driver relationship services and vehicle escorts, among other services. Comdata provides these services to over 400,000 drivers, 7,000 truck stop service centers and 500 terminal fueling locations. Ceridian Corporation, the lease guarantor, is one of North America's leading information services companies that serves the human resources and transportation markets. Ceridian and its subsidiaries generate, process and distribute data for customers and help customers develop systems plans and software to perform these functions internally. Ceridian Corporation reported a net worth, as of September 30, 2001, of approximately $1.1 billion.

The Comdata lease commenced in April 1997 and expires in May 2016. Comdata has the right to extend the Comdata lease for one additional five-year period of time at a rate equal to the greater of the base rent of the final year of the initial term or 90% of the then-current fair market rental rate. The current annual base rent payable for the Comdata lease is $2,458,638.

*AT&T Oklahoma Buildings*

The XII-REIT Joint Venture purchased the AT&T Oklahoma Buildings on December 28, 2000 for a purchase price of $15,300,000. The AT&T Oklahoma Buildings, which were built in 1998 and 2000, respectively, consist of a one-story office building and a two-story office building, connected by a mutual hallway, containing an aggregate of 128,500 rentable square feet located in Oklahoma City, Oklahoma.

AT&T Corp. (AT&T) leases the entire 78,500 rentable square feet of the two-story office building and 25,000 rentable square feet of the one-story office building. AT&T is among the world's leading voice and data communications companies, serving consumers, businesses and governments worldwide. AT&T has one of the largest digital wireless networks in North America and is one of the leading suppliers of data and Internet services for businesses. In addition, AT&T offers outsourcing, consulting and networking-integration to large businesses and is one of the largest direct internet access service providers for consumers in the United States. AT&T reported a net worth, as of December 31, 2001, of approximately $51.7 billion.

The AT&T lease commenced in April 2000 and expires in August 2010. AT&T has the right to extend the AT&T lease for two additional five-year periods of time at the then-current fair market rental rate. AT&T has a right of first offer to lease the remainder of the space in the one-story office building currently occupied by Jordan Associates, Inc. (Jordan), if Jordan vacates the premises. The current annual base rent payable for the AT&T lease is $1,242,000.

Jordan leases the remaining 25,000 rentable square feet contained in the one-story office building. Jordan provides businesses with advertising and related services including public relations, research, direct marketing and sales promotion. Through this corporate office and other offices in Tulsa, St. Louis, Indianapolis and Wausau, Wisconsin, Jordan provides services to major clients such as Bank One, Oklahoma, N.A., BlueCross & BlueShield of Oklahoma, Kraft Food Services, Inc., Logix Communications and the American Dental Association.

The Jordan lease commenced in December 1998 and expires in December 2008. Jordan has the right to extend the Jordan lease for one additional five-year period of time at the then-current fair market rental rate. The current annual base rent payable for the Jordan lease is $294,500.

*Metris Minnesota Building*

Wells OP purchased the Metris Minnesota Building on December 21, 2000 for a purchase price of $52,800,000. The Metris Minnesota Building, which was built in 2000, is a nine-story office building containing 300,633 rentable square feet located in Minnetonka, Minnesota.

The Metris Minnesota Building is Phase II of a two-phase office complex known as Crescent Ridge Corporate Center in Minnetonka, Minnesota, which is a western suburb of Minneapolis. Phase I of Crescent Ridge Corporate Center is an eight-story multi-tenant building which is connected to the Metris Minnesota Building by a single-story restaurant link building. Neither Phase I of Crescent Ridge Corporate Center nor the connecting restaurant are owned by Wells OP.

The Metris Minnesota Building is leased to Metris Direct, Inc. (Metris) as its corporate headquarters. Metris is a principal subsidiary of Metris Companies, Inc. (Metris Companies), a publicly traded company whose shares are listed on the NYSE (symbol MXT) which has guaranteed the Metris lease. Metris Companies is an information-based direct marketer of consumer credit products and fee-based services primarily to moderate income consumers. Metris Companies' consumer credit products

are primarily unsecured credit cards issued by its subsidiary, Direct Merchants Credit Card Bank. Metris Companies reported a net worth, as of December 31, 2001, of approximately $1.14 billion.

The Metris Minnesota lease commenced in September 2000 and expires in December 2011. Metris has the right to renew the Metris Minnesota lease for an additional five-year term at fair market rent, but in no event less than the basic rent payable in the immediately preceding period. In addition, Metris is required to pay annual parking and storage fees of $87,948 through December 2006 and $114,062 payable on a monthly basis for the remainder of the lease term. The current annual base rent payable for the Metris Minnesota lease is $4,960,445.

*Stone & Webster Building*

Wells OP purchased the Stone & Webster Building on December 21, 2000 for a purchase price of $44,970,000. The Stone & Webster Building, which was built in 1994, is a six-story office building with 312,564 rentable square feet located in Houston, Texas. In addition, the site includes 4.34 acres of unencumbered land available for expansion.

Stone & Webster is a full-service global engineering and construction company offering managerial and technical resources for solving complex energy, environmental, infrastructure and industrial challenges. The Stone & Webster lease is guaranteed by The Shaw Group, Inc., the parent company of Stone & Webster. Shaw Group is the largest supplier of fabricated piping systems and services in the world. The Shaw Group reported a net worth, as of February 28, 2002, of approximately $612 million.

The Stone & Webster lease commenced in December 2000 and expires in December 2010. Stone & Webster has the right to extend the Stone & Webster lease for two additional five-year periods of time for a base rent equal to the greater of (1) the last year's rent, or (2) the then-current market rental rate. The current annual base rent payable for the Stone & Webster lease is $4,533,056.

SYSCO is the largest marketer and distributor of foodservice products in North America. SYSCO operates from approximately 100 distribution facilities and provides its products and services to about 356,000 restaurants and other users across the United States and portions of Canada. SYSCO reported a net worth, as of December 29, 2001, of approximately $2.2 billion.

The SYSCO lease commenced in October 1998 and expires in September 2008. The current annual base rent payable for the SYSCO lease is $2,130,320.

*Motorola Plainfield Building*

Wells OP purchased the Motorola Plainfield Building on November 1, 2000 for a purchase price of $33,648,156. The Motorola Plainfield Building, which was built in 1976, is a three-story office building containing 236,710 rentable square feet located in South Plainfield, New Jersey.

The Motorola Plainfield Building is leased to Motorola, Inc. (Motorola). Motorola is a global leader in providing integrated communications solutions and embedded electronic solutions, including software-enhanced wireless telephones, two-way radios and digital and analog systems and set-top terminals for broadband cable television operators. Motorola reported a net worth, as of December 31, 2001 , of approximately $13.7 billion.

The Motorola Plainfield lease commenced in November 2000 and expires in October 2010. Motorola has the right to extend the Motorola Plainfield lease for two additional five-year periods of time for a base rent equal to the greater of (1) base rent for the immediately preceding lease year, or (2) 95%

of the then-current fair market rental rate. The current annual base rent payable for the Motorola Plainfield lease is $3,324,428.

The Motorola Plainfield lease grants Motorola a right of first refusal to purchase the Motorola Plainfield Building if Wells OP attempts to sell the property during the term of the lease. Additionally, Motorola has an expansion right for an additional 143,000 rentable square feet. If Motorola exercises its expansion option, upon completion of the expansion, the term of the Motorola Plainfield lease shall be extended an additional 10 years after Motorola occupies the expansion space. The base rent for the expansion space shall be determined by the construction costs and fees for the expansion. The base rent for the original building for the extended 10-year period shall be the greater of (1) the then-current base rent, or (2) 95% of the then-current fair market rental rate.

*Quest Building*

The VIII-IX Joint Venture purchased the Quest Building on January 10, 1997 for a purchase price of $7,193,000. On July 1, 2000, the VIII-IX Joint Venture contributed the Quest Building to the VIII-IX-REIT Joint Venture. The Quest Building, which was built in 1984 and refurbished in 1996, is a two-story office building containing 65,006 rentable square feet located in Irvine, California.

The Quest Building is currently leased to Quest Software, Inc. (Quest). Quest, whose shares are publicly traded, is a corporation that provides software database management and disaster recovery services for its clients. Quest was established in April 1987 to develop and market software products to help insure uninterrupted, high performance access to enterprise and custom computing applications and databases. Quest reported a net worth, as of December 31, 2001, of approximately $441 million.

The Quest lease commenced in June 2000 and expires in January 2004. The annual base rent payable for the remaining portion of the initial lease term is $1,287,119. Quest has the right to extend the lease for two additional one-year periods of time at an annual base rent of $1,365,126.

*Delphi Building*

Wells OP purchased the Delphi Building on June 29, 2000 for a purchase price of $19,800,000. The Delphi Building, which was built in 2000, is a three-story office building containing 107,193 rentable square feet located in Troy, Michigan.

The Delphi Building is leased to Delphi Automotive Systems LLC (Delphi LLC). Delphi LLC is a wholly-owned subsidiary of Delphi Automotive Systems Corporation (Delphi), formerly the Automotive Components Group of General Motors, which was spun off from General Motors in May 1999. Delphi is the world's largest automotive components supplier and sells its products to almost every major manufacturer of light vehicles in the world. Delphi reported a net worth, as of December 31, 2001, of approximately $2.22 billion.

The Delphi lease commenced in May 2000 and expires in April 2007. Delphi LLC has the right to extend the Delphi lease for two additional five-year periods of time at 95% of the then-current fair market rental rate. The current annual base rent payable for the Delphi lease is $1,955,524.

*Avnet Building*

Wells OP purchased the Avnet Building on June 12, 2000 for a purchase price of $13,250,000. The Avnet Building, which was built in 2000, is a two-story office building containing 132,070 rentable square feet located in Tempe, Arizona. The Avnet Building is subject to a first priority mortgage in favor of

SouthTrust Bank, N.A. (SouthTrust) securing a SouthTrust Line of Credit, which is more particularly described in the "Real Estate Loans" section of this prospectus.

The Avnet Building is leased to Avnet, Inc. (Avnet). Avnet is a Fortune 300 company and one of the world's largest industrial distributors of electronic components and computer products, including microprocessors, semi-conductors and electromechanical devices, serving customers in 60 countries. Additionally, Avnet sells products of more than 100 of the world's leading component manufacturers to customers around the world. Avnet reported a net worth, as of December 28, 2001, of approximately $1.77 billion.

The Avnet lease commenced in May 2000 and expires in April 2010. Avnet has the right to extend the Avnet lease for two additional five-year periods of time. The annual rent payable for the first three years of each extension period will be at the current fair market rental rate at the end of the preceding term. The annual rent payable for the fourth and fifth years of each extension period will be the then-current fair market rental rate at the end of the preceding term multiplied by a factor of 1.093. The current annual base rent payable for the Avnet lease is $1,516,164.

Avnet has a right of first refusal to purchase the Avnet Building if Wells OP attempts to sell the Avnet Building. Avnet also has an expansion option. Wells OP has the option to undertake the expansion or allow Avnet to undertake the expansion at its own expense, subject to certain terms and conditions.

The Avnet ground lease commenced in April 1999 and expires in September 2083. Wells OP has the right to terminate the Avnet ground lease prior to the expiration of the 30th year. The current annual ground lease payment pursuant to the Avnet ground lease is $230,777.

*Siemens Building*

The XII-REIT Joint Venture purchased the Siemens Building on May 10, 2000 for a purchase price of $14,265,000. The Siemens Building, which was built in 2000, is a three-story office building containing 77,054 rentable square feet located in Troy, Michigan.

The Siemens Building is leased to Siemens Automotive Corporation (Siemens). Siemens is a subsidiary of Siemens Corporation USA, a domestic corporation which conducts the American operations of Siemens AG, the world's second largest manufacturer of electronic capital goods. Siemens, part of the worldwide Automotive Systems Group of Siemens AG, is a supplier of advanced electronic and electrical products and systems to automobile manufacturers.

The Siemens lease commenced in January 2000 and expires in August 2010. Siemens has the right to extend the Siemens lease for two additional five-year periods at 95% of the then-current fair market rental rate. The current annual base rent payable for the Siemens lease is $1,374,643.

Siemens has a one-time right to cancel the Siemens lease effective after the 90$^{th}$ month of the lease term if Siemens pays a cancellation fee to the XII-REIT Joint Venture currently calculated to be approximately $1,234,160.

*Motorola Tempe Building*

Wells OP purchased the Motorola Tempe Building on March 29, 2000 for a purchase price of $16,000,000. The Motorola Tempe Building, which was built in 1998, is a two-story office building containing 133,225 rentable square feet in Tempe, Arizona. The Motorola Tempe Building is subject to a

first priority mortgage in favor of SouthTrust securing a SouthTrust line of credit, which is more particularly described in the "Real Estate Loans" section of this prospectus.

The Motorola Tempe Building is leased to Motorola, Inc. (Motorola) and is occupied by Motorola's Satellite Communications Division (SATCOM). SATCOM is a worldwide developer and manufacturer of space and ground communications equipment and systems. SATCOM is the prime contractor for the Iridium System and is primarily engaged in computer design and development functions.

The Motorola Tempe lease commenced in August 1998 and expires in August 2005. Motorola has the right to extend the Motorola Tempe lease for four additional five-year periods of time at the then-prevailing market rental rate. The current annual rent payable under the Motorola Tempe lease is $1,843,834.

The Motorola Tempe Building is subject to a ground lease that commenced in November 1997 and expires in December 2082. Wells OP has the right to terminate the Motorola Tempe ground lease prior to the expiration of the 30th year and prior to the expiration of each subsequent 10-year period thereafter. The current annual ground lease payment pursuant to the Motorola Tempe ground lease is $243,825.

*ASML Building*

Wells OP purchased the ASML Building on March 29, 2000 for a purchase price of $17,355,000. The ASML Building, which was built in 2000, is a two-story office and warehouse building containing 95,133 rentable square feet located in Tempe, Arizona. The ASML Building is subject to a first priority mortgage in favor of SouthTrust securing a SouthTrust line of credit, which is more particularly described in the "Real Estate Loans" section of this prospectus.

The ASML Building is leased to ASM Lithography, Inc. (ASML). ASML is a wholly-owned subsidiary of ASM Lithography Holdings NV (ASML Holdings), a Dutch multi-national corporation that supplies lithography systems used for printing integrated circuit designs onto very thin disks of silicon, commonly referred to as wafers. These systems are supplied to integrated circuit manufacturers throughout the United States, Asia and Western Europe. ASML Holdings, a guarantor of the ASML lease, reported a net worth, as of December 31, 2001, of approximately $1.1 billion.

The ASML lease commenced in June 1998 and expires in June 2013. The current annual base rent payable under the ASML lease is $1,927,788. ASML has an expansion option which allows ASML the ability to expand the building into at least an additional 30,000 rentable square feet, to be constructed by Wells OP. If the expansion option exercised is for less than 30,000 square feet, Wells OP may reject the exercise at its sole discretion. In the event that ASML exercises its expansion option after the first five years of the initial lease term, such lease term will be extended to 10 years from the date of such expansion.

The ASML Building is subject to a ground lease that commenced in August 1997 and expires in December 2082. Wells OP has the right to terminate the ASML ground lease prior to the expiration of the 30th year, and prior to the expiration of each subsequent 10-year period thereafter. The current annual ground lease payment pursuant to the ASML ground lease is $186,368.

*Dial Building*

Wells OP purchased the Dial Building on March 29, 2000 for a purchase price of $14,250,000. The Dial Building, which was built in 1997, is a two-story office building containing 129,689 rentable square feet located in Scottsdale, Arizona. The Dial Building is subject to a first priority mortgage in favor of SouthTrust securing a SouthTrust line of credit, which is more particularly described in the "Real Estate Loans" section of this prospectus.

The Dial Building is leased to Dial Corporation (Dial). Dial currently has its headquarters in the Dial Building and is one of the leading consumer product manufacturers in the United States. Dial's brands include Dial soap, Purex detergents, Renuzit air fresheners, Armour canned meats, and a variety of other leading consumer products. Dial reported a net worth, as of December 31, 2001, of approximately $81.8 million.

The Dial lease commenced in August 1997 and expires in August 2008. Dial has the right to extend the Dial lease for two additional five-year periods of time at 95% of the then-current fair market rental rate. The annual rent payable for the initial term of the Dial lease is $1,387,672.

*Metris Tulsa Building*

Wells OP purchased the Metris Tulsa Building on February 11, 2000 for a purchase price of $12,700,000. The Metris Tulsa Building, which was built in 2000, is a three-story office building containing 101,100 rentable square feet located in Tulsa, Oklahoma.

The Metris Tulsa Building is leased to Metris Direct, Inc. (Metris). Metris Companies, Inc., the parent company of Metris, has guaranteed the Metris Tulsa lease. The Metris Tulsa lease commenced in February 2000 and expires in January 2010. Metris has the right to extend the Metris Tulsa lease for two additional five-year periods of time. The monthly base rent payable for the renewal terms of the Metris Tulsa lease shall be equal to the then-current market rate. The current annual base rent payable for the Metris Tulsa lease is $1,187,925.

*Cinemark Building*

Wells OP purchased the Cinemark Building on December 21, 1999 for a purchase price of $21,800,000. The Cinemark Building, which was built in 1999, is a five-story office building containing 118,108 rentable square feet located in Plano, Texas. The Cinemark Building is subject to a first priority mortgage in favor of SouthTrust securing a SouthTrust line of credit, which is more particularly described in the "Real Estate Loans" section of this prospectus.

The entire 118,108 rentable square feet of the Cinemark Building is currently leased to two tenants. Cinemark USA, Inc. (Cinemark) occupies 65,521 rentable square feet (56%) of the Cinemark Building, and The Coca-Cola Company (Coca-Cola) occupies the remaining 52,587 (44%) rentable square feet of the Cinemark Building.

Cinemark, a privately owned company, is one of the largest motion picture exhibitors in North and South America. Cinemark currently operates in excess of 2,575 screens in 32 states within the United States and internationally in countries such as Argentina, Brazil, Canada, Chile, Costa Rica, Ecuador, El Salvador, Honduras, Nicaragua, Mexico and Peru. Cinemark reported a net worth, as of December 31, 2001, of approximately $25.3 million.

The Cinemark lease commenced in December 1999 and expires in December 2009. Cinemark has the right to extend the Cinemark lease for one additional five-year period of time and a subsequent additional 10-year period of time. The monthly base rent payable for the second renewal term of the Cinemark lease shall be equal to 95% of the then-current market rate. Cinemark has a right of first refusal to lease any of the remaining rentable area of the Cinemark Building that subsequently becomes vacant. The current annual base rent payable for the Cinemark lease is $1,366,491.

Coca-Cola is the global soft-drink industry leader with world headquarters in Atlanta, Georgia. Coca-Cola manufactures and sells syrups, concentrates and beverage bases for Coca-Cola, the company's flagship brand, and over 160 other soft drink brands in nearly 200 countries around the world. Coca-Cola reported a net worth, as of December 31, 2001, of approximately $11.4 billion.

The Coca-Cola lease commenced in December 1999 and expires in November 2006. Coca-Cola has the right to extend the lease for two additional five-year periods of time. The current annual base rent payable for the Coca-Cola lease is $1,354,184.

*Gartner Building*

The XI-XII-REIT Joint Venture purchased the Gartner Building on September 20, 1999 for a purchase price of $8,320,000. The Gartner Building, which was built in 1998, is a two-story office building containing 62,400 rentable square feet located in Fort Myers, Florida.

The Gartner Building is currently leased to The Gartner Group, Inc. (Gartner). The Gartner Building is occupied by Gartner's Financial Services Division. Gartner is one of the world's leading independent providers of research and analysis related to information and technology solutions. Gartner has over 80 locations worldwide and over 12,000 clients.

The Gartner lease commenced in February 1998 and expires in January 2008. Gartner has the right to extend the lease for two additional five-year periods of time at a rate equal to the lesser of (1) the prior rate increased by 2.5%, or (2) 95% of the then-current market rate. The current annual base rent payable for the Gartner lease is $830,656.

*Videojet Technologies Chicago Building*

Wells OP purchased the Videojet Technologies Chicago Building on September 10, 1999 for a purchase price of $32,630,940. The Videojet Technologies Chicago Building, which was built in 1991, is a two-story office, assembly and manufacturing building containing 250,354 rentable square located in Wood Dale, Illinois. The Videojet Technologies Chicago Building is subject to a first priority mortgage in favor of Bank of America, N.A. (BOA) securing the BOA loan, which is more particularly described in the "Real Estate Loans" section of this prospectus.

The Videojet Technologies Chicago Building is leased to Videojet Technologies, Inc. (Videojet). Videojet is one of the largest manufacturers of digital imaging, process control, and asset management systems worldwide. In February 2002, Videojet was acquired by Danaher Corporation (Danaher), a company whose shares are traded on the NYSE. Danaher is a leading manufacturer of process and environmental controls and tools and components.

The Videojet lease commenced in November 1991 and expires in November 2011. Videojet has the right to extend the Videojet lease for one additional five-year period of time. The current annual base rent payable for the Videojet lease is $3,376,746.

*Johnson Matthey Building*

The XI-XII-REIT Joint Venture purchased the Johnson Matthey Building on August 17, 1999 for a purchase price of $8,000,000. The Johnson Matthey Building, which was built in 1973 and refurbished in 1998, is a 130,000 square foot research and development, office and warehouse building located in Wayne, Pennsylvania.

The Johnson Matthey Building is currently leased to Johnson Matthey, Inc. (Johnson Matthey). Johnson Matthey is a wholly-owned subsidiary of Johnson Matthey, PLC of the United Kingdom, a world leader in advanced materials technology. Johnson Matthey, PLC, a company whose shares are publicly traded, is over 175 years old, has operations in 38 countries and employs 12,000 people. Johnson Matthey reported a net worth, as of September 30, 2001, of approximately $1.16 billion.

The Johnson Matthey lease commenced in July 1998 and expires in June 2007. Johnson Matthey has the right to extend the lease for two additional three-year periods of time at the then-current fair market rent. Johnson Matthey has a right of first refusal to purchase the Johnson Matthey Building in the event that the XI-XII-REIT Joint Venture desires to sell the building to an unrelated third-party. The current annual base rent payable under the Johnson Matthey lease is $854,748.

*Alstom Power Richmond Building*

Wells OP purchased a 7.49 acre tract of land on July 22, 1999 for a purchase price of $936,250 and completed construction of the Alstom Power Richmond Building at an aggregate cost of approximately $11,400,000, including the cost of the land. The Alstom Power Richmond Building, which was built in 2000, is a four-story brick office building containing 99,057 gross square feet located in Midlothian, Virginia.

Wells OP originally obtained a construction loan from SouthTrust in the maximum principal amount of $9,280,000 to fund the development and construction of the Alstom Power Richmond Building. This loan, which is more specifically detailed in the "Real Estate Loans" section of this prospectus, was converted to a line of credit and is secured by a first priority mortgage against the Alstom Power Richmond Building, an assignment of the landlord's interest in the Alstom Power Richmond lease and a $4,000,000 letter of credit issued by Unibank.

The Alstom Power Richmond Building is leased to Alstom Power, Inc. (Alstom Power). Alstom Power is the result of the December 30, 1999 merger between ABB Power Generation, Inc. and ABB Alstom Power, Inc. Alstom Power reported a net worth, as of September 30, 2001, of approximately $1.8 billion.

The Alstom Power Richmond lease commenced in July 2000 and expires in July 2007. Alstom Power has the right to extend the lease for two additional five-year periods of time at the then-current market rental rate. The current annual base rent payable for the Alstom Power lease is $1,213,324.

Alstom Power has a one-time option to terminate the Alstom Power lease as to a portion of the premises containing between 24,500 and 25,500 rentable square feet as of the fifth anniversary of the rental commencement date and Alstom Power will be required to pay a termination fee equal to six times the sum of the next due installments of rent plus the unamortized portions of the base improvement allowance, additional allowance and broker commission, each being amortized in equal monthly installments of principal and interest over the initial term of the lease at an annual rate of 10%.

*Sprint Building*

The XI-XII-REIT Joint Venture purchased the Sprint Building on July 2, 1999 for a purchase price of $9,500,000. The Sprint Building, which was built in 1992, is a three-story office building containing 68,900 rentable square feet located in Leawood, Kansas.

The Sprint Building is leased to Sprint Communications Company L.P. (Sprint). Sprint is the nation's third largest long distance phone company, which operates on an all-digital long distance

telecommunications network using state-of-the-art fiber optic and electronic technology. Sprint reported a net worth, as of December 31, 2001, of approximately $12.6 billion.

The Sprint lease commenced in May 1997 and expires in May 2007, subject to Sprint's right to extend the lease for two additional five-year periods of time. The annual base rent payable under the Sprint lease is $1,102,404 for the remainder of the lease term. The monthly base rent payable for each extended term of the Sprint lease will be equal to 95% of the then-current market rental rate.

The Sprint lease contains a termination option which may be exercised by Sprint effective as of May 18, 2004 provided that Sprint has not exercised either expansion option, as described below. Sprint must provide notice to the XI-XII-REIT Joint Venture of its intent to exercise its termination option on or before August 21, 2003. If Sprint exercises its termination option, it will be required to pay the joint venture a termination payment equal to $6.53 per square foot, or $450,199.

Sprint also has an expansion option for an additional 20,000 square feet of office space. If Sprint exercises an expansion option, the XI-XII-REIT Joint Venture will be required to construct the expansion improvements in accordance with the specific drawings and plans attached as an exhibit to the Sprint lease. The joint venture will be required to fund the expansion improvements and to fund to Sprint a tenant finish allowance of $10 per square foot for the expansion space.

*EYBL CarTex Building*

The XI-XII-REIT Joint Venture purchased the EYBL CarTex Building on May 18, 1999 for a purchase price of $5,085,000. The EYBL CarTex Building, which was built in 1989, is a manufacturing and office building consisting of a total of 169,510 square feet located in Fountain Inn, South Carolina.

The EYBL CarTex Building is leased to EYBL CarTex, Inc. (EYBL CarTex). EYBL CarTex produces automotive textiles for BMW, Mercedes, GM Bali, VW Mexico and Golf A4. EYBL CarTex is a wholly-owned subsidiary of EYBL International, AG, Krems/Austria. EYBL International is the world's largest producer of circular knit textile products and loop pile plushes for the automotive industry. EYBL International reported a net worth, as of September 30, 2001, of approximately $41.5 billion.

The EYBL CarTex lease commenced in March 1998 and expires in February 2008, subject to EYBL CarTex's right to extend the lease for two additional five-year periods of time. The monthly base rent payable for each extended term of the lease will be equal to the fair market rent. In addition, EYBL CarTex has an option to purchase the EYBL CarTex Building at the expiration of the initial lease term by giving notice to the landlord by March 1, 2007. The current annual base rent payable under the EYBL CarTex lease is $550,908.

*Matsushita Building*

Wells OP purchased an 8.8 acre tract of land on March 15, 1999, for a purchase price of $4,450,230. Wells OP completed construction of the Matsushita Building in 2000 at an aggregate cost of $18,431,206, including the cost of the land. The Matsushita Building is a two-story office building containing 144,906 rentable square feet located in Lake Forest, California.

The Matsushita Building is leased to Matsushita Avionics Systems Corporation (Matsushita Avionics). Matsushita Avionics is a wholly-owned subsidiary of Matsushita Electric Corporation of America (Matsushita Electric). Matsushita Electric, a guarantor of the Matsushita lease, is a wholly-owned subsidiary of Matsushita Electric Industrial Co., Ltd. (Matsushita Industrial), a Japanese company which is the world's largest consumer electronics manufacturer.

The Matsushita lease commenced in January 2000 and expires in January 2007. Matsushita Avionics has the option to extend the initial term of the Matsushita lease for two successive five-year

periods at a rate of 95% of the stated rental rate. The monthly base rent during the option term shall be adjusted upward at the beginning of the 24th and 48th month of each option term by an amount equal to 6% of the monthly base rent payable immediately preceding such period. The current annual base rent payable for the Matsushita lease is $2,005,464.

*AT&T Pennsylvania Building*

Wells OP purchased the AT&T Pennsylvania Building on February 4, 1999 for a purchase price of $12,291,200. The AT&T Pennsylvania Building, which was built in 1998, is a four-story office building containing 81,859 rentable square feet located in Harrisburg, Pennsylvania.

The AT&T Pennsylvania Building is leased to Pennsylvania Cellular Telephone Corp. (Pennsylvania Telephone), a subsidiary of AT&T Corp. (AT&T), and the obligations of Pennsylvania Telephone under the Pennsylvania Telephone lease are guaranteed by AT&T.

The Pennsylvania Telephone lease commenced in November 1998 and expires in November 2008. Pennsylvania Telephone has the option to extend the initial term of the Pennsylvania Telephone lease for three additional five-year periods and one additional four year and 11-month period. The annual base rent for each extended term under the lease will be equal to 93% of the fair market rent. The fair market rent shall be multiplied by the fair market escalator (which represents the yearly rate of increases in the fair market rent for the entire renewal term), if any. The current annual base rent payable for the Pennsylvania Telephone lease is $1,442,116.

In addition, the Pennsylvania Telephone lease contains an option to expand the premises to create additional office space of not less than 40,000 gross square feet and not more than 90,000 gross square feet, as well as additional parking to accommodate such office space. If Pennsylvania Telephone exercises its option for the expansion improvements, Wells OP will be obligated to expend the funds necessary to construct the expansion improvements. Pennsylvania Telephone may exercise its expansion option by delivering written notice to Wells OP at any time before the last business day of the 96th month of the initial term of the Pennsylvania Telephone lease.

*PwC Building*

Wells OP purchased the PwC Building on December 31, 1998 for a purchase price of $21,127,854. The PwC Building, which was built in 1998, is a four-story office building containing 130,091 rentable square feet located in Tampa, Florida. Wells OP purchased the PwC Building subject to a loan from SouthTrust. The SouthTrust loan, which is more particularly described in the “Real Estate Loans” section of this prospectus, is secured by a first priority mortgage against the PwC Building.

The PwC Building is leased to PricewaterhouseCoopers (PwC). PwC provides a full range of business advisory services to leading global, national and local companies and to public institutions.

The PwC lease commenced in December 1998 and expires in December 2008, subject to PwC’s right to extend the lease for two additional five-year periods of time. The current annual base rent payable under the PwC lease is $2,093,382. The base rent escalates at the rate of 3% per year throughout the 10-year lease term. In addition, PwC is required to pay a “reserve” of $13,009 ($0.10 per square foot) as additional rent.

The annual base rent for each renewal term under the lease will be equal to the greater of (1) 90% of the then-current market rent rate for such space multiplied by the rentable area of the leased premises, or (2) 100% of the base rent paid during the last lease year of the initial term, or the then-current renewal term.

In addition, the PwC lease contains an option to expand the premises to include an additional three or four-story building with an amount of square feet up to a total of 132,000 square feet which, if exercised by PwC, will require Wells OP to expend funds necessary to construct the expansion building. PwC may exercise its expansion option at any time prior to the expiration of the initial term of the PwC lease.

If PwC elects to exercise its expansion option, Wells OP will be required to expand the parking garage such that a sufficient number of parking spaces, at least equal to four parking spaces per 1,000 square feet of rentable area, is maintained. In the event that PwC elects to exercise its expansion option and Wells OP determines not to proceed with the construction of the expansion building as described above, or if Wells OP is otherwise required to construct the expansion building and fails to do so in a timely basis pursuant to the PwC lease, PwC may exercise its purchase option by giving Wells OP written notice of such exercise within 30 days after either such event. If PwC properly exercises its purchase option, PwC must simultaneously deliver a deposit in the amount of $50,000.

*Cort Furniture Building*

The Cort Joint Venture purchased the Cort Furniture Building on July 31, 1998 for a purchase price of $6,400,000. The Cort Furniture Building, which was built in 1975, is a one-story office, showroom and warehouse building containing 52,000 rentable square feet located in Fountain Valley, California.

The Cort Furniture Building is leased to Cort Furniture Rental Corporation (Cort). Cort uses the Cort Furniture Building as its regional corporate headquarters with an attached clearance showroom and warehouse storage areas. Cort is a wholly-owned subsidiary of Cort Business Services Corporation, the largest and only national provider of high-quality office and residential rental furniture and related accessories. The obligations of Cort under the Cort Furniture lease are guaranteed by Cort Business Services Corporation.

The Cort lease commenced in November 1988 and expires in October 2003. Cort has an option to extend the Cort lease for an additional five-year period of time at 90% of the then-fair market rental value, but will be no less than the rent in the 15th year of the Cort lease. The current annual base rent payable under the Cort lease is $834,888 for the remainder of the lease term.

*Fairchild Building*

The Fremont Joint Venture purchased the Fairchild Building on July 21, 1998 for a purchase price of $8,900,000. The Fairchild Building, which was built in 1985, is a two-story manufacturing and office building containing 58,424 rentable square feet located in Fremont, Alameda County, California.

The Fairchild Building is leased to Fairchild Technologies U.S.A., Inc. (Fairchild). Fairchild is a global leader in the design and manufacture of production equipment for semiconductor and compact disk manufacturing. Fairchild is a wholly-owned subsidiary of the Fairchild Corporation (Fairchild Corp), the largest aerospace fastener and fastening system manufacturer and one of the largest independent aerospace parts distributors in the world. The obligations of Fairchild under the Fairchild lease are guaranteed by Fairchild Corp. Fairchild Corp. reported a net worth, as of December 30, 2001, of approximately $403 million.

The Fairchild lease commenced in December 1997 and expires in November 2004, subject to Fairchild's right to extend the Fairchild lease for an additional five-year period. The base rent during the first year of the extended term of the Fairchild lease, if exercised by Fairchild, shall be 95% of the then-fair market rental value of the Fairchild Building subject to the annual 3% increase adjustments. The current annual base rent payable under the Fairchild lease is $920,144.

*Avaya Building*

The Avaya Building was purchased by the IX-X-XI-REIT Joint Venture on June 24, 1998 for a purchase price of $5,504,276. The Avaya Building, which was built in 1998, is a one-story office building containing 57,186 rentable square feet located in Oklahoma City, Oklahoma.

The Avaya Building is leased to Avaya, Inc. (Avaya), the former Enterprise Networks Group of Lucent Technologies Inc. (Lucent Technologies). Lucent Technologies, the former tenant, assigned the lease to Avaya on September 30, 2000. Lucent Technologies, which has not been released from its obligations as tenant to pay rent under the lease, is a telecommunications company which was spun off by AT&T in April 1996. Avaya reported a net worth, as of December 31, 2001, of approximately $452 million. Lucent Technologies reported a net worth, as of December 31, 2001, of approximately $10.63 billion.

The Avaya lease commenced in January 1998 and expires in January 2008. The current annual base rent payable under the Avaya lease is $536,977. Under the Avaya lease, Avaya also has an option to terminate the Avaya lease on the seventh anniversary of the rental commencement date. If Avaya elects to exercise its option to terminate the Avaya lease, Avaya would be required to pay a termination payment anticipated to be approximately $1,339,000.

*Iomega Building*

Wells Fund X originally purchased the Iomega Building on April 1, 1998 for a purchase price of $5,025,000 and, on July 1, 1998, contributed the Iomega Building to the IX-X-XI-REIT Joint Venture. The Iomega Building is a warehouse and office building with 108,250 rentable square feet located in Ogden, Utah.

The Iomega Building is leased to Iomega Corporation (Iomega). Iomega, a company whose shares are traded on the NYSE, is a manufacturer of computer storage devices used by individuals, businesses, government and educational institutions, including "Zip" drives and disks, "Jaz" one gigabyte drives and disks, and tape backup drives and cartridges. Iomega reported a net worth, as of December 31, 2001, of approximately $378.9 million.

The Iomega lease commenced in August 1996 and expires in April 2009. On March 1, 2003 and July 1, 2006, the monthly base rent payable under the Iomega lease will be increased to reflect an amount equal to 100% of the increase in the Consumer Price Index during the preceding 40 months; provided however, that in no event shall the base rent be increased with respect to any one year by more than 6% or by less than 3% per year, compounded annually, on a cumulative basis from the beginning of the lease term. The current annual base rent payable under the Iomega lease is $659,868.

*Interlocken Building*

The IX-X-XI-REIT Joint Venture purchased the Interlocken Building on March 20, 1998 for a purchase price of $8,275,000. The Interlocken Building, which was built in 1996, is a three-story multi-tenant office building containing 51,975 rentable square feet located in Broomfield, Colorado. The aggregate current annual base rent payable for all tenants of the Interlocken Building is $1,070,515.

*Ohmeda Building*

The IX-X-XI-REIT Joint Venture purchased the Ohmeda Building on February 13, 1998 for a purchase price of $10,325,000. The Ohmeda Building, which was built in 1988, is a two-story office building containing 106,750 rentable square feet located in Louisville, Colorado.

The Ohmeda Building is leased to Ohmeda, Inc. (Ohmeda). Ohmeda is a medical supply firm based in Boulder, Colorado and is a worldwide leader in vascular access and hemodynamic monitoring for hospital patients. On April 13, 1998, Instrumentarium Corporation (Instrumentarium), a Finnish company, acquired the division of Ohmeda that occupies the Ohmeda Building. Instrumentarium, a guarantor on the Ohmeda lease, is an international health care company concentrating on selected fields of medical technology manufacturing, marketing and distribution. Instrumentarium reported a net worth, as of December 31, 2001, of approximately $480 million.

The Ohmeda lease expires in January 2005, subject to Ohmeda's right to extend the Ohmeda lease for two additional five-year periods of time. The current annual base rent payable under the Ohmeda lease is $1,004,520.

The Ohmeda lease contains an option to expand the premises by an amount of square feet up to a total of 200,000 square feet which, if exercised by Ohmeda, will require the IX-X-XI-REIT Joint Venture to expend funds necessary to acquire additional land, if necessary, and to construct the expansion space.

*Alstom Power Knoxville Building*

Wells Fund IX purchased the land and constructed the Alstom Power Knoxville Building. The Alstom Power Knoxville Building, which was built in 1997, is a three-story multi-tenant steel-framed office building containing 84,404 square feet located in Knoxville, Tennessee. Wells Fund IX contributed the Alstom Power Knoxville Building to the IX-X-XI-REIT Joint Venture on March 26, 1997 and was credited with making a $7,900,000 capital contribution to the IX-X-XI-REIT Joint Venture.

The Alstom Power Knoxville Building is currently leased to Alstom Power, Inc. (Alstom Power). Alstom Power is the result of the December 30, 1999 merger between ABB Power Generation, Inc. and ABB Alstom Power, Inc. Alstom Power reported a net worth, as of September 30, 2001, of approximately $1.8 billion.

As security for Alstom Power's obligations under its lease, Alstom Power has provided to the IX-X-XI-REIT Joint Venture an irrevocable standby letter of credit in accordance with the terms and conditions set forth in the Alstom Power Knoxville lease. The letter of credit maintained by Alstom Power is required to be in the amount of $4,000,000 until the seventh anniversary of the rental commencement date (January 2005), at which time it will be reduced by $1,000,000 each year until the end of the lease term.

The Alstom Power Knoxville lease commenced in January 1998 and expires in November 2007. The current annual base rent for the Alstom Power Knoxville lease is $1,106,520.

Alstom Power has an option to terminate the Alstom Power Knoxville lease as of the seventh anniversary of the rental commencement date. If Alstom Power elects to exercise this termination option, Alstom Power is required to pay to the IX-X-XI-REIT Joint Venture a termination payment currently estimated to be approximately $1,800,000 based upon certain assumptions.

**Property Management Fees**

Wells Management, our Property Manager, has been retained to manage and lease substantially all of our properties. Except as set forth below, we pay management and leasing fees to Wells Management in an amount equal to the lesser of: (A) 4.5% of gross revenues, or (B) 0.6% of the net asset value of the properties (excluding vacant properties) owned by the Wells REIT, calculated on an annual basis. For purposes of this calculation, net asset value shall be defined as the excess of (1) the aggregate of the fair market value of all properties owned by the Wells REIT (excluding vacant properties), over (2) the aggregate outstanding debt of the Wells REIT (excluding debts having maturities of one year or less). In addition, we may pay Wells Management a separate fee for the one-time initial rent-up or leasing-up of newly constructed properties in an amount not to exceed the fee customarily charged in arm's length transactions by others rendering similar services in the same geographic area for similar properties as determined by a survey of brokers and agents in such area (customarily equal to the first month's rent).

Wells Management has also been retained to manage and lease all of the properties currently owned by the IX-X-XI-REIT Joint Venture and the VIII-IX-REIT Joint Venture. While both Wells Fund XI and the Wells REIT are authorized to pay management and leasing fees to Wells Management in the amount of 4.5% of gross revenues, Wells Fund VIII, Wells Fund IX and Wells Fund X are authorized to pay aggregate management and leasing fees to Wells Management in the amount of 6% of gross revenues. Accordingly, a portion of the gross revenues of these joint ventures will be subject to a 6% management and leasing fee and a portion of gross revenues will be subject to a 4.5% management and leasing fee based upon the respective ownership percentages of the joint venture partners in each of these two joint ventures.

Wells Management also received or will receive a one-time initial lease-up fee equal to the first month's rent for the leasing of the Alstom Power Knoxville Building, the Avaya Building, the Matsushita Building, the Alstom Power Richmond Building and the Nissan Project.

**Real Estate Loans**

*SouthTrust Loans*

Wells OP has established various secured lines of credit with SouthTrust Bank, N.A. (SouthTrust) whereby SouthTrust has agreed to lend an aggregate amount of up to $72,140,000 in connection with its purchase of real properties. The interest rate on each of these separate lines of credit is an annual variable rate equal to the London InterBank Offered Rate (LIBOR) for a 30-day period plus 175 basis points. Wells OP will be charged an advance fee of 0.125% of the amount of each advance. As of June 30, 2002, the interest rate on each of the SouthTrust lines of credit was 3.625% per annum.

***The $32,393,000 SouthTrust Line of Credit***

The $32,393,000 SouthTrust line of credit requires monthly payments of interest only and matures on September 10, 2002. This SouthTrust line of credit is secured by first priority mortgages against the Cinemark Building, the Dial Building and the ASML Building. As of June 30, 2002, there was no outstanding principal balance due on the $32,393,000 SouthTrust line of credit.

***The $12,844,000 SouthTrust Line of Credit***

The $12,844,000 SouthTrust line of credit requires monthly payments of interest only and matures on September 10, 2002. This SouthTrust line of credit is secured by a first priority mortgage against the PwC Building. As of June 30, 2002, there was no outstanding principal balance due on the $12,844,000 SouthTrust line of credit.

***The $19,003,000 SouthTrust Line of Credit***

The $19,003,000 SouthTrust line of credit requires monthly payments of interest only and matures on September 10, 2002. This SouthTrust line of credit is secured by first priority mortgages against the Avnet Building and the Motorola Tempe Building. As of June 30, 2002, there was no outstanding principal balance due on the $19,003,000 SouthTrust line of credit.

***The $7,900,000 SouthTrust Line of Credit***

Wells OP originally obtained a loan from SouthTrust Bank, N.A. in connection with the acquisition, development and construction of the Alstom Power Richmond Building. After completion of construction, SouthTrust converted the construction loan into a separate line of credit in the maximum principal amount of up to $7,900,000. This SouthTrust line of credit requires payments of interest only and matures on September 10, 2002. The $7,900,000 SouthTrust line of credit is secured by a first priority mortgage against the Alstom Power Richmond Building, the Alstom Power Richmond lease and a $4,000,000 letter of credit issued by Unibank. As of June 30, 2002, the outstanding principal balance on the $7,900,000 SouthTrust line of credit was $7,655,600.

*BOA Line of Credit*

Wells OP established a secured line of credit in the amount of $85,000,000 with Bank of America, N.A. (BOA Line of Credit) in connection with its purchase of real properties. In addition, Wells OP may increase the BOA Line of Credit up to an amount of $110,000,000 with the lender's approval. The interest rate on the BOA Line of Credit is an annual variable rate equal to LIBOR for a 30-day period plus 180 basis points. The BOA Line of Credit requires monthly payments of interest only and matures on May 11, 2004. As of June 30, 2002, the interest rate on the BOA Line of Credit was 3.63% per annum. The BOA Line of Credit is secured by first priority mortgages against the Videojet Technologies Chicago Building, the AT&T Pennsylvania Building, the Motorola Tempe Building, the Matsushita Building, the Metris Tulsa Building and the Delphi Building. As of June 30, 2002, there was no outstanding principal balance due on the BOA Line of Credit.

*BOA Construction Loan*

Wells OP obtained a construction loan in the amount of $34,200,000 from Bank of America, N.A. (BOA Loan), to fund the construction of a building on the Nissan Property located in Irving, Texas. The loan requires monthly payments of interest only and matures on July 30, 2003. The interest rate on the loan is fixed at 5.91%. As of June 30, 2002, the outstanding principal balance on the BOA Loan was $8,002,541. The BOA Loan is secured by a first priority mortgage on the Nissan Property.

## SELECTED FINANCIAL DATA

The Wells REIT commenced active operations when it received and accepted subscriptions for a minimum of 125,000 shares on June 5, 1998. The following sets forth a summary of the selected financial data for the fiscal year ended December 31, 2001, 2000 and 1999:

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Total assets | $ 753,224,519 | $ 398,550,346 | $ 143,852,290 |
| Total revenues | 49,308,802 | 23,373,206 | 6,495,395 |
| Net income | 21,723,967 | 8,552,967 | 3,884,649 |
| Net income allocated to Stockholders | 21,723,967 | 8,552,967 | 3,884,649 |
| Earning per share: | | | |
| Basic and diluted | $0.43 | $0.40 | $0.50 |
| Cash distributions | 0.76 | 0.73 | 0.70 |

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with our accompanying financial statements and the notes thereto.

### General

*Forward Looking Statements*

This section and other sections in the prospectus contain forward-looking statements, within the meaning of Section 27A of the Securities Act of 1933 and 21E of the Securities Exchange Act of 1934, including discussion and analysis of the financial condition of the Wells REIT, anticipated capital expenditures required to complete certain projects, amounts of anticipated cash distributions to stockholders in the future and certain other matters. Readers of this prospectus should be aware that there are various factors that could cause actual results to differ materially from any forward-looking statements made in this prospectus, which include changes in general economic conditions, changes in real estate conditions, construction costs which may exceed estimates, construction delays, increases in interest rates, lease-up risks, inability to obtain new tenants upon the expiration of existing leases, and the potential need to fund tenant improvements or other capital expenditures out of operating cash flow. (See generally "Risk Factors.")

***REIT Qualification***

We have made an election under Section 856 (c) of the Internal Revenue Code to be taxed as a REIT under the Internal Revenue Code beginning with its taxable year ended December 31, 1999. As a REIT for federal income tax purposes, we generally will not be subject to Federal income tax on income that we distribute to our stockholders. If we fail to qualify as a REIT in any taxable year, we will be subject to federal income tax on our taxable income at regular corporate rates and will not be permitted to qualify for treatment as a REIT for federal income tax purposes for four years following the year in which our qualification is lost. Such an event could materially, adversely affect our net income. However, we believe that we are organized and operate in a manner, which has enabled us to qualify for treatment as a REIT for federal income tax purposes during the year ended December 31, 2001. In addition, we intend to continue to operate the Wells REIT so as to remain qualified as a REIT for federal income tax purposes.

**Liquidity and Capital Resources**

During the fiscal year ended December 31, 2001, we received aggregate gross offering proceeds of $522,516,620 from the sale of 52,251,662 shares of our common stock. After payment of $18,143,307 in acquisition and advisory fees and acquisition expenses, payment of $58,387,809 in selling commissions and organization and offering expenses, and common stock redemptions of $4,137,427 pursuant to our share redemption program, we raised net offering proceeds available for investment in properties of $441,848,077 during the fiscal year ended December 31, 2001.

During the three months ended March 31, 2002, we received aggregate gross offering proceeds of $255,702,943 from the sale of 25,570,294 shares of our common stock. After payment of $8,843,134 in acquisition and advisory fees and acquisition expenses, payment of $27,106,265 in selling commissions and organization and offering expenses, and common stock redemptions of $3,041,981 pursuant to our share redemption program, we raised net offering proceeds of $216,711,563 during the first quarter of 2002, of which $185,290,197 remained available for investment in properties at quarter end.

During the three months ended March 31, 2001, we received aggregate gross offering proceeds of $66,174,704 from the sale of 6,617,470 shares of our common stock. After payment of $2,288,933 in acquisition and advisory fees and acquisition expenses, payment of $8,175,768 in selling commissions and organizational and offering expenses, and common stock redemptions of $776,555 pursuant to our share redemption program, we raised net offering proceeds of $54,933,448, of which $5,952,930 was available for investment in properties at quarter end.

The net increase in cash and cash equivalents during the fiscal year ended December 31, 2001, as compared to the fiscal year ended December 31, 2000, and for the three months ended March 31, 2002, as compared to the three months ended March 31, 2001, is primarily the result of raising increased amounts of capital from the sale of shares of common stock, offset by the acquisition of properties during 2001 and the first quarter of 2002, and the payment of acquisition and advisory fees and acquisition expenses, commissions and, organization and offering costs.

As of March 31, 2002, we owned interests in 44 real estate properties either directly or through interests in joint ventures. These properties are generating operating cash flow sufficient to cover our operating expenses and pay dividends to our stockholders. We pay dividends on a quarterly basis regardless of the frequency with which such distributions are declared. Dividends will be paid to investors who are stockholders as of the record dates selected by our board of directors. We currently calculate quarterly dividends based on the daily record and dividend declaration dates; thus, stockholders are entitled to receive dividends immediately upon the purchase of shares. Dividends declared during 2001 and 2000 totaled $0.76 per share and $0.73 per share, respectively. Dividends declared for the first quarter of 2002 and the first quarter of 2001 were approximately $0.194 and $0.188 per share, respectively.

Dividends to be distributed to the stockholders are determined by our board of directors and are dependent on a number of factors, including funds available for payment of dividends, financial condition, capital expenditure requirements and annual distribution requirements in order to maintain our status as a REIT under the Internal Revenue Code. Operating cash flows are expected to increase as additional properties are added to our investment portfolio.

**Cash Flows From Operating Activities**

Our net cash provided by operating activities was $42,349,342 for the fiscal year ended December 31, 2001, $7,319,639 for the fiscal year ended December 31, 2000 and $4,008,275 for the fiscal year ended December 31, 1999. The increase in net cash provided by operating activities was due primarily to the net income generated by properties acquired during 2000 and 2001.

Our net cash provided by operating activities was $13,117,549 and $8,235,314 for the three months ended March 31, 2002 and 2001, respectively. The increase in net cash provided by operating activities was due primarily to the net income generated by additional properties acquired during 2002 and 2001.

**Cash Flows From Investing Activities**

Our net cash used in investing activities was $274,605,735 for the fiscal year ended December 31, 2001, $249,316,460 for the fiscal year ended December 31, 2000 and $105,394,956 for the fiscal year ended December 31, 1999. The increase in net cash used in investing activities was due primarily to investments in properties, directly and through contributions to joint ventures, and the payment of related deferred project costs.

Our net cash used in investing activities was $111,821,692 and $4,264,257 for the three months ended March 31, 2002 and 2001, respectively. The increase in net cash used in investing activities was due primarily to investments in properties and the payment of related deferred project costs, partially offset by distributions received from joint ventures.

**Cash Flows From Financing Activities**

Our net cash provided by financing activities was $303,544,260 for the fiscal year ended December 31, 2001, $243,365,318 for the fiscal year ended December 31, 2000, and $96,337,082 for the fiscal year ended December 31, 1999. The increase in net cash provided by financing activities was due primarily to the raising of additional capital offset by the repayment of notes payable. We raised $522,516,620 in offering proceeds for fiscal year ended December 31, 2001, as compared to $180,387,220 for fiscal year ended December 31, 2000, and $103,169,490 for fiscal year ended December 31, 1999. In addition, we received loan proceeds from financing secured by properties of $110,243,145 and repaid notes payable in the amount of $229,781,888 for fiscal year ended December 31, 2001.

Our net cash provided by financing activities was $210,144,548 for the three months ended March 31, 2002 and net cash used in financing activities for the three months ended March 31, 2001 was $113,042. The increase in net cash provided by financing activities was due primarily to the raising of additional capital and the related repayment of notes payable. We raised $255,702,943 in offering proceeds for the three months ended March 31, 2002, as compared to $66,174,705 for the same period in 2001.

**Results of Operations**

*Comparison of Fiscal Years Ended December 31, 2001, 2000 and 1999*

Gross revenues were $49,308,802 for the fiscal year ended December 31, 2001, $23,373,206 for fiscal year ended December 31, 2000 and $6,495,395 for fiscal year ended December 31, 1999. Gross revenues for the year ended December 31, 2001, 2000 and 1999 were attributable to rental income, interest income earned on funds we held prior to the investment in properties, and income earned from joint ventures. The increase in revenues for the fiscal year ended December 31, 2001 was primarily attributable to the purchase of additional properties during 2000 and 2001. The purchase of additional properties also resulted in an increase in expenses which totaled $27,584,835 for the fiscal year ended December 31, 2001, $14,820,239 for the fiscal year ended December 31, 2000 and $2,610,746 for the fiscal year ended December 31, 1999. Expenses in 2001, 2000 and 1999 consisted primarily of depreciation, interest expense and management and leasing fees. Our net income also increased from

$3,884,649 for fiscal year ended December 31, 1999 to $8,552,967 for fiscal year ended December 31, 2000 to $21,723,967 for the year ended December 31, 2001.

*Comparison of First Quarter 2002 and 2001*

As of March 31, 2002, our real estate properties were 100% leased to tenants. Gross revenues were $19,192,803 and $10,669,713 for the three months ended March 31, 2002 and 2001, respectively. Gross revenues for the three months ended March 31, 2002 and 2001 were attributable to rental income, interest income earned on funds we held prior to the investment in properties, and income earned from joint ventures. The increase in revenues in 2002 was primarily attributable to the purchase of additional properties for $104,051,998 during 2002 and the purchase of additional properties for $227,933,858 in the last three quarters of 2001. The purchase of additional properties also resulted in an increase in expenses which totaled $8,413,139 for the three months ended March 31, 2002, as compared to $7,394,368 for the three months ended March 31, 2001. Expenses in 2002 and 2001 consisted primarily of depreciation, interest expense, management and leasing fees and general and administrative costs. As a result, our net income also increased from $3,275,345 for the three months ended March 31, 2001 to $10,779,664 for the three months ended March 31, 2002.

**Property Operations**

The following table summarizes the operations of the joint ventures in which we owned an interest as of December 31, 2001, 2000 and 1999:

| | Total Revenue For Years Ended December 31 | | | Net Income For Years Ended December 31 | | | Well REIT's Share of Net Income For Years Ended December 31 | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2001 | 2000 | 1999 | 2001 | 2000 | 1999 | 2001 | 2000 | 1999 |
| Fund IX-X-XI-REIT Joint Venture | $ 4,344,209 | $ 4,388,193 | $ 4,053,042 | $ 2,684,837 | $ 2,669,143 | $ 2,172,244 | $ 99,649 | $ 99,177 | $ 81,501 |
| Orange County Joint Venture | 797,937 | 795,545 | 795,545 | 546,171 | 568,961 | 550,952 | 238,542 | 248,449 | 240,585 |
| Fremont Joint Venture | 907,673 | 902,946 | 902,946 | 562,893 | 563,133 | 559,174 | 436,265 | 436,452 | 433,383 |
| Fund XI-XII-REIT Joint Venture | 3,371,067 | 3,349,186 | 1,443,503 | 2,064,911 | 2,078,556 | 853,073 | 1,172,103 | 1,179,848 | 488,500 |
| Fund XII-REIT Joint Venture | 4,708,467 | 976,865 | N/A | 2,611,522 | 614,250 | N/A | 1,386,877 | 305,060 | N/A |
| Fund VIII-IX-REIT Joint Venture | 1,208,724 | 563,049 | N/A | 566,840 | 309,893 | N/A | 89,779 | 24,887 | N/A |
| Fund XIII-REIT Joint Venture | 706,373 | N/A | N/A | 356,355 | N/A | N/A | 297,745 | N/A | N/A |
| | $ 16,044,450 | $ 10,975,784 | $ 7,195,036 | $ 8,977,529 | $ 6,803,936 | $ 4,135,443 | $ 3,720,960 | $ 2,293,873 | $ 1,243,969 |

**Funds From Operations**

Funds From Operations (FFO), as defined by the National Association of Real Estate Investment Trusts (NAREIT), generally means net income, computed in accordance with GAAP excluding extraordinary items (as defined by GAAP) and gains (or losses) from sales of property, plus depreciation and amortization on real estate assets, and after adjustments for unconsolidated partnerships, joint ventures and subsidiaries. We believe that FFO is helpful to investors as a measure of the performance of an equity REIT. However, our calculation of FFO, while consistent with NAREIT's definition, may not be comparable to similarly titled measures presented by other REITs. Adjusted Funds From Operations (AFFO) is defined as FFO adjusted to exclude the effects of straight-line rent adjustments, deferred loan cost amortization and other non-cash and/or unusual items. Neither FFO nor AFFO represent cash generated from operating activities in accordance with GAAP and should not be considered as alternatives to net income as an indication of our performance or to cash flows as a measure of liquidity or ability to make distributions.

The following table reflects the calculation of FFO and AFFO for the three years ended December 31, 2001, 2000, and 1999, respectively:

| | December 31, 2001 | December 31, 2000 | December 31, 1999 |
|---|---|---|---|
| **FUNDS FROM OPERATIONS:** | | | |
| Net income | $ 21,723,967 | $ 8,552,967 | $ 3,884,649 |
| Add: | | | |
| Depreciation of real assets | 15,344,801 | 7,743,550 | 1,726,103 |
| Amortization of deferred leasing costs | 303,347 | 350,991 | 0 |
| Depreciation and amortization—unconsolidated partnerships | 3,211,828 | 852,968 | 652,167 |
| Funds from operations (FFO) | 40,583,943 | 17,500,476 | 6,262,919 |
| Adjustments: | | | |
| Loan cost amortization | 770,192 | 232,559 | 8,921 |
| Straight line rent | (2,754,877) | (1,650,791) | (847,814) |
| Straight line rent—unconsolidated partnerships | (543,039) | (245,288) | (140,076) |
| Lease acquisition fees paid | 0 | (152,500) | 0 |
| Lease acquisition fees paid—Unconsolidated partnerships | 0 | (8,002) | (512) |
| Adjusted funds from operations | $ 38,056,219 | $ 15,676,454 | $ 5,283,438 |
| **WEIGHTED AVERAGE SHARES:** | | | |
| **BASIC AND DILUTED** | 51,081,867 | 21,616,051 | 7,769,298 |

The following table reflects the calculation of FFO and AFFO for the three months ended March 31, 2002 and 2001, respectively:

| | Three Months Ended March 31, 2002 | Three Months Ended March 31, 2001 |
|---|---|---|
| **FUNDS FROM OPERATIONS:** | | |
| Net income | $ 10,779,664 | $ 3,275,345 |
| Add: | | |
| Depreciation of real assets | 5,744,452 | 3,187,179 |
| Amortization of deferred leasing costs | 72,749 | 75,837 |
| Depreciation and amortization—unconsolidated partnerships | 706,176 | 299,116 |
| Funds from operations (FFO) | 17,303,041 | 6,837,477 |
| Adjustments: | | |
| Loan cost amortization | 175,462 | 214,757 |
| Straight line rent | (1,038,378) | (616,465) |
| Straight line rent—unconsolidated partnerships | (99,315) | (39,739) |
| Lease acquisition fees paid—unconsolidated partnerships | 0 | (2,356) |
| Adjusted funds from operations (AFFO) | $ 16,340,810 | $ 6,393,674 |
| **WEIGHTED AVERAGE SHARES:** | | |
| **BASIC AND DILUTED** | 95,130,210 | 34,359,444 |

**Inflation**

The real estate market has not been affected significantly by inflation in the past three years due to the relatively low inflation rate. However, there are provisions in the majority of tenant leases which would protect us from the impact of inflation. These provisions include reimbursement billings for common area maintenance charges (CAM), real estate tax and insurance reimbursements on a per square foot basis, or in some cases, annual reimbursement of operating expenses above a certain per square foot allowance.

**Critical Accounting Policies**

Our accounting policies have been established and conform with generally accepted accounting principles in the United States (GAAP). The preparation of financial statements in conformity with GAAP requires management to use judgment in the application of accounting policies, including making estimates and assumptions. These judgments affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenue and expenses during the reporting periods. If our judgment or interpretation of the facts and circumstances relating to various transactions had been different, it is possible that different accounting policies would have been applied; thus, resulting in a different presentation of our financial statements. Below is a discussion of the accounting policies that we consider to be critical in that they may require complex judgment in their application or require estimates about matters which are inherently uncertain.

**Straight-Lined Rental Revenues**

We recognize rental income generated from all leases on real estate assets in which we have an ownership interest, either directly or through investments in joint ventures, on a straight-line basis over the terms of the respective leases. If a tenant was to encounter financial difficulties in future periods, the amount recorded as a receivable may not be realized.

**Operating Cost Reimbursements**

We generally bill tenants for operating cost reimbursements, either directly or through investments in joint ventures, on a monthly basis at amounts estimated largely based on actual prior period activity and the respective lease terms. Such billings are generally adjusted on an annual basis to reflect reimbursements owed to the landlord based on the actual costs incurred during the period and the respective lease terms. Financial difficulties encountered by tenants may result in receivables not being realized.

**Real Estate**

We continually monitor events and changes in circumstances indicating that the carrying amounts of the real estate assets in which we have an ownership interest, either directly or through investments in joint ventures, may not be recoverable. When such events or changes in circumstances are present, we assess the potential impairment by comparing the fair market value of the asset, estimated at an amount equal to the future undiscounted operating cash flows expected to be generated from tenants over the life of the asset and from its eventual disposition, to the carrying value of the asset. In the event that the carrying amount exceeds the estimated fair market value, we would recognize an impairment loss in the amount required to adjust the carrying amount of the asset to its estimated fair market value. Neither the Wells REIT nor our joint ventures have recognized impairment losses on real estate assets in 2001, 2000 or 1999.

**Deferred Project Costs**

We record acquisition and advisory fees and acquisition expenses payable to Wells Capital, Inc., our advisor, by capitalizing deferred project costs and reimbursing our advisor in an amount equal to 3.5% of cumulative capital raised to date. As we invest our capital proceeds, deferred project costs are applied to real estate assets, either directly or through contributions to joint ventures, at an amount equal to 3.5% of each investment and depreciated over the useful lives of the respective real estate assets.

**Deferred Offering Costs**

Our advisor expects to continue to fund 100% of the organization and offering costs and recognize related expenses, to the extent that such costs exceed 3% of cumulative capital raised, on our behalf. Organization and offering costs include items such as legal and accounting fees, marketing and promotional costs, and printing costs, and specifically exclude sales costs and underwriting commissions. We record offering costs by accruing deferred offering costs, with an offsetting liability included in due to affiliates, at an amount equal to the lesser of 3% of cumulative capital raised to date or actual costs incurred from third-parties less reimbursements paid to our advisor. As the actual equity is raised, we reverse the deferred offering costs accrual and recognize a charge to stockholders' equity upon reimbursing our advisor.

## PRIOR PERFORMANCE SUMMARY

*The information presented in this section represents the historical experience of real estate programs managed by Wells Capital, our advisor, and its affiliates. Investors in the Wells REIT should not assume that they will experience returns, if any, comparable to those experienced by investors in such prior Wells real estate programs.*

Of the 14 publicly offered real estate limited partnerships in which Leo F. Wells, III has served as a general partner, 13 of such limited partnerships have completed their respective offerings. These 13 limited partnerships and the year in which each of their offerings was completed are:

1. Wells Real Estate Fund I (1986),
2. Wells Real Estate Fund II (1988),
3. Wells Real Estate Fund II-OW (1988),
4. Wells Real Estate Fund III, L.P. (1990),
5. Wells Real Estate Fund IV, L.P. (1992),
6. Wells Real Estate Fund V, L.P. (1993),
7. Wells Real Estate Fund VI, L.P. (1994),
8. Wells Real Estate Fund VII, L.P. (1995),
9. Wells Real Estate Fund VIII, L.P. (1996),
10. Wells Real Estate Fund IX, L.P. (1996),
11. Wells Real Estate Fund X, L.P. (1997),
12. Wells Real Estate Fund XI, L.P. (1998), and
13. Wells Real Estate Fund XII, L.P. (2001).

In addition to the foregoing real estate limited partnerships, Wells Capital and its affiliates have sponsored three prior public offerings of shares of common stock of the Wells REIT. The initial public offering of the Wells REIT began on January 30, 1998 and was terminated on December 19, 1999. We received gross proceeds of approximately $132,181,919 from the sale of approximately 13,218,192 shares in our initial public offering. We commenced our second public offering of shares of common stock of the Wells REIT on December 20, 1999 and terminated the second offering on December 19, 2000. We received gross proceeds of approximately $175,229,193 from the sale of approximately 17,522,919 shares in our second public offering. We commenced our third public offering of shares of common stock of the Wells REIT on December 20, 2000. As of June 30, 2002, we had received gross proceeds of approximately $1,148,480,414 from the sale of approximately 114,848,041 shares in our third public offering. Accordingly, as of June 30, 2002, we had received aggregate gross offering proceeds of approximately $1,455,891,526 from the sale of approximately 145,589,153 shares in our three prior public offerings. After payment of $50,528,371 in acquisition and advisory fees and acquisition expenses, payment of $163,576,134 in selling commissions and organization and offering expenses, and common stock redemptions of $12,223,808 pursuant to our share redemption program, as of June 30, 2002, we had raised aggregate net offering proceeds available for investment in properties of $1,229,563,213, out of which $885,294,095 had been invested in real estate properties, and $344,269,118 remained available for investment in real estate properties.

Wells Capital and its affiliates are also currently sponsoring a public offering of 4,500,000 units on behalf of Wells Real Estate Fund XIII, L.P. (Wells Fund XIII), a public limited partnership. Wells Fund XIII began its offering on March 29, 2001 and, as of June 30, 2002, Wells Fund XIII had raised gross offering proceeds of $18,634,296 from 926 investors.

The Prior Performance Tables included in the back of this prospectus set forth information as of the dates indicated regarding certain of these Wells programs as to (1) experience in raising and investing funds (Table I); (2) compensation to sponsor (Table II); (3) annual operating results of prior programs (Table III); and (4) sales or disposals of properties (Table V).

In addition to the real estate programs sponsored by Wells Capital and its affiliates discussed above, they are also sponsoring an index mutual fund that invests in various REIT stocks known as the Wells S&P REIT Index Fund (REIT Index Fund). The REIT Index Fund is a mutual fund that seeks to provide investment results corresponding to the performance of the S&P REIT Index by investing in the REIT stocks included in the S&P REIT Index. The REIT Index Fund began its offering on January 12, 1998 and, as of June 30, 2002, had raised offering proceeds net of redemptions of $136,709,717 from 6,719 investors.

**Publicly Offered Unspecified Real Estate Programs**

Wells Capital and its affiliates have previously sponsored the above listed 13 publicly offered real estate limited partnerships and are currently sponsoring Wells Fund XIII offered on an unspecified property or "blind pool" basis. The total amount of funds raised from investors in the offerings of these 14 publicly offered limited partnerships, as of December 31, 2001, was $331,193,410, and the total number of investors in such programs was 27,103.

The investment objectives of each of the other Wells programs are substantially identical to the investment objectives of the Wells REIT. Substantially all of the proceeds of the offerings of Wells Fund I, Wells Fund II, Wells Fund II-OW, Wells Fund III, Wells Fund IV, Wells Fund V, Wells Fund VI, Wells Fund VII, Wells Fund VIII, Wells Fund IX, Wells Fund X, Wells Fund XI and Wells Fund XII available for investment in real properties have been invested in properties.

Because of the cyclical nature of the real estate market, decreases in net income of the public partnerships could occur at any time in the future when economic conditions decline. No assurance can be made that the Wells programs will ultimately be successful in meeting their investment objectives. (See "Risk Factors.")

The aggregate dollar amount of the acquisition and development costs of the properties purchased by the 14 publicly offered limited partnerships, as of December 31, 2001, was $275,358,446. Of this amount, approximately 90.2% was spent on acquiring or developing office buildings, and approximately 9.8% was spent on acquiring or developing shopping centers. Of this amount, approximately 22.6% was or will be spent on new properties, 57.1% on existing or used properties and 20.3% on construction properties. Following is a table showing a breakdown of the aggregate amount of the acquisition and development costs of the properties purchased by the Wells REIT, Wells Fund XIII and the 13 Wells programs listed above as of December 31, 2001:

| Type of Property | New | Used | Construction |
|---|---|---|---|
| Office and Industrial Buildings | 22.59% | 53.88% | 13.74% |
| Shopping Centers | 0% | 3.21% | 6.58% |

**Wells Fund I** terminated its offering on September 5, 1986, and received gross proceeds of $35,321,000 representing subscriptions from 4,895 limited partners ($24,679,000 of the gross proceeds were attributable to sales of Class A Units, and $10,642,000 of the gross proceeds were attributable to sales of Class B Units). Limited partners in Wells Fund I have no right to change the status of their units from Class A to Class B or vice versa. Wells Fund I owns interests in the following properties:

- a condominium interest in a three-story medical office building in Atlanta, Georgia;
- a commercial office building in Atlanta, Georgia;
- a shopping center in Knoxville, Tennessee; and
- a project consisting of seven office buildings and a shopping center in Tucker, Georgia.

The prospectus of Wells Fund I provided that the properties purchased by Wells Fund I would typically be held for a period of eight to 12 years, but that the general partners may exercise their discretion on as to whether and when to sell the properties owned by Wells Fund I and that the general partners were under no obligation to sell the properties at any particular time.

Wells Fund I has sold the following properties from its portfolio:

| Date of Sale | Property Name | % Ownership | Net Sale Proceeds | Taxable Gain |
|---|---|---|---|---|
| Aug. 31, 2000 | One of two buildings at Peachtree Place | 90% | $ 633,694 | $ 205,019 |
| Jan. 11, 2001 | Crowe's Crossing | 100% | $ 6,569,000 | $ 11,496 |
| Oct. 1, 2001 | Cherokee Commons | 24% | $ 2,037,315 | $ 52,461 |

Wells Fund I is in the process of marketing its remaining properties for sale.

**Wells Fund II and Wells Fund II-OW** terminated their offerings on September 7, 1988, and received aggregate gross proceeds of $36,870,250 representing subscriptions from 4,659 limited partners ($28,829,000 of the gross proceeds were attributable to sales of Class A Units, and $8,041,250 of the gross proceeds were attributable to sales of Class B Units). Limited partners in Wells Fund II and Wells Fund II-OW have no right to change the status of their units from Class A to Class B or vice versa. Wells Fund II and Wells Fund II-OW own all of their properties through a joint venture, which owns interests in the following properties:

- a project consisting of seven office buildings and a shopping center in Tucker, Georgia;
- a two-story office building in Charlotte, North Carolina which is currently unoccupied;
- a four-story office building in Houston, Texas, three floors of which are leased to Boeing;
- a restaurant property in Roswell, Georgia leased to Brookwood Grill of Roswell, Inc.; and
- a combined retail center and office development in Roswell, Georgia.

The prospectus of Wells Fund II and Wells Fund II-OW provided that the properties purchased by Wells Fund II and Wells Fund II-OW would typically be held for a period of eight to 12 years, but that the general partners may exercise their discretion as to whether and when to sell the properties owned by Wells Fund II and Wells Fund II-OW and that the partnerships were under no obligation to sell their properties at any particular time.

Wells Fund II and Wells Fund II-OW sold the following property from its portfolio in 2001:

| Date of Sale | Property Name | % Ownership | Net Sale Proceeds | Taxable Gain |
|---|---|---|---|---|
| Oct. 1, 2001 | Cherokee Commons | 54% | $ 4,601,723 | $ 111,419 |

Wells Fund II and Wells Fund II-OW are in the process of marketing their remaining properties for sale.

**Wells Fund III** terminated its offering on October 23, 1990, and received gross proceeds of $22,206,310 representing subscriptions from 2,700 limited partners ($19,661,770 of the gross proceeds were attributable to sales of Class A Units, and $2,544,540 of the gross proceeds were attributable to sales of Class B Units). Limited partners in Wells Fund III have no right to change the status of their units from Class A to Class B or vice versa. Wells Fund III owns interests in the following properties:

- a four-story office building in Houston, Texas, three floors of which are leased to Boeing;
- a restaurant property in Roswell, Georgia leased to Brookwood Grill of Roswell, Inc.;
- a combined retail center and office development in Roswell, Georgia;
- a two-story office building in Greenville, North Carolina;
- a shopping center in Stockbridge, Georgia having Kroger as the anchor tenant; and
- a two-story office building in Richmond, Virginia leased to Reciprocal Group.

The prospectus of Wells Fund III provided that the properties purchased by Wells Fund III would typically be held for a period of eight to 12 years, but that the general partners may exercise their discretion as to whether and when to sell the properties owned by Wells Fund III and that they were under no obligation to sell the properties at any particular time. The general partners of Wells Fund III have decided to begin the process of positioning the properties for sale over the next several years.

**Wells Fund IV** terminated its offering on February 29, 1992, and received gross proceeds of $13,614,655 representing subscriptions from 1,286 limited partners ($13,229,150 of the gross proceeds were attributable to sales of Class A Units, and $385,505 of the gross proceeds were attributable to sales of Class B Units). Limited partners in Wells Fund IV have no right to change the status of their units from Class A to Class B or vice versa. Wells Fund IV owns interests in the following properties:

- a shopping center in Stockbridge, Georgia having Kroger as the anchor tenant;
- a four-story office building in Jacksonville, Florida leased to IBM and Customized Transportation Inc. (CTI);
- a two-story office building in Richmond, Virginia leased to Reciprocal Group; and
- two substantially identical two-story office buildings in Stockbridge, Georgia.

**Wells Fund V** terminated its offering on March 3, 1993, and received gross proceeds of $17,006,020 representing subscriptions from 1,667 limited partners ($15,209,666 of the gross proceeds were attributable to sales of Class A Units, and $1,796,354 of the gross proceeds were attributable to sales of Class B Units). Limited partners in Wells Fund V who purchased Class B Units are entitled to change the status of their units to Class A, but limited partners who purchased Class A Units are not entitled to change the status of their units to Class B. After taking into effect conversion elections made by limited partners subsequent to their subscription for units, as of December 31, 2001, $15,664,160 of units of Wells Fund V were treated as Class A Units, and $1,341,860 of units were treated as Class B Units. Wells Fund V owns interests in the following properties:

- a four-story office building in Jacksonville, Florida leased to IBM and CTI;
- two substantially identical two-story office buildings in Stockbridge, Georgia;

- a four-story office building in Hartford, Connecticut leased to Hartford Fire Insurance Company;
- restaurant properties in Stockbridge, Georgia leased to Apple Restaurants, Inc., Taco Mac, Dependable Ins and Tokyo Japanese Steak; and
- a three-story office building in Appleton, Wisconsin leased to Jaako Poyry Fluor Daniel.

**Wells Fund VI** terminated its offering on April 4, 1994, and received gross proceeds of $25,000,000 representing subscriptions from 1,793 limited partners ($19,332,176 of the gross proceeds were attributable to sales of Class A Units, and $5,667,824 of the gross proceeds were attributable to sales of Class B Units). Limited partners in Wells Fund VI are entitled to change the status of their units from Class A to Class B and vice versa. After taking into effect conversion elections made by limited partners subsequent to their subscription for units, as of December 31, 2001, $22,363,610 of units of Wells Fund VI were treated as Class A Units, and $2,636,390 of units were treated as Class B Units. Wells Fund VI owns interests in the following properties:

- a four-story office building in Hartford, Connecticut leased to Hartford Fire Insurance Company;
- restaurant properties in Stockbridge, Georgia leased to Apple Restaurants, Inc., Taco Mac, Dependable Insurance and Tokyo Japanese Steak;
- a restaurant and retail building in Stockbridge, Georgia;
- a shopping center in Stockbridge, Georgia;
- a three-story office building in Appleton, Wisconsin leased to Jaako Poyry Fluor Daniel;
- a combined retail and office development in Roswell, Georgia;
- a four-story office building in Jacksonville, Florida leased to Bellsouth Advertising and Publishing Corporation and American Express Travel Related Services Company, Inc.; and
- a shopping center in Clemmons, North Carolina having Harris Teeter, Inc. as the anchor tenant.

Wells Fund VI sold its interest in the following property in 2001:

| Date of Sale | Property Name | % Ownership | Net Sale Proceeds | Taxable Gain |
|---|---|---|---|---|
| Oct. 1, 2001 | Cherokee Commons | 11% | $ 903,122 | $ 21,867 |

**Wells Fund VII** terminated its offering on January 5, 1995, and received gross proceeds of $24,180,174 representing subscriptions from 1,910 limited partners ($16,788,095 of the gross proceeds were attributable to sales of Class A Units, and $7,392,079 of the gross proceeds were attributable to sales of Class B Units). Limited partners in Wells Fund VII are entitled to change the status of their units from Class A to Class B and vice versa. After taking into effect conversion elections made by limited partners subsequent to their subscriptions for units, as of December 31, 2001, $20,670,201 of units in Wells Fund VII were treated as Class A Units, and $3,509,973 of units were treated as Class B Units. Wells Fund VII owns interests in the following properties:

- a three-story office building in Appleton, Wisconsin leased to Jaako Poyry Fluor Daniel;
- a restaurant and retail building in Stockbridge, Georgia;
- a shopping center in Stockbridge, Georgia;
- a combined retail and office development in Roswell, Georgia;
- a two-story office building in Alachua County, Florida near Gainesville leased to CH2M Hill, Engineers, Planners, Economists, Scientists;
- a four-story office building in Jacksonville, Florida leased to Bellsouth Advertising and Publishing Corporation and American Express Travel Related Services Company, Inc.;
- a shopping center in Clemmons, North Carolina having Harris Teeter, Inc. as the anchor tenant; and
- a retail development in Clayton County, Georgia.

Wells Fund VII sold its interest in the following property in 2001:

| Date of Sale | Property Name | % Ownership | Net Sale Proceeds | Taxable Gain |
|---|---|---|---|---|
| Oct. 1, 2001 | Cherokee Commons | 11% | $ 903,122 | $ 21,867 |

**Wells Fund VIII** terminated its offering on January 4, 1996, and received gross proceeds of $32,042,689 representing subscriptions from 2,241 limited partners ($26,135,339 of the gross proceeds were attributable to sales of Class A Units, and $5,907,350 were attributable to sales of Class B Units). Limited partners in Wells Fund VIII are entitled to change the status of their units from Class A to Class B and vice versa. After taking into effect conversion elections made by limited partners subsequent to their subscriptions for units and certain repurchases made by Wells Fund VIII, as of December 31, 2001, $28,065,187 of units in Wells Fund VIII were treated as Class A Units, and $3,967,502 of units were treated as Class B Units. Wells Fund VIII owns interests in the following properties:

- a two-story office building in Alachua County, Florida near Gainsville leased to CH2M Hill, Engineers, Planners, Economists, Scientists;
- a four-story office building in Jacksonville, Florida leased to Bellsouth Advertising and Publishing Corporation and American Express Travel Related Services Company, Inc.;
- a shopping center in Clemmons, North Carolina having Harris Teeter, Inc. as the anchor tenant;
- a retail development in Clayton County, Georgia;
- a four-story office building in Madison, Wisconsin leased to US Cellular, a subsidiary of Bellsouth Corporation;
- a one-story office building in Farmers Branch, Texas leased to TCI Valwood Limited Partnership I;
- a two-story office building in Orange County, California leased to Quest Software, Inc.; and
- a two-story office building in Boulder County, Colorado leased to Cirrus Logic, Inc.

**Wells Fund IX** terminated its offering on December 30, 1996, and received gross proceeds of $35,000,000 representing subscriptions from 2,098 limited partners ($29,359,310 of the gross proceeds were attributable to sales of Class A Units, and $5,640,690 were attributable to sales of Class B Units). After taking into effect conversion elections made by limited partners subsequent to their subscriptions for units, as of December 31, 2001, $31,364,290 of units in Wells Fund IX were treated as Class A Units, and $3,635,710 of units were treated as Class B Units. Wells Fund IX owns interests in the following properties:

- a one-story office building in Farmers Branch, Texas leased to TCI Valwood Limited Partnership I;
- a four-story office building in Madison, Wisconsin leased to US Cellular, a subsidiary of Bellsouth Corporation;
- a two-story office building in Orange County, California leased to Quest Software, Inc.;
- a two-story office building in Boulder County, Colorado leased to Cirrus Logic, Inc.;
- a two-story office building in Boulder County, Colorado leased to Ohmeda, Inc.;
- a three-story office building in Knox County, Tennessee leased to Alstom Power, Inc.;
- a one-story office and warehouse building in Weber County, Utah leased to Iomega Corporation;
- a three-story office multi-tenant building in Boulder County, Colorado; and
- a one-story office building in Oklahoma City, Oklahoma leased to Avaya, Inc.

Certain financial information for Wells Fund IX is summarized below:

| | 2001 | 2000 | 1999 | 1998 | 1997 |
|---|---|---|---|---|---|
| Gross Revenues | $ 1,874,290 | $ 1,836,768 | $ 1,593,734 | $ 1,561,456 | $ 1,199,300 |
| Net Income | $ 1,768,474 | $ 1,758,676 | $ 1,490,331 | $ 1,449,955 | $ 1,091,766 |

**Wells Fund X** terminated its offering on December 30, 1997, and received gross proceeds of $27,128,912 representing subscriptions from 1,812 limited partners ($21,160,992 of the gross proceeds were contributable to sales of Class A Units, and $5,967,920 were attributable to sales of Class B Units). After taking into effect conversion elections made by limited partners subsequent to their subscriptions for units, as of December 31, 2001, $23,166,181 of units in Wells Fund X were treated as Class A Units and $3,962,731 of units were treated as Class B Units. Wells Fund X owns interests in the following properties:

- a three-story office building in Knox County, Tennessee leased to Alstom Power, Inc.;
- a two-story office building in Boulder County, Colorado leased to Ohmeda, Inc.;
- a one-story office and warehouse building in Weber County, Utah leased to Iomega Corporation;
- a three-story multi-tenant office building in Boulder County, Colorado;
- a one-story office building in Oklahoma City, Oklahoma leased to Avaya, Inc.;

- a one-story office and warehouse building in Orange County, California leased to Cort Furniture Rental Corporation; and
- a two-story office and manufacturing building in Alameda County, California leased to Fairchild Technologies U.S.A., Inc.

Certain financial information for Wells Fund X is summarized below:

| | 2001 | 2000 | 1999 | 1998 | 1997 |
|---|---|---|---|---|---|
| Gross Revenues | $ 1,559,026 | $ 1,557,518 | $ 1,309,281 | $ 1,204,597 | $ 372,507 |
| Net Income | $ 1,449,849 | $ 1,476,180 | $ 1,192,318 | $ 1,050,329 | $ 278,025 |

**Wells Fund XI** terminated its offering on December 30, 1998, and received gross proceeds of $16,532,802 representing subscriptions from 1,345 limited partners ($13,029,424 of the gross proceeds were attributable to sales of Class A Units and $3,503,378 were attributable to sales of Class B Units). After taking into effect conversion elections made by limited partners subsequent to their subscriptions for units, as of December 31, 2001, $13,462,560 of units in Wells Fund XI were treated as Class A Units and $3,070,242 of units were treated as Class B Units. Wells Fund XI owns interests in the following properties:

- a three-story office building in Knox County, Tennessee leased to Alstom Power, Inc.;
- a one-story office building in Oklahoma City, Oklahoma leased to Avaya, Inc.;
- a two-story office building in Boulder County, Colorado leased to Ohmeda, Inc.;
- a three-story multi-tenant office building in Boulder County, Colorado;
- a one-story office and warehouse building in Weber County, Utah leased to Iomega Corporation;
- a one-story office and warehouse building in Orange County, California leased to Cort Furniture Rental Corporation;
- a two-story office and manufacturing building in Alameda County, California leased to Fairchild Technologies U.S.A., Inc.;
- a two-story manufacturing and office building in Greenville County, South Carolina leased to EYBL CarTex, Inc.;
- a three-story office building in Johnson County, Kansas leased to Sprint Communications Company L.P.;
- a two-story research and development office and warehouse building in Chester County, Pennsylvania leased to Johnson Matthey, Inc.; and
- a two-story office building in Fort Myers, Florida leased to Gartner Group, Inc.

Certain financial information for Wells Fund XI is summarized below:

| | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|
| Gross Revenues | $ 960,676 | $ 975,850 | $ 766,586 | $ 262,729 |
| Net Income | $ 870,350 | $ 895,989 | $ 630,528 | $ 143,295 |

**Wells Fund XII** terminated its offering on March 21, 2001, and received gross proceeds of $35,611,192 representing subscriptions from 1,333 limited partners ($26,888,609 of the gross proceeds were attributable to sales of cash preferred units and $8,722,583 were attributable to sales of tax preferred units). After taking into effect conversion elections made by limited partners subsequent to their subscriptions for units, as of December 31, 2001, $27,786,067 of units in Wells Fund XII were treated as cash preferred units and $7,825,125 of units were treated as tax preferred units. Wells Fund XII owns interests in the following properties:

- a two-story manufacturing and office building in Greenville County, South Carolina leased to EYBL CarTex, Inc.;
- a three-story office building in Johnson County, Kansas leased to Sprint Communications Company L.P.;
- a two-story research and development office and warehouse building in Chester County, Pennsylvania leased to Johnson Matthey, Inc.;
- a two-story office building in Fort Myers, Florida leased to Gartner Group, Inc.;
- a three-story office building in Troy, Michigan leased to Siemens Automotive Corporation;
- a one-story office building and a connecting two-story office building in Oklahoma City, Oklahoma leased to AT&T Corp. and Jordan Associates, Inc.; and
- a three-story office building in Brentwood, Tennessee leased to Comdata Network, Inc.

Certain financial information for Wells Fund XII is summarized below:

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Gross Revenues | $ 1,661,194 | $ 929,868 | $ 160,379 |
| Net Income | $ 1,555,418 | $ 856,228 | $ 122,817 |

**Wells Fund XIII** began its offering on March 29, 2001. As of June 30, 2002, Wells Fund XIII had received gross proceeds of $18,634,296 representing subscriptions from 926 limited partners ($15,743,298 of the gross proceeds were attributable to sales of cash preferred units and $2,890,998 were attributable to sales of tax preferred units). Wells Fund XIII owns interests in the following properties:

- a two-story office building in Orange Park, Florida leased to AmeriCredit Financial Services Corporation; and
- two connected one-story office and assembly buildings in Parker, Colorado leased to Advanced Digital Information Corporation.

The information set forth above should not be considered indicative of results to be expected from the Wells REIT.

The foregoing properties in which the above 14 limited partnerships have invested have all been acquired on an all cash basis.

Leo F. Wells, III and Wells Partners, L.P. are the general partners of Wells Fund IV, Wells Fund V, Wells Fund VI, Wells Fund VII, Wells Fund VIII, Wells Fund IX, Wells Fund X, Wells Fund XI and Wells Fund XII. Wells Capital, which is the general partner of Wells Partners, L.P., and Leo F. Wells, III are the general partners of Wells Fund I, Wells Fund II, Wells Fund II-OW, Wells Fund III and Wells Fund XIII.

Potential investors are encouraged to examine the Prior Performance Tables included in the back of the prospectus for more detailed information regarding the prior experience of Wells Capital and its affiliates. In addition, upon request, prospective investors may obtain from us without charge copies of offering materials and any reports prepared in connection with any of the Wells programs, including a copy of the most recent Annual Report on Form 10-K filed with the Securities and Exchange Commission. For a reasonable fee, we will also furnish upon request copies of the exhibits to any such Form 10-K. Any such request should be directed to our secretary. Additionally, Table VI contained in Part II of the registration statement, which is not part of this prospectus, gives certain additional information relating to properties acquired by the Wells programs. We will furnish, without charge, copies of such table upon request.

## FEDERAL INCOME TAX CONSIDERATIONS

### General

The following is a summary of material federal income tax considerations associated with an investment in the shares. This summary does not address all possible tax considerations that may be material to an investor and does not constitute tax advice. Moreover, this summary does not deal with all tax aspects that might be relevant to you, as a prospective stockholder, in light of your personal circumstances; nor does it deal with particular types of stockholders that are subject to special treatment under the Internal Revenue Code, such as insurance companies, tax-exempt organizations, financial institutions or broker-dealers, or foreign corporations or persons who are not citizens or residents of the United States (Non-U.S. stockholders). The Internal Revenue Code provisions governing the federal income tax treatment of REITs are highly technical and complex, and this summary is qualified in its entirety by the express language of applicable Internal Revenue Code provisions, Treasury Regulations promulgated thereunder and administrative and judicial interpretations thereof.

***We urge you, as a prospective investor, to consult your own tax advisor regarding the specific tax consequences to you of a purchase of shares, ownership and sale of the shares and of our election to be taxed as a REIT, including the federal, state, local, foreign and other tax consequences of such purchase, ownership, sale and election.***

*Opinion of Counsel*

Holland & Knight LLP (Holland & Knight) has acted as our counsel, has reviewed this summary and is of the opinion that it fairly summarizes the federal income tax considerations addressed that are material to stockholders. It is also the opinion of our counsel that it is more likely than not that we qualified to be taxed as a REIT under the Internal Revenue Code for our taxable year ended December 31, 2001, provided that we have operated and will continue to operate in accordance with various assumptions and the factual representations we made to counsel concerning our business, properties and operations. We must emphasize that all opinions issued by Holland & Knight are based on various assumptions and are conditioned upon the assumptions and representations we made concerning our business and properties. Moreover, our qualification for taxation as a REIT depends on our ability to meet the various qualification tests imposed under the Internal Revenue Code discussed below, the results

of which will not be reviewed by Holland & Knight. Accordingly, we cannot assure you that the actual results of our operations for any one taxable year will satisfy these requirements. (See "Risk Factors—Failure to Qualify as a REIT.")

The statements made in this section of the prospectus and in the opinion of Holland & Knight are based upon existing law and Treasury Regulations, as currently applicable, currently published administrative positions of the Internal Revenue Service and judicial decisions, all of which are subject to change, either prospectively or retroactively. We cannot assure you that any changes will not modify the conclusions expressed in our counsel's opinion. Moreover, an opinion of counsel is not binding on the Internal Revenue Service and we cannot assure you that the Internal Revenue Service will not successfully challenge our status as a REIT.

*Taxation of the Company*

If we qualify for taxation as a REIT, we generally will not be subject to federal corporate income taxes on that portion of our ordinary income or capital gain that we distribute currently to our stockholders, because the REIT provisions of the Internal Revenue Code generally allow a REIT to deduct distributions paid to its stockholders. This substantially eliminates the federal "double taxation" on earnings (taxation at both the corporate level and stockholder level) that usually results from an investment in a corporation.

Even if we qualify for taxation as a REIT, however, we will be subject to federal income taxation as follows:

- we will be taxed at regular corporate rates on our undistributed REIT taxable income, including undistributed net capital gains;
- under some circumstances, we will be subject to "alternative minimum tax";
- if we have net income from the sale or other disposition of "foreclosure property" that is held primarily for sale to customers in the ordinary course of business or other non-qualifying income from foreclosure property, we will be subject to tax at the highest corporate rate on that income;
- if we have net income from prohibited transactions (which are, in general, sales or other dispositions of property other than foreclosure property held primarily for sale to customers in the ordinary course of business), the income will be subject to a 100% tax;
- if we fail to satisfy either of the 75% or 95% gross income tests (discussed below) but have nonetheless maintained our qualification as a REIT because certain conditions have been met, we will be subject to a 100% tax on an amount equal to the greater of the amount by which we fail the 75% or 95% test multiplied by a fraction calculated to reflect our profitability;
- if we fail to distribute during each year at least the sum of (1) 85% of our REIT ordinary income for the year, (2) 95% of our REIT capital gain net income for such year, and (3) any undistributed taxable income from prior periods, we will be subject to a 4% excise tax on the excess of the required distribution over the amounts actually distributed; and
- if we acquire any asset from a C corporation (i.e., a corporation generally subject to corporate-level tax) in a carryover-basis transaction and we subsequently recognize gain on the disposition of the asset during the 10-year period beginning on the date on which

we acquired the asset, then a portion of the gains may be subject to tax at the highest regular corporate rate, pursuant to guidelines issued by the Internal Revenue Service (Built-In-Gain Rules).

**Requirements for Qualification as a REIT**

We elected to be taxable as a REIT for our taxable year ended December 31, 1998. In order for us to qualify as a REIT, however, we had to meet and we must continue to meet the requirements discussed below relating to our organization, sources of income, nature of assets and distributions of income to our stockholders.

*Organizational Requirements*

In order to qualify for taxation as a REIT under the Internal Revenue Code, we must:

- be a domestic corporation;
- elect to be taxed as a REIT and satisfy relevant filing and other administrative requirements;
- be managed by one or more trustees or directors;
- have transferable shares;
- not be a financial institution or an insurance company;
- use a calendar year for federal income tax purposes;
- have at least 100 stockholders for at least 335 days of each taxable year of 12 months; and
- not be closely held.

As a Maryland corporation, we satisfy the first requirement, and we have filed an election to be taxed as a REIT with the IRS. In addition, we are managed by a board of directors, we have transferable shares, and we do not intend to operate as a financial institution or insurance company. We utilize the calendar year for federal income tax purposes, and we have more than 100 stockholders. We would be treated as closely held only if five or fewer individuals or certain tax-exempt entities own, directly or indirectly, more than 50% (by value) of our shares at any time during the last half of our taxable year. For purposes of the closely-held test, the Internal Revenue Code generally permits a look-through for pension funds and certain other tax-exempt entities to the beneficiaries of the entity to determine if the REIT is closely held. Five or fewer individuals or tax-exempt entities have never owned more than 50% of our outstanding shares during the last half of any taxable year.

We are authorized to refuse to transfer our shares to any person if the sale or transfer would jeopardize our ability to satisfy the REIT ownership requirements. There can be no assurance that a refusal to transfer will be effective. However, based on the foregoing, we should currently satisfy the organizational requirements, including the share ownership requirements. Notwithstanding compliance with the share ownership requirements outlined above, tax-exempt stockholders may be required to treat all or a portion of their distributions from us as “unrelated business taxable income” if tax-exempt stockholders, in the aggregate, exceed certain ownership thresholds set forth in the Internal Revenue Code. (See “Taxation of Tax-Exempt Stockholders.”)

*Ownership of Interests in Partnerships and Qualified REIT Subsidiaries*

In the case of a REIT that is a partner in a partnership, Treasury Regulations provide that the REIT is deemed to own its proportionate share, based on its interest in partnership capital, of the assets of the partnership and is deemed to have earned its allocable share of partnership income. Also, if a REIT owns a qualified REIT subsidiary, which is defined as a corporation wholly-owned by a REIT, the REIT will be deemed to own all of the subsidiary's assets and liabilities and it will be deemed to be entitled to treat the income of that subsidiary as its own. In addition, the character of the assets and gross income of the partnership or qualified REIT subsidiary shall retain the same character in the hands of the REIT for purposes of satisfying the gross income tests and asset tests set forth in the Internal Revenue Code.

*Operational Requirements—Gross Income Tests*

To maintain our qualification as a REIT, we must satisfy annually two gross income requirements.

- At least 75% of our gross income, excluding gross income from prohibited transactions, for each taxable year must be derived directly or indirectly from investments relating to real property or mortgages on real property. Gross income includes "rents from real property" and, in some circumstances, interest, but excludes gross income from dispositions of property held primarily for sale to customers in the ordinary course of a trade or business. Such dispositions are referred to as "prohibited transactions." This is the 75% Income Test.

- At least 95% of our gross income, excluding gross income from prohibited transactions, for each taxable year must be derived from the real property investments described above and from distributions, interest and gains from the sale or disposition of stock or securities or from any combination of the foregoing. This is the 95% Income Test.

- The rents we receive or that we are deemed to receive qualify as "rents from real property" for purposes of satisfying the gross income requirements for a REIT only if the following conditions are met:

    - the amount of rent received from a tenant generally must not be based in whole or in part on the income or profits of any person; however, an amount received or accrued generally will not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of gross receipts or sales;

    - rents received from a tenant will not qualify as "rents from real property" if an owner of 10% or more of the REIT directly or constructively owns 10% or more of the tenant (a "Related Party Tenant") or a subtenant of the tenant (in which case only rent attributable to the subtenant is disqualified);

    - if rent attributable to personal property leased in connection with a lease of real property is greater than 15% of the total rent received under the lease, then the portion of rent attributable to the personal property will not qualify as "rents from real property"; and

- the REIT must not operate or manage the property or furnish or render services to tenants, other than through an "independent contractor" who is adequately compensated and from whom the REIT does not derive any income. However, a REIT may provide services with respect to its properties, and the income derived therefrom will qualify as "rents from real property," if the services are "usually or customarily rendered" in connection with the rental of space only and are not otherwise considered "rendered to the occupant." Even if the services with respect to a property are impermissible tenant services, the income derived therefrom will qualify as "rents from real property" if such income does not exceed one percent of all amounts received or accrued with respect to that property.

Prior to the making of investments in properties, we may satisfy the 75% Income Test and the 95% Income Test by investing in liquid assets such as government securities or certificates of deposit, but earnings from those types of assets are qualifying income under the 75% Income Test only for one year from the receipt of proceeds. Accordingly, to the extent that offering proceeds have not been invested in properties prior to the expiration of this one year period, in order to satisfy the 75% Income Test, we may invest the offering proceeds in less liquid investments approved by our board of directors such as mortgage-backed securities or shares in other REITs. We intend to trace offering proceeds received for purposes of determining the one year period for "new capital investments." No rulings or regulations have been issued under the provisions of the Internal Revenue Code governing "new capital investments," however, so that there can be no assurance that the Internal Revenue Service will agree with this method of calculation.

Except for amounts received with respect to certain investments of cash reserves, we anticipate that substantially all of our gross income will be derived from sources that will allow us to satisfy the income tests described above; however, we can make no assurance in this regard.

Notwithstanding our failure to satisfy one or both of the 75% Income and the 95% Income Tests for any taxable year, we may still qualify as a REIT for that year if we are eligible for relief under specific provisions of the Internal Revenue Code. These relief provisions generally will be available if:

- our failure to meet these tests was due to reasonable cause and not due to willful neglect;
- we attach a schedule of our income sources to our federal income tax return; and
- any incorrect information on the schedule is not due to fraud with intent to evade tax.

It is not possible, however, to state whether, in all circumstances, we would be entitled to the benefit of these relief provisions. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally earn exceeds the limits on this income, the Internal Revenue Service could conclude that our failure to satisfy the tests was not due to reasonable cause. As discussed above in "Taxation of the Company," even if these relief provisions apply, a tax would be imposed with respect to the excess net income.

*Operational Requirements—Asset Tests*

At the close of each quarter of our taxable year, we also must satisfy the following three tests (Asset Tests) relating to the nature and diversification of our assets:

- First, at least 75% of the value of our total assets must be represented by real estate assets, cash, cash items and government securities. The term "real estate assets" includes

real property, mortgages on real property, shares in other qualified REITs and a proportionate share of any real estate assets owned by a partnership in which we are a partner or of any qualified REIT subsidiary of ours;

- Second, no more than 25% of our total assets may be represented by securities other than those in the 75% asset class; and
- Third, of the investments included in the 25% asset class, the value of any one issuer's securities that we own may not exceed 5% of the value of our total assets. Additionally, we may not own more than 10% of any one issuer's outstanding voting securities, or securities having a value of more than 10% of the total value of the outstanding securities of any one issuer.

These tests must generally be met for any quarter in which we acquire securities. Further, if we meet the Asset Tests at the close of any quarter, we will not lose our REIT status for a failure to satisfy the Asset Tests at the end of a later quarter if such failure occurs solely because of changes in asset values. If our failure to satisfy the Asset Tests results from an acquisition of securities or other property during a quarter, we can cure the failure by disposing of a sufficient amount of nonqualifying assets within 30 days after the close of that quarter. We maintain, and will continue to maintain, adequate records of the value of our assets to ensure compliance with the Asset Tests and will take other action within 30 days after the close of any quarter as may be required to cure any noncompliance.

*Operational Requirements—Annual Distribution Requirement*

In order to be taxed as a REIT, we are required to make dividend distributions, other than capital gain distributions, to our stockholders each year in the amount of at least 90% of our REIT taxable income (computed without regard to the dividends paid deduction and our capital gain and subject to certain other potential adjustments).

While we must generally pay dividends in the taxable year to which they relate, we may also pay dividends in the following taxable year if (1) they are declared before we timely file our federal income tax return for the taxable year in question, and if (2) they are paid on or before the first regular dividend payment date after the declaration.

Even if we satisfy the foregoing dividend distribution requirement and, accordingly, continue to qualify as a REIT for tax purposes, we will still be subject to tax on the excess of our net capital gain and our REIT taxable income, as adjusted, over the amount of dividends distributed to stockholders.

In addition, if we fail to distribute during each calendar year at least the sum of:

- 85% of our ordinary income for that year;
- 95% of our capital gain net income other than the capital gain net income which we elect to retain and pay tax on for that year; and
- any undistributed taxable income from prior periods;

we will be subject to a 4% excise tax on the excess of the amount of such required distributions over amounts actually distributed during such year.

We intend to make timely distributions sufficient to satisfy this requirement; however, we may possibly experience timing differences between (1) the actual receipt of income and payment of

deductible expenses, and (2) the inclusion of that income. We may also possibly be allocated a share of net capital gain attributable to the sale of depreciated property that exceeds our allocable share of cash attributable to that sale.

In such circumstances, we may have less cash than is necessary to meet our annual distribution requirement or to avoid income or excise taxation on certain undistributed income. We may find it necessary in such circumstances to arrange for financing or raise funds through the issuance of additional shares in order to meet our distribution requirements, or we may make taxable stock distributions to meet the distribution requirement.

If we fail to satisfy the distribution requirement for any taxable year by reason of a later adjustment to our taxable income made by the Internal Revenue Service, we may be able to pay "deficiency dividends" in a later year and include such distributions in our deductions for dividends paid for the earlier year. In such event, we may be able to avoid being taxed on amounts distributed as deficiency dividends, but we would be required in such circumstances to pay interest to the Internal Revenue Service based upon the amount of any deduction taken for deficiency dividends for the earlier year.

As noted above, we may also elect to retain, rather than distribute, our net long-term capital gains. The effect of such an election would be as follows:

- we would be required to pay the tax on these gains;
- stockholders, while required to include their proportionate share of the undistributed long-term capital gains in income, would receive a credit or refund for their share of the tax paid by the REIT; and
- the basis of a stockholder's shares would be increased by the amount of our undistributed long-term capital gains (minus the amount of capital gains tax we pay) included in the stockholder's long-term capital gains.

In computing our REIT taxable income, we will use the accrual method of accounting and depreciate depreciable property under the alternative depreciation system. We are required to file an annual federal income tax return, which, like other corporate returns, is subject to examination by the Internal Revenue Service. Because the tax law requires us to make many judgments regarding the proper treatment of a transaction or an item of income or deduction, it is possible that the Internal Revenue Service will challenge positions we take in computing our REIT taxable income and our distributions. Issues could arise, for example, with respect to the allocation of the purchase price of properties between depreciable or amortizable assets and nondepreciable or non-amortizable assets such as land and the current deductibility of fees paid to Wells Capital or its affiliates. Were the Internal Revenue Service to successfully challenge our characterization of a transaction or determination of our REIT taxable income, we could be found to have failed to satisfy a requirement for qualification as a REIT. If, as a result of a challenge, we are determined to have failed to satisfy the distribution requirements for a taxable year, we would be disqualified as a REIT, unless we were permitted to pay a deficiency distribution to our stockholders and pay interest thereon to the Internal Revenue Service, as provided by the Internal Revenue Code. A deficiency distribution cannot be used to satisfy the distribution requirement, however, if the failure to meet the requirement is not due to a later adjustment to our income by the Internal Revenue Service.

*Operational Requirements—Recordkeeping*

In order to continue to qualify as a REIT, we must maintain certain records as set forth in applicable Treasury Regulations. Further, we must request, on an annual basis, certain information designed to disclose the ownership of our outstanding shares. We intend to comply with such requirements.

**Failure to Qualify as a REIT**

If we fail to qualify as a REIT for any reason in a taxable year and applicable relief provisions do not apply, we will be subject to tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. We will not be able to deduct dividends paid to our stockholders in any year in which we fail to qualify as a REIT. We also will be disqualified for the four taxable years following the year during which qualification was lost unless we are entitled to relief under specific statutory provisions. (See "Risk Factors—Federal Income Tax Risks.")

**Sale-Leaseback Transactions**

Some of our investments may be in the form of sale-leaseback transactions. In most instances, depending on the economic terms of the transaction, we will be treated for federal income tax purposes as either the owner of the property or the holder of a debt secured by the property. We do not expect to request an opinion of counsel concerning the status of any leases of properties as true leases for federal income tax purposes.

The Internal Revenue Service may take the position that a specific sale-leaseback transaction, which we treat as a true lease, is not a true lease for federal income tax purposes but is, instead, a financing arrangement or loan. We may also structure some sale-leaseback transactions as loans. In this event, for purposes of the Asset Tests and the 75% Income Test, each such loan likely would be viewed as secured by real property to the extent of the fair market value of the underlying property. We expect that, for this purpose, the fair market value of the underlying property would be determined without taking into account our lease. If a sale-leaseback transaction were so recharacterized, we might fail to satisfy the Asset Tests or the Income Tests and, consequently, lose our REIT status effective with the year of recharacterization. Alternatively, the amount of our REIT taxable income could be recalculated which might also cause us to fail to meet the distribution requirement for a taxable year.

**Taxation of U.S. Stockholders**

*Definition*

In this section, the phrase "U.S. stockholder" means a holder of shares that for federal income tax purposes:

- is a citizen or resident of the United States;
- is a corporation, partnership or other entity created or organized in or under the laws of the United States or of any political subdivision thereof;
- is an estate or trust, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

For any taxable year for which we qualify for taxation as a REIT, amounts distributed to taxable U.S. stockholders will be taxed as described below.

*Distributions Generally*

Distributions to U.S. stockholders, other than capital gain distributions discussed below, will constitute dividends up to the amount of our current or accumulated earnings and profits and will be taxable to the stockholders as ordinary income. These distributions are not eligible for the dividends received deduction generally available to corporations. To the extent that we make a distribution in excess of our current or accumulated earnings and profits, the distribution will be treated first as a tax-free return of capital, reducing the tax basis in each U.S. stockholder's shares, and the amount of each distribution in excess of a U.S. stockholder's tax basis in its shares will be taxable as gain realized from the sale of its shares. Distributions that we declare in October, November or December of any year payable to a stockholder of record on a specified date in any of these months will be treated as both paid by us and received by the stockholder on December 31 of the year, provided that we actually pay the distribution no later than January 31 of the following calendar year. U.S. stockholders may not include any of our losses on their own federal income tax returns.

We will be treated as having sufficient earnings and profits to treat as a dividend any distribution by us up to the amount required to be distributed in order to avoid imposition of the 4% excise tax discussed above. Moreover, any "deficiency distribution" will be treated as an ordinary or capital gain distribution, as the case may be, regardless of our earnings and profits. As a result, stockholders may be required to treat as taxable some distributions that would otherwise result in a tax-free return of capital.

*Capital Gain Distributions*

Distributions to U.S. stockholders that we properly designate as capital gain distributions will be treated as long-term capital gains to the extent they do not exceed our actual net capital gain, for the taxable year without regard to the period for which the U.S. stockholder has held his stock.

*Passive Activity Loss and Investment Interest Limitations*

Our distributions and any gain you realize from a disposition of shares will not be treated as passive activity income, and stockholders may not be able to utilize any of their "passive losses" to offset this income on their personal tax returns. Our distributions (to the extent they do not constitute a return of capital) will generally be treated as investment income for purposes of the limitations on the deduction of investment interest. Net capital gain from a disposition of shares and capital gain distributions generally will be included in investment income for purposes of the investment interest deduction limitations only if, and to the extent, you so elect, in which case any such capital gains will be taxed as ordinary income.

*Certain Dispositions of the Shares*

In general, any gain or loss realized upon a taxable disposition of shares by a U.S. stockholder who is not a dealer in securities will be treated as long-term capital gain or loss if the shares have been held for more than 12 months and as short-term capital gain or loss if the shares have been held for 12 months or less. If, however, a U.S. stockholder has received any capital gains distributions with respect to his shares, any loss realized upon a taxable disposition of shares held for six months or less, to the extent of the capital gains distributions received with respect to his shares, will be treated as long-term capital loss. Also, the Internal Revenue Service is authorized to issue Treasury Regulations that would subject a portion of the capital gain a U.S. stockholder recognizes from selling his shares or from a capital

gain distribution to a tax at a 25% rate, to the extent the capital gain is attributable to depreciation previously deducted.

*Information Reporting Requirements and Backup Withholding for U.S. Stockholders*

Under some circumstances, U.S. stockholders may be subject to backup withholding at a rate of 31% on payments made with respect to, or cash proceeds of a sale or exchange of, our shares. Backup withholding will apply only if the stockholder:

- fails to furnish his or her taxpayer identification number (which, for an individual, would be his or her Social Security Number);
- furnishes an incorrect tax identification number;
- is notified by the Internal Revenue Service that he or she has failed properly to report payments of interest and distributions or is otherwise subject to backup withholding; or
- under some circumstances, fails to certify, under penalties of perjury, that he or she has furnished a correct tax identification number and that (a) he or she has not been notified by the Internal Revenue Service that he or she is subject to backup withholding for failure to report interest and distribution payments or (b) he or she has been notified by the Internal Revenue Service that he or she is no longer subject to backup withholding.

Backup withholding will not apply with respect to payments made to some stockholders, such as corporations and tax-exempt organizations. Backup withholding is not an additional tax. Rather, the amount of any backup withholding with respect to a payment to a U.S. stockholder will be allowed as a credit against the U.S. stockholder's U.S. federal income tax liability and may entitle the U.S. stockholder to a refund, provided that the required information is furnished to the Internal Revenue Service. U.S. stockholders should consult their own tax advisors regarding their qualifications for exemption from backup withholding and the procedure for obtaining an exemption.

**Treatment of Tax-Exempt Stockholders**

Tax-exempt entities such as employee pension benefit trusts, individual retirement accounts, charitable remainder trusts, etc. generally are exempt from federal income taxation. Such entities are subject to taxation, however, on any "unrelated business taxable income" (UBTI), as defined in the Internal Revenue Code. Our payment of dividends to a tax-exempt employee pension benefit trust or other domestic tax-exempt stockholder generally will not constitute UBTI to such stockholder unless such stockholder has borrowed to acquire or carry its shares.

In the event that we are deemed to be "predominately held" by qualified employee pension benefit trusts that each hold more than 10% (in value) of our shares, such trusts would be required to treat a percentage of the dividend distributions paid to them as UBTI. We would be deemed to be "predominately held" by such trusts if either (1) one employee pension benefit trust owns more than 25% in value of our shares, or (2) any group of such trusts, each owning more than 10% in value of our shares, holds in the aggregate more than 50% in value of our shares. If either of these ownership thresholds were ever exceeded, any qualified employee pension benefit trust holding more than 10% in value of our shares would be subject to tax on that portion of our dividend distributions made to it which is equal to the percentage of our income which would be UBTI if we, ourselves, were a qualified trust, rather than a REIT. We will attempt to monitor the concentration of ownership of employee pension benefit trusts in our shares, and we do not expect our shares to be deemed to be "predominately held" by qualified

employee pension benefit trusts, as defined in the Internal Revenue Code, to the extent required to trigger the treatment of our income as UBTI to such trusts.

For social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans exempt from federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) and (c)(20) of the Internal Revenue Code, respectively, income from an investment in our shares will constitute UBTI unless the stockholder in question is able to deduct amounts "set aside" or placed in reserve for certain purposes so as to offset the UBTI generated. Any such organization that is a prospective investor in our shares should consult its own tax advisor concerning these "set aside" and reserve requirements.

**Special Tax Considerations for Non-U.S. Stockholders**

The rules governing U.S. income taxation of non-resident alien individuals, foreign corporations, foreign partnerships and foreign trusts and estates (collectively, Non-U.S. stockholders) are complex. The following discussion is intended only as a summary of these rules. Non-U.S. stockholders should consult with their own tax advisors to determine the impact of federal, state and local income tax laws on an investment in our shares, including any reporting requirements.

*Income Effectively Connected With a U.S. Trade or Business*

In general, Non-U.S. stockholders will be subject to regular U.S. federal income taxation with respect to their investment in our shares if the income derived therefrom is "effectively connected" with the Non-U.S. stockholder's conduct of a trade or business in the United States. A corporate Non-U.S. stockholder that receives income that is (or is treated as) effectively connected with a U.S. trade or business also may be subject to a branch profits tax under Section 884 of the Internal Revenue Code, which is payable in addition to the regular U.S. federal corporate income tax.

The following discussion will apply to Non-U.S. stockholders whose income derived from ownership of our shares is deemed to be not "effectively connected" with a U.S. trade or business.

*Distributions Not Attributable to Gain From the Sale or Exchange of a United States Real Property Interest*

A distribution to a Non-U.S. stockholder that is not attributable to gain realized by us from the sale or exchange of a United States real property interest and that we do not designate as a capital gain distribution will be treated as an ordinary income distribution to the extent that it is made out of current or accumulated earnings and profits. Generally, any ordinary income distribution will be subject to a U.S. federal income tax equal to 30% of the gross amount of the distribution unless this tax is reduced by the provisions of an applicable tax treaty. Any such distribution in excess of our earnings and profits will be treated first as a return of capital that will reduce each Non-U.S. stockholder's basis in its shares (but not below zero) and then as gain from the disposition of those shares, the tax treatment of which is described under the rules discussed below with respect to dispositions of shares.

*Distributions Attributable to Gain From the Sale or Exchange of a United States Real Property Interest*

Distributions to a Non-U.S. stockholder that are attributable to gain from the sale or exchange of a United States real property interest will be taxed to a Non-U.S. stockholder under Internal Revenue Code provisions enacted by the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). Under FIRPTA, such distributions are taxed to a Non-U.S. stockholder as if the distributions were gains

"effectively connected" with a U.S. trade or business. Accordingly, a Non-U.S. stockholder will be taxed at the normal capital gain rates applicable to a U.S. stockholder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals). Distributions subject to FIRPTA also may be subject to a 30% branch profits tax when made to a corporate Non-U.S. stockholder that is not entitled to a treaty exemption.

*Withholding Obligations With Respect to Distributions to Non-U.S. Stockholders*

Although tax treaties may reduce our withholding obligations, based on current law, we will generally be required to withhold from distributions to Non-U.S. stockholders, and remit to the Internal Revenue Service:

- 35% of designated capital gain distributions or, if greater, 35% of the amount of any distributions that could be designated as capital gain distributions; and
- 30% of ordinary income distributions (*i.e.*, dividends paid out of our earnings and profits).

In addition, if we designate prior distributions as capital gain distributions, subsequent distributions, up to the amount of the prior distributions, will be treated as capital gain distributions for purposes of withholding. A distribution in excess of our earnings and profits will be subject to 30% withholding if at the time of the distribution it cannot be determined whether the distribution will be in an amount in excess of our current or accumulated earnings and profits. If the amount of tax we withhold with respect to a distribution to a Non-U.S. stockholder exceeds the stockholder's U.S. tax liability with respect to that distribution, the Non-U.S. stockholder may file a claim with the Internal Revenue Service for a refund of the excess.

*Sale of Our Shares by a Non-U.S. Stockholder*

A sale of our shares by a Non-U.S. stockholder will generally not be subject to U.S. federal income taxation unless our shares constitute a "United States real property interest" within the meaning of FIRPTA. Our shares will not constitute a United States real property interest if we are a "domestically controlled REIT." A "domestically controlled REIT" is a REIT that at all times during a specified testing period has less than 50% in value of its shares held directly or indirectly by Non-U.S. stockholders. We currently anticipate that we will be a domestically controlled REIT. Therefore, sales of our shares should not be subject to taxation under FIRPTA. However, we cannot assure you that we will continue to be a domestically controlled REIT. If we were not a domestically controlled REIT, whether a Non-U.S. stockholder's sale of our shares would be subject to tax under FIRPTA as a sale of a United States real property interest would depend on whether our shares were "regularly traded" on an established securities market and on the size of the selling stockholder's interest in us. Our shares currently are not "regularly traded" on an established securities market.

If the gain on the sale of shares were subject to taxation under FIRPTA, a Non-U.S. stockholder would be subject to the same treatment as a U.S. stockholder with respect to the gain, subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals. In addition, distributions that are treated as gain from the disposition of shares and are subject to tax under FIRPTA also may be subject to a 30% branch profits tax when made to a corporate Non-U.S. stockholder that is not entitled to a treaty exemption. Under FIRPTA, the purchaser of our shares may be required to withhold 10% of the purchase price and remit this amount to the Internal Revenue Service.

Even if not subject to FIRPTA, capital gains will be taxable to a Non-U.S. stockholder if the Non-U.S. stockholder is a non-resident alien individual who is present in the United States for 183 days or more during the taxable year and some other conditions apply, in which case the non-resident alien individual will be subject to a 30% tax on his or her U.S. source capital gains.

Recently promulgated Treasury Regulations may alter the procedures for claiming the benefits of an income tax treaty. Our Non-U.S. stockholders should consult their tax advisors concerning the effect, if any, of these Treasury Regulations on an investment in our shares.

*Information Reporting Requirements and Backup Withholding for Non-U.S. Stockholders*

Additional issues may arise for information reporting and backup withholding for Non-U.S. stockholders. Non-U.S. stockholders should consult their tax advisors with regard to U.S. information reporting and backup withholding requirements under the Internal Revenue Code.

**Statement of Stock Ownership**

We are required to demand annual written statements from the record holders of designated percentages of our shares disclosing the actual owners of the shares. Any record stockholder who, upon our request, does not provide us with required information concerning actual ownership of the shares is required to include specified information relating to his or her shares in his or her federal income tax return. We also must maintain, within the Internal Revenue District in which we are required to file our federal income tax return, permanent records showing the information we have received about the actual ownership of shares and a list of those persons failing or refusing to comply with our demand.

**State and Local Taxation**

We and any operating subsidiaries we may form may be subject to state and local tax in states and localities in which we or they do business or own property. The tax treatment of the Wells REIT, Wells OP, any operating subsidiaries we may form and the holders of our shares in local jurisdictions may differ from the federal income tax treatment described above.

**Tax Aspects of Our Operating Partnership**

The following discussion summarizes certain federal income tax considerations applicable to our investment in Wells OP, our operating partnership. The discussion does not cover state or local tax laws or any federal tax laws other than income tax laws.

*Classification as a Partnership*

We will be entitled to include in our income a distributive share of Wells OP's income and to deduct our distributive share of Wells OP's losses only if Wells OP is classified for federal income tax purposes as a partnership, rather than as an association taxable as a corporation. Under applicable Treasury Regulations (Check-the-Box-Regulations), an unincorporated U.S. entity with at least two members may elect to be classified either as an association taxable as a corporation or as a partnership. If such an entity fails to make an election, it generally will be treated as a partnership for federal income tax purposes. Wells OP intends to be classified as a partnership for federal income tax purposes and will not elect to be treated as an association taxable as a corporation under the Check-the-Box-Regulations.

Even though Wells OP will be treated as a partnership for federal income tax purposes, since it will not elect to be taxable as a corporation under the Check-the-Box Regulations, it could still be taxed

as a corporation if it were deemed to be a "publicly traded partnership." A publicly traded partnership is a partnership whose interests are traded on an established securities market or are readily tradable on a secondary market (or the substantial equivalent thereof); provided, that even if the foregoing requirements are met, a publicly traded partnership will not be treated as a corporation for federal income tax purposes if at least 90% of such partnership's gross income for a taxable year consists of "qualifying income" under Section 7704(d) of the Internal Revenue Code. Qualifying income generally includes any income that is qualifying income for purposes of the 95% Income Test applicable to REITs (90% Passive-Type Income Exception). (See "Requirements for Qualification as a REIT—Operational Requirements—Gross Income Tests.")

Under applicable Treasury Regulations (PTP Regulations), limited safe harbors from the definition of a publicly traded partnership are provided. Pursuant to one of those safe harbors (Private Placement Exclusion), interests in a partnership will not be treated as readily tradable on a secondary market or the substantial equivalent thereof if (1) all interests in the partnership were issued in a transaction (or transactions) that was not required to be registered under the Securities Act of 1933, as amended, and (2) the partnership does not have more than 100 partners at any time during the partnership's taxable year. In determining the number of partners in a partnership, a person owning an interest in a flow-through entity (such as a partnership, grantor trust or S corporation) that owns an interest in the partnership is treated as a partner in such partnership only if (a) substantially all of the value of the owner's interest in the flow-through is attributable to the flow-through entity's interest (direct or indirect) in the partnership, and (b) a principal purpose of the use of the flow-through entity is to permit the partnership to satisfy the 100 partner limitation. Wells OP qualifies for the Private Placement Exclusion. Further, even if Wells OP were to be considered a publicly traded partnership under the PTP Regulations because it is deemed to have more than 100 partners, Wells OP should not be treated as a corporation because it should be eligible for the 90% Passive-Type Income Exception described above.

We have not requested, and do not intend to request, a ruling from the Internal Revenue Service that Wells OP will be classified as a partnership for federal income tax purposes. Holland & Knight is of the opinion, however, that based on certain factual assumptions and representations, Wells OP will more likely than not be treated for federal income tax purposes as a partnership and not as an association taxable as a corporation, or as a publicly traded partnership. Unlike a tax ruling, however, an opinion of counsel is not binding upon the Internal Revenue Service, and no assurance can be given that the Internal Revenue Service will not challenge the status of Wells OP as a partnership for federal income tax purposes. If such challenge were sustained by a court, Wells OP would be treated as a corporation for federal income tax purposes, as described below. In addition, the opinion of Holland & Knight is based on existing law, which is to a great extent the result of administrative and judicial interpretation. No assurance can be given that administrative or judicial changes would not modify the conclusions expressed in the opinion.

If for any reason Wells OP were taxable as a corporation, rather than a partnership, for federal income tax purposes, we would not be able to qualify as a REIT. (See "Federal Income Tax Considerations—Requirements for Qualification as a REIT—Operational Requirements—Gross Income Tests" and "Requirements for Qualification as a REIT—Operational Requirements—Asset Tests.") In addition, any change in Wells OP's status for tax purposes might be treated as a taxable event, in which case we might incur a tax liability without any related cash distribution. Further, items of income and deduction of Wells OP would not pass through to its partners, and its partners would be treated as stockholders for tax purposes. Consequently, Wells OP would be required to pay income tax at corporate tax rates on its net income, and distributions to its partners would constitute dividends that would not be deductible in computing Wells OP's taxable income.

*Income Taxation of the Operating Partnership and its Partners*

*Partners, Not a Partnership, Subject to Tax.* A partnership is not a taxable entity for federal income tax purposes. As a partner in Wells OP, we will be required to take into account our allocable share of Wells OP's income, gains, losses, deductions, and credits for any taxable year of Wells OP ending within or with our taxable year, without regard to whether we have received or will receive any distribution from Wells OP.

*Partnership Allocations.* Although a partnership agreement generally determines the allocation of income and losses among partners, such allocations will be disregarded for tax purposes if they do not comply with the provisions of Section 704(b) of the Internal Revenue Code and the Treasury Regulations promulgated thereunder. If an allocation is not recognized for federal income tax purposes, the item subject to the allocation will be reallocated in accordance with the partners' interests in the partnership, which will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. Wells OP's allocations of taxable income and loss are intended to comply with the requirements of Section 704(b) of the Internal Revenue Code and the Treasury Regulations promulgated thereunder.

*Tax Allocations With Respect to Contributed Properties.* Pursuant to Section 704(c) of the Internal Revenue Code, income, gain, loss, and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership must be allocated for federal income tax purposes in a manner such that the contributor is charged with, or benefits from, the unrealized gain or unrealized loss associated with the property at the time of the contribution. The amount of such unrealized gain or unrealized loss is generally equal to the difference between the fair market value of the contributed property at the time of contribution and the adjusted tax basis of such property at the time of contribution. Under applicable Treasury Regulations, partnerships are required to use a "reasonable method" for allocating items subject to Section 704(c) of the Internal Revenue Code and several reasonable allocation methods are described therein.

Under the partnership agreement for Wells OP, depreciation or amortization deductions of Wells OP generally will be allocated among the partners in accordance with their respective interests in Wells OP, except to the extent that Wells OP is required under Section 704(c) to use a method for allocating depreciation deductions attributable to its properties that results in us receiving a disproportionately large share of such deductions. We may possibly be allocated (1) lower amounts of depreciation deductions for tax purposes with respect to contributed properties than would be allocated to us if each such property were to have a tax basis equal to its fair market value at the time of contribution, and (2) taxable gain in the event of a sale of such contributed properties in excess of the economic profit allocated to us as a result of such sale. These allocations may cause us to recognize taxable income in excess of cash proceeds received by us, which might adversely affect our ability to comply with the REIT distribution requirements, although we do not anticipate that this event will occur. The foregoing principles also will affect the calculation of our earnings and profits for purposes of determining which portion of our distributions is taxable as a dividend. The allocations described in this paragraph may result in a higher portion of our distributions being taxed as a dividend than would have occurred had we purchased such properties for cash.

*Basis in Operating Partnership Interest.* The adjusted tax basis of our partnership interest in Wells OP generally is equal to (1) the amount of cash and the basis of any other property contributed to Wells OP by us, (2) increased by (A) our allocable share of Wells OP's income and (B) our allocable share of the indebtedness of Wells OP, and (3) reduced, but not below zero, by (A) our allocable share of Wells OP's losses and (B) the amount of cash distributed to us, including constructive cash distributions resulting from a reduction in our share of the indebtedness of Wells OP.

If the allocation of our distributive share of Wells OP's losses would reduce the adjusted tax basis of our partnership interest in Wells OP below zero, the recognition of such losses will be deferred until such time as the recognition of such losses would not reduce our adjusted tax basis below zero. If a distribution from Wells OP or a reduction in our share of Wells OP's liabilities (which is treated as a constructive distribution for tax purposes) would reduce our adjusted tax basis below zero, any such distribution, including a constructive distribution, would cause us to recognize taxable income equal to the amount of such distribution in excess of our adjusted tax basis. The gain realized by us upon the receipt of any such distribution or constructive distribution would normally be characterized as capital gain, and if our partnership interest in Wells OP has been held for longer than the long-term capital gain holding period (currently one year), the distribution would constitute long-term capital gain.

*Depreciation Deductions Available to the Operating Partnership.* Wells OP will use a portion of contributions made by the Wells REIT from offering proceeds to acquire interests in properties. Wells OP's initial basis in such properties for federal income tax purposes generally will be equal to the purchase price paid by Wells OP. Wells OP plans to depreciate each such depreciable property for federal income tax purposes under the alternative depreciation system of depreciation (ADS). Under ADS, Wells OP generally will depreciate buildings and improvements over a 40-year recovery period using a straight-line method and a mid-month convention and will depreciate furnishings and equipment over a 12-year recovery period. To the extent that Wells OP acquires properties in exchange for units of Wells OP, Wells OP's initial basis in each such property for federal income tax purposes should be the same as the transferor's basis in that property on the date of acquisition by Wells OP. Although the law is not entirely clear, Wells OP generally intends to depreciate such depreciable property for federal income tax purposes over the same remaining useful lives and under the same methods used by the transferors of such properties.

*Sale of the Operating Partnership's Property*

Generally, any gain realized by Wells OP on the sale of property held for more than one year will be long-term capital gain, except for any portion of such gain that is treated as depreciation or cost recovery recapture. Any gain recognized by Wells OP upon the disposition of a property will be allocated among the partners in accordance with their respective percentage interests in Wells OP.

Our share of any gain realized by Wells OP on the sale of any property held by Wells OP as inventory or other property held primarily for sale to customers in the ordinary course of Wells OP's trade or business will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. Such prohibited transaction income also may have an adverse effect upon our ability to satisfy the Income Tests for maintaining our REIT status. (See "Federal Income Tax Considerations—Requirements for Qualification as a REIT—Gross Income Tests" above.) We, however, do not presently intend to acquire or hold or allow Wells OP to acquire or hold any property that represents inventory or other property held primarily for sale to customers in the ordinary course of our or Wells OP's trade or business.

## ERISA CONSIDERATIONS

The following is a summary of some non-tax considerations associated with an investment in our shares by a qualified employee pension benefit plan or an individual retirement account (IRA). This summary is based on provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code, as amended through the date of this prospectus, and relevant regulations and opinions issued by the Department of Labor and the Internal Revenue Service. We cannot assure you that there will not be adverse tax decisions or legislative, regulatory or administrative changes which would significantly modify the statements expressed herein. Any such changes may or may not apply to transactions entered into prior to the date of their enactment.

Each fiduciary of an employee pension benefit plan subject to ERISA, such as a profit sharing, section 401(k) or pension plan, or of any other retirement plan or account subject to Section 4975 of the Internal Revenue Code, such as an IRA (Benefit Plans), seeking to invest plan assets in our shares must, taking into account the facts and circumstances of such Benefit Plan, consider, among other matters:

- whether the investment is consistent with the applicable provisions of ERISA and the Internal Revenue Code;
- whether, under the facts and circumstances appertaining to the Benefit Plan in question, the fiduciary's responsibility to the plan has been satisfied;
- whether the investment will produce UBTI to the Benefit Plan (see "Federal Income Tax Considerations—Treatment of Tax-Exempt Stockholders"); and
- the need to value the assets of the Benefit Plan annually.

Under ERISA, a plan fiduciary's responsibilities include the following duties:

- to act solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits to them, as well as defraying reasonable expenses of plan administration;
- to invest plan assets prudently;
- to diversify the investments of the plan unless it is clearly prudent not to do so;
- to ensure sufficient liquidity for the plan; and
- to consider whether an investment would constitute or give rise to a prohibited transaction under ERISA or the Internal Revenue Code.

ERISA also requires that the assets of an employee benefit plan be held in trust and that the trustee, or a duly authorized named fiduciary or investment manager, have exclusive authority and discretion to manage and control the assets of the plan.

**Prohibited Transactions**

Section 406 of ERISA and Section 4975 of the Internal Revenue Code prohibit specified transactions involving the assets of a Benefit Plan which are between the plan and any "party in interest" or "disqualified person" with respect to that Benefit Plan. These transactions are prohibited regardless of how beneficial they may be for the Benefit Plan. Prohibited transactions include the sale, exchange or leasing of property, and the lending of money or the extension of credit, between a Benefit Plan and a party in interest or disqualified person. The transfer to, or use by or for the benefit of, a party in interest, or disqualified person of any assets of a Benefit Plan is also prohibited. A fiduciary of a Benefit Plan also is prohibited from engaging in self-dealing, acting for a person who has an interest adverse to the plan or receiving any consideration for its own account from a party dealing with the plan in a transaction involving plan assets. Furthermore, Section 408 of the Internal Revenue Code states that assets of an IRA trust may not be commingled with other property except in a common trust fund or common investment fund.

**Plan Asset Considerations**

In order to determine whether an investment in our shares by Benefit Plans creates or gives rise to the potential for either prohibited transactions or a commingling of assets as referred to above, a fiduciary must consider whether an investment in our shares will cause our assets to be treated as assets of the investing Benefit Plans. Neither ERISA nor the Internal Revenue Code define the term "plan assets," however, U.S. Department of Labor Regulations provide guidelines as to whether, and under what circumstances, the underlying assets of an entity will be deemed to constitute assets of a Benefit Plan when the plan invests in that entity (Plan Assets Regulation). Under the Plan Assets Regulation, the assets of corporations, partnerships or other entities in which a Benefit Plan makes an equity investment will generally be deemed to be assets of the Benefit Plan unless the entity satisfies one of the exceptions to this general rule. As discussed below, we have received an opinion of counsel that, based on the Plan Assets Regulation, our underlying assets should not be deemed to be "plan assets" of Benefit Plans investing in shares, assuming the conditions set forth in the opinion are satisfied, based upon the fact that at least one of the specific exemptions set forth in the Plan Assets Regulation is satisfied, as determined under the criteria set forth below.

Specifically, the Plan Assets Regulation provides that the underlying assets of REITs will not be treated as assets of a Benefit Plan investing therein if the interest the Benefit Plan acquires is a "publicly-offered security." A publicly-offered security must be:

- sold as part of a public offering registered under the Securities Act of 1933, as amended, and be part of a class of securities registered under the Securities Exchange Act of 1934, as amended, within a specified time period;
- part of a class of securities that is owned by 100 or more persons who are independent of the issuer and one another; and
- "freely transferable."

Our shares are being sold as part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act, and are part of a class registered under the Securities Exchange Act. In addition, we have well in excess of 100 independent stockholders. Thus, both the first and second criterion of the publicly-offered security exception will be satisfied.

Whether a security is "freely transferable" depends upon the particular facts and circumstances. For example, our shares are subject to certain restrictions on transferability intended to ensure that we continue to qualify for federal income tax treatment as a REIT. The regulation provides, however, that where the minimum investment in a public offering of securities is $10,000 or less, the presence of a restriction on transferability intended to prohibit transfers which would result in a termination or reclassification of the entity for state or federal tax purposes will not ordinarily affect a determination that such securities are "freely transferable." The minimum investment in our shares is less than $10,000; thus, the restrictions imposed in order to maintain our status as a REIT should not cause the shares to be deemed not "freely transferable. "

In the event that our underlying assets were treated by the Department of Labor as the assets of investing Benefit Plans, our management would be treated as fiduciaries with respect to each Benefit Plan stockholder, and an investment in our shares might constitute an ineffective delegation of fiduciary responsibility to Wells Capital, our advisor, and expose the fiduciary of the Benefit Plan to co-fiduciary liability under ERISA for any breach by Wells Capital of the fiduciary duties mandated under ERISA.

Further, if our assets are deemed to be "plan assets," an investment by an IRA in our shares might be deemed to result in an impermissible commingling of IRA assets with other property.

If Wells Capital, our advisor, or its affiliates were treated as fiduciaries with respect to Benefit Plan stockholders, the prohibited transaction restrictions of ERISA and the Internal Revenue Code would apply to any transaction involving our assets. These restrictions could, for example, require that we avoid transactions with entities that are affiliated with us or our affiliates or restructure our activities in order to obtain an administrative exemption from the prohibited transaction restrictions. Alternatively, we might have to provide Benefit Plan stockholders with the opportunity to sell their shares to us or we might dissolve or terminate.

If a prohibited transaction were to occur, the Internal Revenue Code imposes an excise tax equal to 15% of the amount involved and authorizes the IRS to impose an additional 100% excise tax if the prohibited transaction is not "corrected" in a timely manner. These taxes would be imposed on any disqualified person who participates in the prohibited transaction. In addition, Wells Capital and possibly other fiduciaries of Benefit Plan stockholders subject to ERISA who permitted the prohibited transaction to occur or who otherwise breached their fiduciary responsibilities, or a non-fiduciary participating in a prohibited transaction, could be required to restore to the Benefit Plan any profits they realized as a result of the transaction or breach, and make good to the Benefit Plan any losses incurred by the Benefit Plan as a result of the transaction or breach. With respect to an IRA that invests in our shares, the occurrence of a prohibited transaction involving the individual who established the IRA, or his or her beneficiary, would cause the IRA to lose its tax-exempt status under Section 408(e)(2) of the Internal Revenue Code.

We have obtained an opinion from Holland & Knight that it is more likely than not that our shares will be deemed to constitute "publicly-offered securities" and, accordingly, that it is more likely than not that our underlying assets should not be considered "plan assets" under the Plan Assets Regulation, assuming the offering takes place as described in this prospectus. If our underlying assets were not deemed to be "plan assets," the problems discussed in the immediately preceding three paragraphs are not expected to arise.

**Other Prohibited Transactions**

Regardless of whether the shares qualify for the "publicly-offered security" exception of the Plan Assets Regulation, a prohibited transaction could occur if the Wells REIT, Wells Capital, any selected dealer or any of their affiliates is a fiduciary (within the meaning of Section 3(21) of ERISA) with respect to any Benefit Plan purchasing the shares. Accordingly, unless an administrative or statutory exemption applies, shares should not be purchased by a Benefit Plan with respect to which any of the above persons is a fiduciary. A person is a fiduciary with respect to a Benefit Plan under Section 3(21) of ERISA if, among other things, the person has discretionary authority or control with respect to "plan assets" or provides investment advice for a fee with respect to "plan assets." Under a regulation issued by the Department of Labor, a person shall be deemed to be providing investment advice if that person renders advice as to the advisability of investing in our shares and that person regularly provides investment advice to the Benefit Plan pursuant to a mutual agreement or understanding (written or otherwise) (1) that the advice will serve as the primary basis for investment decisions, and (2) that the advice will be individualized for the Benefit Plan based on its particular needs.

**Annual Valuation**

A fiduciary of an employee benefit plan subject to ERISA is required to determine annually the fair market value of each asset of the plan as of the end of the plan's fiscal year and to file a report reflecting that value with the Department of Labor. When the fair market value of any particular asset is not available, the fiduciary is required to make a good faith determination of that asset's fair market value assuming an orderly liquidation at the time the determination is made. In addition, a trustee or custodian of an IRA must provide an IRA participant with a statement of the value of the IRA each year. In discharging its obligation to value assets of a plan, a fiduciary subject to ERISA must act consistently with the relevant provisions of the plan and the general fiduciary standards of ERISA.

Unless and until our shares are listed on a national securities exchange or are included for quotation on NASDAQ, it is not expected that a public market for the shares will develop. To date, neither the Internal Revenue Service nor the Department of Labor has promulgated regulations specifying how a plan fiduciary should determine the fair market value of the shares, namely when the fair market value of the shares is not determined in the marketplace. Therefore, to assist fiduciaries in fulfilling their valuation and annual reporting responsibilities with respect to ownership of shares, we intend to have our advisor prepare annual reports of the estimated value of our shares. The methodology to be utilized for determining such estimated share values will be for our advisor to estimate the amount a stockholder would receive if our properties were sold at their estimated fair market values at the end of the fiscal year and the proceeds therefrom (without reduction for selling expenses) were distributed to the stockholders in liquidation. Due to the expense involved in obtaining annual appraisals for all of our properties, we do not currently anticipate that actual appraisals will be obtained; however, in connection with the advisor's estimated valuations, the advisor will obtain a third party opinion that its estimates of value are reasonable. We will provide our reports to plan fiduciaries and IRA trustees and custodians who identify themselves to us and request this information.

Until December 31, 2002, we intend to use the offering price of shares as the per share net asset value. Beginning at the end of year 2003, we will have our advisor prepare estimated valuations utilizing the methodology described above. You should be cautioned, however, that such valuations will be estimates only and will be based upon a number of assumptions that may not be accurate or complete. As set forth above, we do not currently anticipate obtaining appraisals for our properties and, accordingly, the advisor's estimates should not be viewed as an accurate reflection of the fair market value of our properties, nor will they represent the amount of net proceeds that would result from an immediate sale of our properties. In addition, property values are subject to change and can always decline in the future. For these reasons, our estimated valuations should not be utilized for any purpose other than to assist plan fiduciaries in fulfilling their valuation and annual reporting responsibilities. Further, we cannot assure you:

- that the estimated values we obtain could or will actually be realized by us or by our stockholders upon liquidation (in part because estimated values do not necessarily indicate the price at which assets could be sold and because no attempt will be made to estimate the expenses of selling any of our assets);
- that our stockholders could realize these values if they were to attempt to sell their shares; or
- that the estimated values, or the method used to establish values, would comply with the ERISA or IRA requirements described above.

## DESCRIPTION OF SHARES

The following description of the shares is not complete but is a summary of portions of our articles of incorporation and is qualified in its entirety by reference to our articles of incorporation.

Under our articles of incorporation, we have authority to issue a total of 1,000,000,000 shares of capital stock. Of the total shares authorized, 750,000,000 shares are designated as common stock with a par value of $0.01 per share, 100,000,000 shares are designated as preferred stock and 150,000,000 shares are designated as shares-in-trust, which would be issued only in the event we have purchases in excess of the ownership limits described below. In addition, our board of directors may amend our articles of incorporation to increase or decrease the amount of our authorized shares.

As of June 30, 2002, approximately 144,366,772 shares of our common stock were issued and outstanding, and no shares of preferred stock or shares-in-trust were issued and outstanding.

### Common Stock

The holders of common stock are entitled to one vote per share on all matters voted on by stockholders, including election of our directors. Our articles of incorporation do not provide for cumulative voting in the election of our directors. Therefore, the holders of a majority of the outstanding common shares can elect our entire board of directors. Subject to any preferential rights of any outstanding series of preferred stock, the holders of common stock are entitled to such dividends as may be declared from time to time by our board of directors out of legally available funds and, upon liquidation, are entitled to receive all assets available for distribution to our stockholders. All shares issued in the offering will be fully paid and non-assessable shares of common stock. Holders of shares of common stock will not have preemptive rights, which means that you will not have an automatic option to purchase any new shares that we issue.

We will not issue certificates for our shares. Shares will be held in “uncertificated” form which will eliminate the physical handling and safekeeping responsibilities inherent in owning transferable stock certificates and eliminate the need to return a duly executed stock certificate to effect a transfer. Wells Capital, our advisor, acts as our registrar and as the transfer agent for our shares. Transfers can be effected simply by mailing to Wells Capital a transfer and assignment form, which we will provide to you at no charge.

### Preferred Stock

Our articles of incorporation authorize our board of directors to designate and issue one or more classes or series of preferred stock without stockholder approval. Our board of directors may determine the relative rights, preferences and privileges of each class or series of preferred stock so issued, which may be more beneficial than the rights, preferences and privileges attributable to the common stock. The issuance of preferred stock could have the effect of delaying or preventing a change in control of the Wells REIT. Our board of directors has no present plans to issue preferred stock, but may do so at any time in the future without stockholder approval.

### Meetings and Special Voting Requirements

An annual meeting of the stockholders will be held each year, at least 30 days after delivery of our annual report. Special meetings of stockholders may be called only upon the request of a majority of our directors, a majority of the independent directors, the chairman, the president or upon the written request of stockholders holding at least 10% of the shares. The presence of a majority of the outstanding

shares either in person or by proxy shall constitute a quorum. Generally, the affirmative vote of a majority of all votes entitled to be cast is necessary to take stockholder action authorized by our articles of incorporation, except that a majority of the votes represented in person or by proxy at a meeting at which a quorum is present is sufficient to elect a director.

Under Maryland Corporation Law and our articles of incorporation, stockholders are entitled to vote at a duly held meeting at which a quorum is present on (1) amendments to our articles of incorporation, (2) a liquidation or dissolution of the Wells REIT, (3) a reorganization of the Wells REIT, (4) a merger, consolidation or sale or other disposition of substantially all of our assets, and (5) a termination of our status as a REIT. The vote of stockholders holding a majority of our outstanding shares is required to approve any such action, and no such action can be taken by our board of directors without such majority vote of our stockholders. Accordingly, any provision in our articles of incorporation, including our investment objectives, can be amended by the vote of stockholders holding a majority of our outstanding shares. Stockholders voting against any merger or sale of assets are permitted under Maryland Corporation Law to petition a court for the appraisal and payment of the fair value of their shares. In an appraisal proceeding, the court appoints appraisers who attempt to determine the fair value of the stock as of the date of the stockholder vote on the merger or sale of assets. After considering the appraisers' report, the court makes the final determination of the fair value to be paid to the dissenting stockholder and decides whether to award interest from the date of the merger or sale of assets and costs of the proceeding to the dissenting stockholders.

Wells Capital, as our advisor, is selected and approved annually by our directors. While the stockholders do not have the ability to vote to replace Wells Capital or to select a new advisor, stockholders do have the ability, by the affirmative vote of a majority of the shares entitled to vote on such matter, to elect to remove a director from our board.

Stockholders are entitled to receive a copy of our stockholder list upon request. The list provided by us will include each stockholder's name, address and telephone number, if available, and number of shares owned by each stockholder and will be sent within 10 days of the receipt by us of the request. A stockholder requesting a list will be required to pay reasonable costs of postage and duplication. We have the right to request that a requesting stockholder represent to us that the list will not be used to pursue commercial interests.

In addition to the foregoing, stockholders have rights under Rule 14a-7 under the Securities Exchange Act, which provides that, upon the request of investors and the payment of the expenses of the distribution, we are required to distribute specific materials to stockholders in the context of the solicitation of proxies for voting on matters presented to stockholders or, at our option, provide requesting stockholders with a copy of the list of stockholders so that the requesting stockholders may make the distribution of proxies themselves.

**Restriction on Ownership of Shares**

In order for us to qualify as a REIT, not more than 50% of our outstanding shares may be owned by any five or fewer individuals, including some tax-exempt entities. In addition, the outstanding shares must be owned by 100 or more persons independent of us and each other during at least 335 days of a 12-month taxable year or during a proportionate part of a shorter taxable year. We may prohibit certain acquisitions and transfers of shares so as to ensure our continued qualification as a REIT under the Internal Revenue Code. However, we cannot assure you that this prohibition will be effective.

In order to assist us in preserving our status as a REIT, our articles of incorporation contain a limitation on ownership that prohibits any person or group of persons from acquiring, directly or

indirectly, beneficial ownership of more than 9.8% of our outstanding shares. Our articles of incorporation provide that any transfer of shares that would violate our share ownership limitations is null and void and the intended transferee will acquire no rights in such shares, unless the transfer is approved by our board of directors based upon receipt of information that such transfer would not violate the provisions of the Internal Revenue Code for qualification as a REIT.

Shares in excess of the ownership limit which are attempted to be transferred will be designated as "shares-in-trust" and will be transferred automatically to a trust effective on the day before the reported transfer of such shares. The record holder of the shares that are designated as shares-in-trust will be required to submit such number of shares to the Wells REIT in the name of the trustee of the trust. We will designate a trustee of the share trust that will not be affiliated with us. We will also name one or more charitable organizations as a beneficiary of the share trust. Shares-in-trust will remain issued and outstanding shares and will be entitled to the same rights and privileges as all other shares of the same class or series. The trustee will receive all dividends and distributions on the shares-in-trust and will hold such dividends or distributions in trust for the benefit of the beneficiary. The trustee will vote all shares-in-trust during the period they are held in trust.

At our direction, the trustee will transfer the shares-in-trust to a person whose ownership will not violate the ownership limits. The transfer shall be made within 20 days of our receipt of notice that shares have been transferred to the trust. During this 20-day period, we will have the option of redeeming such shares. Upon any such transfer or redemption, the purported transferee or holder shall receive a per share price equal to the lesser of (1) the price per share in the transaction that created such shares-in-trust, or (2) the market price per share on the date of the transfer or redemption.

Any person who (1) acquires shares in violation of the foregoing restriction or who owns shares that were transferred to any such trust is required to give immediate written notice to the Wells REIT of such event, or (2) transfers or receives shares subject to such limitations is required to give the Wells REIT 15 days written notice prior to such transaction. In both cases, such persons shall provide to the Wells REIT such other information as we may request in order to determine the effect, if any, of such transfer on our status as a REIT.

The foregoing restrictions will continue to apply until (1) our board of directors determines it is no longer in our best interest to continue to qualify as a REIT, and (2) there is an affirmative vote of the majority of shares entitled to vote on such matter at a regular or special meeting of our stockholders.

The ownership limit does not apply to an offeror which, in accordance with applicable federal and state securities laws, makes a cash tender offer, where at least 85% of the outstanding shares are duly tendered and accepted pursuant to the cash tender offer. The ownership limit also does not apply to the underwriter in a public offering of shares or to a person or persons so exempted from the ownership limit by our board of directors based upon appropriate assurances that our qualification as a REIT is not jeopardized.

Any person who owns 5% or more of the outstanding shares during any taxable year will be asked to deliver a statement or affidavit setting forth the number of shares beneficially owned, directly or indirectly.

**Dividends**

Dividends will be paid on a quarterly basis regardless of the frequency with which such dividends are declared. Dividends will be paid to investors who are stockholders as of the record dates selected by our board of directors. We currently calculate our quarterly dividends based upon daily record and

dividend declaration dates so our investors will be entitled to be paid dividends immediately upon their purchase of shares. We then make quarterly dividend payments following the end of each calendar quarter.

We are required to make distributions sufficient to satisfy the requirements for qualification as a REIT for tax purposes. Generally, income distributed as dividends will not be taxable to us under the Internal Revenue Code if we distribute at least 90% of our taxable income. (See "Federal Income Tax Considerations—Requirements for Qualification as a REIT.")

Dividends will be declared at the discretion of our board of directors, in accordance with our earnings, cash flow and general financial condition. Our board's discretion will be directed, in substantial part, by its obligation to cause us to comply with the REIT requirements. Because we may receive income from interest or rents at various times during our fiscal year, dividends may not reflect our income earned in that particular distribution period but may be made in anticipation of cash flow which we expect to receive during a later quarter and may be made in advance of actual receipt of funds in an attempt to make dividends relatively uniform. We may borrow money, issue securities or sell assets in order to make dividend distributions.

We are not prohibited from distributing our own securities in lieu of making cash dividends to stockholders, provided that the securities so distributed to stockholders are readily marketable. Stockholders who receive marketable securities in lieu of cash dividends may incur transaction expenses in liquidating the securities.

**Dividend Reinvestment Plan**

We currently have a dividend reinvestment plan available that allows you to have your dividends otherwise distributable to you invested in additional shares of the Wells REIT.

You may purchase shares under our dividend reinvestment plan for $10 per share until all of the shares registered as part of this offering have been sold. After this time, we may purchase shares either through purchases on the open market, if a market then exists, or through an additional issuance of shares. In any case, the price per share will be equal to the then-prevailing market price, which shall equal the price on the securities exchange or over-the-counter market on which such shares are listed at the date of purchase if such shares are then listed. A copy of our Amended and Restated Dividend Reinvestment Plan as currently in effect is included as Exhibit B to this prospectus.

You may elect to participate in the dividend reinvestment plan by completing the Subscription Agreement, the enrollment form or by other written notice to the plan administrator. Participation in the plan will begin with the next distribution made after receipt of your written notice. We may terminate the dividend reinvestment plan for any reason at any time upon 10 days' prior written notice to participants. Your participation in the plan will also be terminated to the extent that a reinvestment of your dividends in our shares would cause the percentage ownership limitation contained in our articles of incorporation to be exceeded. In addition, you may terminate your participation in the dividend reinvestment plan at any time by providing us with written notice.

If you elect to participate in the dividend reinvestment plan and are subject to federal income taxation, you will incur a tax liability for dividends allocated to you even though you have elected not to receive the dividends in cash but rather to have the dividends withheld and reinvested pursuant to the dividend reinvestment plan. Specifically, you will be treated as if you have received the dividend from us in cash and then applied such dividend to the purchase of additional shares. You will be taxed on the

amount of such dividend as ordinary income to the extent such dividend is from current or accumulated earnings and profits, unless we have designated all or a portion of the dividend as a capital gain dividend.

**Share Redemption Program**

Prior to the time that our shares are listed on a national securities exchange, stockholders of the Wells REIT who have held their shares for at least one year may receive the benefit of limited interim liquidity by presenting for redemption all or any portion of their shares to us at any time in accordance with the procedures outlined herein. At that time, we may, subject to the conditions and limitations described below, redeem the shares presented for redemption for cash to the extent that we have sufficient funds available to us to fund such redemption.

If you have held your shares for the required one-year period, you may redeem your shares for a purchase price equal to the lesser of (1) $10 per share, or (2) the purchase price per share that you actually paid for your shares of the Wells REIT. In the event that you are redeeming all of your shares, shares purchased pursuant to our dividend reinvestment plan may be excluded from the foregoing one-year holding period requirement, in the discretion of our board of directors. In addition, for purposes of the one-year holding period, limited partners of Wells OP who exchange their limited partnership units for shares in the Wells REIT shall be deemed to have owned their shares as of the date they were issued their limited partnership units in Wells OP. Our board of directors reserves the right in its sole discretion at any time and from time to time to (1) change the purchase price for redemptions, or (2) otherwise amend the terms of our share redemption program. In addition, our board of directors has delegated to our officers the right to (1) waive the one-year holding period in the event of the death or bankruptcy of a stockholder or other exigent circumstances, or (2) reject any request for redemption at any time and for any reason.

Redemption of shares, when requested, will be made quarterly on a first-come, first-served basis. Subject to funds being available, we will limit the number of shares redeemed pursuant to our share redemption program as follows: (1) during any calendar year, we will not redeem in excess of 3.0% of the weighted average number of shares outstanding during the prior calendar year; and (2) funding for the redemption of shares will come exclusively from the proceeds we receive from the sale of shares under our dividend reinvestment plan such that in no event shall the aggregate amount of redemptions under our share redemption program exceed aggregate proceeds received from the sale of shares pursuant to our dividend reinvestment plan. The board of directors, in its sole discretion, may choose to terminate the share redemption program or to reduce the number of shares purchased under the share redemption program if it determines the funds otherwise available to fund our share redemption program are needed for other purposes. (See “Risk Factors—Investment Risks.”)

We cannot guarantee that the funds set aside for our share redemption program will be sufficient to accommodate all requests made in any year. If we do not have such funds available, at the time when redemption is requested, you can (1) withdraw your request for redemption, or (2) ask that we honor your request at such time, if any, when sufficient funds become available. Such pending requests will be honored on a first-come, first-served basis.

Our share redemption program is only intended to provide interim liquidity for stockholders until a secondary market develops for the shares. No such market presently exists, and we cannot assure you that any market for your shares will ever develop.

The shares we redeem under our share redemption program will be cancelled, and will be held as treasury stock. We will not resell such shares to the public unless they are first registered with the

Securities and Exchange Commission (Commission) under the Securities Act of 1933 and under appropriate state securities laws or otherwise sold in compliance with such laws.

**Restrictions on Roll-Up Transactions**

In connection with any proposed transaction considered a "Roll-up Transaction" involving the Wells REIT and the issuance of securities of an entity (a Roll-up Entity) that would be created or would survive after the successful completion of the Roll-up Transaction, an appraisal of all properties shall be obtained from a competent independent appraiser. The properties shall be appraised on a consistent basis, and the appraisal shall be based on the evaluation of all relevant information and shall indicate the value of the properties as of a date immediately prior to the announcement of the proposed Roll-up Transaction. The appraisal shall assume an orderly liquidation of properties over a 12-month period. The terms of the engagement of the independent appraiser shall clearly state that the engagement is for our benefit and the stockholders. A summary of the appraisal, indicating all material assumptions underlying the appraisal, shall be included in a report to stockholders in connection with any proposed Roll-up Transaction.

A "Roll-up Transaction" is a transaction involving the acquisition, merger, conversion or consolidation, directly or indirectly, of the Wells REIT and the issuance of securities of a Roll-up Entity. This term does not include:

- a transaction involving our securities that have been for at least 12 months listed on a national securities exchange or included for quotation on NASDAQ; or
- a transaction involving the conversion to corporate, trust, or association form of only the Wells REIT if, as a consequence of the transaction, there will be no significant adverse change in any of the following: stockholder voting rights; the term of our existence; compensation to Wells Capital; or our investment objectives.

In connection with a proposed Roll-up Transaction, the person sponsoring the Roll-up Transaction must offer to stockholders who vote "no" on the proposal the choice of:

(1) accepting the securities of a Roll-up Entity offered in the proposed Roll-up Transaction; or

(2) one of the following:

(A) remaining as stockholders of the Wells REIT and preserving their interests therein on the same terms and conditions as existed previously, or

(B) receiving cash in an amount equal to the stockholder's pro rata share of the appraised value of our net assets.

We are prohibited from participating in any proposed Roll-up Transaction:

- that would result in the stockholders having democracy rights in a Roll-up Entity that are less than those provided in our bylaws and described elsewhere in this prospectus, including rights with respect to the election and removal of directors, annual reports, annual and special meetings, amendment of our articles of incorporation, and dissolution of the Wells REIT;
- that includes provisions that would operate to materially impede or frustrate the accumulation of shares by any purchaser of the securities of the Roll-up Entity, except to the minimum extent necessary to preserve the tax status of the Roll-up Entity, or which

would limit the ability of an investor to exercise the voting rights of its securities of the Roll-up Entity on the basis of the number of shares held by that investor;

- in which investor's rights to access of records of the Roll-up Entity will be less than those provided in the section of this prospectus entitled "Description of Shares—Meetings and Special Voting Requirements;" or
- in which any of the costs of the Roll-up Transaction would be borne by us if the Roll-up Transaction is not approved by the stockholders.

**Business Combinations**

Maryland Corporation Law prohibits certain business combinations between a Maryland corporation and an interested stockholder or the interested stockholder's affiliate for five years after the most recent date on which the stockholder becomes an interested stockholder. These provisions of the Maryland Corporation Law will not apply, however, to business combinations that are approved or exempted by the board of directors of the corporation prior to the time that the interested stockholder becomes an interested stockholder. As permitted by Maryland Corporation Law, we have provided in our articles of incorporation that the business combination provisions of Maryland Corporation Law will not apply to transactions involving the Wells REIT.

**Control Share Acquisitions**

Maryland Corporation Law provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquiror, or by officers or directors who are employees of the corporation are not entitled to vote on the matter. As permitted by Maryland Corporation Law, we have provided in our articles of incorporation that the control share provisions of Maryland Corporation Law will not apply to transactions involving the Wells REIT.

## THE OPERATING PARTNERSHIP AGREEMENT

**General**

Wells Operating Partnership, L.P. (Wells OP) was formed in January 1998 to acquire, own and operate properties on our behalf. It is considered to be an Umbrella Partnership Real Estate Investment Trust (UPREIT), which is a structure generally utilized to provide for the acquisition of real property from owners who desire to defer taxable gain otherwise required to be recognized by them upon the disposition of their properties. Such owners may also desire to achieve diversity in their investment and other benefits afforded to stockholders in a REIT. For purposes of satisfying the Asset and Income Tests for qualification as a REIT for tax purposes, the REIT's proportionate share of the assets and income of an UPREIT, such as Wells OP, will be deemed to be assets and income of the REIT.

The property owner's goals are accomplished because a property owner may contribute property to an UPREIT in exchange for limited partnership units on a tax-deferred basis. Further, Wells OP is structured to make distributions with respect to limited partnership units which will be equivalent to the dividend distributions made to stockholders of the Wells REIT. Finally, a limited partner in Wells OP may later exchange his limited partnership units in Wells OP for shares of the Wells REIT (in a taxable transaction) and, if our shares are then listed, achieve liquidity for his investment.

Substantially all of our assets are held by Wells OP, and we intend to make future acquisitions of real properties using the UPREIT structure. The Wells REIT is the sole general partner of Wells OP and, as of June 30, 2002, owned an approximately 99.72% equity percentage interest in Wells OP. Wells Capital, our advisor, contributed $200,000 to Wells OP and is currently the only limited partner owning the other approximately 0.28% equity percentage interest in Wells OP. As the sole general partner of Wells OP, we have the exclusive power to manage and conduct the business of Wells OP.

The following is a summary of certain provisions of the partnership agreement of Wells OP. This summary is not complete and is qualified by the specific language in the partnership agreement. You should refer to the partnership agreement, itself, which we have filed as an exhibit to the registration statement, for more detail.

**Capital Contributions**

As we accept subscriptions for shares, we will transfer substantially all of the net proceeds of the offering to Wells OP as a capital contribution; however, we will be deemed to have made capital contributions in the amount of the gross offering proceeds received from investors. Wells OP will be deemed to have simultaneously paid the selling commissions and other costs associated with the offering. If Wells OP requires additional funds at any time in excess of capital contributions made by us and Wells Capital or from borrowing, we may borrow funds from a financial institution or other lender and lend such funds to Wells OP on the same terms and conditions as are applicable to our borrowing of such funds. In addition, we are authorized to cause Wells OP to issue partnership interests for less than fair market value if we conclude in good faith that such issuance is in the best interest of Wells OP and the Wells REIT.

**Operations**

The partnership agreement of Wells OP provides that Wells OP is to be operated in a manner that will (1) enable the Wells REIT to satisfy the requirements for being classified as a REIT for tax purposes, (2) avoid any federal income or excise tax liability, and (3) ensure that Wells OP will not be classified as a "publicly traded partnership" for purposes of Section 7704 of the Internal Revenue Code, which classification could result in Wells OP being taxed as a corporation, rather than as a partnership. (See "Federal Income Tax Considerations—Tax Aspects of Our Operating Partnership—Classification as a Partnership.")

The partnership agreement provides that Wells OP will distribute cash flow from operations to the limited partners of Wells OP in accordance with their relative percentage interests on at least a quarterly basis in amounts determined by the Wells REIT as general partner such that a holder of one unit of limited partnership interest in Wells OP will receive the same amount of annual cash flow distributions from Wells OP as the amount of annual dividends paid to the holder of one of our shares. Remaining cash from operations will be distributed to the Wells REIT as the general partner to enable us to make dividend distributions to our stockholders.

Similarly, the partnership agreement of Wells OP provides that taxable income is allocated to the limited partners of Wells OP in accordance with their relative percentage interests such that a holder of one unit of limited partnership interest in Wells OP will be allocated taxable income for each taxable year in an amount equal to the amount of taxable income to be recognized by a holder of one of our shares, subject to compliance with the provisions of Sections 704(b) and 704(c) of the Internal Revenue Code and corresponding Treasury Regulations. Losses, if any, will generally be allocated among the partners in accordance with their respective percentage interests in Wells OP.

Upon the liquidation of Wells OP, after payment of debts and obligations, any remaining assets of Wells OP will be distributed to partners with positive capital accounts in accordance with their respective positive capital account balances. If the Wells REIT were to have a negative balance in its capital account following a liquidation, it would be obligated to contribute cash to Wells OP equal to such negative balance for distribution to other partners, if any, having positive balances in their capital accounts.

In addition to the administrative and operating costs and expenses incurred by Wells OP in acquiring and operating real properties, Wells OP will pay all administrative costs and expenses of the Wells REIT and such expenses will be treated as expenses of Wells OP. Such expenses will include:

- all expenses relating to the formation and continuity of existence of the Wells REIT;
- all expenses relating to the public offering and registration of securities by the Wells REIT;
- all expenses associated with the preparation and filing of any periodic reports by the Wells REIT under federal, state or local laws or regulations;
- all expenses associated with compliance by the Wells REIT with applicable laws, rules and regulations; and
- all other operating or administrative costs of the Wells REIT incurred in the ordinary course of its business on behalf of Wells OP.

**Exchange Rights**

The limited partners of Wells OP, including Wells Capital, have the right to cause Wells OP to redeem their limited partnership units for cash equal to the value of an equivalent number of our shares, or, at our option, we may purchase their limited partnership units by issuing one share of the Wells REIT for each limited partnership unit redeemed. These exchange rights may not be exercised, however, if and to the extent that the delivery of shares upon such exercise would (1) result in any person owning shares in excess of our ownership limits, (2) result in shares being owned by fewer than 100 persons, (3) result in the Wells REIT being "closely held" within the meaning of Section 856(h) of the Internal Revenue Code, (4) cause the Wells REIT to own 10% or more of the ownership interests in a tenant within the meaning of Section 856(d)(2)(B) of the Internal Revenue Code, or (5) cause the acquisition of shares by a redeemed limited partner to be "integrated" with any other distribution of our shares for purposes of complying with the Securities Act of 1933.

Subject to the foregoing, limited partners may exercise their exchange rights at any time after one year following the date of issuance of their limited partnership units; provided, however, that a limited partner may not deliver more than two exchange notices each calendar year and may not exercise an exchange right for less than 1,000 limited partnership units, unless such limited partner holds less than 1,000 units, in which case, he must exercise his exchange right for all of his units.

**Transferability of Interests**

The Wells REIT may not (1) voluntarily withdraw as the general partner of Wells OP, (2) engage in any merger, consolidation or other business combination, or (3) transfer its general partnership interest in Wells OP (except to a wholly-owned subsidiary), unless the transaction in which such withdrawal, business combination or transfer occurs results in the limited partners receiving or having the right to

receive an amount of cash, securities or other property equal in value to the amount they would have received if they had exercised their exchange rights immediately prior to such transaction or unless, in the case of a merger or other business combination, the successor entity contributes substantially all of its assets to Wells OP in return for an interest in Wells OP and agrees to assume all obligations of the general partner of Wells OP. The Wells REIT may also enter into a business combination or we may transfer our general partnership interest upon the receipt of the consent of a majority-in-interest of the limited partners of Wells OP, other than Wells Capital. With certain exceptions, the limited partners may not transfer their interests in Wells OP, in whole or in part, without the written consent of the Wells REIT as the general partner. In addition, Wells Capital may not transfer its interest in Wells OP as long as it is acting as the advisor to the Wells REIT, except pursuant to the exercise of its right to exchange limited partnership units for Wells REIT shares, in which case similar restrictions on transfer will apply to the REIT shares received by Wells Capital.

## PLAN OF DISTRIBUTION

### General

We are offering a maximum of 300,000,000 shares to the public through Wells Investment Securities, our Dealer Manager, a registered broker-dealer affiliated with Wells Capital, our advisor. (See "Conflicts of Interest.") The shares are being offered at a price of $10.00 per share on a "best efforts" basis, which means generally that the Dealer Manager will be required to use only its best efforts to sell the shares and it has no firm commitment or obligation to purchase any of the shares. We are also offering 30,000,000 shares for sale pursuant to our dividend reinvestment plan at a price of $10.00 per share. We reserve the right in the future to reallocate additional shares to our dividend reinvestment plan out of our public offering shares. An additional 6,600,000 shares are reserved for issuance upon exercise of soliciting dealer warrants, which are granted to participating broker-dealers based upon the number of shares they sell. Therefore, a total of 336,600,000 shares are being registered in this offering.

The offering of shares will terminate on or before July 25, 2004. However, we reserve the right to terminate this offering at any time prior to such termination date.

### Underwriting Compensation and Terms

Except as provided below, the Dealer Manager will receive selling commissions of 7.0% of the gross offering proceeds. The Dealer Manager will also receive 2.5% of the gross offering proceeds in the form of a dealer manager fee as compensation for acting as the Dealer Manager and for expenses incurred in connection with marketing our shares and paying the employment costs of the Dealer Manager's wholesalers. Out of its dealer manager fee, the Dealer Manager may pay salaries and commissions to its wholesalers in the aggregate amount of up to 1.0% of gross offering proceeds. We will not pay referral or similar fees to any accountants, attorneys or other persons in connection with the distribution of the shares. Stockholders who elect to participate in the dividend reinvestment plan will be charged selling commissions and dealer manager fees on shares purchased pursuant to the dividend reinvestment plan on the same basis as stockholders purchasing shares other than pursuant to the dividend reinvestment plan.

The Dealer Manager may authorize certain other broker-dealers who are members of the NASD (Participating Dealers) to sell our shares. In the event of the sale of shares by such Participating Dealers, the Dealer Manager may reallow its commissions in the amount of up to 7.0% of the gross offering proceeds to such Participating Dealers. In addition, the Dealer Manager may reallow a portion of its dealer manager fee to Participating Dealers in the aggregate amount of up to 1.5% of gross offering proceeds to be paid to such Participating Dealers as marketing fees, or to reimburse representatives of such Participating Dealers the costs and expenses of attending our educational conferences and seminars.

In addition, unless otherwise agreed with the Dealer Manager, Participating Dealers will be reimbursed for bona fide due diligence expenses, not to exceed 0.5% of gross offering proceeds in the aggregate.

We will also award to the Dealer Manager one soliciting dealer warrant for every 50 shares sold to the public or issued to stockholders pursuant to our dividend reinvestment plan during the offering period, except for sales of shares made net of commissions, as described below, in which case no warrants will be issued. The Dealer Manager intends to reallow these warrants to Participating Dealers by awarding one soliciting dealer warrant for every 50 shares sold during the offering period, unless such issuance of soliciting dealer warrants is prohibited by either federal or state securities laws. The holder of a soliciting dealer warrant will be entitled to purchase one share from the Wells REIT at a price of $12 per share during the period beginning on the first anniversary of the effective date of this offering and ending five years after the effective date of this offering. Participating Dealers are restricted from transferring, assigning, pledging or hypothecating the soliciting dealer warrants (except to certain officers or partners of such Participating Dealers in accordance with applicable NASD Rules) for a period of one year following the effective date of this offering. The shares issuable upon exercise of the soliciting dealer warrants are being registered as part of this offering. For the life of the soliciting dealer warrants, Participating Dealers are given the opportunity to profit from a rise in the market price for the common stock without assuming the risk of ownership, with a resulting dilution in the interest of other stockholders upon exercise of such warrants. In addition, holders of the soliciting dealer warrants would be expected to exercise such warrants at a time when we could obtain needed capital by offering new securities on terms more favorable than those provided by the soliciting dealer warrants. Exercise of the soliciting dealer warrants is governed by the terms and conditions detailed in this prospectus and in the Warrant Purchase Agreement, which is an exhibit to the registration statement.

In no event shall the total aggregate underwriting compensation, including sales commissions, the dealer manager fee and underwriting expense reimbursements, exceed 9.5% of gross offering proceeds in the aggregate, except for the soliciting dealer warrants described above and bona fide due diligence expenses not to exceed 0.5% of gross offering proceeds in the aggregate.

We have agreed to indemnify the Participating Dealers, including the Dealer Manager, against certain liabilities arising under the Securities Act of 1933, as amended.

The Participating Dealers are not obligated to obtain any subscriptions on our behalf, and we cannot assure you that any shares will be sold.

Our executive officers and directors, as well as officers and employees of Wells Capital or other affiliates, may purchase shares in this offering at a discount. The purchase price for such shares shall be $8.90 per share reflecting the fact that the acquisition and advisory fees relating to such shares will be reduced by $0.15 per share (from $0.30 per share to $0.15 per share), and that selling commissions in the amount of $0.70 per share and dealer manager fees in the amount of $0.25 per share will not be payable in connection with such sales. The net offering proceeds we receive will not be affected by such sales of shares at a discount. Wells Capital and its affiliates shall be expected to hold their shares purchased as stockholders for investment and not with a view towards distribution. In addition, shares purchased by Wells Capital or its affiliates shall not be entitled to vote on any matter presented to the stockholders for a vote.

We may sell shares to retirement plans of Participating Dealers, to Participating Dealers in their individual capacities, to IRAs and qualified plans of their registered representatives or to any one of their registered representatives in their individual capacities for 93% of the public offering price in consideration of the services rendered by such broker-dealers and registered representatives in the offering. The net proceeds to the Wells REIT from such sales made net of commissions will be identical to net proceeds we receive from other sales of shares.

In connection with sales of certain minimum numbers of shares to a "purchaser," as defined below, certain volume discounts resulting in reductions in selling commissions payable with respect to such sales are available to investors. In such event, any such reduction will be credited to the investor by reducing the purchase price per share payable by the investor. The following table illustrates the various discount levels available:

| | | Commissions on Sales per Incremental Share in Volume Discount Range | |
|---|---|---|---|
| Number of Shares Purchased | Purchase Price per Incremental Share in Volume Discount Range | Percentage (based on $10 per share) | Amount |
| 1 to 50,000 | $10.00 | 7.0% | $0.70 |
| 50,001 to 100,000 | $ 9.80 | 5.0% | $0.50 |
| 100,001 and Over | $ 9.60 | 3.0% | $0.30 |

For example, if an investor purchases 200,000 shares he would pay (1) $500,000 for the first 50,000 shares ($10.00 per share), (2) $490,000 for the next 50,000 shares ($9.80 per share), and (3) $960,000 for the remaining 100,000 shares ($9.60 per share). Accordingly, he could pay as little as $1,950,000 ($9.75 per share) rather than $2,000,000 for the shares, in which event the commission on the sale of such shares would be $90,000 ($0.45 per share) and, after payment of the dealer manager fee of $50,000 ($0.25 per share), we would receive net proceeds of $1,810,000 ($9.05 per share). The net proceeds to the Wells REIT will not be affected by volume discounts. Requests to apply the volume discount provisions must be made in writing and submitted simultaneously with your subscription for shares.

Because all investors will be paid the same dividends per share as other investors, an investor qualifying for a volume discount will receive a higher percentage return on his investment than investors who do not qualify for such discount.

Subscriptions may be combined for the purpose of determining the volume discounts in the case of subscriptions made by any "purchaser," as that term is defined below, provided all such shares are purchased through the same broker-dealer. The volume discount shall be prorated among the separate subscribers considered to be a single "purchaser." Any request to combine more than one subscription must be made in writing submitted simultaneously with your subscription for shares, and must set forth the basis for such request. Any such request will be subject to verification by the Dealer Manager that all of such subscriptions were made by a single "purchaser."

For the purposes of such volume discounts, the term "purchaser" includes:

- an individual, his or her spouse and their children under the age of 21 who purchase the units for his, her or their own accounts;
- a corporation, partnership, association, joint-stock company, trust fund or any organized group of persons, whether incorporated or not;
- an employees' trust, pension, profit sharing or other employee benefit plan qualified under Section 401(a) of the Internal Revenue Code; and
- all commingled trust funds maintained by a given bank.

Notwithstanding the above, in connection with volume sales made to investors in the Wells REIT, investors may request in writing to aggregate subscriptions, including subscriptions to public real estate programs previously sponsored by our advisor or its affiliates, as part of a combined order for purposes of determining the number of shares purchased, provided that any aggregate group of subscriptions must be

received from the same Participating Dealer, including the Dealer Manager. Any such reduction in selling commission will be prorated among the separate subscribers. An investor may reduce the amount of his purchase price to the net amount shown in the foregoing table, if applicable. As set forth above, all requests to aggregate subscriptions as a single "purchaser" or other application of the foregoing volume discount provisions must be made in writing, and except as provided in this paragraph, separate subscriptions will not be cumulated, combined or aggregated.

California residents should be aware that volume discounts will not be available in connection with the sale of shares made to California residents to the extent such discounts do not comply with the provisions of Rule 260.140.51 adopted pursuant to the California Corporate Securities Law of 1968. Pursuant to this Rule, volume discounts can be made available to California residents only in accordance with the following conditions:

- there can be no variance in the net proceeds to the Wells REIT from the sale of the shares to different purchasers of the same offering;
- all purchasers of the shares must be informed of the availability of quantity discounts;
- the same volume discounts must be allowed to all purchasers of shares which are part of the offering;
- the minimum amount of shares as to which volume discounts are allowed cannot be less than $10,000;
- the variance in the price of the shares must result solely from a different range of commissions, and all discounts allowed must be based on a uniform scale of commissions; and
- no discounts are allowed to any group of purchasers.

Accordingly, volume discounts for California residents will be available in accordance with the foregoing table of uniform discount levels based on dollar volume of shares purchased, but no discounts are allowed to any group of purchasers, and no subscriptions may be aggregated as part of a combined order for purposes of determining the number of shares purchased.

Investors may agree with their broker-dealer to reduce the amount of selling commissions payable with respect to the sale of their shares down to zero (1) in the event that the investor has engaged the services of a registered investment advisor or other financial advisor with whom the investor has agreed to pay compensation for investment advisory services or other financial or investment advice, or (2) in the event that the investor is investing in a bank trust account with respect to which the investor has delegated the decision-making authority for investments made in the account to a bank trust department. The net proceeds to the Wells REIT will not be affected by reducing the commissions payable in connection with such transactions.

Neither the Dealer Manager nor its affiliates will compensate any person engaged as an investment advisor by a potential investor as an inducement for such investment advisor to advise favorably for an investment in the Wells REIT.

In addition, subscribers for shares may agree with their Participating Dealers and the Dealer Manager to have selling commissions due with respect to the purchase of their shares paid over a six-year period pursuant to a deferred commission arrangement. Stockholders electing the deferred commission option will be required to pay a total of $9.40 per share purchased upon subscription, rather than $10.00 per share, with respect to which $0.10 per share will be payable as commissions due upon subscription. For the period of six years following subscription, $0.10 per share will be deducted on an annual basis

from dividends or other cash distributions otherwise payable to the stockholders and used by the Wells REIT to pay deferred commission obligations. The net proceeds to the Wells REIT will not be affected by the election of the deferred commission option. Under this arrangement, a stockholder electing the deferred commission option will pay a 1% commission upon subscription, rather than a 7% commission, and an amount equal to a 1% commission per year thereafter for the next six years, or longer if required to satisfy outstanding deferred commission obligations, will be deducted from dividends or other cash distributions otherwise payable to such stockholder and used by the Wells REIT to satisfy commission obligations. The foregoing commission amounts may be adjusted with approval of the Dealer Manager by application of the volume discount provisions described previously.

Stockholders electing the deferred commission option who are subject to federal income taxation will incur tax liability for dividends or other cash distributions otherwise payable to them with respect to their shares even though such dividends or other cash distributions will be withheld from such stockholders and will instead be paid to third parties to satisfy commission obligations.

Investors who wish to elect the deferred commission option should make the election on their Subscription Agreement Signature Page. Election of the deferred commission option shall authorize the Wells REIT to withhold dividends or other cash distributions otherwise payable to such stockholder for the purpose of paying commissions due under the deferred commission option; provided, however, that in no event may the Wells REIT withhold in excess of $0.60 per share in the aggregate under the deferred commission option. Such dividends or cash distributions otherwise payable to stockholders may be pledged by the Wells REIT, the Dealer Manager, Wells Capital or their affiliates to secure one or more loans, the proceeds of which would be used to satisfy sales commission obligations.

In the event that, at any time prior to the satisfaction of our remaining deferred commission obligations, listing of the shares occurs or is reasonably anticipated to occur, or we begin a liquidation of our properties, the remaining commissions due under the deferred commission option may be accelerated by the Wells REIT. In either such event, we shall provide notice of any such acceleration to stockholders who have elected the deferred commission option. In the event of listing, the amount of the remaining commissions due shall be deducted and paid by the Wells REIT out of dividends or other cash distributions otherwise payable to such stockholders during the time period prior to listing. To the extent that the distributions during such time period are insufficient to satisfy the remaining commissions due, the obligation of Wells REIT and our stockholders to make any further payments of deferred commissions under the deferred commission option shall terminate, and Participating Dealers will not be entitled to receive any further portion of their deferred commissions following listing of our shares. In the event of a liquidation of our properties, the amount of remaining commissions due shall be deducted and paid by the Wells REIT out of dividends or net sale proceeds otherwise payable to stockholders who are subject to any such acceleration of their deferred commission obligations. In no event may the Wells REIT withhold in excess of $0.60 per share in the aggregate for the payment of deferred commissions.

**Subscription Procedures**

You should pay for your shares by check payable to “Wells Real Estate Investment Trust, Inc.” Subscriptions will be effective only upon our acceptance, and we reserve the right to reject any subscription in whole or in part. We may not accept a subscription for shares until at least five business days after the date you receive this prospectus. You will receive a confirmation of your purchase. We will initially deposit the subscription proceeds in an interest-bearing account with Bank of America, N.A., Atlanta, Georgia. Subscribers may not withdraw funds from the account. We will withdraw funds from the account periodically for the acquisition of real estate properties, the payment of fees and expenses or other investments approved by our board of directors. We generally admit stockholders to the Wells REIT on a daily basis.

Except for purchases pursuant to our dividend reinvestment plan or reinvestment plans of other public real estate programs, all accepted subscriptions will be for whole shares and for not less than 100 shares ($1,000). (See "Suitability Standards.") Except in Maine, Minnesota, Nebraska and Washington, investors who have satisfied the minimum purchase requirement and have purchased units or shares in Wells programs or units or shares in other public real estate programs may purchase less than the minimum number of shares discussed above, provided that such investors purchase a minimum of 2.5 shares ($25). After investors have satisfied the minimum purchase requirement, minimum additional purchases must be in increments of at least 2.5 shares ($25), except for purchases made pursuant to our dividend reinvestment plan or reinvestment plans of other public real estate programs.

Investors who desire to establish an IRA for purposes of investing in shares may do so by having Wells Advisors, Inc., a qualified non-bank IRA custodian affiliated with our advisor, act as their IRA custodian. In the event that an IRA is established having Wells Advisors, Inc. as the IRA custodian, the authority of Wells Advisors, Inc. will be limited to holding the shares on behalf of the beneficiary of the IRA and making distributions or reinvestments in shares solely at the discretion of the beneficiary of the IRA. Wells Advisors, Inc. will not have the authority to vote any of the shares held in an IRA except strictly in accordance with the written instructions of the beneficiary of the IRA.

The proceeds of this offering will be used only for the purposes set forth in the "Estimated Use of Proceeds" section. Subscriptions will be accepted or rejected within 30 days of receipt by the Wells REIT and, if rejected, all funds shall be returned to the rejected subscribers within 10 business days.

The Dealer Manager and each Participating Dealer who sells shares on behalf of the Wells REIT have the responsibility to make every reasonable effort to determine that the purchase of shares is appropriate for the investor and that the requisite suitability standards are met. (See "Suitability Standards.") In making this determination, the Participating Dealer will rely on relevant information provided by the investor, including information as to the investor's age, investment objectives, investment experience, income, net worth, financial situation, other investments, and other pertinent information. Each investor should be aware that the Participating Dealer will be responsible for determining suitability.

The Dealer Manager or each Participating Dealer shall maintain records of the information used to determine that an investment in shares is suitable and appropriate for an investor. These records are required to be maintained for a period of at least six years.

## SUPPLEMENTAL SALES MATERIAL

In addition to this prospectus, we may utilize certain sales material in connection with the offering of the shares, although only when accompanied by or preceded by the delivery of this prospectus. In certain jurisdictions, some or all of such sales material may not be available. This material may include information relating to this offering, the past performance of Wells Capital, our advisor, and its affiliates, property brochures and articles and publications concerning real estate. In addition, the sales material may contain certain quotes from various publications without obtaining the consent of the author or the publication for use of the quoted material in the sales material.

The offering of shares is made only by means of this prospectus. Although the information contained in such sales material will not conflict with any of the information contained in this prospectus, such material does not purport to be complete, and should not be considered a part of this prospectus or the registration statement of which this prospectus is a part, or as incorporated by reference in this prospectus or said registration statement or as forming the basis of the offering of the shares.

## LEGAL OPINIONS

The legality of the shares being offered hereby has been passed upon for the Wells REIT by Holland & Knight LLP (Holland & Knight). The statements under the caption "Federal Income Tax Consequences" as they relate to federal income tax matters have been reviewed by Holland & Knight, and Holland & Knight has opined as to certain income tax matters relating to an investment in shares of the Wells REIT. Holland & Knight has also represented Wells Capital, our advisor, as well as various other affiliates of Wells Capital, in other matters and may continue to do so in the future. (See "Conflicts of Interest.")

## EXPERTS

### Changes in Principal Accountant

On May 8, 2002, the audit committee of our board of directors recommended to the board of directors the dismissal of Arthur Andersen LLP (Andersen) as our independent public accountants, and our board of directors approved the dismissal of Andersen as our independent public accountants; effective immediately.

Andersen's reports on the consolidated financial statements of the Wells REIT for the years ended December 31, 2001 and December 31, 2000 did not contain an adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles.

During the fiscal years ended December 31, 2001 and December 31, 2000, and through the date of Andersen's dismissal, there were no disagreements with Andersen on any matter of accounting principle or practice, financial statement disclosure, or auditing scope or procedure which, if not resolved to Andersen's satisfaction, would have caused Andersen to make reference to the subject matter in connection with its report on the consolidated financial statements of the Wells REIT for such years and there were no reportable events as set forth in Item 304(a)(1)(v) of Regulation S-K.

On June 26, 2002, our board of directors approved the recommendation of the audit committee to engage Ernst & Young LLP (Ernst & Young) to audit the financial statements of the Wells REIT, effective immediately. During the fiscal years ended December 31, 2001 and December 31, 2000, and through the date hereof, the Wells REIT did not consult Ernst & Young with respect to the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the consolidated financial statements of the Wells REIT, or any other matters or reportable events as set forth in Items 304(a)(2)(i) and (ii) of Regulation S-K.

### Audited Financial Statements

The financial statements of the Wells REIT, as of December 31, 2001 and 2000, and for each of the years in the three-year period ended December 31, 2001, included in this prospectus and elsewhere in the registration statement, have been audited by Andersen, independent public accountants, as indicated in their report with respect thereto, and are included in this prospectus in reliance upon the authority of said firm as experts in giving said report.

In June 2002, Andersen was tried and convicted of federal obstruction of justice charges. Events arising out of the conviction or other events relating to the financial condition of Andersen may adversely affect the ability of Andersen to satisfy any potential claims that may arise out of Andersen's audits of the financial statements contained in this prospectus. In addition, Andersen has notified us that it will no longer be able to provide us with the necessary consents related to previously audited financial statements

contained in our prospectus. Our inability to obtain such consents may also adversely affect your ability to pursue potential claims against Andersen. (See "Risk Factors.")

**Unaudited Financial Statements**

The Schedule III—Real Estate Investments and Accumulated Depreciation as of December 31, 2001, which is included in this prospectus, has not been audited.

The financial statements of the Wells REIT, as of March 31, 2002, and for the three month periods ended March 31, 2002 and March 31, 2001, which are included in this prospectus, have not been audited.

## ADDITIONAL INFORMATION

We have filed with the Securities and Exchange Commission (Commission), Washington, D.C., a registration statement under the Securities Act of 1933, as amended, with respect to the shares offered pursuant to this prospectus. This prospectus does not contain all the information set forth in the registration statement and the exhibits related thereto filed with the Commission, reference to which is hereby made. Copies of the registration statement and exhibits related thereto, as well as periodic reports and information filed by the Wells REIT, may be obtained upon payment of the fees prescribed by the Commission, or may be examined at the offices of the Commission without charge, at the public reference facility in Washington, D.C. at Judiciary Plaza, Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549. In addition, the Commission maintains a Web site at http://www.sec.gov that contains reports, proxy and information statements and other information regarding registrants that file electronically with the Commission.

## GLOSSARY

The following are definitions of certain terms used in this prospectus and not otherwise defined in this prospectus:

**"IRA"** means an individual retirement account established pursuant to Section 408 or Section 408A of the Internal Revenue Code.

**"NASAA Guidelines"** means the Statement of Policy Regarding Real Estate Investment Trusts of the North American Securities Administrators Association, Inc., as revised and adopted on September 29, 1993.

**"UBTI"** means unrelated business taxable income, as that term is defined in Sections 511 through 514 of the Internal Revenue Code.

## INDEX TO FINANCIAL STATEMENTS AND PRIOR PERFORMANCE TABLES

## REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To Wells Real Estate Investment Trust, Inc.:

We have audited the accompanying consolidated balance sheets of **WELLS REAL ESTATE INVESTMENT TRUST, INC.** (a Maryland corporation) **AND SUBSIDIARY** as of December 31, 2001 and 2000 and the related consolidated statements of income, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2001. These financial statements and the schedule referred to below are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements and schedule are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wells Real Estate Investment Trust, Inc. and subsidiary as of December 31, 2001 and 2000 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2001 in conformity with accounting principles generally accepted in the United States.

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. Schedule III—Real Estate Investments and Accumulated Depreciation as of December 31, 2001 is presented for purposes of complying with the Securities and Exchange Commission's rules and is not part of the basic financial statements. This schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, fairly states, in all material respects, the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

ARTHUR ANDERSEN LLP

Atlanta, Georgia
January 25, 2002

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**CONSOLIDATED BALANCE SHEETS**
**December 31, 2001 and 2000**

| | 2001 | 2000 |
|---|---|---|
| **ASSETS** | | |
| **REAL ESTATE ASSETS, at cost:** | | |
| Land | **$ 86,246,985** | $ 46,237,812 |
| Building, less accumulated depreciation of $24,814,454 and $9,469,653 at December 31, 2001 and 2000, respectively | **472,383,102** | 287,862,655 |
| Construction in progress | **5,738,573** | 3,357,720 |
| Total real estate assets | **564,368,660** | 337,458,187 |
| **INVESTMENT IN JOINT VENTURES** | **77,409,980** | 44,236,597 |
| **CASH AND CASH EQUIVALENTS** | **75,586,168** | 4,298,301 |
| **INVESTMENT IN BONDS** | **22,000,000** | 0 |
| **ACCOUNTS RECEIVABLE** | **6,003,179** | 3,781,034 |
| **DEFERRED PROJECT COSTS** | **2,977,110** | 550,256 |
| **DUE FROM AFFILIATES** | **1,692,727** | 309,680 |
| **DEFERRED LEASE ACQUISITION COSTS** | **1,525,199** | 1,890,332 |
| **DEFERRED OFFERING COSTS** | **0** | 1,291,376 |
| **PREPAID EXPENSES AND OTHER ASSETS, net** | **718,389** | 4,734,583 |
| Total assets | **$ 752,281,412** | $ 398,550,346 |
| **LIABILITIES AND SHAREHOLDERS' EQUITY** | | |
| **LIABILITIES:** | | |
| Notes payable | **$ 8,124,444** | **$ 127,663,187** |
| Obligation under capital lease | **22,000,000** | **0** |
| Accounts payable and accrued expenses | **8,727,473** | **2,166,387** |
| Due to affiliate | **2,166,161** | **1,772,956** |
| Dividends payable | **1,059,026** | **1,025,010** |
| Deferred rental income | **661,657** | **381,194** |
| Total liabilities | **$ 42,738,761** | **$ 133,008,734** |
| **COMMITMENTS AND CONTINGENCIES** | | |
| **MINORITY INTEREST OF UNIT HOLDER IN OPERATING PARTNERSHIP** | **200,000** | **200,000** |
| **SHAREHOLDERS' EQUITY:** | | |
| Common shares, $.01 par value; 125,000,000 shares authorized, 83,761,469 shares issued and 83,206,429 shares outstanding at December 31, 2001; 125,000,000 shares authorized, 31,509,807 shares issued, and 31,368,510 shares outstanding at December 31, 2000 | **837,614** | **315,097** |
| Additional paid–in capital | **738,236,525** | **275,573,339** |
| Cumulative distributions in excess of earnings | **(24,181,092)** | **(9,133,855)** |
| Treasury stock, at cost, 555,040 shares at December 31, 2001 and 141,297 shares at December 31, 2000 | **(5,550,396)** | **(1,412,969)** |
| Total shareholders' equity | **709,342,651** | **265,341,612** |
| Total liabilities and shareholders' equity | **$ 752,281,412** | **$ 398,550,346** |

The accompanying notes are an integral part of these consolidated balance sheets.

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**CONSOLIDATED STATEMENTS OF INCOME**
**For the years ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| **REVENUES:** | | | |
| Rental income | **$ 44,204,279** | $ 20,505,000 | $ 4,735,184 |
| Equity in income of joint ventures | **3,720,959** | 2,293,873 | 1,243,969 |
| Take out fee (Note 9) | **137,500** | 0 | 0 |
| Interest and other income | **1,246,064** | 574,333 | 516,242 |
| | **49,308,802** | 23,373,206 | 6,495,395 |
| **EXPENSES:** | | | |
| Depreciation | **15,344,801** | 7,743,551 | 1,726,103 |
| Interest expense | **3,411,210** | 3,966,902 | 442,029 |
| Amortization of deferred financing costs | **770,192** | 232,559 | 8,921 |
| Operating costs, net of reimbursements | **4,128,883** | 888,091 | (74,666) |
| Management and leasing fees | **2,507,188** | 1,309,974 | 257,744 |
| General and administrative | **973,785** | 438,953 | 135,144 |
| Legal and accounting | **448,776** | 240,209 | 115,471 |
| | **27,584,835** | 14,820,239 | 2,610,746 |
| **NET INCOME** | **$ 21,723,967** | $ 8,552,967 | $ 3,884,649 |
| **EARNINGS PER SHARE:** | | | |
| Basic and diluted | **$ 0.43** | $ 0.40 | $ 0.50 |

The accompanying notes are an integral part of these consolidated statements.

## WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY

## CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
### For the years ended December 31, 2001, 2000, and 1999

| | Common Stock | | Additional Paid-In Capital | Cumulative Distributions in Excess of Earnings | Retained Earnings | Treasury Stock | | Total Shareholders' Equity |
|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | | | | Shares | Amount | |
| **BALANCE, December 31, 1998** | 3,154,136 | $ 31,541 | $ 27,567,275 | $ (511,163) | $ 334,034 | 0 | $ 0 | $ 27,421,687 |
| Issuance of common stock | 10,316,949 | 103,169 | 103,066,321 | 0 | 0 | 0 | 0 | 103,169,490 |
| Net income | 0 | 0 | 0 | 0 | 3,884,649 | 0 | 0 | 3,884,649 |
| Dividends ($.70 per share) | 0 | 0 | 0 | (1,346,240) | (4,218,683) | 0 | 0 | (5,564,923) |
| Sales commissions and discounts | 0 | 0 | (9,801,197) | 0 | 0 | 0 | 0 | (9,801,197) |
| Other offering expenses | 0 | 0 | (3,094,111) | 0 | 0 | 0 | 0 | (3,094,111) |
| **BALANCE, December 31, 1999** | 13,471,085 | 134,710 | 117,738,288 | (1,857,403) | 0 | 0 | 0 | 116,015,595 |
| Issuance of common stock | 18,038,722 | 180,387 | 180,206,833 | 0 | 0 | 0 | 0 | 180,387,220 |
| Treasury stock purchased | 0 | 0 | 0 | 0 | 0 | (141,297) | (1,412,969) | (1,412,969) |
| Net income | 0 | 0 | 0 | 0 | 8,552,967 | 0 | 0 | 8,552,967 |
| Dividends ($.73 per share) | 0 | 0 | 0 | (7,276,452) | (8,552,967) | 0 | 0 | (15,829,419) |
| Sales commissions and discounts | 0 | 0 | (17,002,554) | 0 | 0 | 0 | 0 | (17,002,554) |
| Other offering expenses | 0 | 0 | (5,369,228) | 0 | 0 | 0 | 0 | (5,369,228) |
| **BALANCE, December 31, 2000** | 31,509,807 | 315,097 | 275,573,339 | (9,133,855) | 0 | (141,297) | (1,412,969) | 265,341,612 |
| **Issuance of common stock** | **52,251,662** | **522,517** | **521,994,103** | **0** | **0** | **0** | **0** | **522,516,620** |
| **Treasury stock purchased** | **0** | **0** | **0** | **0** | **0** | **(413,743)** | **(4,137,427)** | **(4,137,427)** |
| **Net income** | **0** | **0** | **0** | **0** | **21,723,967** | **0** | **0** | **21,723,967** |
| **Dvidends ($.76 per share)** | **0** | **0** | **0** | **(15,047,237)** | **(21,723,967)** | **0** | **0** | **(36,771,204)** |
| **Sales commissions and discounts** | **0** | **0** | **(49,246,118)** | **0** | **0** | **0** | **0** | **(49,246,118)** |
| **Other offering expenses** | **0** | **0** | **(10,084,799)** | | **0** | **0** | **0** | **(10,084,799)** |
| **BALANCE, December 31, 2001** | **83,761,469** | **$837,614** | **$ 738,236,525** | **$ (24,181,092)** | **$ 0** | **(555,040)** | **$(5,550,396)** | **$ 709,342,651** |

The accompanying notes are an integral part of these consolidated statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**For The Years Ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| **CASH FLOWS FROM OPERATING ACTIVITIES:** | | | |
| Net income | **$ 21,723,967** | $ 8,552,967 | $ 3,884,649 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Equity in income of joint ventures | **(3,720,959)** | (2,293,873) | (1,243,969) |
| Depreciation | **15,344,801** | 7,743,551 | 1,726,103 |
| Amortization of deferred financing costs | **770,192** | 232,559 | 8,921 |
| Amortization of deferred leasing costs | **303,347** | 350,991 | 0 |
| Write-off of deferred lease acquisition fees | **61,786** | 0 | 0 |
| Changes in assets and liabilities: | | | |
| Accounts receivable | **(2,222,145)** | (2,457,724) | (898,704) |
| Due from affiliates | **10,995** | (435,600) | 0 |
| Prepaid expenses and other assets, net | **3,246,002** | (6,826,568) | 149,501 |
| Accounts payable and accrued expenses | **6,561,086** | 1,941,666 | 36,894 |
| Deferred rental income | **280,463** | 144,615 | 236,579 |
| Due to affiliates | **(10,193)** | 367,055 | 108,301 |
| Total adjustments | **20,625,375** | (1,233,328) | 123,626 |
| Net cash provided by operating activities | **42,349,342** | 7,319,639 | 4,008,275 |
| **CASH FLOWS FROM INVESTING ACTIVITIES:** | | | |
| Investment in real estate | **(227,933,858)** | (231,518,138) | (85,514,506) |
| Investment in joint ventures | **(33,690,862)** | (15,063,625) | (17,641,211) |
| Deferred project costs paid | **(17,220,446)** | (6,264,098) | (3,610,967) |
| Distributions received from joint ventures | **4,239,431** | 3,529,401 | 1,371,728 |
| Net cash used in investing activities | **(274,605,735)** | (249,316,460) | (105,394,956) |
| **CASH FLOWS FROM FINANCING ACTIVITIES:** | | | |
| Proceeds from notes payable | **110,243,145** | 187,633,130 | 40,594,463 |
| Repayments of notes payable | **(229,781,888)** | (83,899,171) | (30,725,165) |
| Dividends paid to shareholders | **(36,737,188)** | (16,971,110) | (3,806,398) |
| Issuance of common stock | **522,516,620** | 180,387,220 | 103,169,490 |
| Treasury stock purchased | **(4,137,427)** | (1,412,969) | 0 |
| Sales commissions paid | **(49,246,118)** | (17,002,554) | (9,801,197) |
| Offering costs paid | **(9,312,884)** | (5,369,228) | (3,094,111) |
| Net cash provided by financing activities | **303,544,260** | 243,365,318 | 96,337,082 |
| **NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS** | **71,287,867** | 1,368,497 | (5,049,599) |
| **CASH AND CASH EQUIVALENTS, beginning of year** | **4,298,301** | 2,929,804 | 7,979,403 |
| **CASH AND CASH EQUIVALENTS, end of year** | **$ 75,586,168** | $ 4,298,301 | $ 2,929,804 |
| **SUPPLEMENTAL DISCLOSURES OF NONCASH ACTIVITI ES:** | | | |
| Deferred project costs applied to real estate assets | **$ 14,321,416** | $ 5,114,279 | $ 3,183,239 |
| Deferred project costs contributed to joint ventures | **$ 1,395,035** | $ 627,656 | $ 735,056 |
| Deferred project costs due to affiliate | **$ 1,114,140** | $ 191,281 | $ 191,783 |
| Deferred offering costs due to affiliate | **$ 0** | $ 1,291,376 | $ 964,941 |
| Reversal of deferred offering costs due to affiliate | **$ 964,941** | $ 0 | $ 0 |
| Other offering expenses due to affiliate | **$ 943,107** | $ 0 | $ 0 |
| Assumption of obligation under capital lease | **$ 22,000,000** | $ 0 | $ 0 |
| Investment in bonds | **$ 22,000,000** | $ 0 | $ 0 |

The accompanying notes are an integral part of these consolidated statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**
**December 31, 2001, 2000, and 1999**

## 1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Wells Real Estate Investment Trust, Inc. (the "Company") is a Maryland corporation that qualifies as a real estate investment trust ("REIT"). The Company is conducting an offering for the sale of a maximum of 125,000,000 (exclusive of 10,000,000 shares available pursuant to the Company's dividend reinvestment program) shares of common stock, $.01 par value per share, at a price of $10 per share. The Company will seek to acquire and operate commercial properties, including, but not limited to, office buildings, shopping centers, business and industrial parks, and other commercial and industrial properties, including properties which are under construction, are newly constructed, or have been constructed and have operating histories. All such properties may be acquired, developed, and operated by the Company alone or jointly with another party. The Company is likely to enter into one or more joint ventures with affiliated entities for the acquisition of properties. In connection therewith, the Company may enter into joint ventures for the acquisition of properties with prior or future real estate limited partnership programs sponsored by Wells Capital, Inc. (the "Advisor") or its affiliates.

Substantially all of the Company's business is conducted through Wells Operating Partnership, L.P. (the "Operating Partnership"), a Delaware limited partnership. During 1997, the Operating Partnership issued 20,000 limited partner units to the Advisor in exchange for $200,000. The Company is the sole general partner in the Operating Partnership and possesses full legal control and authority over the operations of the Operating Partnership; consequently, the accompanying consolidated financial statements of the Company include the accounts of the Operating Partnership. All significant intercompany balances have been eliminated in consolidation.

The Company owns interests in the following properties directly through its ownership in the Operating Partnership: (i) the PricewaterhouseCoopers property (the "PwC Building"), a four-story office building located in Tampa, Florida; (ii) the AT&T Building, a four-story office building located in Harrisburg, Pennsylvania; (iii) the Marconi Data Systems property (the "Marconi Building"), a two-story office, assembly, and manufacturing building located in Wood Dale, Illinois; (iv) the Cinemark Property (the "Cinemark Building"), a five-story office building located in Plano, Texas; (v) the Matsushita Property (the "Matsushita Building"), a two-story office building located in Lake Forest, California; (vi) the ASML Property (the "ASML Building"), a two-story office and warehouse building located in Tempe, Arizona; (vii) the Motorola Property (the "Motorola Tempe Building"), a two-story office building located in Tempe, Arizona; (viii) the Dial Property (the "Dial Building"), a two-story office building located in Scottsdale, Arizona; (ix) the Delphi Building, a three-story office building located in Troy, Michigan; (x) the Avnet Property (the "Avnet Building"), a two-story office building located in Tempe, Arizona; (xi) the Metris Oklahoma Building, a three-story office building located in Tulsa, Oklahoma; (xii) the Alstom Power-Richmond Building, a four-story office building located in Richmond, Virginia; (xiii) the Motorola Plainfield Building, a three-story office building located in South Plainfield, New Jersey; (xiv) the Stone & Webster Building, a six-story office building located in Houston, Texas; (xv) the Metris Minnetonka Building, a nine-story office building located in Minnetonka, Minnesota; (xvi) the State Street Bank Building, a seven-story office building located in Quincy, Massachusetts; (xvii) the IKON Buildings, two one-story office buildings located in Houston, Texas; (xviii) the Ingram Micro Distribution Facility, a one-story office and warehouse building located in Millington, Tennessee; (xix) the Lucent Building, a four-story office building located in Cary, North Carolina; (xx) the Nissan land (the "Nissan Property"), a 14.873 acre tract of undeveloped land located in Irving, Texas; (xxi) the Convergys Building, a two-story office building located in Tamarac, Florida; and (xxii) the Windy Point Buildings, a seven-story office building and an eleven-story office building located in Schaumburg, Illinois.

The Company owns an interest in one property through a joint venture between the Operating Partnership, Wells Real Estate Fund VIII, L.P. ("Wells Fund VIII"), and Wells Real Estate Fund IX, L.P. ("Wells Fund IX"), which is referred

to as the Fund VIII, IX, and REIT Joint Venture. The Company also owns interests in five properties through a joint venture between the Operating Partnership, Wells Fund IX, Wells Real Estate Fund X, L.P. ("Wells Fund X"), and Wells Real Estate Fund XI, L.P. ("Wells Fund XI"), which is referred to as the Fund IX, Fund X, Fund XI, and REIT Joint Venture. The Company owns an interest in one property through each of two unique joint ventures between the Operating Partnership and Fund X and XI Associates, a joint venture between Wells Fund X and Wells Fund XI. In addition, the Company owns interests in four properties through a joint venture between the Operating Partnership, Wells Fund XI, and Wells Real Estate Fund XII, L.P. ("Wells Fund XII"), which is referred to as the Fund XI, XII, and REIT Joint Venture. The Company owns interests in three properties through a joint venture between the Operating Partnership and Wells Fund XII, which is referred to as the Fund XII and REIT Joint Venture. The Company also owns interests in two properties through a joint venture between the Operating Partnership and Wells Fund XIII, which is referred to as the Fund XIII and REIT Joint Venture.

Through its investment in the Fund VIII, IX, and REIT Joint Venture, the Company owns an interest in a two-story office building in Irvine, California (the "Quest Building").

The following properties are owned by the Company through its investment in the Fund IX, X, XI, and REIT Joint Venture: (i) a three-story office building in Knoxville, Tennessee (the "Alstom Power Building"), (ii) a two-story office building in Louisville, Colorado (the "Ohmeda Building"), (iii) a three-story office building in Broomfield, Colorado (the "360 Interlocken Building"), (iv) a one-story office and warehouse building in Ogden, Utah (the "Iomega Building"), and (v) a one-story office building in Oklahoma City, Oklahoma (the "Avaya Building").

Through its investment in two joint ventures with Fund X and XI Associates, the Company owns interests in the following properties: (i) a one-story office and warehouse building in Fountain Valley, California (the "Cort Furniture Building"), owned by Wells/Orange County Associates and (ii) a two-story manufacturing and office building in Fremont, California (the "Fairchild Building"), owned by Wells/Fremont Associates.

The following properties are owned by the Company through its investment in the Fund XI, XII, and REIT Joint Venture: (i) a two-story manufacturing and office building in Fountain Inn, South Carolina (the "EYBL CarTex Building"), (ii) a three-story office building Leawood, Kansas (the "Sprint Building"), (iii) an office and warehouse building in Chester County, Pennsylvania (the "Johnson Matthey Building"), and (iv) a two-story office building in Ft. Myers, Florida (the "Gartner Building").

Through its investment in the Fund XII and REIT Joint Venture, the Company owns interests in the following properties: (i) a three-story office building in Troy, Michigan (the "Siemens Building"), (ii) a one-story office building and a two-story office building in Oklahoma City, Oklahoma (collectively referred to as the "AT&T Call Center Buildings"), and (iii) a three-story office building in Brentwood, Tennessee (the "Comdata Building").

The following properties are owned by the Company through its investment in the Fund XIII and REIT Joint Venture: (i) a one-story office building in Orange Park, Florida (the "AmeriCredit Building"), and (ii) two connected one-story office and assembly buildings in Parker, Colorado (the "ADIC Buildings").

**Use of Estimates and Factors Affecting the Company**

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The carrying values of real estate are based on management's current intent to hold the real estate assets as long-term investments. The success of the Company's future operations and the ability to realize the investment in its assets will be dependent on the Company's ability to maintain rental rates, occupancy, and an appropriate level of operating expenses in future years. Management believes that the steps it is taking will enable the Company to realize its investment in its assets.

**Income Taxes**

The Company has elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended. To qualify as a REIT, the Company must meet a number of organizational and operational requirements, including a requirement to currently distribute at least 90% of the REIT's ordinary taxable income to shareholders. It is management's current intention to adhere to these requirements and maintain the Company's REIT status. As a REIT, the Company generally will not be subject to federal income tax on distributed taxable income. Even if the Company qualifies as a REIT, it may be subject to certain state and local taxes on its income and real estate assets, and to federal income and excise taxes on its undistributed taxable income. No provision for federal income taxes has been made in the accompanying consolidated financial statements, as the Company made distributions equal to or in excess of its taxable income in each of the three years in the period ended December 31, 2001.

**Real Estate Assets**

Real estate assets held by the Company and joint ventures are stated at cost less accumulated depreciation. Major improvements and betterments are capitalized when they extend the useful life of the related asset. All repair and maintenance expenditures are expensed as incurred.

Management continually monitors events and changes in circumstances which could indicate that carrying amounts of real estate assets may not be recoverable. When events or changes in circumstances are present which indicate that the carrying amounts of real estate assets may not be recoverable, management assesses the recoverability of real estate assets by determining whether the carrying value of such real estate assets will be recovered through the future cash flows expected from the use of the asset and its eventual disposition. Management has determined that there has been no impairment in the carrying value of real estate assets held by the Company or the joint ventures as of December 31, 2001 and 2000.

Depreciation of building and improvements is calculated using the straight-line method over 25 years. Tenant improvements are amortized over the life of the related lease or the life of the asset, whichever is shorter.

**Revenue Recognition**

All leases on real estate assets held by the Company or the joint ventures are classified as operating leases, and the related rental income is recognized on a straight-ine basis over the terms of the respective leases.

**Cash and Cash Equivalents**

For the purposes of the statements of cash flows, the Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. Cash equivalents include cash and short-term investments. Short-term investments are stated at cost, which approximates fair value, and consist of investments in money market accounts.

**Deferred Lease Acquisition Costs**

Costs incurred to procure operating leases are capitalized and amortized on a straight-line basis over the terms of the related leases.

**Earnings Per Share**

Earnings per share are calculated based on the weighted average number of common shares outstanding during each period. The weighted average number of common shares outstanding is identical for basic and fully diluted earnings per share, as there is no dilutive impact created from the Company's stock option plan (Note 10) using the treasury stock method.

**Reclassifications**

Certain prior year amounts have been reclassified to conform with the current year financial statement presentation.

**Investment in Joint Ventures**

*Basis of Presentation*

The Operating Partnership does not have control over the operations of the joint ventures; however, it does exercise significant influence. Accordingly, the Operating Partnership's investments in joint ventures are recorded using the equity method of accounting.

*Partners' Distributions and Allocations of Profit and Loss*

Cash available for distribution and allocations of profit and loss to the Operating Partnership by the joint ventures are made in accordance with the terms of the individual joint venture agreements. Generally, these items are allocated in proportion to the partners' respective ownership interests. Cash is paid from the joint ventures to the Operating Partnership on a quarterly basis.

*Deferred Lease Acquisition Costs*

Costs incurred to procure operating leases are capitalized and amortized on a straight-line basis over the terms of the related leases. Deferred lease acquisition costs are included in prepaid expenses and other assets, net, in the balance sheets presented in Note 5.

**2. DEFERRED PROJECT COSTS**

The Company paid a percentage of shareholder contributions to the Advisor for acquisition and advisory services and acquisition expenses. These payments, as stipulated in the prospectus, can be up to 3.5% of shareholder contributions, subject to certain overall limitations contained in the prospectus. Aggregate fees paid through December 31, 2001 were $29,122,286 and amounted to 3.5% of shareholders' contributions received. These fees are allocated to specific properties as they are purchased or developed and are included in capitalized assets of the joint ventures or real estate assets. Deferred project costs at December 31, 2001 and 2000 represent fees not yet applied to properties.

**3. DEFERRED OFFERING COSTS**

Offering expenses, to the extent they exceed 3% of gross offering proceeds, will be paid by the Advisor and not by the Company. Offering expenses include such costs as legal and accounting fees, printing costs, and other offering expenses and specifically exclude sales costs and underwriting commissions.

As of December 31, 2001, the Advisor paid offering expenses on behalf of the Company in the aggregate amount of $20,459,289, of which the Advisor had been reimbursed $18,551,241, which did not exceed the 3% limitation.

**4. RELATED-PARTY TRANSACTIONS**

Due from affiliates at December 31, 2001 and 2000 represents the Operating Partnership's share of the cash to be distributed from its joint venture investments for the fourth quarter of 2001 and 2000 and advances due from the Advisor as of December 31, 2000:

| | 2001 | 2000 |
|---|---|---|
| Fund VIII, IX, and REIT Joint Venture | **$ 46,875** | $ 21,605 |
| Fund IX, X, XI, and REIT Joint Venture | **36,073** | 12,781 |
| Wells/Orange County Associates | **83,847** | 24,583 |
| Wells/Fremont Associates | **164,196** | 53,974 |
| Fund XI, XII, and REIT Joint Venture | **429,980** | 136,648 |
| Fund XII and REIT Joint Venture | **680,542** | 49,094 |
| Fund XIII and REIT | **251,214** | 0 |
| Advisor | **0** | 10,995 |
| | **$ 1,692,727** | $ 309,680 |

The Operating Partnership entered into a property management and leasing agreement with Wells Management Company, Inc. ("Wells Management"), an affiliate of the Advisor. In consideration for supervising the management and leasing of the Operating Partnership's properties, the Operating Partnership will pay management and leasing fees equal to the lesser of (a) 4.5% of the gross revenues generally paid over the life of the lease or (b) .6% of the net asset value of the properties (excluding vacant properties) owned by the Company to Wells Management. These management and leasing fees are calculated on an annual basis plus a separate competitive fee for the one-time initial lease-up of newly constructed properties generally paid in conjunction with the receipt of the first month's rent.

The Operating Partnership's portion of the management and leasing fees and lease acquisition costs paid to Wells Management, both directly and at the joint venture level, were $2,468,294, $1,111,748, and $336,517 for the years ended December 31, 2001, 2000, and 1999, respectively.

The Advisor performs certain administrative services for the Operating Partnership, such as accounting and other partnership administration, and incurs the related expenses. Such expenses are allocated among the Operating Partnership and the various Wells Real Estate Funds based on time spent on each fund by individual administrative personnel. In the opinion of management, such allocation is a reasonable basis for allocating such expenses.

The Advisor is a general partner in various Wells Real Estate Funds. As such, there may exist conflicts of interest where the Advisor, while serving in the capacity as general partner for Wells Real Estate Funds, may be in competition with the Operating Partnership for tenants in similar geographic markets.

**5. INVESTMENT IN JOINT VENTURES**

The Operating Partnership's investment and percentage ownership in joint ventures at December 31, 2001 and 2000 are summarized as follows:

| | 2001 | | 2000 | |
|---|---|---|---|---|
| | Amount | Percent | Amount | Percent |
| Fund VIII, IX, and REIT Joint Venture | **$ 1,189,067** | **16%** | $ 1,276,551 | 16% |
| Fund IX, X, XI, and REIT Joint Venture | **1,290,360** | **4** | 1,339,636 | 4 |
| Wells/Orange County Associates | **2,740,000** | **44** | 2,827,607 | 44 |
| Wells/Fremont Associates | **6,575,358** | **78** | 6,791,287 | 78 |
| Fund XI, XII, and REIT Joint Venture | **17,187,985** | **57** | 17,688,615 | 57 |
| Fund XII and REIT Joint Venture | **30,299,872** | **55** | 14,312,901 | 47 |
| Fund XIII and REIT Joint Venture | **18,127,338** | **68** | 0 | 0 |
| | **$ 77,409,980** | | $ 44,236,597 | |

The following is a roll forward of the Operating Partnership's investment in joint ventures for the years ended December 31, 2001 and 2000:

| | 2001 | 2000 |
|---|---|---|
| Investment in joint ventures, beginning of year | **$ 44,236,597** | $ 29,431,176 |
| Equity in income of joint ventures | **3,720,959** | 2,293,873 |
| Contributions to joint ventures | **35,085,897** | 15,691,281 |
| Distributions from joint ventures | **(5,633,473)** | (3,179,733) |
| Investment in joint ventures, end of year | **$ 77,409,980** | $ 44,236,597 |

**Fund VIII, IX, and REIT Joint Venture**

On June 15, 2000, Fund VIII and IX Associates, a joint venture between Wells Real Estate Fund VIII, L.P. ("Fund VIII") and Wells Real Estate Fund IX, L.P. ("Fund IX"), entered into a joint venture with the Operating Partnership to form Fund VIII, IX, and REIT Joint Venture, for the purpose of acquiring, developing, operating, and selling real properties.

On July 1, 2000, Fund VIII and IX Associates contributed the Quest Building (formerly the Bake Parkway Building) to the joint venture. Fund VIII, IX, and REIT Joint Venture recorded the net assets of the Quest Building at an amount equal to the respective historical net book values. The Quest Building is a two-story office building containing approximately 65,006 rentable square feet on a 4.4-acre tract of land in Irvine, California. During 2000, the Operating Partnership contributed $1,282,111 to the Fund VIII, IX, and REIT Joint Venture. Ownership percentage interests were recomputed accordingly.

Following are the financial statements for Fund VIII, IX, and REIT Joint Venture:

**Fund VIII, IX, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Balance Sheets**
**December 31, 2001 and 2000**

| | 2001 | 2000 |
|---|---|---|
| **Assets** | | |
| Real estate assets, at cost: | | |
| Land | **$ 2,220,993** | $ 2,220,993 |
| Building and improvements, less accumulated depreciation of $649,436 in 2001 and $187,891 in 2000 | **4,952,724** | 5,408,892 |
| Total real estate assets | **7,173,717** | 7,629,885 |
| Cash and cash equivalents | **297,533** | 170,664 |
| Accounts receivable | **164,835** | 197,802 |
| Prepaid expenses and other assets, net | **191,799** | 283,864 |
| Total assets | **$ 7,827,884** | $ 8,282,215 |
| **Liabilities and Partners' Capital** | | |
| Liabilities: | | |
| Accounts payable | **$ 676** | $ 0 |
| Partership distributions payable | **296,856** | 170,664 |
| Total liabilities | **297,532** | 170,664 |
| Partners' capital: | | |
| Fund VIII and IX Associates | **6,341,285** | 6,835,000 |
| Wells Operating Partnership, L.P. | **1,189,067** | 1,276,551 |
| Total partners' capital | **7,530,352** | 8,111,551 |
| Total liabilities and partners' capital | **$ 7,827,884** | $ 8,282,215 |

**Fund VIII, IX, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Income**
**for the Year Ended December 31, 2001 and**
**the Period from June 15, 2000 (Inception) Through**
**December 31, 2000**

| | 2001 | 2000 |
|---|---|---|
| Revenues: | | |
| Rental income | **$ 1,207,995** | $ 563,049 |
| Interest income | **729** | 0 |
| | **1,208,724** | 563,049 |
| Expenses: | | |
| Depreciation | **461,545** | 187,891 |
| Management and leasing fees | **142,735** | 54,395 |
| Property administration expenses | **22,278** | 5,692 |
| Operating costs, net of reimbursements | **15,326** | 5,178 |
| | **641,884** | 253,156 |
| Net income | **$ 566,840** | $ 309,893 |
| Net income allocated to Fund VIII and IX Associates | **$ 477,061** | $ 285,006 |
| Net income allocated to Wells Operating Partnership, L.P. | **$ 89,779** | $ 24,887 |

**Fund VIII, IX, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Partners' Capital**
**for the Year Ended December 31, 2001 and**
**the Period from June 15, 2000 (Inception) Through**
**December 31, 2000**

| | Fund VIII and IX Associates | Wells Operating Partnership, L.P. | Total Partners' Capital |
|---|---|---|---|
| Balance, June 15, 2000 (inception) | $ 0 | $ 0 | $ 0 |
| Net income | 285,006 | 24,887 | 309,893 |
| Partnership contributions | 6,857,889 | 1,282,111 | 8,140,000 |
| Partnership distributions | (307,895) | (30,447) | (338,342) |
| Balance, December 31, 2000 | 6,835,000 | 1,276,551 | 8,111,551 |
| Net income | **477,061** | **89,779** | **566,840** |
| Partnership contributions | **0** | **5,377** | **5,377** |
| Partnership distributions | **(970,776)** | **(182,640)** | **(1,153,416)** |
| Balance, December 31, 2001 | **$ 6,341,285** | **$ 1,189,067** | **$ 7,530,352** |

**Fund VIII, IX, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Cash Flows**
**for the Year Ended December 31, 2001 and**
**the Period from June 15, 2000 (Inception) Through**
**December 31, 2000**

| | 2001 | 2000 |
|---|---|---|
| Cash flows from operating activities: | | |
| Net income | **$ 566,840** | $ 309,893 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation | **461,545** | 187,891 |
| Changes in assets and liabilities: | | |
| Accounts receivable | **32,967** | (197,802) |
| Prepaid expenses and other assets, net | **92,065** | (283,864) |
| Accounts payable | **676** | 0 |
| Total adjustments | **587,253** | (293,775) |
| Net cash provided by operating activities | **1,154,093** | 16,118 |
| Cash flows from investing activities: | | |
| Investment in real estate | **(5,377)** | (959,887) |
| Cash flows from financing activities: | | |
| Contributions from joint venture partners | **5,377** | 1,282,111 |
| Distributions to joint venture partners | **(1,027,224)** | (167,678) |
| Net cash (used in) provided by financing activities | **(1,021,847)** | 1,114,433 |
| Net increase in cash and cash equivalents | **126,869** | 170,664 |
| Cash and cash equivalents, beginning of period | **170,664** | 0 |
| Cash and cash equivalents, end of year | **$ 297,533** | $ 170,664 |
| Supplemental disclosure of noncash activities: | | |
| Real estate contribution received from joint venture partner | **$ 0** | $ 6,857,889 |

**Fund IX, X, XI, and REIT Joint Venture**

On March 20, 1997, Fund IX and Wells Real Estate Fund X, L.P. (“Fund X”) entered into a joint venture agreement. The joint venture, Fund IX and X Associates, was formed to acquire, develop, operate, and sell real properties. On March 20, 1997, Wells Fund IX contributed a 5.62-acre tract of real property in Knoxville, Tennessee, and improvements thereon, known as the Alstom Power Building, to the Fund IX and X Associates joint venture. An 84,404-square foot, three-story building was constructed and commenced operations at the end of 1997.

On February 13, 1998, the joint venture purchased a two-story office building, known as the Ohmeda Building, in Louisville, Colorado. On March 20, 1998, the joint venture purchased a three-story office building, known as the 360 Interlocken Building, in Broomfield, Colorado. On June 11, 1998, Fund IX and X Associates was amended and restated to admit Wells Real Estate Fund XI, L.P. (“Fund XI”) and the Operating Partnership. The joint venture was renamed the Fund IX, X, XI, and REIT Joint Venture. On June 24, 1998, the new joint venture purchased a one-story office building, known as the Avaya Building, in Oklahoma City, Oklahoma. On April 1, 1998, Wells Fund X purchased a one-story warehouse facility, known as the Iomega Building, in Ogden, Utah. On July 1, 1998, Wells Fund X contributed the Iomega Building to the Fund IX, X, XI, and REIT Joint Venture.

During 1999, Fund IX and Fund XI made contributions to the Fund IX, X, XI, and REIT Joint Venture; during 2000, Fund IX and Fund X made contributions to the Fund IX, X, XI, and REIT Joint Venture.

Following are the financial statements for the Fund IX, X, XI, and REIT Joint Venture:

**The Fund IX, X, XI, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Balance Sheets**
**December 31, 2001 and 2000**

| | 2001 | 2000 |
|---|---|---|
| **Assets** | | |
| Real estate assets, at cost: | | |
| Land | **$ 6,698,020** | $ 6,698,020 |
| Building and improvements, less accumulated depreciation of $5,619,744 in 2001 and $4,203,502 in 2000 | **27,178,526** | 28,594,768 |
| Total real estate assets, net | **33,876,546** | 35,292,788 |
| Cash and cash equivalents | **1,555,917** | 1,500,044 |
| Accounts receivable | **596,050** | 422,243 |
| Prepaid expenses and other assets, net | **439,002** | 487,276 |
| Total assets | **$ 36,467,515** | $ 37,702,351 |
| **Liabilities and Partners' Capital** | | |
| Liabilities: | | |
| Accounts payable and accrued liabilities | **$ 620,907** | $ 568,517 |
| Refundable security deposits | **100,336** | 99,279 |
| Due to affiliates | **13,238** | 9,595 |
| Partnership distributions payable | **966,912** | 931,151 |
| Total liabilities | **1,701,393** | 1,608,542 |
| Partners' capital: | | |
| Wells Real Estate Fund IX | **13,598,505** | 14,117,803 |
| Wells Real Estate Fund X | **16,803,586** | 17,445,277 |
| Wells Real Estate Fund XI | **3,073,671** | 3,191,093 |
| Wells Operating Partnership, L.P. | **1,290,360** | 1,339,636 |
| Total partners' capital | **34,766,122** | 36,093,809 |
| Total liabilities and partners' capital | **$ 36,467,515** | $ 37,702,351 |

**The Fund IX, X, XI, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Income**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Revenues: | | | |
| Rental income | **$ 4,174,379** | $ 4,198,388 | $ 3,932,962 |
| Other income | **119,828** | 116,129 | 61,312 |
| Interest income | **50,002** | 73,676 | 58,768 |
| | **4,344,209** | 4,388,193 | 4,053,042 |
| Expenses: | | | |
| Depreciation | **1,416,242** | 1,411,434 | 1,538,912 |
| Management and leasing fees | **357,761** | 362,774 | 286,139 |
| Operating costs, net of reimbursements | **(232,601)** | (133,505) | (34,684) |
| Property administration expense | **91,747** | 57,924 | 59,886 |
| Legal and accounting | **26,223** | 20,423 | 30,545 |
| | **1,659,372** | 1,719,050 | 1,880,798 |
| Net income | **$ 2,684,837** | $ 2,669,143 | $ 2,172,244 |
| Net income allocated to Wells Real Estate Fund IX | **$ 1,050,156** | $ 1,045,094 | $ 850,072 |
| Net income allocated to Wells Real Estate Fund X | **$ 1,297,665** | $ 1,288,629 | $ 1,056,316 |
| Net income allocated to Wells Real Estate Fund XI | **$ 237,367** | $ 236,243 | $ 184,355 |
| Net income allocated to Wells Operating Partnership, L.P. | **$ 99,649** | $ 99,177 | $ 81,501 |

**The Fund IX, X, XI, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Partners' Capital**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | Wells Real Estate Fund IX | Wells Real Estate Fund X | Wells Real Estate Fund XI | Wells Operating Partnership, L.P. | Total Partners' Capital |
|---|---|---|---|---|---|
| Balance, December 31, 1998 | $ 14,960,100 | $ 18,707,139 | $ 2,521,003 | $ 1,443,378 | $37,631,620 |
| Net income | 850,072 | 1,056,316 | 184,355 | 81,501 | 2,172,244 |
| Partnership contributions | 198,989 | 0 | 911,027 | 0 | 1,110,016 |
| Partnership distributions | (1,418,535) | (1,762,586) | (307,982) | (135,995) | (3,625,098) |
| Balance, December 31, 1999 | 14,590,626 | 18,000,869 | 3,308,403 | 1,388,884 | 37,288,782 |
| Net income | 1,045,094 | 1,288,629 | 236,243 | 99,177 | 2,669,143 |
| Partnership contributions | 46,122 | 84,317 | 0 | 0 | 130,439 |
| Partnership distributions | (1,564,039) | (1,928,538) | (353,553) | (148,425) | (3,994,555) |
| Balance, December 31, 2000 | 14,117,803 | 17,445,277 | 3,191,093 | 1,339,636 | 36,093,809 |
| Net income | **1,050,156** | **1,297,665** | **237,367** | **99,649** | **2,684,837** |
| Partnership distributions | **(1,569,454)** | **(1,939,356)** | **(354,789)** | **(148,925)** | **(4,012,524)** |
| Balance, December 31, 2001 | **$ 13,598,505** | **$ 16,803,586** | **$ 3,073,671** | **$ 1,290,360** | **$34,766,122** |

**The Fund IX, X, XI, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Cash Flows**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net income | **$ 2,684,837** | $ 2,669,143 | $ 2,172,244 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation | **1,416,242** | 1,411,434 | 1,538,912 |
| Changes in assets and liabilities: | | | |
| Accounts receivable | **(173,807)** | 132,722 | (421,708) |
| Prepaid expenses and other assets, net | **48,274** | 39,133 | (85,281) |
| Accounts payable and accrued liabilities, and refundable security deposits | **53,447** | (37,118) | 295,177 |
| Due to affiliates | **3,643** | 3,216 | 1,973 |
| Total adjustments | **1,347,799** | 1,549,387 | 1,329,073 |
| Net cash provided by operating activities | **4,032,636** | 4,218,530 | 3,501,317 |
| Cash flows from investing activities: | | | |
| Investment in real estate | **0** | (127,661) | (930,401) |
| Cash flows from financing activities: | | | |
| Distributions to joint venture partners | **(3,976,763)** | (3,868,138) | (3,820,491) |
| Contributions received from partners | **0** | 130,439 | 1,066,992 |
| Net cash used in financing activities | **(3,976,763)** | (3,737,699) | (2,753,499) |
| Net increase (decrease) in cash and cash equivalents | **55,873** | 353,170 | (182,583) |
| Cash and cash equivalents, beginning of year | **1,500,044** | 1,146,874 | 1,329,457 |
| Cash and cash equivalents, end of year | **$ 1,555,917** | $ 1,500,044 | $ 1,146,874 |
| Supplemental disclosure of noncash activities: | | | |
| Deferred project costs contributed to joint venture | **$ 0** | $ 0 | $ 43,024 |

**Wells/Orange County Associates**

On July 27, 1998, the Operating Partnership entered into a joint venture agreement with Wells Development Corporation, referred to as Wells/Orange County Associates. On July 31, 1998, Wells/Orange County Associates acquired a 52,000-square foot warehouse and office building located in Fountain Valley, California, known as the Cort Furniture Building.

On September 1, 1998, Fund X and XI Associates acquired Wells Development Corporation's interest in Wells/Orange County Associates, which resulted in Fund X and XI Associates becoming a joint venture partner with the Operating Partnership in the ownership of the Cort Furniture Building.

Following are the financial statements for Wells/Orange County Associates:

**Wells/Orange County Associates**
**(A Georgia Joint Venture)**

**Balance Sheets**
**December 31, 2001 and 2000**

**Assets**

| | 2001 | 2000 |
|---|---|---|
| Real estate assets, at cost: | | |
| Land | **$ 2,187,501** | $ 2,187,501 |
| Building, less accumulated depreciation of $651,780 in 2001 and $465,216 in 2000 | **4,012,335** | 4,198,899 |
| Total real estate assets | **6,199,836** | 6,386,400 |
| Cash and cash equivalents | **188,407** | 119,038 |
| Accounts receivable | **80,803** | 99,154 |
| Prepaid expenses and other assets | **9,426** | 0 |
| Total assets | **$ 6,478,472** | $ 6,604,592 |

**Liabilities and Partners' Capital**

| | | |
|---|---|---|
| Liabilities: | | |
| Accounts payable | **$ 11,792** | $ 1,000 |
| Partnership distributions payable | **192,042** | 128,227 |
| Total liabilities | **203,834** | 129,227 |
| Partners' capital: | | |
| Wells Operating Partnership, L.P. | **2,740,000** | 2,827,607 |
| Fund X and XI Associates | **3,534,638** | 3,647,758 |
| Total partners' capital | **6,274,638** | 6,475,365 |
| Total liabilities and partners' capital | **$ 6,478,472** | $ 6,604,592 |

**Wells/Orange County Associates**
**(A Georgia Joint Venture)**

**Statements of Income**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Revenues: | | | |
| Rental income | **$ 795,528** | $ 795,545 | $ 795,545 |
| Interest income | **2,409** | 0 | 0 |
| | **797,937** | 795,545 | 795,545 |
| Expenses: | | | |
| Depreciation | **186,564** | 186,564 | 186,565 |
| Management and leasing fees | **33,547** | 30,915 | 30,360 |
| Operating costs, net of reimbursements | **21,855** | 5,005 | 22,229 |
| Legal and accounting | **9,800** | 4,100 | 5,439 |
| | **251,766** | 226,584 | 244,593 |
| Net income | **$ 546,171** | $ 568,961 | $ 550,952 |
| Net income allocated to Wells Operating Partnership, L.P. | **$ 238,542** | $ 248,449 | $ 240,585 |
| Net income allocated to Fund X and XI Associates | **$ 307,629** | $ 320,512 | $ 310,367 |

**Wells/Orange County Associates**
**(A Georgia Joint Venture)**

**Statements of Partners' Capital**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | Wells Operating Partnership, L.P. | Fund X and XI Associates | Total Partners' Capital |
|---|---|---|---|
| Balance, December 31, 1998 | $ 2,958,617 | $ 3,816,766 | $6,775,383 |
| Net income | 240,585 | 310,367 | 550,952 |
| Partnership distributions | (306,090) | (394,871) | (700,961) |
| Balance, December 31, 1999 | 2,893,112 | 3,732,262 | 6,625,374 |
| Net income | 248,449 | 320,512 | 568,961 |
| Partnership distributions | (313,954) | (405,016) | (718,970) |
| Balance, December 31, 2000 | 2,827,607 | 3,647,758 | 6,475,365 |
| Net income | **238,542** | **307,629** | **546,171** |
| Partnership distributions | **(326,149)** | **(420,749)** | **(746,898)** |
| Balance, December 31, 2001 | **$ 2,740,000** | **$ 3,534,638** | **$6,274,638** |

**Wells/Orange County Associates**
**(A Georgia Joint Venture)**

**Statements of Cash Flows**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net income | **$ 546,171** | $ 568,961 | $ 550,952 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation | **186,564** | 186,564 | 186,565 |
| Changes in assets and liabilities: | | | |
| Accounts receivable | **18,351** | (49,475) | (36,556) |
| Accounts payable | **10,792** | 1,000 | (1,550) |
| Prepaid and other expenses | **(9,426)** | 0 | 0 |
| Total adjustments | **206,281** | 138,089 | 148,459 |
| Net cash provided by operating activities | **752,452** | 707,050 | 699,411 |
| Cash flows from financing activities: | | | |
| Distributions to partners | **(683,083)** | (764,678) | (703,640) |
| Net increase (decrease) in cash and cash equivalents | **69,369** | (57,628) | (4,229) |
| Cash and cash equivalents, beginning of year | **119,038** | 176,666 | 180,895 |
| Cash and cash equivalents, end of year | **$ 188,407** | $ 119,038 | $ 176,666 |

**Wells/Fremont Associates**

On July 15, 1998, the Operating Partnership entered into a joint venture agreement with Wells Development Corporation, referred to as Wells/Fremont Associates. On July 21, 1998, Wells/Fremont Associates acquired a 58,424-square foot two-story manufacturing and office building located in Fremont, California, known as the Fairchild Building.

On October 8, 1998, Fund X and XI Associates acquired Wells Development Corporation's interest in Wells/Fremont Associates, which resulted in Fund X and XI Associates becoming a joint venture partner with the Operating Partnership in the ownership of the Fairchild Building.

Following are the financial statements for Wells/Fremont Associates:

**Wells/Fremont Associates**
**(A Georgia Joint Venture)**

**Balance Sheets**
**December 31, 2001 and 2000**

**Assets**

| | 2001 | 2000 |
|---|---|---|
| Real estate assets, at cost: | | |
| Land | **$ 2,219,251** | $ 2,219,251 |
| Building, less accumulated depreciation of $999,301 in 2001 and $713,773 in 2000 | **6,138,857** | 6,424,385 |
| Total real estate assets | **8,358,108** | 8,643,636 |
| Cash and cash equivalents | **203,750** | 92,564 |
| Accounts receivable | **133,801** | 126,433 |
| Total assets | **$ 8,695,659** | $ 8,862,633 |

**Liabilities and Partners' Capital**

| | | |
|---|---|---|
| Liabilities: | | |
| Accounts payable | **$ 1,896** | $ 3,016 |
| Due to affiliate | **8,030** | 7,586 |
| Partnership distributions payable | **201,854** | 89,549 |
| Total liabilities | **211,780** | 100,151 |
| Partners' capital: | | |
| Wells Operating Partnership, L.P. | **6,575,358** | 6,791,287 |
| Fund X and XI Associates | **1,908,521** | 1,971,195 |
| Total partners' capital | **8,483,879** | 8,762,482 |
| Total liabilities and partners' capital | **$ 8,695,659** | $ 8,862,633 |

**Wells/Fremont Associates**
**(A Georgia Joint Venture)**

**Statements of Income**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Revenues: | | | |
| Rental income | **$ 902,945** | $ 902,946 | $ 902,946 |
| Interest income | **2,713** | 0 | 0 |
| Other income | **2,015** | 0 | 0 |
| | **907,673** | 902,946 | 902,946 |
| Expenses: | | | |
| Depreciation | **285,528** | 285,527 | 285,526 |
| Management and leasing fees | **36,267** | 36,787 | 37,355 |
| Operating costs, net of reimbursements | **16,585** | 13,199 | 16,006 |
| Legal and accounting | **6,400** | 4,300 | 4,885 |
| | **344,780** | 339,813 | 343,772 |
| Net income | **$ 562,893** | $ 563,133 | $ 559,174 |
| Net income allocated to Wells Operating Partnership, L.P. | **$ 436,265** | $ 436,452 | $ 433,383 |
| Net income allocated to Fund X and XI Associates | **$ 126,628** | $ 126,681 | $ 125,791 |

**Wells/Fremont Associates**
**(A Georgia Joint Venture)**

**Statements of Partners' Capital**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | Wells Operating Partnership, L.P. | Fund X and XI Associates | Total Partners' Capital |
|---|---|---|---|
| Balance, December 31, 1998 | $ 7,166,682 | $ 2,080,155 | $9,246,837 |
| Net income | 433,383 | 125,791 | 559,174 |
| Partnership distributions | (611,855) | (177,593) | (789,448) |
| Balance, December 31, 1999 | 6,988,210 | 2,028,353 | 9,016,563 |
| Net income | 436,452 | 126,681 | 563,133 |
| Partnership distributions | (633,375) | (183,839) | (817,214) |
| Balance, December 31, 2000 | 6,791,287 | 1,971,195 | 8,762,482 |
| Net income | **436,265** | **126,628** | **562,893** |
| Partnership distributions | **(652,194)** | **(189,302)** | **(841,496)** |
| Balance, December 31, 2001 | **$ 6,575,358** | **$ 1,908,521** | **$8,483,879** |

**Wells/Fremont Associates**
**(A Georgia Joint Venture)**

**Statements of Cash Flows**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net income | **$ 562,893** | $ 563,133 | $ 559,174 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation | **285,528** | 285,527 | 285,526 |
| Changes in assets and liabilities: | | | |
| Accounts receivable | **(7,368)** | (33,454) | (58,237) |
| Accounts payable | **(1,120)** | 1,001 | (1,550) |
| Due to affiliate | **444** | 2,007 | 3,527 |
| Total adjustments | **277,484** | 255,081 | 229,266 |
| Net cash provided by operating activities | **840,377** | 818,214 | 788,440 |
| Cash flows from financing activities: | | | |
| Distributions to partners | **(729,191)** | (914,662) | (791,940) |
| Net increase (decrease) in cash and cash equivalents | **111,186** | (96,448) | (3,500) |
| Cash and cash equivalents, beginning of year | **92,564** | 189,012 | 192,512 |
| Cash and cash equivalents, end of year | **$ 203,750** | $ 92,564 | $ 189,012 |

**Fund XI, XII, and REIT Joint Venture**

On May 1, 1999, the Operating Partnership entered into a joint venture with Fund XI and Wells Real Estate Fund XII, L.P. ("Fund XII"). On May 18, 1999, the joint venture purchased a 169,510-square foot, two-story manufacturing and office building, known as EYBL CarTex Building, in Fountain Inn, South Carolina. On July 21, 1999, the joint venture purchased a 68,900-square foot, three-story-office building, known as the Sprint Building, in Leawood, Kansas. On August 17, 1999, the joint venture purchased a 130,000-square foot office and warehouse building, known as the Johnson Matthey Building, in Chester County, Pennsylvania. On September 20, 1999, the joint venture purchased a 62,400-square foot, two-story office building, known as the Gartner Building, in Fort Myers, Florida.

Following are the financial statements for the Fund XI, XII, and REIT Joint Venture:

**The Fund XI, XII, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Balance Sheets**
**December 31, 2001 and 2000**

| | 2001 | 2000 |
|---|---|---|
| **Assets** | | |
| Real estate assets, at cost: | | |
| Land | **$ 5,048,797** | $ 5,048,797 |
| Building and improvements, less accumulated depreciation of $2,692,116 in 2001 and $1,599,263 in 2000 | **24,626,336** | 25,719,189 |
| Total real estate assets | **29,675,133** | 30,767,986 |
| Cash and cash equivalents | **775,805** | 541,089 |
| Accounts receivable | **675,022** | 394,314 |
| Prepaid assets and other expenses | **26,486** | 26,486 |
| Total assets | **$ 31,152,446** | $ 31,729,875 |
| **Liabilities and Partners' Capital** | | |
| Liabilities: | | |
| Accounts payable | **$ 114,612** | $ 114,180 |
| Partnership distributions payable | **757,500** | 453,395 |
| Total liabilities | **872,112** | 567,575 |
| Partners' capital: | | |
| Wells Real Estate Fund XI | **7,917,646** | 8,148,261 |
| Wells Real Estate Fund XII | **5,174,703** | 5,325,424 |
| Wells Operating Partnership, L.P. | **17,187,985** | 17,688,615 |
| Total partners' capital | **30,280,334** | 31,162,300 |
| Total liabilities and partners' capital | **$ 31,152,446** | $ 31,729,875 |

**The Fund XI, XII, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Income**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Revenues: | | | |
| Rental income | **$ 3,346,227** | $ 3,345,932 | $ 1,443,446 |
| Interest income | **24,480** | 2,814 | 0 |
| Other income | **360** | 440 | 57 |
| | **3,371,067** | 3,349,186 | 1,443,503 |
| Expenses: | | | |
| Depreciation | **1,092,853** | 1,092,680 | 506,582 |
| Management and leasing fees | **156,987** | 157,236 | 59,230 |
| Operating costs, net of reimbursements | **(27,449)** | (30,718) | 4,639 |
| Property administration | **65,765** | 36,707 | 15,979 |
| Legal and accounting | **18,000** | 14,725 | 4,000 |
| | **1,306,156** | 1,270,630 | 590,430 |
| Net income | **$ 2,064,911** | $ 2,078,556 | $ 853,073 |
| Net income allocated to Wells Real Estate Fund XI | **$ 539,930** | $ 543,497 | $ 240,031 |
| Net income allocated to Wells Real Estate Fund XII | **$ 352,878** | $ 355,211 | $ 124,542 |
| Net income allocated to Wells Operating Partnership, L.P. | **$ 1,172,103** | $ 1,179,848 | $ 488,500 |

**The Fund XI, XII, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Partners' Capital**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | Wells Real Estate Fund XI | Wells Real Estate Fund XII | Wells Operating Partnership, L.P. | Total Partners' Capital |
|---|---|---|---|---|
| Balance, December 31, 1998 | $ 0 | $ 0 | $ 0 | $ 0 |
| Net income | 240,031 | 124,542 | 488,500 | 853,073 |
| Partnership contributions | 8,470,160 | 5,520,835 | 18,376,267 | 32,367,262 |
| Partnership distributions | (344,339) | (177,743) | (703,797) | (1,225,879) |
| Balance, December 31, 1999 | 8,365,852 | 5,467,634 | 18,160,970 | 31,994,456 |
| Net income | 543,497 | 355,211 | 1,179,848 | 2,078,556 |
| Partnership distributions | (761,088) | (497,421) | (1,652,203) | (2,910,712) |
| Balance, December 31, 2000 | 8,148,261 | 5,325,424 | 17,688,615 | 31,162,300 |
| Net income | **539,930** | **352,878** | **1,172,103** | **2,064,911** |
| Partnership distributions | **(770,545)** | **(503,599)** | **(1,672,733)** | **(2,946,877)** |
| Balance, December 31, 2001 | **$7,917,646** | **$ 5,174,703** | **$ 17,187,985** | **$30,280,334** |

**The Fund XI, XII, and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Cash Flows**
**for the Years Ended December 31, 2001, 2000, and 1999**

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net income | **$ 2,064,911** | $ 2,078,556 | $ 853,073 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation | **1,092,853** | 1,092,680 | 506,582 |
| Changes in assets and liabilities: | | | |
| Accounts receivable | **(280,708)** | (260,537) | (133,777) |
| Prepaid expenses and other assets | **0** | 0 | (26,486) |
| Accounts payable | **432** | 1,723 | 112,457 |
| Total adjustments | **812,577** | 833,866 | 458,776 |
| Net cash provided by operating activities | **2,877,488** | 2,912,422 | 1,311,849 |
| Cash flows from financing activities: | | | |
| Distributions to joint venture partners | **(2,642,772)** | (3,137,611) | (545,571) |
| Net increase (decrease) in cash and cash equivalents | **234,716** | (225,189) | 766,278 |
| Cash and cash equivalents, beginning of year | **541,089** | 766,278 | 0 |
| Cash and cash equivalents, end of year | **$ 775,805** | $ 541,089 | $ 766,278 |
| Supplemental disclosure of noncash activities: | | | |
| Deferred project costs contributed to joint venture | **$ 0** | $ 0 | $ 1,294,686 |
| Contribution of real estate assets to joint venture | **$ 0** | $ 0 | $ 31,072,562 |

**Fund XII and REIT Joint Venture**

On May 10, 2000, the Operating Partnership entered into a joint venture with Fund XII. The joint venture, Fund XII and REIT Joint Venture, was formed to acquire, develop, operate, and sell real property. On May 20, 2000, the joint venture purchased a 77,054-square foot, three-story office building known as the Siemens Building in Troy, Oakland County, Michigan. On December 28, 2000, the joint venture purchased a 50,000-square foot, one-story office building and a 78,500-square foot two-story office building collectively known as the AT&T Call Center Buildings in Oklahoma City, Oklahoma County, Oklahoma. On May 15, 2001, the joint venture purchased a 201,237-square foot, three-story office building known as the Comdata Building located in Brentwood, Williamson County, Tennessee.

Following are the financial statements for Fund XII and REIT Joint Venture:

**Fund XII and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Balance Sheets**
**December 31, 2001 and 2000**

| | 2001 | 2000 |
|---|---|---|
| **Assets** | | |
| Real estate assets, at cost: | | |
| Land | **$ 8,899,574** | $ 4,420,405 |
| Building and improvements, less accumulated depreciation of $2,131,838 in 2001 and $324,732 in 2000 | **45,814,781** | 26,004,918 |
| Total real estate assets | **54,714,355** | 30,425,323 |
| Cash and cash equivalents | **1,345,562** | 207,475 |
| Accounts receivable | **442,023** | 130,490 |
| Total assets | **$ 56,501,940** | $ 30,763,288 |
| **Liabilities and Partners' Capital** | | |
| Liabilities: | | |
| Accounts payable | **$ 134,969** | $ 0 |
| Partnership distributions payable | **1,238,205** | 208,261 |
| Total liabilities | **1,373,174** | 208,261 |
| Partners' capital: | | |
| Wells Real Estate Fund XII | **24,828,894** | 16,242,127 |
| Wells Operating Partnership, L.P. | **30,299,872** | 14,312,900 |
| Total partners' capital | **55,128,766** | 30,555,027 |
| Total liabilities and partners' capital | **$ 56,501,940** | $ 30,763,288 |

**Fund XII and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Income**
**for the Year Ended December 31, 2001 and**
**the Period From May 10, 2000 (Inception) Through**
**December 31, 2000**

| | 2001 | 2000 |
|---|---|---|
| Revenues: | | |
| Rental income | **$ 4,683,323** | $ 974,796 |
| Interest income | **25,144** | 2,069 |
| | **4,708,467** | 976,865 |
| Expenses: | | |
| Depreciation | **1,807,106** | 324,732 |
| Management and leasing fees | **224,033** | 32,756 |
| Partnership administration | **38,928** | 3,917 |
| Legal and accounting | **16,425** | 0 |
| Operating costs, net of reimbursements | **10,453** | 1,210 |
| | **2,096,945** | 362,615 |
| Net income | **$ 2,611,522** | $ 614,250 |
| Net income allocated to Wells Real Estate Fund XII | **$ 1,224,645** | $ 309,190 |
| Net income allocated to Wells Operating Partnership, L.P. | **$ 1,386,877** | $ 305,060 |

**Fund XII and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statements of Partners' Capital**
**for the Year Ended December 31, 2001 and**
**the Period From May 10, 2000 (Inception) Through**
**December 31, 2000**

| | Wells Real Estate Fund XII | Wells Operating Partnership, L.P. | Total Partners' Capital |
|---|---|---|---|
| Balance, May 10, 2000 (inception) | $ 0 | $ 0 | $ 0 |
| Net income | 309,190 | 305,060 | 614,250 |
| Partnership contributions | 16,340,884 | 14,409,171 | 30,750,055 |
| Partnership distributions | (407,948) | (401,330) | (809,278) |
| Balance, December 31, 2000 | 16,242,126 | 14,312,901 | 30,555,027 |
| Net income | **1,224,645** | **1,386,877** | **2,611,522** |
| Partnership contributions | **9,298,084** | **16,795,441** | **26,093,525** |
| Partnership distributions | **(1,935,961)** | **(2,195,347)** | **(4,131,308)** |
| Balance, December 31, 2001 | **$ 24,828,894** | **$ 30,299,872** | **$ 55,128,766** |

**Fund XII and REIT Joint Venture**
**(A Georgia Joint Venture )**

**Statements of Cash Flows**
**for the Year Ended December 31, 2001 and**
**the Period From May 10, 2000 (Inception) Through**
**December 31, 2000**

| | 2001 | 2000 |
|---|---|---|
| Cash flows from operating activities: | | |
| Net income | **$ 2,611,522** | $ 614,250 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation | **1,807,106** | 324,732 |
| Changes in assets and liabilities: | | |
| Accounts receivable | **(311,533)** | (130,490) |
| Accounts payable | **134,969** | 0 |
| Total adjustments | **1,630,542** | 194,242 |
| Net cash provided by operating activities | **4,242,064** | 808,492 |
| Cash flows from investing activities: | | |
| Investment in real estate | **(26,096,138)** | (29,520,043) |
| Cash flows from financing activities: | | |
| Distributions to joint venture partners | **(3,101,364)** | (601,017) |
| Contributions received from partners | **26,093,525** | 29,520,043 |
| Net cash provided by financing activities | **22,992,161** | 28,919,026 |
| Net increase in cash and cash equivalents | **1,138,087** | 207,475 |
| Cash and cash equivalents, beginning of period | **207,475** | 0 |
| Cash and cash equivalents, end of year | **$ 1,345,562** | $ 207,475 |
| Supplemental disclosure of noncash activities: | | |
| Deferred project costs contributed to joint venture | **$ 0** | $ 1,230,012 |

**Fund XIII and REIT Joint Venture**

On June 27, 2001, Wells Real Estate Fund XIII, L.P. ("Fund XIII") entered into a joint venture with the Operating Partnership to form the Fund XIII and REIT Joint Venture. On July 16, 2001, the Fund XIII and REIT Joint Venture purchased an 85,000-square foot, two-story office building known as the AmeriCredit Building in Clay County, Florida. On December 21, 2001, the Fund XIII and REIT Joint Venture purchased two connected one-story office and assembly buildings consisting of 148,200 square feet known as the ADIC Buildings in Douglas County, Colorado.

Following are the financial statements for the Fund XIII and REIT Joint Venture:

**The Fund XIII and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Balance Sheet**
**December 31, 2001**

**Assets**

| | | |
|---|---|---|
| Real estate assets, at cost: | | |
| Land | $ | 3,724,819 |
| Building and improvements, less accumulated depreciation of $266,605 in 2001 | | 22,783,948 |
| Total real estate assets | | 26,508,767 |
| Cash and cash equivalents | | 460,380 |
| Accounts receivable | | 71,236 |
| Prepaid assets and other expenses | | 773 |
| Total assets | $ | 27,041,156 |

**Liabilities and Partners' Capital**

| | | |
|---|---|---|
| Liabilities: | | |
| Accounts payable | $ | 145,331 |
| Partnership distributions payable | | 315,049 |
| Total liabilities | | 460,380 |
| Partners' capital: | | |
| Wells Real Estate Fund XIII | | 8,453,438 |
| Wells Operating Partnership, L.P. | | 18,127,338 |
| Total partners' capital | | 26,580,776 |
| Total liabilities and partners' capital | $ | 27,041,156 |

**The Fund XIII and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statement of Income**
**for the Period From June 27, 2001 (Inception) Through**
**December 31, 2001**

| | |
|---|---|
| Revenues: | |
| Rental income | $ 706,373 |
| Expenses: | |
| Depreciation | 266,605 |
| Management and leasing fees | 26,954 |
| Operating costs, net of reimbursements | 53,659 |
| Legal and accounting | 2,800 |
| | 350,018 |
| Net income | $ 356,355 |
| Net income allocated to Wells Real Estate Fund XIII | $ 58,610 |
| Net income allocated to Wells Operating Partnership, L.P. | $ 297,745 |

**The Fund XIII and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statement of Partners' Capital**
**for the Period From June 27, 2001 (Inception) Through**
**December 31, 2001**

| | Wells Real Estate Fund XIII | Wells Operating Partnership, L.P. | Total Partners' Capital |
|---|---|---|---|
| Balance, June 27, 2001 (inception) | $ 0 | $ 0 | $ 0 |
| Net income | 58,610 | 297,745 | 356,355 |
| Partnership contributions | 8,491,069 | 18,285,076 | 26,776,145 |
| Partnership distributions | (96,241) | (455,483) | (551,724) |
| Balance, December 31, 2001 | $ 8,453,438 | $ 18,127,338 | $26,580,776 |

**The Fund XIII and REIT Joint Venture**
**(A Georgia Joint Venture)**

**Statement of Cash Flows**
**for the Period From June 27, 2001 (Inception) Through**
**December 31, 2001**

| | |
|---|---|
| Cash flows from operating activities: | |
| Net income | $ 356,355 |
| Adjustments to reconcile net income to net cash provided by operating activities: | |
| Depreciation | 266,605 |
| Changes in assets and liabilities: | |
| Accounts receivable | (71,236) |
| Prepaid expenses and other assets | (773) |
| Accounts payable | 145,331 |
| Total adjustments | 339,927 |
| Net cash provided by operating activities | 696,282 |
| Cash flows from investing activities: | |
| Investment in real estate | (25,779,337) |
| Cash flows from financing activities: | |
| Contributions from joint venture partners | 25,780,110 |
| Distributions to joint venture partners | (236,675) |
| Net cash provided by financing activities | 25,543,435 |
| Net increase in cash and cash equivalents | 460,380 |
| Cash and cash equivalents, beginning of period | 0 |
| Cash and cash equivalents, end of year | $ 460,380 |
| Supplemental disclosure of noncash activities: | |
| Deferred project costs contributed to Joint Venture | $ 996,035 |

## 6. INCOME TAX BASIS NET INCOME AND PARTNERS' CAPITAL

The Operating Partnership's income tax basis net income for the years ended December 31, 2001 and 2000 are calculated as follows:

| | 2001 | 2000 |
|---|---|---|
| Financial statement net income | **$ 21,723,967** | $ 8,552,967 |
| Increase (decrease) in net income resulting from: | | |
| Depreciation expense for financial reporting purposes in excess of amounts for income tax purposes | **7,347,459** | 3,511,353 |
| Rental income accrued for financial reporting purposes in excess of amounts for income tax purposes | **(2,735,237)** | (1,822,220) |
| Expenses deductible when paid for income tax purposes, accrued for financial reporting purposes | **25,658** | 37,675 |
| Income tax basis net income | **$ 26,361,847** | $ 10,279,775 |

The Operating Partnership's income tax basis partners' capital at December 31, 2001 and 2000 is computed as follows:

| | 2001 | 2000 |
|---|---|---|
| Financial statement partners' capital | **$ 710,285,758** | $ 265,341,612 |
| Increase (decrease) in partners' capital resulting from: | | |
| Depreciation expense for financial reporting purposes in excess of amounts for income tax purposes | **11,891,061** | 4,543,602 |
| Capitalization of syndication costs for income tax purposes, which are accounted for as cost of capital for financial reporting purposes | **12,896,312** | 12,896,312 |
| Accumulated rental income accrued for financial reporting purposes in excess of amounts for income tax purposes | **(5,382,483)** | (2,647,246) |
| Accumulated expenses deductible when paid for income tax purposes, accrued for financial reporting purposes | **114,873** | 89,215 |
| Dividends payable | **1,059,026** | 1,025,010 |
| Other | **(222,378)** | (222,378) |
| Income tax basis partners' capital | **$ 730,642,169** | $ 281,026,127 |

## 7. RENTAL INCOME

The future minimum rental income due from the Operating Partnership's direct investment in real estate or its respective ownership interest in the joint ventures under noncancelable operating leases at December 31, 2001 is as follows:

| Year ended December 31: | |
|---|---|
| 2002 | $ 69,364,229 |
| 2003 | 70,380,691 |
| 2004 | 71,184,787 |
| 2005 | 70,715,556 |
| 2006 | 71,008,821 |
| Thereafter | 270,840,299 |
| | $ 623,494,383 |

One tenant contributed 10% of rental income for the year ended December 31, 2001. In addition, one tenant will contribute 12% of future minimum rental income.

Future minimum rental income due from Fund VIII, IX, and REIT Joint Venture under noncancelable operating leases at December 31, 2001 is as follows:

| Year ended December 31: | |
|---|---|
| 2002 | $ 1,287,119 |
| 2003 | 1,287,119 |
| 2004 | 107,260 |
| 2005 | 0 |
| 2006 | 0 |
| Thereafter | 0 |
| | $ 2,681,498 |

One tenant contributed 100% of rental income for the year ended December 31, 2001. In addition, one tenant will contribute 100% of future minimum rental income.

The future minimum rental income due from Fund IX, X, XI, and REIT Joint Venture under noncancelable operating leases at December 31, 2001 is as follows:

| Year ended December 31: | | |
|---|---|---|
| 2002 | $ | 3,648,769 |
| 2003 | | 3,617,432 |
| 2004 | | 3,498,472 |
| 2005 | | 2,482,815 |
| 2006 | | 2,383,190 |
| Thereafter | | 3,053,321 |
| | $ | 18,683,999 |

Four tenants contributed 26%, 23%, 13%, and 13% of rental income for the year ended December 31, 2001. In addition, four tenants will contribute 38%, 21%, 20%, and 17% of future minimum rental income.

The future minimum rental income due Wells/Orange County Associates under noncancelable operating leases at December 31, 2001 is as follows:

| Year ended December 31: | | |
|---|---|---|
| 2002 | $ | 834,888 |
| 2003 | | 695,740 |
| | $ | 1,530,628 |

One tenant contributed 100% of rental income for the year ended December 31, 2001 and will contribute 100% of future minimum rental income.

The future minimum rental income due Wells/Fremont Associates under noncancelable operating leases at December 31, 2001 is as follows:

| Year ended December 31: | | |
|---|---|---|
| 2002 | $ | 922,444 |
| 2003 | | 950,118 |
| 2004 | | 894,832 |
| | $ | 2,767,394 |

One tenant contributed 100% of rental income for the year ended December 31, 2001 and will contribute 100% of future minimum rental income.

The future minimum rental income due from Fund XI, XII, and REIT Joint Venture under noncancelable operating leases at December 31, 2001 is as follows:

| Year ended December 31: | | |
|---|---|---|
| 2002 | $ | 3,277,512 |
| 2003 | | 3,367,510 |
| 2004 | | 3,445,193 |
| 2005 | | 3,495,155 |
| 2006 | | 3,552,724 |
| Thereafter | | 2,616,855 |
| | $ | 19,754,949 |

Four tenants contributed approximately 30%, 28%, 24%, and 18% of rental income for the year ended December 31, 2001. In addition, four tenants will contribute approximately 30%, 27%, 25%, and 18% of future minimum rental income.

The future minimum rental income due from Fund XII and REIT Joint Venture under noncancelable operating leases at December 31, 2001 is as follows:

| Year ended December 31: | | |
|---|---|---|
| 2002 | $ | 5,352,097 |
| 2003 | | 5,399,451 |
| 2004 | | 5,483,564 |
| 2005 | | 5,515,926 |
| 2006 | | 5,548,289 |
| Thereafter | | 34,677,467 |
| | $ | 61,976,794 |

Three tenants contributed approximately 31%, 29%, and 27% of rental income for the year ended December 31, 2001. In addition, three tenants will contribute approximately 58%, 21%, and 18% of future minimum rental income.

The future minimum rental income due Fund XIII and REIT Joint Venture under noncancelable operating leases at December 31, 2001 is as follows:

| Year ended December 31: | | |
|---|---|---|
| 2002 | $ | 2,545,038 |
| 2003 | | 2,602,641 |
| 2004 | | 2,661,228 |
| 2005 | | 2,721,105 |
| 2006 | | 2,782,957 |
| Thereafter | | 13,915,835 |
| | $ | 27,228,804 |

One tenant contributed approximately 95% of rental income for the year ended December 31, 2001. In addition, two tenants will contribute approximately 51% and 49% of future minimum rental income.

**8. INVESTMENT IN BONDS AND OBLIGATION UNDER CAPITAL LEASE**

On September 27, 2001, the Operating Partnership acquired a ground leasehold interest in the Ingram Micro Distribution Facility pursuant to a Bond Real Property Lease dated December 20, 1995 (the "Bond Lease"). The ground leasehold interest under the Bond Lease, along with the Bond and Bond Deed of Trust described below, were purchased from Ingram Micro, L.P. ("Ingram") in a sale lease-back transaction for a purchase price of $21,050,000. The Bond Lease expires on December 31, 2026. At closing, the Operating Partnership also entered into a new lease with Ingram pursuant to which Ingram agreed to lease the entire Ingram Micro Distribution Facility for a lease term of 10 years with two successive 10-year renewal options.

In connection with the original development of the Ingram Micro Distribution Facility, the Industrial Development Board of the City of Milington, Tennessee (the "Industrial Development Board") issued an Industrial Development Revenue Note dated December 20, 1995 in the principal amount of $22,000,000 (the "Bond") to Lease Plan North America, Inc. (the "Original Bond Holder"). The proceeds from the issuance of the Bond were utilized to finance the construction of the Ingram Micro Distribution Facility. The Bond is secured by a Fee Construction Mortgage Deed of Trust Assignment of Rents and Leases also dated December 20, 1995 (the "Bond Deed of Trust") executed by the Industrial Development Board for the benefit of the Original Bond Holder. Beginning in 2006, the holder of the Bond Lease has the option to purchase the land underlying the Ingram Micro Distribution Facility for $100.00 plus satisfaction of the indebtedness evidenced by the Bond which, as set forth below, was acquired and is currently held by the Operating Partnership.

On December 20, 2000, Ingram purchased the Bond and the Bond Deed of Trust from the Original Bond Holder. On September 27, 2001, along with purchasing the Ingram Micro Distribution Facility through its acquisition of the ground leasehold interest under the Bond Lease, the Operating Partnership also acquired the Bond and the Bond Deed of Trust from Ingram. Because the Operating Partnership is technically subject to the obligation to pay the $22,000,000 indebtedness evidenced by the Bond, the obligation to pay the Bond is carried on the Company's books as a liability;

however, since Operating Partnership is also the owner of the Bond, the Bond is also carried on the Company's books as an asset.

**9. NOTES PAYABLE**

As of December 31, 2001, the Operating Partnership's notes payable included the following:

| | | |
|---|---|---|
| Note payable to Bank of America, interest at 5.9%, interest payable monthly, due July 30, 2003, collateralized by the Nissan property | $ | 468,844 |
| Note payable to SouthTrust Bank, interest at LIBOR plus 175 basis points, principal and interest payable monthly, due June 10, 2002; collateralized by the Operating Partnership's interests in the Cinemark Building, the Dial Building, the ASML Building, the Motorola Tempe Building, the Avnet Building, the Matsushita Building, and the PwC Building | | 7,655,600 |
| Total | $ | 8,124,444 |

The contractual maturities of the Operating Partnership's notes payable are as follows as of December 31, 2001:

| | | |
|---|---|---|
| 2002 | $ | 7,655,600 |
| 2003 | | 468,844 |
| Total | $ | 8,124,444 |

**10. COMMITMENTS AND CONTINGENCIES**

**Take Out Purchase and Escrow Agreement**

An affiliate of the Advisor ("Wells Exchange") has developed a program (the "Wells Section 1031 Program") involving the acquisition by Wells Exchange of income-producing commercial properties and the formation of a series of single member limited liability companies for the purpose of facilitating the resale of co-tenancy interests in such real estate properties to be owned in co-tenancy arrangements with persons ("1031 Participants") who are looking to invest the proceeds from a sale of real estate held for investment in another real estate investment for purposes of qualifying for like-kind exchange treatment under Section 1031 of the Code. Each of these properties will be financed by a combination of permanent first mortgage financing and interim loan financing obtained from institutional lenders.

Following the acquisition of each property, Wells Exchange will attempt to sell co-tenancy interests to 1031 Participants, the proceeds of which will be used to pay off the interim financing. In consideration for the payment of a take out fee to the Company, and following approval of the potential property acquisition by the Company's board of directors, it is anticipated that Wells OP will enter into a take out purchase and escrow agreement or similar contract providing that, in the event that Wells Exchange is unable to sell all of the co-tenancy interest in that particular property to 1031 Participants, the Operating Partnership will purchase, at Wells Exchange's cost, any co-tenancy interests remaining unsold at the end of the offering period.

As a part of the initial transaction in the Wells Section 1031 Program, and in consideration for the payment of a take out fee in the amount of $137,500 to the Company, Wells OP entered into a take out purchase and escrow agreement dated April 16, 2001 providing that, among other things, Wells OP is obligated to acquire, at Wells Exchange's cost ($839,694 in cash plus $832,060 of assumed debt for each 7.63358% interest of co-tenancy interest unsold), any co-tenancy interest in the building known as the Ford Motor Credit Complex which remains unsold at the expiration of the offering of Wells Exchange, which has been extended to April 15, 2002, which is also the maturity date of the interim loan relating to such property. The Ford Motor Credit Complex consists of two connecting office buildings containing 167,438 rentable square feet located in Colorado Springs, Colorado, currently under a triple-net lease with Ford Motor Credit Company, a wholly owned subsidiary of Ford Motor Company.

The obligations of Wells OP under the take out purchase and escrow agreement are secured by reserving against a portion of Wells OP's existing line of credit with Bank of America, N.A. (the "Interim Lender"). If, for any reason, Wells OP fails to acquire any of the co-tenancy interest in the Ford Motor Credit Complex which remains unsold as of

April 15, 2002, or there is otherwise an uncured default under the interim loan or the line of credit documents, the Interim Lender is authorized to draw down Wells OP's line of credit in the amount necessary to pay the outstanding balance of the interim loan in full, in which event the appropriate amount of co-tenancy interest in the Ford Motor Credit Complex would be deeded to Wells OP. Wells OP's maximum economic exposure in the transaction is $21,900,000, in which event Wells OP would acquire the Ford Motor Credit Complex for $11,000,000 in cash plus assumption of the first mortgage financing in the amount of $10,900,000. If some, but not all, of the co-tenancy interests are sold, Wells OP's exposure would be less, and it would own an interest in the property in co-tenancy with the 1031 Participants who had previously acquired co-tenancy interests in the Ford Motor Credit Complex from Wells Exchange.

**Development of the Nissan Property**

The Operating Partnership has entered into an agreement with an independent third-party general contractor for the purpose of designing and constructing a three-story office building containing 268,290 rentable square feet on the Nissan Property. The construction agreement provides that the Operating Partnership will pay the contractor a maximum of $25,326,017 for the design and construction of the building. Construction commenced on January 25, 2002 and is scheduled to be completed within 20 months.

**General**

Management, after consultation with legal counsel, is not aware of any significant litigation or claims against the Company, the Operating Partnership, or the Advisor. In the normal course of business, the Company, the Operating Partnership, or the Advisor may become subject to such litigation or claims.

**11. SHAREHOLDERS' EQUITY**

**Common Stock Option Plan**

The Wells Real Estate Investment Trust, Inc. Independent Director Stock Option Plan ("the Plan") provides for grants of stock to be made to independent nonemployee directors of the Company. Options to purchase 2,500 shares of common stock at $12 per share are granted upon initially becoming an independent director of the Company. Of these shares, 20% are exercisable immediately on the date of grant. An additional 20% of these shares become exercisable on each anniversary following the date of grant for a period of four years. Effective on the date of each annual meeting of shareholders of the Company, beginning in 2000, each independent director will be granted an option to purchase 1,000 additional shares of common stock. These options vest at the rate of 500 shares per full year of service thereafter. All options granted under the Plan expire no later than the date immediately following the tenth anniversary of the date of grant and may expire sooner in the event of the disability or death of the optionee or if the optionee ceases to serve as a director.

The Company has adopted the disclosure provisions in Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation." As permitted by the provisions of SFAS No. 123, the Company applies Accounting Principles Board Opinion No. 25 and the related interpretations in accounting for its stock option plans and, accordingly, does not recognize compensation cost.

A summary of the Company's stock option activity during 2001 and 2000 is as follows:

| | Number | Exercise Price |
|---|---|---|
| Outstanding at December 31, 1999 | 17,500 | $ 12 |
| Granted | 7,000 | 12 |
| Outstanding at December 31, 2000 | 24,500 | 12 |
| Granted | 7,000 | 12 |
| Outstanding at December 31, 2001 | 31,500 | 12 |
| Outstanding options exercisable as of December 31, 2001 | 10,500 | 12 |

For SFAS No. 123 purposes, the fair value of each stock option for 2001 and 2000 has been estimated as of the date of the grant using the minimum value method. The weighted average risk-free interest rates assumed for 2001 and 2000 were 5.05% and 6.45%, respectively. Dividend yields of 7.8% and 7.3% were assumed for 2001 and 2000, respectively. The expected life of an option was assumed to be six years and four years for 2001 and 2000, respectively. Based on these assumptions, the fair value of the options granted during 2001 and 2000 is $0.

**Treasury Stock**

During 1999, the Company's board of directors authorized a dividend reinvestment program (the "DRP"), through which common shareholders may elect to reinvest an amount equal to the dividends declared on their common shares into additional shares of the Company's common stock in lieu of receiving cash dividends. During 2000, the Company's board of directors authorized a common stock repurchase plan subject to the amount reinvested in the Company's common shares through the DRP, less shares already redeemed, and a limitation in the amount of 3% of the average common shares outstanding during the preceding year. During 2001 and 2000, the Company repurchased 413,743 and 141,297 of its own common shares at an aggregate cost of $4,137,427 and $1,412,969, respectively. These transactions were funded with cash on hand and did not exceed either of the foregoing limitations.

**12. QUARTERLY RESULTS (UNAUDITED)**

Presented below is a summary of the unaudited quarterly financial information for the years ended December 31, 2001 and 2000:

| | 2001 Quarters Ended | | | |
|---|---|---|---|---|
| | March 31 | June 30 | September 30 | December 31 |
| Revenues | **$ 10,669,713** | **$ 10,891,240** | **$ 12,507,904** | **$ 15,239,945** |
| Net income | **3,275,345** | **5,038,898** | **6,109,137** | **7,300,587** |
| Basic and diluted earnings per share(a) | **$ 0.10** | **$ 0.12** | **$ 0.11** | **$ 0.10** |
| Dividends per share(a) | **0.19** | **0.19** | **0.19** | **0.19** |

(a) The totals of the four quarterly amounts for the year ended December 31, 2001 do not equal the totals for the year. This difference results from rounding differences between quarters.

| | 2000 Quarters Ended | | | |
|---|---|---|---|---|
| | March 31 | June 30 | September 30 | December 31 |
| Revenues | $ 3,710,409 | $ 5,537,618 | $ 6,586,611 | $ 7,538,568 |
| Net income | 1,691,288 | 1,521,021 | 2,525,228 | 2,815,430 |
| Basic and diluted earnings per share | $ 0.11 | $ 0.08 | $ 0.11 | $ 0.10 |
| Dividends per share | 0.18 | 0.18 | 0.18 | 0.19 |

**13. SUBSEQUENT EVENT**

On January 11, 2002, the Operating Partnership purchased a three-story office building on a 9.8-acre tract of land located in Sarasota County, Florida known as the Arthur Andersen Building, from an unaffiliated third party for $21,400,000. The Operating Partnership incurred additional related acquisition expenses, including attorneys' fees, recording fees, structural report and environmental report fees, and other closing costs, of approximately $30,000.

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**SCHEDULE III—REAL ESTATE INVESTMENTS AND ACCUMULATED DEPRECIATION December 31, 2001**
**(Unaudited)**

| | Cost | Accumulated Depreciation |
|---|---|---|
| **BALANCE AT DECEMBER 31, 1998** | $ 76,201,910 | $ 1,487,963 |
| 1999 additions | 103,916,288 | 4,243,688 |
| **BALANCE AT DECEMBER 31, 1999** | 180,118,198 | 5,731,651 |
| 2000 additions | 293,450,036 | 11,232,378 |
| **BALANCE AT DECEMBER 31, 2000** | 473,568,234 | 16,964,029 |
| 2001 additions | 294,740,403 | 20,821,037 |
| **BALANCE AT DECEMBER 31, 2001** | **$ 768,308,697** | **$ 37,785,066** |

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**
**(A Georgia Public Limited Partnership)**

**SCHEDULE III—REAL ESTATE INVESTMENTS AND ACCUMULATED DEPRECIATION**
**December 31, 2001**
**(Unaudited)**

| Description | Ownership Percentage | Encumbrances | Initial Cost | | Costs of Capitalized Improvements | Gross Amount at Which Carried at December 31, 2001 | | | | Accumulated Depreciation | Date of Construction | Date Acquired | Life on Which Depreciation is Computed (dd) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Land | Buildings and Improvements | | Land | Buildings and Improvements | Construction in Progress | Total | | | | |
| ALSTOM POWER—KNOXVILLE PROPERTY(a) | 4% | None | $ 582,897 | $ 744,164 | $ 6,744,547 | $ 607,930 | $ 7,463,678 | $ 0 | $ 8,071,608 | $ 1,844,482 | 1997 | 12/10/96 | 20 to 25 years |
| AVAYA BUILDING | 4 | None | 1,002,723 | 4,386,374 | 242,241 | 1,051,138 | 4,580,200 | 0 | 5,631,338 | 656,495 | 1998 | 6/24/98 | 20 to 25 years |
| 360 INTERLOCKEN (c) | 4 | None | 1,570,000 | 6,733,500 | 437,266 | 1,650,070 | 7,090,696 | 0 | 8,740,766 | 1,098,339 | 1996 | 3/20/98 | 20 to 25 years |
| IOMEGA PROPERT(d) | 4 | None | 597,000 | 4,674,624 | 876,459 | 641,988 | 5,506,095 | 0 | 6,148,083 | 742,404 | 1998 | 7/01/98 | 20 to 25 years |
| OHMEDA PROPERTY(e) | 4 | None | 2,613,600 | 7,762,481 | 528,415 | 2,746,894 | 8,157,602 | 0 | 10,904,496 | 1,278,024 | 1998 | 2/13/98 | 20 to 25 years |
| FAIRCHILD PROPERTY(f) | 78 | None | 2,130,480 | 6,852,630 | 374,300 | 2,219,251 | 7,138,159 | 0 | 9,357,410 | 999,301 | 1998 | 7/21/98 | 20 to 25 years |
| ORANGE COUNTY PROPERTY(g) | 44 | None | 2,100,000 | 4,463,700 | 287,916 | 2,187,501 | 4,664,115 | 0 | 6,851,616 | 651,780 | 1988 | 7/31/98 | 20 to 25 years |
| PRICEWATER-HOUSECOOPERS PROPERTY(h) | 100 | None | 1,460,000 | 19,839,071 | 825,560 | 1,520,834 | 20,603,797 | 0 | 22,124,631 | 2,469,792 | 1998 | 12/31/98 | 20 to 25 years |
| EYBL CARTEX PROPERTY(i) | 57 | None | 330,000 | 4,791,828 | 213,411 | 343,750 | 4,991,489 | 0 | 5,335,239 | 532,416 | 1998 | 5/18/99 | 20 to 25 years |
| SPRINT BUILDING (j) | 57 | None | 1,696,000 | 7,850,726 | 397,783 | 1,766,667 | 8,177,842 | 0 | 9,944,509 | 817,785 | 1998 | 7/2/99 | 20 to 25 years |
| JOHNSON MATTHEY(k) | 57 | None | 1,925,000 | 6,131,392 | 335,685 | 2,005,209 | 6,386,868 | 0 | 8,392,077 | 617,438 | 1973 | 8/17/99 | 20 to 25 years |
| GARTNER PROPERTY(l) | 57 | None | 895,844 | 7,451,760 | 347,820 | 933,171 | 7,762,253 | 0 | 8,695,424 | 724,477 | 1998 | 9/20/99 | 20 to 25 years |
| AT&T—PA PROPERTY(m) | 100 | None | 662,000 | 11,836,368 | 265,740 | 689,583 | 12,074,525 | 0 | 12,764,108 | 1,408,686 | 1998 | 2/4/99 | 20 to 25 years |
| MARCONI PROPERTY(n) | 100 | None | 5,000,000 | 28,161,665 | 1,381,747 | 5,208,335 | 29,335,077 | 0 | 34,543,412 | 2,737,941 | 1991 | 9/10/99 | 20 to 25 years |
| CINEMARK PROPERTY(o) | 100 | None | 1,456,000 | 20,376,881 | 908,217 | 1,516,667 | 21,224,431 | 0 | 22,741,098 | 1,768,692 | 1999 | 12/21/99 | 20 to 25 years |

| Description | Ownership Percentage | Encumbrances | Initial Cost | | Costs of Capitalized Improvements | Gross Amount at Which Carried at December 31, 2001 | | | | Accumulated Depreciation | Date of Construction | Date Acquired | Life on Which Depreciation is Computed (dd) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Land | Buildings and Improvements | | Land | Buildings and Improvements | Construction in Progress | Total | | | | |
| MATSUSHITA PROPERTY (p) | 100 | None | 4,577,485 | 0 | 13,860,142 | 4,768,215 | 13,773,660 | 0 | 18,541,875 | 2,032,803 | 1999 | 3/15/99 | 20 to 25 years |
| ALSTOM POWER—RICHMOND PROPERTY (q) | 100 | None | 948,401 | 0 | 9,938,308 | 987,918 | 9,923,454 | 0 | 10,911,372 | 921,980 | 1999 | 7/22/99 | 20 to 25 years |
| METRIS—OK PROPERTY (r) | 100 | None | 1,150,000 | 11,569,583 | 541,489 | 1,197,917 | 12,063,155 | 0 | 13,261,072 | 881,413 | 2000 | 2/11/00 | 20 to 25 years |
| DIAL PROPERTY (s) | 100 | None | 3,500,000 | 10,785,309 | 601,264 | 3,645,835 | 11,240,738 | 83,125 | 14,969,698 | 821,315 | 1997 | 3/29/00 | 20 to 25 years |
| ASML PROPERTY (t) | 100 | None | 0 | 17,392,633 | 731,685 | 0 | 18,124,318 | 0 | 18,124,318 | 1,314,573 | 1995 | 3/29/00 | 20 to 25 years |
| MOTOROLA—AZ PROPERTY (u) | 100 | None | 0 | 16,036,219 | 669,639 | 0 | 16,705,858 | 0 | 16,705,858 | 1,218,400 | 1998 | 3/29/00 | 20 to 25 years |
| AVNET PROPERTY (v) | 100 | None | 0 | 13,271,502 | 551,156 | 0 | 13,822,658 | 0 | 13,822,658 | 868,060 | 2000 | 6/12/00 | 20 to 25 years |
| DELPHI PROPERTY (w) | 100 | None | 2,160,000 | 16,775,971 | 1,676,956 | 2,250,008 | 18,469,408 | 14,877 | 20,734,293 | 1,286,705 | 2000 | 6/29/00 | 20 to 25 years |
| SIEMENS PROPERTY (x) | 47 | None | 2,143,588 | 12,048,902 | 591,358 | 2,232,905 | 12,550,943 | 43,757 | 14,827,605 | 959,465 | 2000 | 5/10/00 | 20 to 25 years |
| QUEST PROPERTY (y) | 16 | None | 2,220,993 | 5,545,498 | 51,285 | 2,220,993 | 5,602,160 | 0 | 7,823,153 | 649,436 | 1997 | 9/10/97 | 20 to 25 years |
| MOTOROLA—NJ PROPERTY (z) | 100 | None | 9,652,500 | 20,495,243 | 0 | 10,054,720 | 25,540,919 | 392,104 | 35,987,743 | 1,541,768 | 2000 | 11/1/00 | 20 to 25 years |
| METRIS—MN PROPERTY (aa) | 100 | None | 7,700,000 | 45,151,969 | 2,181 | 8,020,859 | 47,042,309 | 0 | 55,063,168 | 2,000,737 | 2000 | 12/21/00 | 20 to 25 years |
| STONE & WEBSTER PROPERTY (bb) | 100 | None | 7,100,000 | 37,914,954 | 0 | 7,395,857 | 39,498,469 | 0 | 46,894,326 | 1,679,981 | 1994 | 12/21/00 | 20 to 25 years |
| AT&T—OK PROPERTY (cc) | 47 | None | 2,100,000 | 13,227,555 | 638,651 | 2,187,500 | 13,785,631 | 0 | 15,973,131 | 597,317 | 1999 | 12/28/00 | 20 to 25 years |
| COMDATA PROPERTY | 64 | None | 4,300,000 | 20,650,000 | 572,944 | 4,479,168 | 21,566,287 | 0 | 26,045,455 | 575,056 | 1986 | 5/15/2001 | 20 to 25 years |
| AMERICREDIT PROPERTY | 87 | None | 1,610,000 | 10,890,000 | 563,257 | 1,677,084 | 11,386,174 | 0 | 13,063,258 | 227,724 | 2001 | 7/16/2001 | 20 to 25 years |
| STATE STREET PROPERTY | 100 | None | 10,600,000 | 38,962,988 | 4,344,837 | 11,041,670 | 40,666,305 | 2,201,913 | 53,909,888 | 807,903 | 1998 | 7/30/2001 | 20 to 25 years |
| IKON PROPERTY | 100 | None | 2,735,000 | 17,915,000 | 985,856 | 2,847,300 | 18,792,672 | 0 | 21,639,972 | 250,689 | 2000 | 9/7/2001 | 20 to 25 years |
| NISSAN PROPERTY | 100 | $ 8,124,444 | 5,545,700 | 0 | 21,353 | 5,567,053 | 0 | 2,653,777 | 8,220,830 | 0 | 2002 | 9/19/2001 | 20 to 25 years |
| INGRAM MICRO PROPERTY | 100 | $ 22,000,000 | 333,049 | 20,666,951 | 922,657 | 333,049 | 21,590,010 | 0 | 21,923,059 | 292,307 | 1997 | 9/27/2001 | 20 to 25 years |
| LUCENT PROPERTY | 100 | None | 7,000,000 | 10,650,000 | 1,106,240 | 7,275,830 | 11,484,562 | 0 | 18,760,392 | 153,093 | 2000 | 9/28/2001 | 20 to 25 years |

| Description | Ownership Percentage | Encumbrances | Initial Cost: Land | Initial Cost: Buildings and Improvements | Costs of Capitalized Improvements | Gross Amount at Which Carried at December 31, 2001: Land | Gross Amount at Which Carried at December 31, 2001: Buildings and Improvements | Gross Amount at Which Carried at December 31, 2001: Construction in Progress | Gross Amount at Which Carried at December 31, 2001: Total | Accumulated Depreciation | Date of Construction | Date Acquired | Life on Which Depreciation is Computed (dd) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| CONVERGYS PROPERTY | 100 | None | 3,500,000 | 9,755,000 | 791,672 | 3,642,442 | 10,404,230 | 0 | 14,046,672 | 34,681 | 2001 | 12/21/2001 | 20 to 25 years |
| ADIC PROPERTY | 51 | None | 1,954,213 | 11,000,000 | 757,902 | 2,047,735 | 11,664,380 | 0 | 13,712,115 | 38,881 | 2001 | 12/21/2001 | 20 to 25 years |
| WINDY POINT I PROPERTY | 100 | None | 4,360,000 | 29,298,642 | 1,440,568 | 4,536,862 | 30,562,349 | 0 | 35,099,211 | 101,875 | 1999 | 12/31/2001 | 20 to 25 years |
| WINDY POINT II PROPERTY | 100 | None | 3,600,000 | 52,016,358 | 2,385,402 | 3,746,033 | 54,255,727 | 0 | 58,001,760 | 180,852 | 2001 | 12/31/2001 | 20 to 25 years |
| Total | | $ 30,124,444 | $112,812,473 | $ 584,077,441 | $ 57,913,909 | $117,245,941 | $ 645,673,203 | $ 5,389,553 | $768,308,697 | $ 37,785,066 | | | |

(a) The Alstom Power Knoxville Property consists of a three-story office building located in Knoxville, Tennessee. It is owned by Fund IX-X-XI-REIT Joint Venture.
(b) The Avaya Building consists of a one-story office building located in Oklahoma City, Oklahoma. It is owned by Fund IX-X-XI-REIT Joint Venture.
(c) The 360 Interlocken Property consists of a three-story multi-tenant office building located in Broomfield, Colorado. It is owned by Fund IX-X-XI-REIT Joint Venture.
(d) The Iomega Property consists of a one-story warehouse and office building located in Ogden, Utah. It is owned by Fund IX-X-XI-REIT Joint Venture.
(e) The Ohmeda Property consists of a two-story office building located in Louisville, Colorado. It is owned by Fund IX-X-XI-REIT Joint Venture.
(f) The Fairchild Property consists of a two-story warehouse and office building located in Fremont, California. It is owned by Wells/Freemont Associates.
(g) The Orange County Property consists of a one-story warehouse and office building located in Fountain Valley, California. It is owned by Wells/Orange County Associates.
(h) The PriceWaterhouseCoopers Property consists of a four-story office building located in Tampa, Florida. It is 100% owned by the Company.
(i) The EYBL CarTex Property consists of a one-story manufacturing and office building located in Fountain Inn, South Carolina. It is owned by Fund XI-XII-REIT Joint Venture.
(j) The Sprint Building consists of a three-story office building located in Leawood, Kansas. It is owned by Fund XI-XII-REIT Joint Venture.
(k) The Johnson Matthey Property consists of a one-story research and development office and warehouse building located in Chester County, Pennsylvania. It is owned by Fund XI-XII-REIT Joint Venture.
(l) The Gartner Property consists of a two-story office building located in Ft. Myers, Florida. It is owned by Fund XI-XII-REIT Joint Venture
(m) The AT&T—PA Property consists of a four-story office building located in Harrisburg, Pennsylvania. It is 100% owned by the Company.
(n) The Marconi Property consists of a two-story office building located in Wood Dale, Illinois. It is 100% owned by the Company.
(o) The Cinemark Property consists of a five-story office building located in Plano, Texas. It is 100% owned by the Company.
(p) The Matsushita Property consists of a two-story office building located in Lake Forest, California. It is 100% owned by the Company.
(q) The Alstom Property consists of a four-story office building located in Midlothian, Chesterfield County, Virginia. It is 100% owned by the Company.
(r) The Metris—OK Property consists of a three-story office building located in Tulsa, Oklahoma. It is 100% owned by the Company.
(s) The Dial Property consists of a two-story office building located in Scottsdale, Arizona. It is 100% owned by the Company.
(t) The ASML Property consists of a two-story office building located in Tempe, Arizona. It is 100% owned by the Company.
(u) The Motorola—AZ Property consists of a two-story office building located in Tempe, Arizona. It is 100% owned by the Company.
(v) The Avnet Property consists of a two-story office building located in Tempe, Arizona. It is 100% owned by the Company.
(w) The Delphi Property consists of a three-story office building located in Troy, Michigan. It is 100% owned by the Company.
(x) The Siemens Property consists of a three-story office building located in Troy, Michigan. It is owned by Fund XII-REIT Joint Venture.
(y) The Quest Property consists of a two-story office building located in Orange County, California. It is owned by Fund VIII-IX-REIT Joint Venture.
(z) The Motorola—NJ Property consists of a three-story office building located in South Plainfield, New Jersey. It is 100% owned by the Company.
(aa) The Metris—MN Property consists of a nine-story office building located in Minnetonka, Minnesota. It is 100% owned by the Company.
(bb) The Stone & Webster Property consists of a six-story office building located in Houston, Texas. It is 100% owned by the Company.
(cc) The AT&T—OK Property consists of a two-story office building located in Oklahoma City, Oklahoma. It is owned by the Fund XII-REIT Joint Venture.
(dd) Depreciation lives used for buildings are 25 years. Depreciation lives used for land improvements are 20 years.

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**CONSOLIDATED BALANCE SHEETS**

| | March 31, 2002 | December 31, 2001 |
|---|---|---|
| | (Unaudited) | |
| **ASSETS** | | |
| **REAL ESTATE ASSETS, at cost:** | | |
| Land | $ 94,273,542 | $ 86,246,985 |
| Building and improvements, less accumulated depreciation of $30,558,906 in 2002 and $24,814,454 in 2001 | 563,639,005 | 472,383,102 |
| Construction in progress | 8,827,823 | 5,738,573 |
| Total real estate assets | 666,740,370 | 564,368,660 |
| **INVESTMENT IN JOINT VENTURES** | 76,811,543 | 77,409,980 |
| **CASH AND CASH EQUIVALENTS** | 187,022,573 | 75,586,168 |
| **INVESTMENT IN BONDS** | 22,000,000 | 22,000,000 |
| **ACCOUNTS RECEIVABLE** | 7,697,487 | 6,003,179 |
| **DEFERRED PROJECT COSTS** | 7,739,896 | 2,977,110 |
| **DEFERRED LEASE ACQUISITION COSTS, net** | 1,868,674 | 1,525,199 |
| **DUE FROM AFFILIATES** | 1,820,241 | 1,692,727 |
| **PREPAID EXPENSES AND OTHER ASSETS, net** | 1,584,942 | 718,389 |
| **DEFERRED OFFERING COSTS** | 244,761 | 0 |
| Total assets | $ 973,530,487 | $ 752,281,412 |
| **LIABILITIES AND SHAREHOLDERS' EQUITY** | | |
| **LIABILITIES:** | | |
| Notes payable | $ 11,071,586 | $ 8,124,444 |
| Obligation under capital lease | 22,000,000 | 22,000,000 |
| Accounts payable and accrued expenses | 8,570,735 | 8,727,473 |
| Dividends payable | 3,657,498 | 1,059,026 |
| Due to affiliates | 990,923 | 2,166,161 |
| Deferred rental income | 1,567,241 | 661,657 |
| Total liabilities | 47,857,983 | 42,738,761 |
| **MINORITY INTEREST OF UNIT HOLDER IN OPERATING PARTNERSHIP** | 200,000 | 200,000 |
| **SHAREHOLDERS' EQUITY:** | | |
| Common shares, $.01 par value; 125,000,000 shares authorized, 109,331,764 shares issued and 108,472,526 shares outstanding at March 31, 2002, and 83,761,469 shares issued and 83,206,429 shares outstanding at December 31, 2001 | 1,093,317 | 837,614 |
| Additional paid-in capital | 966,577,500 | 738,236,525 |
| Cumulative distributions in excess of earnings | (33,555,824) | (24,181,092) |
| Treasury stock, at cost, 859,238 shares at March 31, 2002 and 555,040 shares at December 31, 2001 | (8,592,377) | (5,550,396) |
| Other comprehensive loss | (50,112) | 0 |
| Total shareholders' equity | 925,472,504 | 709,342,651 |
| Total liabilities and shareholders' equity | $ 973,530,487 | $ 752,281,412 |

The accompanying condensed notes are an integral part of these consolidated financial statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**CONSOLIDATED STATEMENTS OF INCOME**
**(Unaudited)**

| | Three Months Ended | |
|---|---|---|
| | March 31, 2002 | March 31, 2001 |
| **REVENUES:** | | |
| Rental income | $ 16,738,163 | $ 9,860,085 |
| Equity in income of joint ventures | 1,206,823 | 709,713 |
| Interest income | 1,113,715 | 99,915 |
| Take out fee | 134,102 | 0 |
| | 19,192,803 | 10,669,713 |
| **EXPENSES:** | | |
| Depreciation | 5,744,452 | 3,187,179 |
| Management and leasing fees | 899,495 | 565,714 |
| Operating costs, net of reimbursements | 624,698 | 1,091,185 |
| General and administrative | 529,031 | 175,107 |
| Interest expense | 440,001 | 2,160,426 |
| Amortization of deferred financing costs | 175,462 | 214,757 |
| | 8,413,139 | 7,394,368 |
| **NET INCOME** | $ 10,779,664 | $ 3,275,345 |
| **EARNINGS PER SHARE** | | |
| Basic and diluted | $ 0.11 | $ 0.10 |

The accompanying condensed notes are an integral part of these consolidated financial statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**
**For the year ended December 31, 2001**
**and for the three months ended March 31, 2002**

| | Common Stock Shares | Common Stock Amount | Additional Paid-In Capital | Cumulative Distributions in Excess of Earnings | Retained Earnings | Treasury Stock Shares | Treasury Stock Amount | Other Comprehensive Income | Total Shareholders' Equity |
|---|---|---|---|---|---|---|---|---|---|
| **BALANCE, December 31, 2000** | 31,509,807 | $ 315,097 | $275,573,339 | $ (9,133,855) | $ 0 | (141,297) | $(1,412,969) | $ 0 | $ 265,341,612 |
| Issuance of common stock | 52,251,662 | 522,517 | 521,994,103 | 0 | 0 | 0 | 0 | 0 | 522,516,620 |
| Treasury stock purchased | 0 | 0 | 0 | 0 | 0 | (413,743) | (4,137,427) | 0 | (4,137,427) |
| Net income | 0 | 0 | 0 | 0 | 21,723,967 | 0 | 0 | 0 | 21,723,967 |
| Dividends ($.76 per share) | 0 | 0 | 0 | (15,047,237) | (21,723,967) | 0 | 0 | 0 | (36,771,204) |
| Sales commissions and discounts | 0 | 0 | (49,246,118) | 0 | 0 | 0 | 0 | 0 | (49,246,118) |
| Other offering expenses | 0 | 0 | (10,084,799) | 0 | 0 | 0 | 0 | 0 | (10,084,799) |
| **BALANCE, December 31, 2001** | 83,761,469 | 837,614 | 738,236,525 | (24,181,092) | 0 | (555,040) | (5,550,396) | 0 | 709,342,651 |
| **Issuance of common stock** | **25,570,295** | **255,703** | **255,447,240** | **0** | **0** | **0** | **0** | **0** | **255,702,943** |
| **Treasury stock purchased** | **0** | **0** | **0** | **0** | **0** | **(304,198)** | **(3,041,981)** | **0** | **(3,041,981)** |
| **Net income** | **0** | **0** | **0** | **0** | **10,779,664** | **0** | **0** | **0** | **10,779,664** |
| **Dividends ($.19 per share)** | **0** | **0** | **0** | **(9,374,732)** | **(10,779,664)** | **0** | **0** | **0** | **(20,154,396)** |
| **Sales commissions and discounts** | **0** | **0** | **(24,579,655)** | **0** | **0** | **0** | **0** | **0** | **(24,579,655)** |
| **Other offering expenses** | **0** | **0** | **(2,526,610)** | **0** | **0** | **0** | **0** | **0** | **(2,526,610)** |
| **Gain/(loss) on interest rate swap** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **(50,112)** | **(50,112)** |
| **BALANCE, March 31, 2002 (UNAUDITED)** | **109,331,764** | **$1,093,317** | **$966,577,500** | **$ (33,555,824)** | **$ 0** | **(859,238)** | **$(8,592,377)** | **$ (50,112)** | **$ 925,472,504** |

The accompanying condensed notes are an integral part of these consolidated financial statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(Unaudited)**

| | Three Months Ended | |
|---|---|---|
| | March 31, 2002 | March 31, 2001 |
| **CASH FLOWS FROM OPERATING ACTIVITIES:** | | |
| Net income | $ 10,779,664 | $ 3,275,345 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Equity in income of joint ventures | (1,206,823) | (709,713) |
| Depreciation | 5,744,452 | 3,187,179 |
| Amortization of deferred financing costs | 175,462 | 214,757 |
| Amortization of deferred leasing costs | 72,749 | 75,837 |
| Deferred lease acquisition costs paid | (400,000) | 0 |
| Changes in assets and liabilities: | | |
| Accounts receivable | (1,694,308) | (264,416) |
| Due from affiliates | (13,740) | 0 |
| Deferred rental income | 905,584 | (142,888) |
| Prepaid expenses and other assets, net | (1,092,127) | 2,481,643 |
| Accounts payable and accrued expenses | (156,738) | 96,828 |
| Due to affiliates | (626) | 20,742 |
| Net cash provided by operating activities | 13,113,549 | 8,235,314 |
| **CASH FLOWS FROM INVESTING ACTIVITIES:** | | |
| Investments in real estate | (104,051,998) | (2,703,858) |
| Investment in joint ventures | 0 | (5,749) |
| Deferred project costs paid | (9,461,180) | (2,288,936) |
| Distributions received from joint ventures | 1,691,486 | 734,286 |
| Net cash used in investing activities | (111,821,692) | (4,264,257) |
| **CASH FLOWS FROM FINANCING ACTIVITIES:** | | |
| Proceeds from notes payable | 2,947,142 | 5,800,000 |
| Repayment of notes payable | 0 | (56,923,187) |
| Dividends paid to shareholders | (17,555,924) | (6,213,236) |
| Issuance of common stock | 255,702,943 | 66,174,705 |
| Sales commissions paid | (24,579,655) | (6,212,824) |
| Offering costs paid | (3,327,977) | (1,961,945) |
| Treasury stock purchased | (3,041,981) | (776,555) |
| Net cash (used in) provided by financing activities | 210,144,548 | (113,042) |
| **NET INCREASE IN CASH AND CASH EQUIVALENTS** | 111,436,405 | 3,858,015 |
| **CASH AND CASH EQUIVALENTS, beginning of year** | 75,586,168 | 4,298,301 |
| **CASH AND CASH EQUIVALENTS, end of period** | $ 187,022,573 | $ 8,156,316 |
| **SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING ACTIVITIES:** | | |
| Deferred project costs applied to real estate assets | $ 4,080,388 | $ 1,430,111 |
| Deferred project costs due to affiliate | $ 496,134 | $ 0 |
| Interest rate swap | $ (50,112) | $ 0 |
| Deferred offering costs due to affiliate | $ 244,761 | $ 0 |
| Other offering costs due to affiliate | $ 141,761 | $ 0 |
| Write-off of deferred offering costs due to affiliate | $ 0 | $ 709,686 |

The accompanying condensed notes are an integral part of these consolidated financial statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC. AND SUBSIDIARY**

**CONDENSED NOTES TO FINANCIAL STATEMENTS**
**March 31, 2002**
**(Unaudited)**

**1. Summary of Significant Accounting Policies**

*(a) General*

Wells Real Estate Investment Trust, Inc. (the "Company") is a Maryland corporation formed on July 3, 1997, which qualifies as a real estate investment trust ("REIT"). Substantially all of the Company's business is conducted through Wells Operating Partnership, L.P. ("Wells OP"), a Delaware limited partnership organized for the purpose of acquiring, developing, owning, operating, improving, leasing, and otherwise managing income producing commercial properties for investment purposes on behalf of the Company. The Company is the sole general partner of Wells OP.

On January 30, 1998, the Company commenced its initial public offering of up to 16,500,000 shares of common stock at $10 per share pursuant to a Registration Statement on Form S-11 filed under the Securities Act of 1933. The Company commenced active operations on June 5, 1998, upon receiving and accepting subscriptions for 125,000 shares. The Company terminated its initial public offering on December 19, 1999 at which time gross proceeds of approximately $132,181,919 had been received from the sale of approximately 13,218,192 shares. The Company commenced its second public offering of shares of common stock on December 20, 1999, which was terminated on December 19, 2000 after receipt of gross proceeds of approximately $175,229,193 from the sale of approximately 17,522,919 shares from the second public offering. The Company commenced its third public offering of the shares of common stock on December 20, 2000. As of March 31, 2002, the Company has received gross proceeds of approximately $785,906,526 from the sale of approximately 78,590,653 shares from its third public offering. Accordingly, as of March 31, 2002, the Company has received aggregate gross offering proceeds of approximately $1,093,317,638 from the sale of 109,331,764 shares of its common stock to 27,900 investors. After payment of $37,965,419 in acquisition and advisory fees and acquisition expenses, payment of $125,647,820 in selling commissions and organization and offering expenses, capital contributions to joint ventures and acquisitions expenditures by Wells OP of $735,821,825 for property acquisitions, and common stock redemptions of $8,592,377 pursuant to the Company's share redemption program, the Company was holding net offering proceeds of $185,290,197 available for investment in properties, as of March 31, 2002.

**(b) Properties**

As of March 31, 2002, the Company owned interests in 44 properties listed in the table below through its ownership in Wells OP. As of March 31, 2002, all of these properties were 100% leased.

| Property Name | Tenant | Property Location | % Owned | Purchase Price | Square Feet | Annual Rent |
|---|---|---|---|---|---|---|
| Dana Detroit Building | Dana Corporation | Detroit, MI | 100% | $23,650,000 | 112,480 | $2,330,600 |
| Dana Kalamazoo Building | Dana Corporation | Kalamazoo, MI | 100% | $18,300,000 | 147,004 | $1,842,800 |
| Novartis Building | Novartis Opthalmics, Inc. | Atlanta, GA | 100% | $15,000,000 | 100,087 | $1,426,240 |
| Transocean Houston Building | Transocean Deepwater Offshore Drilling, Inc.<br>Newpark Resources, Inc. | Houston, TX | 100% | $22,000,000 | 103,260<br>52,731 | $2,110,035<br>$1,153,227 |
| Andersen Building | Arthur Andersen LLP | Sarasota, FL | 100% | $21,400,000 | 157,704 | $1,988,454 |
| Windy Point Buildings | TCI Great Lakes, Inc.<br>The Apollo Group, Inc.<br>Global Knowledge Network<br>Zurich American Insurance<br>Various other tenants | Schaumburg, IL | 100% | $89,275,000 | 129,157<br>28,322<br>22,028<br>300,000<br>8,884 | $1,940,404<br>$ 242,948<br>$ 358,094<br>$4,718,285<br>$ 129,947 |
| Convergys Building | Convergys Customer Management Group, Inc. | Tamarac, FL | 100% | $13,255,000 | 100,000 | $1,144,176 |
| ADIC Buildings | Advanced Digital Information Corporation | Parker, CO | 68.2% | $12,954,213 | 148,200 | $1,124,868 |
| Lucent Building | Lucent Technologies, Inc. | Cary, NC | 100% | $17,650,000 | 120,000 | $1,813,500 |
| Ingram Micro Building | Ingram Micro, L.P. | Millington, TN | 100% | $21,050,000 | 701,819 | $2,035,275 |
| Nissan Property | Nissan Motor Acceptance Corporation | Irving, TX | 100% | $ 5,545,700(1) | 268,290 | $4,225,860(2) |
| IKON Buildings | IKON Office Solutions, Inc. | Houston, TX | 100% | $20,650,000 | 157,790 | $2,015,767 |
| State Street Building | SSB Realty, LLC | Quincy, MA | 100% | $49,563,000 | 234,668 | $6,922,706 |
| AmeriCredit Building | AmeriCredit Financial Services Corporation | Orange Park, FL | 68.2% | $12,500,000 | 85,000 | $1,322,388 |
| Comdata Building | Comdata Network, Inc. | Nashville, TN | 55.0% | $24,950,000 | 201,237 | $2,443,647 |
| AT&T Oklahoma Buildings | AT&T Corp.<br>Jordan Associates, Inc. | Oklahoma City, OK | 55.0% | $15,300,000 | 103,500<br>25,000 | $1,242,000<br>$ 294,504 |
| Metris Minnesota Building | Metris Direct, Inc. | Minnetonka, MN | 100% | $52,800,000 | 300,633 | $4,960,445 |
| Stone & Webster Building | Stone & Webster, Inc.<br>SYSCO Corporation | Houston, TX | 100% | $44,970,000 | 206,048<br>106,516 | $4,533,056<br>$2,130,320 |
| Motorola Plainfield Building | Motorola, Inc. | South Plainfield, NJ | 100% | $33,648,156 | 236,710 | $3,324,427 |
| Quest Building | Quest Software, Inc. | Irvine, CA | 15.8% | $ 7,193,000 | 65,006 | $1,287,119 |
| Delphi Building | Delphi Automotive Systems, LLC | Troy, MI | 100% | $19,800,000 | 107,193 | $1,937,664 |
| Avnet Building | Avnet, Inc. | Tempe, AZ | 100% | $13,250,000 | 132,070 | $1,516,164 |
| Siemens Building | Siemens Automotive Corp. | Troy, MI | 56.8% | $14,265,000 | 77,054 | $1,371,946 |
| Motorola Tempe Building | Motorola, Inc. | Tempe, AZ | 100% | $16,000,000 | 133,225 | $1,913,999 |
| ASML Building | ASM Lithography, Inc. | Tempe, AZ | 100% | $17,355,000 | 95,133 | $1,927,788 |
| Dial Building | Dial Corporation | Scottsdale, AZ | 100% | $14,250,000 | 129,689 | $1,387,672 |
| Metris Tulsa Building | Metris Direct, Inc. | Tulsa, OK | 100% | $12,700,000 | 101,100 | $1,187,925 |
| Cinemark Building | Cinemark USA, Inc.<br>The Coca-Cola Co. | Plano, TX | 100% | $21,800,000 | 65,521<br>52,587 | $1,366,491<br>$1,354,524 |
| Gartner Building | The Gartner Group, Inc. | Ft. Myers, FL | 56.8% | $ 8,320,000 | 62,400 | $ 830,968 |
| Videojet Technologies Chicago (formerly known as the "Marconi Building") | Videojet Technologies, Inc. | Wood Dale, IL | 100% | $32,630,940 | 250,354 | $3,376,743 |
| Johnson Matthey Building | Johnson Matthey, Inc. | Tredyffrin Township, PA | 56.8% | $ 8,000,000 | 130,000 | $ 841,750 |
| Alstom Power Richmond Building | Alstom Power, Inc. | Midlothian, VA | 100% | $11,400,000 | 99,057 | $1,225,963 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Sprint Building | Sprint Communications Company, L.P. | Leawood, KS | 56.8% | $ 9,500,000 | 68,900 | $1,062,949 |
| EYBL CarTex Building | EYBL CarTex, Inc. | Greenville, SC | 56.8% | $ 5,085,000 | 169,510 | $ 543,845 |
| Matsushita Building | Matsushita Avionics Systems Corporation | Lake Forest, CA | 100% | $18,431,206 | 144,906 | $1,995,704 |
| AT&T Pennsylvania Building | Pennsylvania Cellular Telephone Corp. | Harrisburg, PA | 100% | $12,291,200 | 81,859 | $1,442,116 |
| PwC Building | PricewaterhouseCoopers, LLP | Tampa, FL | 100% | $21,127,854 | 130,091 | $2,093,382 |
| Fairchild Building | Fairchild Technologies U.S.A., Inc. | Fremont, CA | 77.5% | $ 8,900,000 | 58,424 | $ 922,444 |
| Cort Furniture Building | Cort Furniture Rental Corporation | Fountain Valley, CA | 44.0% | $ 6,400,000 | 52,000 | $ 834,888 |
| Iomega Building | Iomega Corporation | Ogden City, UT | 3.7% | $ 5,025,000 | 108,250 | $ 539,958 |
| Interlocken Building | ODS Technologies, L.P. and GAIAM, Inc. | Broomfield, CO | 3.7% | $ 8,275,000 | 51,975 | $1,031,003 |
| Ohmeda Building | Ohmeda, Inc. | Louisville, CO | 3.7% | $10,325,000 | 106,750 | $1,004,517 |
| Alstom Power Knoxville Building | Alstom Power, Inc. | Knoxville, TN | 3.7% | $ 7,900,000 | 84,404 | $1,106,519 |
| Avaya Building | Avaya, Inc. | Oklahoma City, OK | 3.7% | $ 5,504,276 | 57,186 | $ 536,977 |

(1) This represents the costs incurred by Wells OP to purchase the land. Total costs to be incurred for development of the Nissan Property are currently estimated to be $42,259,000.
(2) Annual rent does not take effect until construction of the building is completed and the tenant is occupying the building.

Wells OP owns interests in properties directly and through equity ownership in the following joint ventures:

| Joint Venture | Joint Venture Partners | Properties Held by Joint Venture |
|---|---|---|
| Fund XIII-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund XIII, L.P. | The AmeriCredit Building<br>The ADIC Buildings |
| Fund XII-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund XII, L.P. | The Siemens Building<br>The AT&T Oklahoma Buildings<br>The Comdata Building |
| Fund XI-XII-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund XI, L.P.<br>Wells Real Estate Fund XII, L.P. | The EYBL CarTex Building<br>The Sprint Building<br>The Johnson Matthey Building<br>The Gartner Building |
| Fund IX-X-XI-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund IX, L.P.<br>Wells Real Estate Fund X, L.P.<br>Wells Real Estate Fund XI, L.P. | The Alstom Power Knoxville Building<br>The Ohmeda Building<br>The Interlocken Building<br>The Avaya Building<br>The Iomega Building |
| Wells/Fremont Associates Joint Venture (the "Fremont Joint Venture") | Wells Operating Partnership, L.P.<br>Fund X-XI Joint Venture | The Fairchild Building |
| Wells/Orange County Associates Joint Venture (the "Orange County Joint Venture") | Wells Operating Partnership, L.P.<br>Fund X-XI Joint Venture | The Cort Building |
| Fund VIII-IX-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Fund VIII-IX Joint Venture | Quest Building |

**(c) Critical Accounting Policies**

The Company's accounting policies have been established in accordance with accounting principles generally accepted in the United States ("GAAP"). The preparation of financial statements in conformity with GAAP requires management to use judgment in the application of accounting policies, including making estimates and assumptions. These judgments affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenue and expenses during the reporting periods. If our judgment or interpretation of the facts and circumstances relating to various transactions had been different, it is possible that different accounting policies would have been applied; thus, resulting in a different presentation of our financial statements. Below is a discussion of the accounting policies that we consider to be critical in that they may require complex judgment in their application or require estimates about matters which are inherently uncertain.

*Revenue Recognition*

The Company recognizes rental income generated from all leases on real estate assets in which the Company has an ownership interest, either directly or through investments in joint ventures, on a straight–line basis over the terms of the respective leases. If a tenant was to encounter financial difficulties in future periods, the amount recorded as a receivable may not be realized.

***Operating Cost Reimbursements***

The Company generally bills tenants for operating cost reimbursements, either directly or through investments in joint ventures, on a monthly basis at amounts estimated largely based on actual prior period activity and the respective lease terms. Such billings are generally adjusted on an annual basis to reflect reimbursements owed to the landlord based on the actual costs incurred during the period and the respective lease terms. Financial difficulties encountered by tenants may result in receivables not being realized.

***Real Estate***

Management continually monitors events and changes in circumstances indicating that the carrying amounts of the real estate assets in which the Company has an ownership interest, either directly or through investments in joint ventures, may not be recoverable. When such events or changes in circumstances are present, management assesses the potential impairment by comparing the fair market value of the asset, estimated at an amount equal to the future undiscounted operating cash flows expected to be generated from tenants over the life of the asset and from its eventual disposition, to the carrying value of the asset. In the event that the carrying amount exceeds the estimated fair market value, the Company would recognize an impairment loss in the amount required to adjust the carrying amount of the asset to its estimated fair market value. Neither the Company nor its joint ventures have recognized impairment losses on real estate assets in 2002 or 2001.

***Deferred Project Costs***

Wells Capital, Inc. (the "Advisor") expects to continue to fund 100% of the acquisition and advisory fees and acquisition expenses and recognize related expenses, to the extent that such costs exceed 3.5% of cumulative capital raised (subject to certain overall limitations described in the prospectus), on behalf of the Company. The Company records acquisition and advisory fees and acquisition expenses by capitalizing deferred project costs and reimbursing the Advisor in an amount equal to 3.5% of cumulative capital raised to date. As the Company invests its capital proceeds, deferred project costs are applied to real estate assets, either directly or through contributions to joint ventures, at an amount equal to 3.5% of each investment and depreciated over the useful lives of the respective real estate assets. Acquisition and advisory fees and acquisition expenses paid as of March 31, 2002, amounted to $37,965,419 and represented approximately 3.5% of shareholders' capital contributions received. These fees are allocated to specific properties as they are purchased or developed and are included in capitalized assets of the joint venture, or real estate assets. Deferred project costs at March 31, 2002 and December 31, 2001, represent fees paid, but not yet applied to properties.

***Deferred Offering Costs***

The Advisor expects to continue to fund 100% of the organization and offering costs and recognize related expenses, to the extent that such costs exceed 3% of cumulative capital raised, on behalf of the Company. Organization and offering costs include items such as legal and accounting fees, marketing and promotional costs, and printing costs, and specifically exclude sales costs and underwriting commissions. The Company records offering costs by accruing deferred offering costs, with an offsetting liability included in due to affiliates, at an amount equal to the lesser of 3% of cumulative capital raised to date or actual costs incurred from third–parties less reimbursements paid to the Advisor. As the actual equity is raised, the Company reverses the deferred offering costs accrual and recognizes a charge to stockholders' equity upon reimbursing the Advisor. As of March 31, 2002, the Advisor had paid offering expenses on behalf of the Company in an aggregate amount of $23,230,560, of which the Advisor had been reimbursed $22,021,962, which did not exceed the 3% limitation. Deferred offering costs in the accompanying balance sheet represent costs incurred by the Advisor which will be reimbursed by the Company.

**(d) Distribution Policy**

The Company will make distributions each taxable year (not including a return of capital for federal income tax purposes) equal to at least 90% of its real estate investment trusts taxable income. The Company intends to make regular quarterly distributions to holders of the shares. Distributions will be made to those shareholders who are shareholders as of the record date selected by the Directors. The Company currently calculates quarterly dividends based on the daily record and dividend declaration dates; thus, shareholders are entitled to receive dividends immediately upon the purchase of shares.

Dividends to be distributed to the shareholders are determined by the Board of Directors and are dependent on a number of factors related to the Company, including funds available for payment of dividends, financial condition, capital expenditure requirements and annual distribution requirements in order to maintain the Company's status as a REIT under the Code. Operating cash flows are expected to increase as additional properties are added to the Company's investment portfolio.

**(e) Income Taxes**

The Company has made an election under Section 856 (C) of the Internal Revenue Code of 1986, as amended (the "Code"), to be taxed as a Real Estate Investment Trust ("REIT") under the Code beginning with its taxable year ended December 31, 1998. As a REIT for federal income tax purposes, the Company generally will not be subject to federal income tax on income that it distributes to its shareholders. If the Company fails to qualify as a REIT in any taxable year, it will then be subject to federal income tax on its taxable income at regular corporate rates and will not be permitted to qualify for treatment as a REIT for federal income tax purposes for four years following the year during which qualification is lost. Such an event could materially adversely affect the Company's net income and net cash available to distribute to shareholders. However, the Company believes that it is organized and operates in such a manner as to qualify for treatment as a REIT and intends to continue to operate in the foreseeable future in such a manner so that the Company will remain qualified as a REIT for federal income tax purposes.

**(f) Employees**

The Company has no direct employees. The employees of the Advisor and Wells Management Company, Inc., perform a full range of real estate services including leasing and property management, accounting, asset management and investor relations for the Company.

**(g) Insurance**

Wells Management Company, Inc., an affiliate of the Company and the Advisor, carries comprehensive liability and extended coverage with respect to all the properties owned directly or indirectly by the Company. In the opinion of management, the properties are adequately insured.

**(h) Competition**

The Company will experience competition for tenants from owners and managers of competing projects, which may include its affiliates. As a result, the Company may be required to provide free rent, reduced charges for tenant improvements and other inducements, all of which may have an adverse impact on results of operations. At the time the Company elects to dispose of its properties, the Company will also be in competition with sellers of similar properties to locate suitable purchasers for its properties.

**(i) Statement of Cash Flows**

For the purpose of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents. Cash equivalents include cash and short-term investments.

**(j) Basis of Presentation**

Substantially all of the Company's business is conducted through Wells OP. On December 31, 1997, Wells OP issued 20,000 limited partner units to the Advisor in exchange for a capital contribution of $200,000. The Company is the sole general partner in Wells OP; consequently, the accompanying consolidated balance sheet of the Company includes the amounts of the Company and Wells OP. The Advisor, a limited partner, is not currently receiving distributions from its investment in Wells OP.

The consolidated financial statements of the Company have been prepared in accordance with instructions to Form 10-Q and do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. These quarterly statements have not been examined by independent accountants, but in the opinion of the Board of Directors, the statements for the unaudited interim periods presented include all adjustments, which are of a normal and recurring nature, necessary to present a fair presentation of the results for such periods. Results for interim periods are not necessarily indicative of full year results. For further information, refer to the financial statements and footnotes included in the Company's Form 10-K for the year ended December 31, 2001.

## 2. INVESTMENT IN JOINT VENTURES

### (a) Basis of Presentation

As of March 31, 2002, the Company owned interests in 17 properties in joint ventures with related entities through its ownership in Wells OP, which owns interests in seven such joint ventures. The Company does not have control over the operations of these joint ventures; however, it does exercise significant influence. Accordingly, investment in joint ventures is recorded using the equity method.

### (b) Summary of Operations

The following information summarizes the operations of the unconsolidated joint ventures in which the Company, through Wells OP, had ownership interests as of March 31, 2002 and 2001, respectively. There were no additional investments in joint ventures made by the Company during the three months ended March 31, 2002.

| | Total Revenues | | Net Income | | Wells OP's Share of Net Income | |
|---|---|---|---|---|---|---|
| | Three Months Ended | | Three Months Ended | | Three Months Ended | |
| | March 31, 2002 | March 31, 2001 | March 31, 2002 | March 31, 2001 | March 31, 2002 | March 31, 2001 |
| Fund IX-X-XI-REIT Joint Venture | $ 1,379,059 | $ 1,449,856 | $ 554,268 | $ 638,435 | $ 20,572 | $ 23,696 |
| Cort Joint Venture | 212,006 | 199,586 | 129,750 | 133,753 | 56,658 | 58,406 |
| Fremont Joint Venture | 225,161 | 225,178 | 135,948 | 142,612 | 105,365 | 110,530 |
| Fund XI-XII-REIT Joint Venture | 858,219 | 847,030 | 497,149 | 514,277 | 282,197 | 291,918 |
| Fund XII-REIT Joint Venture | 1,670,863 | 947,943 | 805,513 | 445,321 | 442,726 | 208,634 |
| Fund VIII-IX-REIT Joint Venture | 323,746 | 267,624 | 160,696 | 105,033 | 273,931 | 16,529 |
| Fund XIII-REIT Joint Venture | 700,648 | 0 | 401,674 | 0 | 25,374 | 0 |
| | $ 5,369,702 | $ 3,937,217 | $ 2,684,998 | $ 1,979,431 | $ 1,206,823 | $ 709,713 |

## 3. INVESTMENTS IN REAL ESTATE

As of March 31, 2002, the Company, through its ownership in Wells OP, owns 27 properties directly. The following describes acquisitions made directly by Wells OP during the three months ended March 31, 2002.

### The Andersen Building

On January 11, 2002, Wells OP purchased the Andersen Building, a three-story office building containing approximately 157,700 rentable square feet on a 9.8 acre tract of land located in Sarasota County, Florida for a purchase price of $21,400,000, excluding closing costs. The Andersen Building is leased to Arthur Andersen LLP ("Andersen"). The current term of the Andersen lease is 10 years, which commenced on November 11, 1998 and expires on October 31, 2009. Andersen has the right to extend the initial 10-year term of its lease for two additional five-year periods at 90% of the then-current market rental rate. The current annual base rent payable under the Andersen lease is $1,988,454. Andersen has the option to purchase the Andersen Building prior to the end of the fifth lease year for $23,250,000 and again at the expiration of the initial lease term for $25,148,000.

### The Transocean Houston Building

On March 15, 2002, Wells OP purchased the Transocean Houston Building, a six story office building containing approximately 156,000 rentable square feet located in Houston, Harris County, Texas for a purchase price of

$22,000,000, excluding closing costs. The Transocean Houston Building is 100% leased to Transocean Deepwater Offshore Drilling, Inc. ("Transocean") and Newpark Drilling Fluids, Inc. ("Newpark").

The Transocean lease is a triple net lease which covers approximately 103,260 square feet commencing in December 2001 and expiring in March 2011. The initial annual base rent payable under the Transocean lease is $2,110,035. Transocean has the option to extend the initial term of its lease for either (1) two additional five-year periods, or (2) one additional ten-year period, at the then-current market rental rate. In addition, Transocean has an expansion option and a right of first refusal for up to an additional 51,780 rentable square feet.

The Newpark lease covers approximately 52,731 rentable square feet and is a net lease that commenced in August 1999 and expires in August 2009. The current annual base rent payable under the Newpark lease is $1,153,227.

**The Novartis Atlanta Building**

On March 28, 2002, Wells OP purchased the Novartis Atlanta Building, a four-story office building containing approximately 100,000 rentable square feet located in Duluth, Fulton County, Georgia for a purchase price of $15,000,000, excluding closing costs. The Novartis Atlanta Building is 100% leased to Novartis Opthalmics, Inc. ("Novartis"). The Novartis lease is a net lease which commenced in August 2001 and expires in July 2011. Novartis Corporation, the parent of Novartis, has guaranteed the lease. The current annual base rent payable is $1,426,240. Novartis, at its option, may extend the initial term of its lease for three additional five-year periods at the then-current market rental rate. In addition, Novartis may terminate the lease at the end of the fifth lease year by paying a $1,500,000 termination fee.

**The Dana Corporation Buildings**

On March 29, 2002, Wells OP purchased all of the membership interests in Dana Farmington Hills, LLC and Dana Kalamazoo, LLC, which respectively owned a three-story office and research development building containing approximately 112,400 rentable square feet located in Farmington Hills, Oakland County, Michigan (the "Dana Detroit Building") and a two-story office and industrial building containing approximately 147,000 rentable square feet located in Kalamazoo, Kalamazoo County, Michigan (the "Dana Kalamazoo Building") for an aggregate purchase price of $41,950,000, excluding closing costs.

The Dana Detroit Building is 100% leased to the Dana Corporation ("Dana") under a net lease that commenced in October 2001 and expires in October 2021. The current annual base rent payable under the Dana lease for Detroit is $2,330,600. Dana may, at its option, extend the initial term of its lease for six additional five-year periods at the then-current market rental rate. Additionally, Dana may terminate the lease after the eleventh year of its initial lease term subject to certain conditions.

The Dana Kalamazoo Building is also 100% leased to Dana. The Dana lease for Kalamazoo is a net lease which commenced in October 2001 and expires in October 2011. The current annual base rent payable is $1,842,800. Dana has the option to extend the initial term of the Dana lease in Kalamazoo for six additional five-year periods at the then-current market rental rate. Additionally, Dana may terminate the lease at any time after the sixth year of the initial lease term and before the end of the nineteenth lease year, subject to certain conditions.

**4. NOTES PAYABLE**

Notes payable consists of (i) $7,655,600 of draws on a line of credit from SouthTrust Bank secured by a first mortgage against the Cinemark, ASML, Dial, PwC, Motorola Tempe and Avnet Buildings and (ii) $3,415,986 outstanding on the construction loan from Bank of America which is being used to fund the development of the Nissan Property.

**5. DUE TO AFFILIATES**

Due to affiliates consists of amounts due to the Advisor for Acquisitions and Advisory Fees and Acquisition Expenses, deferred offering costs, and other operating expenses paid on behalf of the Company. Also included in due to affiliates is the amount due to the Fund VIII-IX Joint Venture related to the Matsushita lease guarantee, which is explained in detail in the financial statements and footnotes included in the Company's Form 10-K for the

year ended December 31, 2001. Payments of $601,963 have been made as of March 31, 2002 toward funding the obligation under the Matsushita agreement.

**6. COMMITMENTS AND CONTINGENCIES**

**Take Out Purchase and Escrow Agreement**

An affiliate of the Advisor ("Wells Exchange") has developed a program (the "Wells Section 1031 Program") involving the acquisition by Wells Exchange of income-producing commercial properties and the formation of a series of single member limited liability companies for the purpose of facilitating the resale of co-tenancy interests in such real estate properties to be owned in co-tenancy arrangements with persons ("1031 Participants") who are looking to invest the proceeds from a sale of real estate held for investment in another real estate investment for purposes of qualifying for like-kind exchange treatment under Section 1031 of the Code. Each of these properties will be financed by a combination of permanent first mortgage financing and interim loan financing obtained from institutional lenders.

Following the acquisition of each property, Wells Exchange will attempt to sell co-tenancy interests to 1031 Participants, the proceeds of which will be used to pay off the interim financing. In consideration for the payment of a Take Out Fee to the Company, and following approval of the potential property acquisition by the Company's Board of Directors, it is anticipated that Wells OP will enter into a contractual relationship providing that, in the event that Wells Exchange is unable to sell all of the co-tenancy interests in that particular property to 1031 Participants, Wells OP will purchase, at Wells Exchange's cost, any co-tenancy interests remaining unsold at the end of the offering period. As a part of the initial transaction in the Wells Section 1031 Program, and in consideration for the payment of a take out fee in the amount of $137,500 to the Company, Wells OP entered into a take out purchase and escrow agreement dated April 16, 2001 providing, among other things, that Wells OP would be obligated to acquire, at Wells Exchange's cost, any unsold co-tenancy interests in the building known as the Ford Motor Credit Complex which remained unsold at the expiration of the offering of Wells Exchange on April 15, 2002. On April 12, 2002, Wells Exchange paid off the interim financing on the Ford Motor Credit Complex and, accordingly, Wells OP has been released from its prior obligations under the take out purchase and escrow agreement relating to such property.

## PRIOR PERFORMANCE TABLES

The following Prior Performance Tables (Tables) provide information relating to real estate investment programs sponsored by Wells Capital, Inc., our advisor, and its affiliates (Wells Public Programs) which have investment objectives similar to Wells Real Estate Investment Trust, Inc. (Wells REIT). (See "Investment Objectives and Criteria.") Except for the Wells REIT, all of the Wells Public Programs have used capital, and no acquisition indebtedness, to acquire their properties.

Prospective investors should read these Tables carefully together with the summary information concerning the Wells Public Programs as set forth in the "Prior Performance Summary" section of this prospectus.

*Investors in the Wells REIT will not own any interest in the other Wells Public Programs and should not assume that they will experience returns, if any, comparable to those experienced by investors in other Wells Public Programs.*

The advisor is responsible for the acquisition, operation, maintenance and resale of the real estate properties. The financial results of the Wells Public Programs, thus, may provide some indication of the advisor's performance of its obligations during the periods covered. However, general economic conditions affecting the real estate industry and other factors contribute significantly to financial results.

The following tables are included herein:

**Table I**—Experience in Raising and Investing Funds (As a Percentage of Investment)

**Table II**—Compensation to Sponsor (in Dollars)

**Table III**—Annual Operating Results of Wells Public Programs

**Table IV** (Results of completed programs) has been omitted since none of the Wells Public Programs have been liquidated.

**Table V**—Sales or Disposals of Property

Additional information relating to the acquisition of properties by the Wells Public Programs is contained in **Table VI**, which is included in Part II of the registration statement which the Wells REIT has filed with the Securities and Exchange Commission. Copies of any or all information will be provided to prospective investors at no charge upon request.

The following are definitions of certain terms used in the Tables:

"**Acquisition Fees**" shall mean fees and commissions paid by a Wells Public Program in connection with its purchase or development of a property, except development fees paid to a person not affiliated with the Wells Public Program or with a general partner or advisor of the Wells Public Program in connection with the actual development of a project after acquisition of the land by the Wells Public Program.

"**Organization Expenses**" shall include legal fees, accounting fees, securities filing fees, printing and reproduction expenses and fees paid to the sponsor in connection with the planning and formation of the Wells Public Program.

"**Underwriting Fees**" shall include selling commissions and wholesaling fees paid to broker-dealers for services provided by the broker-dealers during the offering.

**TABLE I**
**(UNAUDITED)**

**EXPERIENCE IN RAISING AND INVESTING FUNDS**

This Table provides a summary of the experience of the sponsors of Wells Public Programs for which offerings have been completed since December 31, 1998. Information is provided with regard to the manner in which the proceeds of the offerings have been applied. Also set forth is information pertaining to the timing and length of these offerings and the time period over which the proceeds have been invested in the properties. All figures are as of December 31, 2001.

| | Wells Real Estate Fund XI, L.P. | Wells Real Estate Fund XII, L.P. | Wells Real Estate Investment Trust, Inc. |
|---|---|---|---|
| Dollar Amount Raised | $16,532,802(3) | $35,611,192(4) | $307,411,112(5) |
| Percentage Amount Raised | 100%(3) | 100%(4) | 100%(5) |
| Less Offering Expenses | | | |
| Underwriting Fees | 9.5% | 9.5% | 9.5% |
| Organizational Expenses | 3.0% | 3.0% | 3.0% |
| Reserves(1) | 0.0% | 0.0% | 0.0% |
| Percent Available for Investment | 87.5% | 87.5% | 87.5% |
| Acquisition and Development Costs | | | |
| Prepaid Items and Fees related to Purchase of Property | 0.0% | 0.0 | 0.5% |
| Cash Down Payment | 84.0% | 84.0% | 73.8% |
| Acquisition Fees(2) | 3.5% | 3.5% | 3.5% |
| Development and Construction Costs | 0.0% | 0.0% | 9.7% |
| Reserve for Payment of Indebtedness | 0.0% | 0.0% | 0.0% |
| Total Acquisition and Development Cost | 87.5% | 87.5% | 87.5% |
| Percent Leveraged | 0.0% | 0.0% | 30.9% |
| Date Offering Began | 12/31/97 | 03/22/99 | 01/30/98 |
| Length of Offering | 12 mo. | 24 mo. | 35 mo. |
| Months to Invest 90% of Amount Available for Investment (Measured from Beginning of Offering) | 20 mo. | 26 mo. | 21 mo. |
| Number of Investors as of 12/31/01 | 1,338 | 1,337 | 7,422 |

(1) Does not include general partner contributions held as part of reserves.
(2) Includes acquisition fees, real estate commissions, general contractor fees and/or architectural fees paid to affiliates of the general partners.
(3) Total dollar amount registered and available to be offered was $35,000,000. Wells Real Estate Fund XI, L.P. closed its offering on December 30, 1998, and the total dollar amount raised was $16,532,802.
(4) Total dollar amount registered and available to be offered was $70,000,000. Wells Real Estate Fund XII, L.P. closed its offering on March 21, 2001, and the total dollar amount raised was $35,611,192.
(5) The total dollar amount registered and available to be offered in the first offering was $165,000,000. Wells Real Estate Investment Trust, Inc. closed its initial offering on December 19, 1999, and the total dollar amount raised in its initial offering was $132,181,919. The total dollar amount registered and available to be offered in the second offering was $222,000,000. Wells Real Estate Investment Trust, Inc. closed its second offering on December 19, 2000, and the total dollar amount raised in its second offering was $175,229,193.

**TABLE II**
**(UNAUDITED)**

**COMPENSATION TO SPONSOR**

The following sets forth the compensation received by Wells Capital, Inc., our advisor, and its affiliates, including compensation paid out of offering proceeds and compensation paid in connection with the ongoing operations of Wells Public Programs having similar or identical investment objectives the offerings of which have been completed since December 31, 1998. All figures are as of December 31, 2001.

| | Wells Real Estate Fund XI, L.P. | Wells Real Estate Fund XII, L.P. | Wells Real Estate Investment Trust, Inc.(1) | Other Public Programs(2) |
|---|---|---|---|---|
| Date Offering Commenced | 12/31/97 | 03/22/99 | 01/30/98 | — |
| Dollar Amount Raised | $ 16,532,802 | $ 35,611,192 | $ 307,411,112 | $268,370,007 |
| To Sponsor from Proceeds of Offering: | | | | |
| Underwriting Fees(3) | $ 151,911 | $ 362,416 | $ 3,076,844 | $ 1,494,470 |
| Acquisition Fees | | | | |
| Real Estate Commissions | — | — | — | — |
| Acquisition and Advisory Fees(4) | $ 578,648 | $ 1,246,392 | $ 10,759,389 | $ 12,644,556 |
| Dollar Amount of Cash Generated from Operations Before Deducting Payments to Sponsor(5) | $ 3,494,174 | $ 3,508,128 | $ 116,037,681 | $ 58,169,461 |
| Amount Paid to Sponsor from Operations: | | | | |
| Property Management Fee(2) | $ 90,731 | $ 113,238 | $ 1,899,140 | $ 2,257,424 |
| Partnership Management Fee | — | — | — | — |
| Reimbursements | $ 164,746 | $ 142,990 | $ 1,047,449 | $ 2,503,609 |
| Leasing | $ 90,731 | $ 113,238 | $ 1,899,140 | $ 2,257,426 |
| Commissions General Partner Distributions | — | — | — | — |
| Other | — | — | — | — |
| Dollar Amount of Property Sales and Refinancing Payments to Sponsors: | | | | |
| Cash | — | — | — | — |
| Notes | — | — | — | — |
| Amount Paid to Sponsor from Property Sales and Refinancing: | | | | |
| Real Estate Commissions | — | — | — | — |
| Incentive Fees | — | — | — | — |
| Other | — | — | — | — |

(1) The total dollar amount registered and available to be offered in the first offering was $165,000,000. Wells Real Estate Investment Trust, Inc. closed its initial offering on December 19, 1999, and the total dollar amount raised in its initial offering was $132,181,919. The total dollar amount registered and available to be offered in the second offering was $222,000,000. Wells Real Estate Investment Trust, Inc. closed its second offering on December 19, 2000, and the total dollar amount raised in its second offering was $175,229,193.

(2) Includes compensation paid to the general partners from Wells Real Estate Fund I, Wells Real Estate Fund II, Wells Real Estate Fund II-OW, Wells Real Estate Fund III, L.P., Wells Real Estate Fund IV, L.P., Wells Real Estate Fund V, L.P., Wells Real Estate Fund VI, L.P., Wells Real Estate Fund VII, L.P., Wells Real Estate Fund VIII, L.P., Wells Real Estate Fund IX, L.P. and Wells Real Estate Fund X, L.P. during the past three years. In addition to the amounts shown, affiliates of the general partners of Wells Real Estate Fund I are entitled to certain property management and leasing fees but have elected to defer the payment of such fees until a later year on properties owned by Wells Real Estate Fund I. As of December 31, 2001, the amount of such deferred fees totaled $2,627,841.

(3) Includes net underwriting compensation and commissions paid to Wells Investment Securities, Inc. in connection with the offering which was not reallowed to participating broker-dealers.

(4) Fees paid to the general partners or their affiliates for acquisition and advisory services in connection with the review and evaluation of potential real property acquisitions.

(5) Includes $(161,104) in net cash provided by operating activities, $3,308,970 in distributions to limited partners and $346,208 in payments to sponsor for Wells Real Estate Fund XI, L.P.; $167,620 in net cash used by operating activities, $2,971,042 in distributions to limited partners and $369,466 in payments to sponsor for Wells Real Estate Fund XII, L.P.; $53,677,256 in net cash provided by operating activities, $57,514,696 in dividends and $4,845,729 in payments to sponsor for Wells Real Estate Investment Trust, Inc.; and $956,542 in net cash provided by operating activities, $50,169,329 in distributions to limited partners and $7,018,457 in payments to sponsor for other public programs.

**TABLE III**
**(UNAUDITED)**

The following five tables set forth operating results of Wells Public Programs the offerings of which have been completed since December 30, 1996. The information relates only to public programs with investment objectives similar to those of the Wells REIT. All figures are as of December 31 of the year indicated.

## TABLE III (UNAUDITED)

## OPERATING RESULTS OF PRIOR PROGRAMS
## WELLS REAL ESTATE FUND IX, L.P.

| | 2001 | 2000 | 1999 | 1998 | 1997 |
|---|---|---|---|---|---|
| Gross Revenues(1) | $ 1,874,290 | $ 1,836,768 | $ 1,593,734 | $ 1,561,456 | $ 1,199,300 |
| Profit on Sale of Properties | — | — | — | — | — |
| Less: Operating Expenses(2) | 105,816 | 78,092 | 90,903 | 105,251 | 101,284 |
| Depreciation and Amortization(3) | 0 | 0 | 12,500 | 6,250 | 6,250 |
| Net Income GAAP Basis(4) | $ 1,768,474 | $ 1,758,676 | $ 1,490,331 | $ 1,449,955 | $ 1,091,766 |
| Taxable Income:Operations | $ 2,251,474 | $ 2,147,094 | $ 1,924,542 | $ 1,906,011 | $ 1,083,824 |
| Cash Generated (Used By): | | | | | |
| Operations | $ (101,573) | $ (66,145) | $ (94,403) | $ 80,147 | $ 501,390 |
| Joint Ventures | 2,978,785 | 2,831,329 | 2,814,870 | 2,125,489 | 527,390 |
| | $ 2,877,212 | $ 2,765,184 | $ 2,720,467 | $ 2,205,636 | $ 1,028,780 |
| Less Cash Distributions to Investors: | | | | | |
| Operating Cash Flow | 2,877,212 | 2,707,684 | 2,720,467 | 2,188,189 | 1,028,780 |
| Return of Capital | — | — | 15,528 | — | 41,834 |
| Undistributed Cash Flow From Prior Year Operations | 20,074 | — | 17,447 | — | 1,725 |
| Cash Generated (Deficiency) after Cash Distributions | $ (20,074) | $ 57,500 | $ (32,975) | $ 17,447 | $ (43,559) |
| Special Items (not including sales and financing): | | | | | |
| Source of Funds: | | | | | |
| General Partner Contributions | — | — | — | — | — |
| Increase in Limited Partner Contributions | — | — | — | — | — |
| | $ (20,074) | $ 57,500 | $ (32,975) | $ 17,447 | $ (43,559) |
| Use of Funds: | | | | | |
| Sales Commissions and Offering Expenses | — | — | — | — | 323,039 |
| Return of Original Limited Partner's Investment | — | — | — | — | 100 |
| Property Acquisitions and Deferred Project Costs | — | 44,357 | 190,853 | 9,455,554 | 13,427,158 |
| Cash Generated (Deficiency) after Cash Distributions and Special Items | $ (20,074) | $ 13,143 | $ (223,828) | $ (9,438,107) | $ (13,793,856) |
| Net Income and Distributions Data per $1,000 Invested: | | | | | |
| Net Income on GAAP Basis: | | | | | |
| Ordinary Income (Loss) | | | | | |
| —Operations Class A Units | 57 | 93 | 89 | 88 | 53 |
| —Operations Class B Units | (0) | (267) | (272) | (218) | (77) |
| Capital Gain (Loss) | — | — | — | — | — |
| Tax and Distributions Data per $1,000 Invested: | | | | | |
| Federal Income Tax Results: | | | | | |
| Ordinary Income (Loss) | | | | | |
| —Operations Class A Units | 94 | 91 | 86 | 85 | 46 |
| —Operations Class B Units | (195) | (175) | (164) | (123) | (47) |
| Capital Gain (Loss) | — | — | — | — | — |
| Cash Distributions to Investors: | | | | | |
| Source (on GAAP Basis) | | | | | |
| —Investment Income Class A Units | 56 | 87 | 88 | 73 | 36 |
| —Return of Capital Class A Units | 36 | — | 2 | — | — |
| —Return of Capital Class B Units | — | — | — | — | — |
| Source (on Cash Basis) | | | | | |
| —Operations Class A Units | 92 | 87 | 89 | 73 | 35 |
| —Return of Capital Class A Units | — | — | 1 | — | 1 |
| —Operations Class B Units | — | — | — | — | — |
| Source (on a Priority Distribution Basis)(5) | | | | | |
| —Investment Income Class A Units | 81 | 76 | 77 | 61 | 29 |
| —Return of Capital Class A Units | 11 | 11 | 13 | 12 | 7 |
| —Return of Capital Class B Units | — | — | — | — | — |
| Amount (in Percentage Terms) Remaining Invested in Program Properties at the end of the Last Year Reported in the Table | 100% | | | | |

(1) Includes $593,914 in equity in earnings of joint ventures and $605,386 from investment of reserve funds in 1997; $1,481,869 in equity in earnings of joint ventures and $79,587 from investment of reserve funds in 1998; $1,593,734 in equity in earnings of joint ventures and $0 from investment of reserve funds in 1999; and $1,829,216 in equity in earnings of joint ventures and $7,552 from investment of reserve funds in 2000; and $1,870,378 in equity in earnings of joint ventures and $3,912 from investment of reserve funds in 2001. As of December 31, 2001, the leasing status was 100% including developed property in initial lease up.

(2) Includes partnership administrative expenses.

(3) Included in equity in earnings of joint ventures in gross revenues is depreciation of $469,126 for 1997; $1,143,407 for 1998; $1,210,939 for 1999; $1,100,915 for 2000; and $1,076,802 for 2001.

(4) In accordance with the partnership agreement, net income or loss, depreciation and amortization are allocated $1,564,778 to Class A Limited Partners, $(472,806) to Class B Limited Partners and $(206) to the General Partners for 1997; $2,597,938 to Class A Limited Partners, $(1,147,983) to Class B Limited Partners and $0 to the General Partners for 1998; $2,713,636 to Class A Limited Partners, $(1,223,305) to Class B Limited Partners and $0 to the General Partners for 1999; $2,858,806 to Class A Limited Partners, $(1,100,130) to Class B Limited Partners and $0 to the General Partners for 2000; and $1,768,474 to Class A Limited Partners, $(0) to Class B Limited Partners and $0 to the General Partners for 2001.

(5) Pursuant to the terms of the partnership agreement, an amount equal to the cash distributions paid to Class A Limited Partners is payable as priority distributions out of the first available net proceeds from the sale of partnership properties to Class B Limited Partners. The amount of cash distributions paid per unit to Class A Limited Partners is shown as a return of capital to the extent of such priority distributions payable to Class B Limited Partners. As of December 31, 2001, the aggregate amount of such priority distributions payable to Class B Limited Partners totaled $1,668,253.

## TABLE III (UNAUDITED)

## OPERATING RESULTS OF PRIOR PROGRAMS
## WELLS REAL ESTATE FUND X, L.P.

| | 2001 | 2000 | 1999 | 1998 | 1997 |
|---|---|---|---|---|---|
| Gross Revenues(1) | $ 1,559,026 | $ 1,557,518 | $ 1,309,281 | $ 1,204,597 | $ 372,507 |
| Profit or Sale of Properties | — | — | — | — | — |
| Less: Operating Expenses (2) | 109,177 | 81,338 | 98,213 | 99,034 | 88,232 |
| Depreciation and Amortization (3) | 0 | 0 | 18,750 | 55,234 | 6,250 |
| Net Income GAAP Basis (4) | $ 1,449,849 | $ 1,476,180 | $ 1,192,318 | $ 1,050,329 | $ 278,025 |
| Taxable Income: Operations | $ 1,688,775 | $ 1,692,792 | $ 1,449,771 | $ 1,277,016 | $ 382,543 |
| Cash Generated (Used By): | | | | | |
| Operations | (100,983) | (59,595) | (99,862) | 300,019 | 200,668 |
| Joint Ventures | 2,307,137 | 2,192,397 | 2,175,915 | 886,846 | — |
| | $ 2,206,154 | $ 2,132,802 | $ 2,076,053 | $ 1,186,865 | $ 200,668 |
| Less Cash Distributions to Investors: | | | | | |
| Operating Cash Flow | 2,206,154 | 2,103,260 | 2,067,801 | 1,186,865 | — |
| Return of Capital | — | — | — | 19,510 | — |
| Undistributed Cash Flow From Prior Year Operations | 25,647 | — | — | 200,668 | — |
| Cash Generated (Deficiency) after Cash Distributions | $ (25,647) | $ 29,542 | $ 8,252 | $ (220,178) | $ 200,668 |
| Special Items (not including sales and financing): | | | | | |
| Source of Funds: | | | | | |
| General Partner Contributions | — | — | — | — | — |
| Increase in Limited Partner Contributions | — | — | — | — | 27,128,912 |
| | $ (25,647) | $ 29,542 | $ 8,252 | $ (220,178) | $ 27,329,580 |
| Use of Funds: | | | | | |
| Sales Commissions and Offering Expenses | — | — | — | 300,725 | 3,737,363 |
| Return of Original Limited Partner's Investment | — | — | — | — | 100 |
| Property Acquisitions and Deferred Project Costs | 0 | 81,022 | 0 | 17,613,067 | 5,188,485 |
| Cash Generated (Deficiency) after Cash Distributions and Special Items | $ (25,647) | $ (51,480) | $ 8,252 | $ (18,133,970) | $ 18,403,632 |
| Net Income and Distributions Data per $1,000 Invested: | | | | | |
| Net Income on GAAP Basis: | | | | | |
| Ordinary Income (Loss) | | | | | |
| —Operations Class A Units | 99 | 104 | 97 | 85 | 28 |
| —Operations Class B Units | (188) | (159) | (160) | (123) | (9) |
| Capital Gain (Loss) | — | — | — | — | — |
| Tax and Distributions Data per $1,000 Invested: | | | | | |
| Federal Income Tax Results: | | | | | |
| Ordinary Income (Loss) | | | | | |
| —Operations Class A Units | 95 | 98 | 92 | 78 | 35 |
| —Operations Class B Units | (130) | (107) | (100) | (64) | 0 |
| Capital Gain (Loss) | — | — | — | — | — |
| Cash Distributions to Investors: | | | | | |
| Source (on GAAP Basis) | | | | | |
| —Investment Income Class A Units | 96 | 94 | 95 | 66 | — |
| —Return of Capital Class A Units | — | — | — | — | — |
| —Return of Capital Class B Units | — | — | — | — | — |
| Source (on Cash Basis) | | | | | |
| —Operations Class A Units | 96 | 94 | 95 | 56 | — |
| —Return of Capital Class A Units | — | — | — | 10 | — |
| —Operations Class B Units | — | — | — | — | — |
| Source (on a Priority Distribution Basis) (5) | | | | | |
| —Investment Income Class A Units | 80 | 74 | 71 | 48 | — |
| —Return of Capital Class A Units | 16 | 20 | 24 | 18 | — |
| —Return of Capital Class B Units | — | — | — | — | — |
| Amount (in Percentage Terms) Remaining Invested in Program Properties at the end of the Last Year Reported in the Table | 100% | | | | |

(1) Includes $(10,035) in equity in earnings of joint ventures and $382,542 from investment of reserve funds in 1997; $869,555 in equity in earnings of joint ventures and $215,042 from investment of reserve funds in 1998; $1,309,281 in equity in earnings of joint ventures and $0 from investment of reserve funds in 1999; 1,547,664 in equity in earnings of joint ventures and $9,854 from investment of reserve funds in 2000; and $1,549,588 in equity in earnings of joint ventures and $9,438 from investment of reserve funds in 2001. As of December 31, 2001, the leasing status was 100% including developed property in initial lease up.

(2) Includes partnership administrative expenses.

(3) Included in equity in earnings of joint ventures in gross revenues is depreciation of $18,675 for 1997; $674,986 for 1998; $891,911 for 1999; $816,544 for 2000; and $814,502 for 2001.

(4) In accordance with the partnership agreement, net income or loss, depreciation and amortization are allocated $302,862 to Class A Limited Partners, $(24,675) to Class B Limited Partners and $(162) to the General Partners for 1997; $1,779,191 to Class A Limited Partners, $(728,524) to Class B Limited Partners and $(338) to General Partners for 1998; $2,084,229 to Class A Limited Partners, $(891,911) to Class B Limited Partners and $0 to the General Partners for 1999; $2,292,724 to Class A Limited Partners, $(816,544) to Class B Limited Partners and $0 to the General Partners for 2000; and $2,264,351 to Class A Limited Partners, $(814,502) to Class B Limited Partners and $0 to the General Partners for 2001.

(5) Pursuant to the terms of the partnership agreement, an amount equal to the cash distributions paid to Class A Limited Partners is payable as priority distributions out of the first available net proceeds from the sale of partnership properties to Class B Limited Partners. The amount of cash distributions paid per unit to Class A Limited Partners is shown as a return of capital to the extent of such priority distributions payable to Class B Limited Partners. As of December 31, 2001, the aggregate amount of such priority distributions payable to Class B Limited Partners totaled $1,735,882.

## TABLE III (UNAUDITED)

## OPERATING RESULTS OF PRIOR PROGRAMS
## WELLS REAL ESTATE FUND XI, L.P.

| | 2001 | 2000 | 1999 | 1998 | 1997 |
|---|---|---|---|---|---|
| Gross Revenues(1) | $ 960,676 | $ 975,850 | $ 766,586 | $ 262,729 | N/A |
| Profit on Sale of Properties | — | — | — | — | |
| Less: Operating Expenses(2) | 90,326 | 79,861 | 111,058 | 113,184 | |
| Depreciation and Amortization(3) | 0 | — | 25,000 | 6,250 | |
| Net Income GAAP Basis(4) | $ 870,350 | $ 895,989 | $ 630,528 | $ 143,295 | |
| Taxable Income: Operations | $ 1,038,394 | $ 944,775 | $ 704,108 | $ 177,692 | |
| Cash Generated (Used By): | | | | | |
| Operations | (128,985) | (72,925) | 40,906 | (50,858) | |
| Joint Ventures | 1,376,673 | 1,333,337 | 705,394 | 102,662 | |
| | $ 1,247,688 | $ 1,260,412 | $ 746,300 | $ 51,804 | |
| Less Cash Distributions to Investors: | | | | | |
| Operating Cash Flow | 1,247,688 | 1,205,303 | 746,300 | 51,804 | |
| Return of Capital | 4,809 | — | 49,761S | 48,070 | |
| Undistributed Cash Flow From Prior Year Operations | 55,109 | — | — | — | |
| Cash Generated (Deficiency) after Cash Distributions | $ (59,918) | $ 55,109 | $ (49,761) | $ (48,070) | |
| Special Items (not including sales and financing): | | | | | |
| Source of Funds: | | | | | |
| General Partner Contributions | — | — | — | — | |
| Increase in Limited Partner Contributions | — | — | — | 16,532,801 | |
| | $ (59,918) | $ 55,109 | $ (49,761) | $ 16,484,731 | |
| Use of Funds: | | | | | |
| Sales Commissions and Offering Expenses | — | — | 214,609 | 1,779,661 | |
| Return of Original Limited Partner's Investment | — | — | 100 | — | |
| Property Acquisitions and Deferred Project Costs | — | — | 9,005,979 | 5,412,870 | |
| Cash Generated (Deficiency) after Cash Distributions and Special Items | $ (59,918) | $ 55,109 | $ (9,270,449) | $ 9,292,200 | |
| Net Income and Distributions Data per $1,000 Invested: | | | | | |
| Net Income on GAAP Basis: | | | | | |
| Ordinary Income (Loss) | | | | | |
| —Operations Class A Units | 101 | 103 | 77 | 50 | |
| —Operations Class B Units | (158) | (155) | (112) | (77) | |
| Capital Gain (Loss) | — | — | — | — | |
| Tax and Distributions Data per $1,000 Invested: | | | | | |
| Federal Income Tax Results: | | | | | |
| Ordinary Income (Loss) | | | | | |
| —Operations Class A Units | 100 | 97 | 71 | 18 | |
| —Operations Class B Units | (100) | (112) | (73) | (17) | |
| Capital Gain (Loss) | — | — | — | — | |
| Cash Distributions to Investors: | | | | | |
| Source (on GAAP Basis) | | | | | |
| —Investment Income Class A Units | 97 | 90 | 60 | 8 | |
| —Return of Capital Class A Units | — | — | — | — | |
| —Return of Capital Class B Units | — | — | — | — | |
| Source (on Cash Basis) | | | | | |
| —Operations Class A Units | 97 | 90 | 56 | 4 | |
| —Return of Capital Class A Units | — | — | 4 | 4 | |
| —Operations Class B Units | — | — | — | — | |
| Source (on a Priority Distribution Basis)(5) | | | | | |
| —Investment Income Class A Units | 75 | 69 | 46 | 6 | |
| —Return of Capital Class A Units | 22 | 21 | 14 | 2 | |
| —Return of Capital Class B Units | — | — | — | — | |
| Amount (in Percentage Terms) Remaining Invested in Program Properties at the end of the Last Year Reported in the Table | 100% | | | | |

(1) Includes $142,163 in equity in earnings of joint ventures and $120,566 from investment of reserve funds in 1998; $607,579 in equity in earnings of joint ventures and $159,007 from investment of reserve funds in 1999; $967,900 in equity in earnings of joint ventures and $7,950 from investment of reserve funds in 2000; and $959,631 in equity in earnings of joint ventures and $1,045 from investment of reserve funds in 2001. As of December 31, 2001, the leasing status was 100% including developed property in initial lease up.

(2) Includes partnership administrative expenses.

(3) Included in equity in earnings of joint ventures in gross revenues is depreciation of $105,458 for 1998; $353,840 for 1999; $485,558 for 2000; and $491,478 for 2001.

(4) In accordance with the partnership agreement, net income or loss, depreciation and amortization are allocated $254,862 to Class A Limited Partners, $(111,067) to Class B Limited Partners and $(500) to General Partners for 1998; $1,009,368 to Class A Limited Partners, $(378,840) to Class B Limited Partners and $0 to the General Partners for 1999; $1,381,547 to Class A Limited Partners, $(485,558) to Class B Limited Partners and $0 to General Partners for 2000; and $1,361,828 to Class A Limited Partners, $(491,478) to Class B Limited Partners and $0 to the General Partners for 2001.

(5) Pursuant to the terms of the partnership agreement, an amount equal to the cash distributions paid to Class A Limited Partners is payable as priority distributions out of the first available net proceeds from the sale of partnership properties to Class B Limited Partners. The amount of cash distributions paid per unit to Class A Limited Partners is shown as a return of capital to the extent of such priority distributions payable to Class B Limited Partners. As of December 31, 2001, the aggregate amount of such priority distributions payable to Class B Limited Partners totaled $791,502.

## TABLE III (UNAUDITED)

## OPERATING RESULTS OF PRIOR PROGRAMS
## WELLS REAL ESTATE FUND XII, L.P.

| | 2001 | 2000 | 1999 |
|---|---|---|---|
| GrossRevenues(1) | $ 1,661,194 | $ 929,868 | $ 160,379 |
| Profit on Sale of Properties | — | — | — |
| Less: Operating Expenses(2) | 105,776 | 73,640 | 37,562 |
| Depreciation and Amortization(3) | 0 | 0 | 0 |
| Net Income GAAP Basis(4) | $ 1,555,418 | $ 856,228 | $ 122,817 |
| Taxable Income: Operations | $ 1,850,674 | $ 863,490 | $ 130,108 |
| Cash Generated (Used By): | | | |
| Operations | (83,406) | 247,244 | 3,783 |
| Joint Ventures | 2,036,837 | 737,266 | 61,485 |
| | $ 1,953,431 | $ 984,510 | $ 65,268 |
| Less Cash Distributions to Investors: | | | |
| Operating Cash Flow | 1,953,431 | 779,818 | 62,934 |
| Return of Capital | — | — | — |
| Undistributed Cash Flow From Prior Year Operations | 174,859 | — | — |
| Cash Generated (Deficiency) after Cash Distributions | $ (174,859) | $ 204,692 | $ 2,334 |
| Special Items (not including sales and financing): | | | |
| Source of Funds: | | | |
| General Partner Contributions | — | — | — |
| Increase in Limited Partner Contributions | 10,625,431 | 15,617,575 | 9,368,186 |
| | $ 10,450,572 | $ 15,822,267 | $ 9,370,520 |
| Use of Funds: | | | |
| Sales Commissions and Offering Expenses | 1,328,179 | 1,952,197 | 1,171,024 |
| Return of Original Limited Partner's Investment | — | — | 100 |
| Property Acquisitions and Deferred Project Costs | 9,298,085 | 16,246,485 | 5,615,262 |
| Cash Generated (Deficiency) after Cash Distributions and Special Items | $ (175,692) | $ (2,376,415) | $ 2,584,134 |
| Net Income and Distributions Data per $1,000 Invested: | | | |
| Net Income on GAAP Basis: | | | |
| Ordinary Income (Loss) | | | |
| —Operations Class A Units | 98 | 89 | 50 |
| —Operations Class B Units | (131) | (92) | (56) |
| Capital Gain (Loss) | — | — | — |
| Tax and Distributions Data per $1,000 Invested: | | | |
| Federal Income Tax Results: | | | |
| Ordinary Income (Loss) | | | |
| —Operations Class A Units | 84 | 58 | 23 |
| —Operations Class B Units | (74) | (38) | (25) |
| Capital Gain (Loss) | — | — | — |
| Cash Distributions to Investors: | | | |
| Source (on GAAP Basis) | | | |
| —Investment Income Class A Units | 77 | 41 | 8 |
| —Return of Capital Class A Units | — | — | — |
| —Return of Capital Class B Units | — | — | — |
| Source (on Cash Basis) | | | |
| —Operations Class A Units | 77 | 41 | 8 |
| —Return of Capital Class A Units | — | — | — |
| —Operations Class B Units | — | — | — |
| Source (on a Priority Distribution Basis)(5) | | | |
| —Investment Income Class A Units | 55 | 13 | 6 |
| —Return of Capital Class A Units | 22 | 28 | 2 |
| —Return of Capital Class B Units | — | — | — |
| Amount (in Percentage Terms) Remaining Invested in Program Properties at the end of the Last Year Reported in the Table | 100% | | |

(1) Includes $124,542 in equity in earnings of joint ventures and $35,837 from investment of reserve funds in 1999; $664,401 in equity in earnings of joint ventures and $265,467 from investment of reserve funds in 2000; and $1,577,523 in equity in earnings of joint ventures and $83,671 from investment of reserve funds in 2001. As of December 31, 2001, the leasing status was 100% including developed property in initial lease up.

(2) Includes partnership administrative expenses.

(3) Included in equity in earnings of joint ventures in gross revenues is depreciation of $72,427 for 1999; $355,210 for 2000; and $1,035,609 for 2001.

(4) In accordance with the partnership agreement, net income or loss, depreciation and amortization are allocated $195,244 to Class A Limited Partners, $(71,927) to Class B Limited Partners and $(500) to the General Partners for 1999; $1,209,438 to Class A Limited Partners, $(353,210) to Class B Limited Partners and $0 to General Partners for 2000; and $2,591,027 to Class A Limited Partners, $(1,035,609) to Class B Limited Partners and $0 to the General Partners for 2001.

(5) Pursuant to the terms of the partnership agreement, an amount equal to the cash distributions paid to Class A Limited Partners is payable as priority distributions out of the first available net proceeds from the sale of partnership properties to Class B Limited Partners. The amount of cash distributions paid per unit to Class A Limited Partners is shown as a return of capital to the extent of such priority distributions payable to Class B Limited Partners. As of December 31, 2001, the aggregate amount of such priority distributions payable to Class B Limited Partners totaled $870,747.

## TABLE V (UNAUDITED)

## SALES OR DISPOSALS OF PROPERTIES

The following Table sets forth sales or other disposals of properties by Wells Public Programs within the most recent three years. The information relates to only public programs with investment objectives similar to those of Wells Real Estate Investment Trust, Inc. All figures are as of December 31, 2001.

| | | | | Selling Price, Net Of Closing Costs And GAAP Adjustments | | | | | Cost Of Properties Including Closing And Soft Costs | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Property | Date Acquired | Date Of Sale | Cash Received Net Of Closing Costs | Mortgage Balance At Time Of Sale | Purchase Money Mortgage Taken Back By Program | Adjustments Resulting From Application Of GAAP | Total | Original Mortgage Financing | Total Acquisition Cost, Capital Improvement, Closing And Soft Costs(1) | Total | Excess (Deficiency) Of Property Operating Cash Receipts Over Cash Expenditures |
| 3875 Peachtree Place, Atlanta, Georgia | 12/1/85 | 08/31/00 | $ 727,982 | -0- | -0- | -0- | $ 727,982(2) | -0- | $ 647,648 | $ 647,648 | |
| Crowe's Crossing Shopping Center, DeKalb Count, Georgia | 12/31/86 | 01/11/01 | $6,487,000 | -0- | -0- | -0- | $6,487,000(3) | -0- | $ 9,388,869 | $ 9,368,869 | |
| Cherokee Commons Shopping Center, Cherokee County, Georgia | 10/30/87 | 10/01/01 | $8,434,089 | -0- | -0- | -0- | $8,434,089(4) | -0- | $ 10,650,750 | $10,650,750 | |

(1) Amount shown does not include *pro rata* share of original offering costs.
(2) Includes Wells Real Estate Fund I's share of taxable gain from this sale in the amount of $205,019, of which $205,019 is allocated to capital gain and $0 is allocated to ordinary gain.
(3) Includes taxable gain from this sale in the amount of $11,496, of which $11,496 is allocated to capital gain and $0 is allocated to ordinary gain.
(4) Includes taxable gain from this sale in the amount of $207,613, of which $207,613 is allocated to capital gain and $0 is allocated to ordinary gain.

**EXHIBIT A**

**SUBSCRIPTION AGREEMENT**

To: **Wells Real Estate Investment Trust, Inc.**
Suite 250
6200 The Corners Parkway
Atlanta, Georgia 30092

Ladies and Gentlemen:

The undersigned, by signing and delivering a copy of the attached Subscription Agreement Signature Page, hereby tenders this subscription and applies for the purchase of the number of shares of common stock ("Shares") of Wells Real Estate Investment Trust, Inc., a Maryland corporation ("Wells REIT"), set forth on such Subscription Agreement Signature Page. Payment for the Shares is hereby made by check payable to "Wells Real Estate Investment Trust, Inc."

I hereby acknowledge receipt of the Prospectus of the Wells REIT dated July 26, 2002 (the "Prospectus").

I agree that if this subscription is accepted, it will be held, together with the accompanying payment, on the terms described in the Prospectus. Subscriptions may be rejected in whole or in part by the Wells REIT in its sole and absolute discretion.

Prospective investors are hereby advised of the following:

(a) The assignability and transferability of the Shares is restricted and will be governed by the Wells REIT's Articles of Incorporation and Bylaws and all applicable laws as described in the Prospectus.

(b) Prospective investors should not invest in Shares unless they have an adequate means of providing for their current needs and personal contingencies and have no need for liquidity in this investment.

(c) There is no public market for the Shares and, accordingly, it may not be possible to readily the liquidate an investment in the Wells REIT.

**SPECIAL NOTICE FOR CALIFORNIA RESIDENTS ONLY**
**CONDITIONS RESTRICTING TRANSFER OF SHARES**

**260.141.11 Restrictions on Transfer.**

(a) The issuer of any security upon which a restriction on transfer has been imposed pursuant to Sections 260.102.6, 260.141.10 or 260.534 of the Rules (the "Rules") adopted under the California Corporate Securities Law (the "Code") shall cause a copy of this section to be delivered to each issuee or transferee of such security at the time the certificate evidencing the security is delivered to the issuee or transferee.

(b) It is unlawful for the holder of any such security to consummate a sale or transfer of such security, or any interest therein, without the prior written consent of the Commissioner (until this condition is removed pursuant to Section 260.141.12 of the Rules), except:

(1) to the issuer;

(2) pursuant to the order or process of any court;

(3) to any person described in subdivision (i) of Section 25102 of the Code or Section 260.105.14 of the Rules;

(4) to the transferor's ancestors, descendants or spouse, or any custodian or trustee for the account of the transferor or the transferor's ancestors, descendants or spouse; or to a transferee by a trustee or custodian for the account of the transferee or the transferee's ancestors, descendants or spouse;

(5) to holders of securities of the same class of the same issuer;

(6) by way of gift or donation inter vivos or on death;

(7) by or through a broker-dealer licensed under the Code (either acting as such or as a finder) to a resident of a foreign state, territory or country who is neither domiciled in this state to the knowledge of the broker-dealer, nor actually present in this state if the sale of such securities is not in violation of any securities laws of the foreign state, territory or country concerned;

(8) to a broker-dealer licensed under the Code in a principal transaction, or as an underwriter or member of an underwriting syndicate or selling group;

(9) if the interest sold or transferred is a pledge or other lien given by the purchaser to the seller upon a sale of the security for which the Commissioner's written consent is obtained or under this rule not required;

(10) by way of a sale qualified under Sections 25111, 25112, 25113 or 25121 of the Code, of the securities to be transferred, provided that no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification;

(11) by a corporation to a wholly owned subsidiary of such corporation, or by a wholly owned subsidiary of a corporation to such corporation;

(12) by way of an exchange qualified under Section 25111, 25112 or 25113 of the Code provided that no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification;

(13) between residents of foreign states, territories or countries who are neither domiciled or actually present in this state;

(14) to the State Controller pursuant to the Unclaimed Property Law or to the administrator of the unclaimed property law of another state;

(15) by the State Controller pursuant to the Unclaimed Property Law or by the administrator of the unclaimed property law of another state if, in either such case, such person (i) discloses to potential purchasers at the sale that transfer of the securities is restricted under this rule, (ii) delivers to each purchaser a copy of this rule, and (iii) advises the Commissioner of the name of each purchaser;

(16) by a trustee to a successor trustee when such transfer does not involve a change in the beneficial ownership of the securities;

(17) by way of an offer and sale of outstanding securities in an issuer transaction that is subject to the qualification requirement of Section 25110 of the Code but exempt from that qualification requirement by subdivision (f) of Section 25102; provided that any such transfer is on the condition that any certificate evidencing the security issued to such transferee shall contain the legend required by this section.

(c) The certificates representing all such securities subject to such a restriction on transfer, whether upon initial issuance or upon any transfer thereof, shall bear on their face a legend, prominently stamped or printed thereon in capital letters of not less than 10-point size, reading as follows:

"IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED IN THE COMMISSIONER'S RULES."

[Last amended effective January 21, 1988.]

**SPECIAL NOTICE FOR MAINE, MASSACHUSETTS, MINNESOTA, MISSOURI AND NEBRASKA RESIDENTS ONLY**

In no event may a subscription for Shares be accepted until at least five business days after the date the subscriber receives the Prospectus. Residents of the States of Maine, Massachusetts, Minnesota, Missouri and Nebraska who first received the Prospectus only at the time of subscription may receive a refund of the subscription amount upon request to the Wells REIT within five days of the date of subscription.

**STANDARD REGISTRATION REQUIREMENTS**

The following requirements have been established for the various forms of registration. Accordingly, complete Subscription Agreements and such supporting material as may be necessary must be provided.

**TYPE OF OWNERSHIP AND SIGNATURE(S) REQUIRED**

1. **INDIVIDUAL**: One signature required.

2. **JOINT TENANTS WITH RIGHT OF SURVIVORSHIP**: All parties must sign.

3. **TENANTS IN COMMON**: All parties must sign.

4. **COMMUNITY PROPERTY**: Only one investor signature required.

5. **PENSION OR PROFIT SHARING PLANS**: The trustee signs the Signature Page.

6. **TRUST**: The trustee signs the Signature Page. Provide the name of the trust, the name of the trustee and the name of the beneficiary.

7. **PARTNERSHIP**: Identify whether the entity is a general or limited partnership. The general partners must be identified and their signatures obtained on the Signature Page. In the case of an investment by a general partnership, all partners must sign (unless a "managing partner" has been designated for the partnership, in which case he may sign on behalf of the partnership if a certified copy of the document granting him authority to invest on behalf of the partnership is submitted).

8. **CORPORATION**: The Subscription Agreement must be accompanied by (1) a certified copy of the resolution of the Board of Directors designating the officer(s) of the corporation authorized to sign on behalf of the corporation and (2) a certified copy of the Board's resolution authorizing the investment.

9. **IRA AND IRA ROLLOVERS**: Requires signature of authorized signer (e.g., an officer) of the bank, trust company, or other fiduciary. The address of the trustee must be provided in order for the trustee to receive checks and other pertinent information regarding the investment.

10. **KEOGH (HR 10)**: Same rules as those applicable to IRAs.

11. **UNIFORM GIFT TO MINORS ACT (UGMA)** or **UNIFORM TRANSFERS TO MINORS ACT (UTMA)**: The required signature is that of the custodian, not of the parent (unless the parent has been designated as the custodian). Only one child is permitted in each investment under UGMA or UTMA. In addition, designate the state under which the gift is being made.

**INSTRUCTIONS TO SUBSCRIPTION AGREEMENT SIGNATURE PAGE**
**TO WELLS REAL ESTATE INVESTMENT TRUST, INC. SUBSCRIPTION AGREEMENT**

**INVESTOR INSTRUCTIONS**

**Please follow these instructions carefully. Failure to do so may result in the rejection of your subscription. All information on the Subscription Agreement Signature Page should be completed as follows:**

1. **INVESTMENT**

a. **GENERAL**: A minimum investment of $1,000 (100 Shares) is required, except for certain states which require a higher minimum investment. **A CHECK FOR THE FULL PURCHASE PRICE OF THE SHARES SUBSCRIBED FOR SHOULD BE MADE PAYABLE TO THE ORDER OF "WELLS REAL ESTATE INVESTMENT TRUST, INC."** Investors who have satisfied the minimum purchase requirements in Wells Real Estate Fund I, Wells Real Estate Fund II, Wells Real Estate Fund II-OW, Wells Real Estate Fund III, L.P., Wells Real Estate Fund IV, L.P., Wells Real Estate Fund V, L.P., Wells Real Estate Fund VI, L.P., Wells Real Estate Fund VII, L.P., Wells Real Estate Fund VIII, L.P., Wells Real Estate Fund IX, L.P., Wells Real Estate Fund X, L.P., Wells Real Estate Fund XI, L.P., Wells Real Estate Fund XII, L.P., or Wells Real Estate Fund XIII, L.P., or in any other public real estate program may invest as little as $25 (2.5 Shares) except for residents of Maine, Minnesota, Nebraska or Washington. Shares may be purchased only by persons meeting the standards set forth under the Section of the Prospectus entitled "Suitability Standards." Please indicate the state in which the sale was made. **WE WILL NOT ACCEPT CASH, MONEY ORDERS OR TRAVELERS CHECKS FOR INITIAL INVESTMENTS.**

b. **DEFERRED COMMISSION OPTION:** Please check the box if you have agreed with your Broker-Dealer to elect the Deferred Commission Option, as described in the Prospectus, as supplemented to date. By electing the Deferred Commission Option, you are required to pay only $9.40 per Share purchased upon subscription. For the next six years following the year of subscription, you will have a 1% sales commission ($.10 per Share) per year deducted from and paid out of dividends or other cash distributions otherwise distributable to you. Election of the Deferred Commission Option shall authorize the Wells REIT to withhold such amounts from dividends or other cash distributions otherwise payable to you as is set forth in the "Plan of Distribution" section of the Prospectus.

2. **ADDITIONAL INVESTMENTS**

Please check if you plan to make one or more additional investments in the Wells REIT. All additional investments must be in increments of at least $25. Additional investments by residents of Maine must be for the minimum amounts stated under "Suitability Standards" in the Prospectus, and residents of Maine must execute a new Subscription Agreement Signature Page to make additional investments in the Wells REIT. If additional investments in the Wells REIT are made, the investor agrees to notify the Wells REIT and the Broker-Dealer named on the Subscription Agreement Signature Page in writing if at any time he fails to meet the applicable suitability standards or he is unable to make any other representations or warranties set forth in the Prospectus or the Subscription Agreement. The investor acknowledges that the Broker-Dealer named in the Subscription Agreement Signature Page may receive commissions on such additional investments as described in the Prospectus.

3. **TYPE OF OWNERSHIP**

Please check the appropriate box to indicate the type of entity or type of individuals subscribing.

| | | |
|---|---|---|
| 4. | **REGISTRATION NAME AND ADDRESS** | Please enter the exact name in which the Shares are to be held. For joint tenants with right of survivorship or tenants in common, include the names of both investors. In the case of partnerships or corporations, include the name of an individual to whom correspondence will be addressed. Trusts should include the name of the trustee. All investors must complete the space provided for taxpayer identification number or social security number. By signing in Section 6, the investor is certifying that this number is correct. Enter the mailing address and telephone numbers of the registered owner of this investment. In the case of a Qualified Plan or trust, this will be the address of the trustee. Indicate the birthdate and occupation of the registered owner unless the registered owner is a partnership, corporation or trust. |
| 5. | **INVESTOR NAME AND ADDRESS** | Complete this Section only if the investor's name and address is different from the registration name and address provided in Section 4. If the Shares are registered in the name of a trust, enter the name, address, telephone number, social security number, birthdate and occupation of the beneficial owner of the trust. |
| 6. | **SUBSCRIBER SIGNATURES** | Please separately initial each representation made by the investor where indicated. Except in the case of fiduciary accounts, the investor may not grant any person a power of attorney to make such representations on his or her behalf. Each investor must sign and date this Section. If title is to be held jointly, all parties must sign. If the registered owner is a partnership, corporation or trust, a general partner, officer or trustee of the entity must sign. **PLEASE NOTE THAT THESE SIGNATURES DO NOT HAVE TO BE NOTARIZED.** |
| 7. | **DIVIDENDS** | a. **DIVIDEND REINVESTMENT PLAN**: By electing the Dividend Reinvestment Plan, the investor elects to reinvest the stated percentage of dividends otherwise payable to such investor in Shares of the Wells REIT. The investor agrees to notify the Wells REIT and the Broker-Dealer named on the Subscription Agreement Signature Page in writing if at any time he fails to meet the applicable suitability standards or he is unable to make any other representations and warranties as set forth in the Prospectus or Subscription Agreement or in the prospectus and subscription agreement of any future limited partnerships sponsored by the Advisor or its affiliates. The investor acknowledges that the Broker-Dealer named in the Subscription Agreement Signature Page may receive commissions not to exceed 7% of any reinvested dividends.<br><br>b. **DIVIDEND ADDRESS** : If cash dividends are to be sent to an address other than that provided in Section 4 (i.e., a bank, brokerage firm or savings and loan, etc.), please provide the name, account number and address. |
| 8. | **BROKER-DEALER** | This Section is to be completed by the Registered Representative. Please complete all BROKER-DEALER information contained in Section 8 including suitability certification. **SIGNATURE PAGE MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE.** |

The Subscription Agreement Signature Page, which has been delivered with this Prospectus, together with a check for the full purchase price, should be delivered or mailed to your Broker-Dealer. Only original, completed copies of Subscription Agreements can be accepted. Photocopied or otherwise duplicated Subscription Agreements cannot be accepted by the Wells REIT.

**IF YOU NEED FURTHER ASSISTANCE IN COMPLETING THIS SUBSCRIPTION AGREEMENT SIGNATURE PAGE, PLEASE CALL 1-800-448-1010**

Table of Contents

WELLS REIT

Special Instructions:

# WELLS REAL ESTATE INVESTMENT TRUST, INC.
# SUBSCRIPTION AGREEMENT SIGNATURE PAGE

See page A5-A6 in the Prospectus for instructions.

## 1. INVESTMENT

_____ # of Shares  _____ Total $ Invested

(# Shares x $10 = $ Invested)

Minimum purchase $1,000 or 100 Shares

**Make Investment Check Payable to:**
**Wells Real Estate Investment Trust, Inc.**

☐ Initial Investment (Minimum $1,000)
☐ Additional Investment (Minimum $25)
State in which sale was made _____

Check the following box to elect the Deferred Commission Option: ☐
(This election must be agreed to by the Broker-Dealer listed below)

## 2. ADDITIONAL INVESTMENTS

Please check if you plan to make additional investments in the Wells REIT: ☐
[If additional investments are made, please include social security number or other taxpayer identification number on your check. All additional investments must be made in increments of at least $25. By checking this box, I agree to notify the Wells REIT in writing if at any time I fail to meet the suitability standards or am unable to make the representations in Section 6.]

## 3. TYPE OF OWNERSHIP

☐ IRA (06)
(Enter Custodial Information under section 4)
☐ Keogh (10)
☐ Qualified Pension Plan (11)
☐ Qualified Profit Sharing Plan (12)
☐ Trust / Trust Type: _____
(Please specify, i.e. Family, Living, Revocable, etc.)
☐ Individual (01)
☐ Joint Tenants With Right of Survivorship (02)
☐ Community Property (03)
☐ Tenants in Common (04)
☐ Custodian: A Custodian for _____ under the Uniform Gift to Minors Act or the Uniform Transfers to Minors Act of the State of _____ (08)
☐ Other _____

## 4. REGISTRATION NAME AND ADDRESS

Please print name(s) in which Shares are to be registered. **Include trust or custodial name if applicable. If Wells Advisors Inc. is the designated custodian, please complete the Wells IRA Application Booklet in addition to this form.**

☐ Mr ☐ Mrs ☐ Ms ☐ MD ☐ PhD ☐ DDS ☐ Other _____

Taxpayer Identification Number
☐☐ – ☐☐☐☐☐☐☐

Social Security Number
☐☐☐ – ☐☐ – ☐☐☐☐

Street Address or P.O. Box
City  State  Zip Code
Home Telephone No. (  )  Business Telephone No. (  )
Birth Date  Occupation
Email Address (Optional)  Provide only if you would like to receive updated information about Wells via email.

## 5. INVESTOR NAME AND ADDRESS

(COMPLETE ONLY IF DIFFERENT FROM REGISTRATION NAME AND ADDRESS)

☐ Mr ☐ Mrs ☐ Ms ☐ MD ☐ PhD ☐ DDS ☐ Other _____

Name

Social Security Number
☐☐☐ – ☐☐ – ☐☐☐☐

Street Address or P.O. Box
City  State  Zip Code
Home Telephone No. (  )  Business Telephone No. (  )
Birth Date  Occupation
Email Address (Optional)  Provide only if you would like to receive updated information about Wells via email.

**(REVERSE SIDE MUST BE COMPLETED)**

## 6. SUBSCRIBER SIGNATURES

Please separately initial each of the representations below. Except in the case of fiduciary accounts, you may not grant any person a power of attorney to make such representations on your behalf. In order to induce the Wells REIT to accept this subscription, I hereby represent and warrant to you as follows:

| | | | |
|---|---|---|---|
| (a) | I have received the Prospectus. | Initials | Initials |
| (b) | I have (i) a net worth (exclusive of home, home furnishings and automobiles) of $150,000 or more; or (ii) a net worth (as described above) of at least $45,000 and had during the last tax year or estimate that I will have during the current tax year a minimum of $45,000 annual gross income, or that I meet the higher suitability requirements imposed by my state of primary residence as set forth in the Prospectus under "SUITABILITY STANDARDS". | Initials | Initials |
| (c) | I acknowledge that the shares are not liquid. | Initials | Initials |
| (d) | If I am a California resident or if the Person to whom I subsequently propose to assign or transfer any Shares is a California resident, I may not consummate a sale or transfer of my Shares, or any interest therein, or receive any consideration therefor, without the prior written consent of the Commissioner of the Department of Corporations of the State of California, except as permitted in the Commissioner's Rules, and I understand that my Shares, or any document evidencing my Shares, will bear a legend reflecting the substance of the foregoing understanding. | Initials | Initials |
| (e) | ARKANSAS, NEW MEXICO AND TEXAS RESIDENTS ONLY: I am purchasing the Shares for my own account and acknowledge that the investment is not liquid. | Initials | Initials |

I declare that the information supplied above is true and correct and may be relied upon by the Wells REIT in connection with my investment in the Wells REIT. Under penalties of perjury, by signing this Signature Page, I hereby certify that (a) I have provided herein my correct Taxpayer Identification Number, and (b) I am not subject to back-up withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to back-up withholding.

| Signature of Investor or Trustee | Signature of Joint Owner, if applicable | Date |
|---|---|---|
| | | |

**(MUST BE SIGNED BY TRUSTEE(S) IF IRA, KEOGH OR QUALIFIED PLAN.)**

## 7. DIVIDENDS (YOU MUST CHECK ONE OF THE FOLLOWING)

**NOTE: If you have checked "IRA" in section 3 and listed Wells Advisors, Inc. as custodian under Section 4, please disregard this section. You must instead complete page 7 of the Well Advisors, Inc. IRA Application Booklet.**

☐ I prefer to participate in the Dividend Reinvestment Plan
☐ I prefer to direct dividends to a party other than the registered owner per my instructions below
☐ I prefer dividends to be deposited directly into the following account: ___Checking ___ Savings

(For deposits into checking or savings accounts): Please enclose a voided check or deposit slip. By enclosing a voided check or deposit slip I (we) authorize and direct the Wells REIT to begin making electronic deposits to the checking or savings account designated by the enclosed voided check or deposit slip. An automated deposit entry shall constitute my (our) receipt for each transaction. This authority is to remain in force until the Wells REIT has received written notification from me (us) of its termination at such time and in such manner as to give the Wells REIT reasonable time to act on it.

| | | | | | |
|---|---|---|---|---|---|
| Institution Name | | Account Number | | | |
| Name on Account | | | | | |
| Street Address or P.O. Box | | | | | |
| City | | State | | Zip Code | |

☐ I prefer dividends be paid to me at my address listed under Section 4

## 8. BROKER-DEALER (TO BE COMPLETED BY REGISTERED REPRESENTATIVE)

☐ **PLEASE CHECK IF THIS IS A CHANGE IN BROKER-DEALER**
☐ **PLEASE CHECK IF THIS IS A NEW BRANCH ADDRESS FOR THE REGISTERED REPRESENTATIVE**

**The Broker-Dealer or authorized representative must sign below** to complete order. Broker-Dealer or authorized representative warrants that it is a duly licensed Broker-Dealer or authorized representative and may lawfully offer Shares in the state designated as the investor's address or the state in which the sale was made, if different. The Broker-Dealer or authorized representative warrants that he has reasonable grounds to believe this investment is suitable for the subscriber and that he has informed subscriber of all aspects of liquidity and marketability of this investment.

| | | | | | |
|---|---|---|---|---|---|
| Broker-Dealer Name | | Telephone No. | ( ) | | |
| Broker-Dealer Street Address or P.O. Box | | | | | |
| City | | State | | Zip Code | |

| | | | | | |
|---|---|---|---|---|---|
| Registered Representative Name | | Telephone No. | ( ) | | |
| Reg. Rep. Street Address or P.O. Box | | | | | |
| City | | State | | Zip Code | |
| Email Address (Optional) | | Provide only if you would like to receive updated information about Wells via email. | | | |

| Broker-Dealer Signature, if required | Registered Representative Signature |
|---|---|
| | |

Please mail completed Subscription Agreement (with all signatures) and personal check(s) made payable to

Overnight address:
6200 The Corners Parkway, Suite 250
Atlanta, Georgia 30092-2295

**Wells Real Estate Investment Trust, Inc.**
800-557-4830 or 770-449-7800

Mailing address:
P.O. Box 926040
Atlanta, Georgia 30010-6040

Cash, money orders and travelers checks will not be accepted.

ACCEPTANCE BY WELLS REIT Received and Subscription Accepted by:

**EXHIBIT B**

**AMENDED AND RESTATED**
**DIVIDEND REINVESTMENT PLAN**
**As of December 20, 1999**

Wells Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), pursuant to its Amended and Restated Articles of Incorporation, adopted a Dividend Reinvestment Plan (the "DRP"), which is hereby amended and restated in its entirety as set forth below. Capitalized terms shall have the same meaning as set forth in the Articles unless otherwise defined herein.

1. *Dividend Reinvestment*. As agent for the shareholders ("Shareholders") of the Company who (a) purchased shares of the Company's common stock (the "Shares") pursuant to the Company's initial public offering (the "Initial Offering"), which commenced on January 30, 1998 and will terminate on or before January 30, 2000, (b) purchase Shares pursuant to the Company's second public offering (the "Second Offering"), which will commence immediately upon the termination of the Initial Offering, or (c) purchase Shares pursuant to any future offering of the Company ("Future Offering"), and who elect to participate in the DRP (the "Participants"), the Company will apply all dividends and other distributions declared and paid in respect of the Shares held by each Participant (the "Dividends"), including Dividends paid with respect to any full or fractional Shares acquired under the DRP, to the purchase of the Shares for such Participants directly, if permitted under state securities laws and, if not, through the Dealer Manager or Soliciting Dealers registered in the Participant's state of residence.

2. *Effective Date*. The effective date of this Amended and Restated Dividend Reinvestment Plan (the "DRP") shall be the date that the Second Offering becomes effective with the Securities and Exchange Commission (the "Commission").

3. *Procedure for Participation*. Any Shareholder who purchased Shares pursuant to the Initial Offering, the Second Offering or any Future Offering and who has received a prospectus, as contained in the Company's registration statement filed with the Commission, may elect to become a Participant by completing and executing the Subscription Agreement, an enrollment form or any other appropriate authorization form as may be available from the Company, the Dealer Manager or Soliciting Dealer. Participation in the DRP will begin with the next Dividend payable after receipt of a Participant's subscription, enrollment or authorization. Shares will be purchased under the DRP on the date that Dividends are paid by the Company. Dividends of the Company are currently paid quarterly. Each Participant agrees that if, at any time prior to the listing of the Shares on a national stock exchange or inclusion of the Shares for quotation on the National Association of Securities Dealers, Inc. Automated Quotation System ("Nasdaq"), he or she fails to meet the suitability requirements for making an investment in the Company or cannot make the other representations or warranties set forth in the Subscription Agreement, he or she will promptly so notify the Company in writing.

4. *Purchase of Shares*. Participants will acquire DRP Shares from the Company at a fixed price of $10 per Share until (i) all 2,200,000 of the DRP Shares registered in the Second Offering are issued or (ii) the Second Offering terminates and the Company elects to deregister with the Commission the unsold DRP Shares. Participants in the DRP may also purchase fractional Shares so that 100% of the Dividends will be used to acquire Shares. However, a Participant will not be able to acquire DRP Shares to the extent that any such purchase would cause such Participant to exceed the Ownership Limit as set forth in the Articles.

Shares to be distributed by the Company in connection with the DRP may (but are not required to) be supplied from: (a) the DRP Shares which will be registered with the Commission in connection with the Company's Second Offering, (b) Shares to be registered with the Commission in a Future Offering for use in the DRP (a "Future Registration"), or (c) Shares of the Company's common stock purchased by the Company for the DRP in a secondary market (if available) or on a stock exchange or Nasdaq (if listed) (collectively, the "Secondary Market").

Shares purchased on the Secondary Market as set forth in (c) above will be purchased at the then-prevailing market price, which price will be utilized for purposes of purchases of Shares in the DRP. Shares acquired by the Company on the Secondary Market or registered in a Future Registration for use in the DRP may be at prices lower or higher than the $10 per Share price which will be paid for the DRP Shares pursuant to the Initial Offering and the Second Offering.

If the Company acquires Shares in the Secondary Market for use in the DRP, the Company shall use reasonable efforts to acquire Shares for use in the DRP at the lowest price then reasonably available. However, the Company does not in any respect guarantee or warrant that the Shares so acquired and purchased by the Participant in the DRP will be at the lowest possible price. Further, irrespective of the Company's ability to acquire Shares in the Secondary Market or to complete a Future Registration for shares to be used in the DRP, the Company is in no way obligated to do either, in its sole discretion.

It is understood that reinvestment of Dividends does not relieve a Participant of any income tax liability which may be payable on the Dividends.

5. *Share Certificates*. The ownership of the Shares purchased through the DRP will be in book-entry form only until the Company begins to issue certificates for its outstanding common stock.

6. *Reports*. Within 90 days after the end of the Company's fiscal year, the Company shall provide each Shareholder with an individualized report on his or her investment, including the purchase date(s), purchase price and number of Shares owned, as well as the dates of Dividend distributions and amounts of Dividends paid during the prior fiscal year. In addition, the Company shall provide to each Participant an individualized quarterly report at the time of each Dividend payment showing the number of Shares owned prior to the current Dividend, the amount of the current Dividend and the number of Shares owned after the current Dividend.

7. *Commissions and Other Charges*. In connection with Shares sold pursuant to the DRP, the Company will pay selling commissions of 7%; a dealer manager fee of 2.5%; and, in the event that proceeds from the sale of DRP Shares are used to acquire properties, acquisition and advisory fees and expenses of 3.5%, of the purchase price of the DRP Shares.

8. *Termination by Participant*. A Participant may terminate participation in the DRP at any time, without penalty by delivering to the Company a written notice. Prior to listing of the Shares on a national stock exchange or Nasdaq, any transfer of Shares by a Participant to a non-Participant will terminate participation in the DRP with respect to the transferred Shares. If a Participant terminates DRP participation, the Company will ensure that the terminating Participant's account will reflect the whole number of shares in his or her account and provide a check for the cash value of any fractional share in such account. Upon termination of DRP participation, Dividends will be distributed to the Shareholder in cash.

9. *Amendment or Termination of DRP by the Company*. The Board of Directors of the Company may by majority vote (including a majority of the Independent Directors) amend or terminate the DRP for any reason upon 10 days' written notice to the Participants.

10. *Liability of the Company*. The Company shall not be liable for any act done in good faith, or for any good faith omission to act, including, without limitation, any claims or liability; (a) arising out of failure to terminate a Participant's account upon such Participant's death prior to receipt of notice in writing of such death; and (b) with respect to the time and the prices at which Shares are purchased or sold for a Participant's account. To the extent that indemnification may apply to liabilities arising under the Securities Act of 1933, as amended, or the securities act of a sate, the Company has been advised that, in the opinion of the Commission and certain state securities commissioners, such indemnification is contrary to public policy and, therefore, unenforceable.

**Until October 24, 2002 (90 days after the date of this prospectus), all dealers that affect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as soliciting dealers.**

We have not authorized any dealer, salesperson or other individual to give any information or to make any representations that are not contained in this prospectus. If any such information or statements are given or made, you should not rely upon such information or representation. This prospectus does not constitute an offer to sell any securities other than those to which this prospectus relates, or an offer to sell, or a solicitation of an offer to buy, to any person in any jurisdiction where such an offer or solicitation would be unlawful. This prospectus speaks as of the date set forth below. You should not assume that the delivery of this prospectus or that any sale made pursuant to this prospectus implies that the information contained in this prospectus will remain fully accurate and correct as of any time subsequent to the date of this prospectus.

**ALPHABETICAL INDEX**



Shares of the Wells REIT are not FDIC insured, may lose value and are not bank guaranteed. Investments in real estate and REITs may be affected by adverse economic and regulatory changes. Properties that incur vacancies may be difficult to sell or re-lease. Non-traded REITs have certain risks, including illiquidity of the investment, and should be considered a long-term investment. Past performance does not guarantee future performance. When you sell your shares, they could be worth less than what you paid for them.

# WELLS REAL ESTATE INVESTMENT TRUST, INC.

**Up to 300,000,000 Shares**
**of Common Stock**
**Offered to the Public**

**PROSPECTUS**

# WELLS INVESTMENT SECURITIES, INC.

**July 26, 2002**

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**
**SUPPLEMENT NO. 1 DATED AUGUST 14, 2002 TO THE PROSPECTUS**
**DATED JULY 26, 2002**

*This document supplements, and should be read in conjunction with, the prospectus of Wells Real Estate Investment Trust, Inc. dated July 26, 2002. When we refer to the "prospectus" in this supplement, we are also referring to any and all supplements to the prospectus. Unless otherwise defined in this supplement, capitalized terms used in this supplement shall have the same meanings as set forth in the prospectus.*

The purpose of this supplement is to describe the following:

(1) Status of the offering of shares in Wells Real Estate Investment Trust, Inc. (Wells REIT);

(2) Revisions to the "Description of Properties" section of the prospectus to describe the following real property acquisitions:

  (A) Acquisition of a two-story office building in San Antonio, Texas (PacifiCare San Antonio Building);

  (B) Acquisition of a 4.2 acre tract of land in Houston, Texas (Kerr-McGee Property);

  (C) Acquisition of two adjacent one-story distribution facility buildings in Duncan, South Carolina (BMG Greenville Buildings); and

  (D) Acquisition of a one-story office building in Suwanee, Georgia (Kraft Atlanta Building);

(3) Revisions to the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of the prospectus;

(4) Unaudited Financial Statements of the Wells REIT for the quarter ended June 30, 2002; and

(5) Unaudited pro forma financial statements of the Wells REIT reflecting the acquisitions of the PacifiCare San Antonio Building, the Kerr-McGee Property, the BMG Greenville Buildings and the Kraft Atlanta Building.

**Status of the Offering**

We commenced our initial public offering of common stock on January 30, 1998. Our initial public offering was terminated on December 19, 1999. We received approximately $132,181,919 in gross offering proceeds from the sale of 13,218,192 shares in our initial public offering. We commenced our second offering of common stock on December 20, 1999. Our second public offering was terminated on December 19, 2000. We received approximately $175,229,193 in gross offering proceeds from the sale of 17,522,919 shares in our second public offering. We commenced our third public offering of common stock on December 20, 2000. Our third public offering was terminated on July 26, 2002. We received approximately $1,292,032,232 in gross offering proceeds from the sale of 129,203,223 shares in our third public offering.

Pursuant to the prospectus, we commenced our fourth public offering of common stock on July 26, 2002. As of August 10, 2002, we had received gross proceeds of approximately $46,430,189 from the sale of approximately 4,643,019 shares in our fourth public

offering. Accordingly, as of August 10, 2002, we had received aggregate gross offering proceeds of approximately $1,645,873,533 from the sale of approximately 164,587,353 shares in all of our public offerings. After payment of $57,110,749 in acquisition and advisory fees and acquisition expenses, payment of $183,457,253 in selling commissions and organization and offering expenses, and common stock redemptions of $14,137,852 pursuant to our share redemption program, as of August 10, 2002, we had raised aggregate net offering proceeds available for investment in properties of $1,391,167,679, out of which $968,778,340 had been invested in real estate properties, and $422,389,339 remained available for investment in real estate properties.

**Description of Properties**

As of August 10, 2002, we had purchased interests in 57 real estate properties located in 19 states, each of which was 100% leased to tenants. Below are the descriptions of our recent real property acquisitions through August 10, 2002.

***The PacifiCare San Antonio Building***

On July 12, 2002, Wells Operating Partnership, L.P. (Wells OP), a Delaware limited partnership formed to acquire, own, lease and operate real properties on behalf of the Wells REIT, purchased a two-story office building containing 142,500 rentable square feet located in San Antonio, Texas (PacifiCare San Antonio Building) for a purchase price of $14,650,000, plus closing costs. The PacifiCare San Antonio Building was built in 2000 and is located at 6200 Northwest Parkway, San Antonio, Texas.

The PacifiCare San Antonio Building is leased entirely to PacifiCare Health Systems, Inc. (PacifiCare), a corporation whose shares are traded on NASDAQ. PacifiCare is one of the leading health and consumer service companies in the United States. The services PacifiCare provides include health insurance products, pharmacy and medical management, behavioral health services, and dental and vision services. PacifiCare reported a net worth, as of December 31, 2001, of approximately $2 billion.

The PacifiCare lease commenced in November 2000 and expires in November 2010. The current annual base rent payable under the PacifiCare lease is $1,471,700. PacifiCare, at its option, has the right to extend the initial term of its lease for one additional five-year period at an annual base rent of $1,967,925, and two subsequent five-year terms at the then-current market rental rate. In addition, PacifiCare has an expansion option for between approximately 20,000 and 45,000 rentable square feet, which it may exercise prior to the end of the 42nd month of the initial term of the PacifiCare lease.

***Kerr-McGee Property***

Purchase of the Kerr-McGee Property. On July 29, 2002 Wells OP purchased the Kerr-McGee Property, which is a build-to-suit property located in Houston, Texas, for a purchase price of $1,738,044, plus closing costs. We commenced construction on a four-story office building containing approximately 100,000 rentable square feet (Kerr-McGee Project) on August 1, 2002. Wells OP obtained a construction loan in the amount of $13,700,000 from Bank of America, N.A. (BOA) to fund the construction of the Kerr-McGee Project. The loan requires monthly payments of interest only and matures on January 29, 2004. The interest rate on the loan, as of August 6, 2002, was 3.80%. The BOA loan is secured by a first priority mortgage on the Kerr-McGee Property.

Wells OP entered into a development agreement, an architect agreement and a construction agreement to construct the Kerr-McGee Project on the Kerr-McGee Property.

Development Agreement. Wells OP entered into a development agreement (Development Agreement) with Means-Knaus, LLC, a Texas limited liability company (Developer), as the exclusive development manager to supervise, manage and coordinate the planning, design, construction and completion of the Kerr-McGee Project. As compensation for the services to be rendered by the Developer under the Development Agreement, Wells OP is paying a development fee of $699,740. The fee is due and payable ratably as the construction and development of the Kerr-McGee Project is completed.

We anticipate that the aggregate of all costs and expenses to be incurred by Wells OP with respect to the acquisition of the Kerr-McGee Property and the planning, design, development, construction and completion of the Kerr-McGee Project will total approximately $15,760,000.

Construction Agreement. Wells OP entered into a design and build construction agreement (Construction Agreement) with Hoar Construction, LLC (Contractor) for the construction of the Kerr-McGee Project. The Construction Agreement provides that Wells OP will pay the Contractor a maximum of $6,391,255 for the construction of the Kerr-McGee Project that includes all estimated fees and costs. The Contractor will be responsible for all costs of labor, materials, construction equipment and machinery necessary for completion of the Kerr-McGee Project. In addition, the Contractor will be required to secure and pay for any additional building permits which may be necessary for construction of the Kerr-McGee Project.

Kerr-McGee Lease. The Kerr-McGee Property is leased to Kerr-McGee Oil & Gas Corporation, a wholly owned subsidiary of Kerr-McGee Corporation (Kerr-McGee), a Delaware corporation whose shares are publicly traded on the New York Stock Exchange (NYSE). Kerr-McGee, which has guaranteed the Kerr-McGee lease, operates a worldwide business in oil and gas exploration and production, and titanium dioxide pigment production and marketing. It has oil fields in the Gulf of Mexico, the North Sea, the South China Sea, and onshore in the United States, Ecuador, Indonesia and Kazakhstan. Kerr-McGee reported a net worth, as of December 31, 2001, of approximately $3.1 billion.

The Kerr-McGee lease will commence shortly after completion of the Kerr-McGee Project, which we expect to occur in approximately July 2003. The Kerr-McGee lease will expire 11 years and one month after commencement, or approximately July 31, 2014. Kerr-McGee has the right to extend the initial term of this lease for (1) one additional 20-year period or (2) a combination of five-year terms or ten-year terms totaling not more than 20 years at 95% of the then-current market rental rate. The annual base rent payable for the Kerr-McGee lease beginning on the rent commencement date is expected to be approximately $1,655,000.

***BMG Greenville Buildings***

On July 31, 2002, Wells OP purchased two adjacent one-story distribution facility buildings containing 473,398 rentable square feet and 313,380 rentable square feet, respectively, located at 110 & 112 Hidden Lake Circle in Duncan, South Carolina (BMG Greenville Buildings) for a purchase price of $26,900,000, plus closing costs. The BMG Greenville Buildings were originally built in 1987.

The BMG Greenville Buildings are leased to BMG Direct Marketing, Inc. (BMG Marketing) and BMG Music, respectively. BMG Marketing and BMG Music are wholly owned subsidiaries of Bertelsmann AG (Bertelsmann), a German corporation with its international headquarters in Gütersloh, Germany and its U.S. headquarters in New York, New York. Bertlesmann, a guarantor on both the BMG Marketing lease and the BMG Music lease, operates in the media industry, specializing in a wide range of markets including: television and radio; book publishing; magazines and newspapers; music labels; professional information; print and media services; book and music clubs; and media e-commerce.

Bertelsmann has operations in approximately 51 countries. Bertelsmann reported a net worth, as of June 30, 2001, of approximately $8.15 billion.

The BMG Marketing lease commenced in March 1988 and expires in March 2011. The current annual base rent payable under the BMG Marketing lease is $1,394,156. BMG Marketing, at its option, has the right to extend the initial term of its lease for two additional ten-year periods at 95% of the then-current market rental rate.

The BMG Music lease commenced in December 1987 and expires in March 2011. The current annual base rent payable under the BMG Music lease is $763,600. BMG Music, at its option, has the right to extend the initial term of its lease for two additional ten-year periods at 95% of the then-current market rental rate.

***Kraft Atlanta Building***

On August 1, 2002, Wells OP purchased a one-story building containing an aggregate of 87,219 rentable square feet located at 4000 Johns Creek Court in Suwanee, Georgia (Kraft Atlanta Building) for a purchase price of $11,625,000. The Kraft Atlanta Building was built in 2001.

Kraft Foods North America, Inc. (Kraft) leases 73,264 rentable square feet (84%) of the Kraft Atlanta Building. Kraft, a wholly owned subsidiary of Kraft Foods, Inc., a Virginia corporation whose shares are publicly traded on the NYSE, is one of the largest food and beverage companies in the world with operations in 145 countries.

The Kraft lease commenced in February 2002 and expires in January 2012. The annual base rent payable under the Kraft lease beginning on September 1, 2002 will be $1,263,804. Kraft, at its option, has the right to extend the initial term of its lease for two additional five-year periods at the then-current market rental rate. In addition, Kraft may terminate the Kraft lease (1) at the end of the third lease year, by paying a $7,000,000 termination fee, or (2) at the end of the seventh lease year, by paying a $1,845,296 termination fee.

PerkinElmer Instruments, LLC (PerkinElmer) leases the remaining 13,955 rentable square feet (16%) of the Kraft Atlanta Building. PerkinElmer provides analytical solutions for the pharmaceutical, food and beverage, environmental, chemical, and semiconductor industries. PerkinElmer is a wholly owned subsidiary of PerkinElmer, Inc., a Massachusetts corporation whose shares are publicly traded on the NYSE. PerkinElmer, Inc. is a global technology company focusing on life sciences, optoelectronics and analytical instruments. PerkinElmer, Inc. operates in more than 125 countries.

The PerkinElmer lease commenced in December 2001 and expires in November 2016. The current annual base rent payable under the PerkinElmer lease is $194,672. PerkinElmer, at its option, has the right to extend the initial term of its lease for two additional five-year periods at the then-current market rental rate. In addition, PerkinElmer may terminate the PerkinElmer lease at the end of the 10th lease year by paying a $325,000 termination fee.

**Property Management Fees**

Wells Management Company, Inc. (Wells Management), an affiliate of the Wells REIT and our advisor, will be paid management and leasing fees in the amount of 4.5% of gross revenues from the PacifiCare San Antonio Building, the Kerr-McGee Property, the BMG Greenville Buildings, and the Kraft Atlanta Building subject to certain limitations. In addition, Wells Management will receive a one-time initial lease-up fee relating to the leasing of the Kerr-McGee Property equal to the first month's rent estimated to be approximately $140,000.

**Management's Discussion and Analysis of Financial Condition and Results of Operation**

The following information should be read in conjunction with the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section beginning on page 101 of the prospectus.

**Forward Looking Statements**

This section and other sections of the prospectus supplement contain forward-looking statements, within the meaning of Section 27A of the Securities Act of 1933 and 21E of the Securities Exchange Act of 1934, including discussion and analysis of the financial condition of the Wells REIT, anticipated capital expenditures required to complete certain projects, amounts of anticipated cash distributions to stockholders in the future and certain other matters. Readers of this supplement should be aware that there are various factors that could cause actual results to differ materially from any forward-looking statements made in the supplement, which include changes in general economic conditions, changes in real estate conditions, construction costs which may exceed estimates, construction delays, increases in interest rates, lease-up risks, inability to obtain new tenants upon the expiration of existing leases, inability to invest in properties that will provide targeted rates of return and the potential need to fund tenant improvements or other capital expenditures out of operating cash flow.

**Liquidity and Capital Resources**

During the six months ended June 30, 2002, we received aggregate gross offering proceeds of $618,275,931 from the sale of 61,827,594 shares of our common stock. After payment of $21,406,085 in acquisition and advisory fees and acquisition expenses, payment of $65,035,665 in selling commissions and organization and offering expenses, and common stock redemptions of $6,673,412 pursuant to the our share redemption program, we raised net offering proceeds of $525,160,769 during the first two quarters of 2002, of which $344,269,118 remained available for investment in properties at quarter end.

During the six months ended June 30, 2001, we received aggregate gross offering proceeds of $162,606,610 from the sale of 16,260,661 shares of our common stock. After payment of $5,642,317 in acquisition and advisory fees and acquisition expenses, payment of $20,151,132 in selling commissions and organizational and offering expenses, and common stock redemptions of $1,397,561 pursuant to the our share redemption program, we raised net offering proceeds of $135,415,600 during the first two quarters of 2001, of which $3,906,869 was available for investment in properties at quarter end.

The significant increase in our available capital resources is due to significantly increased sales of our common stock during the first half of 2002.

As of June 30, 2002, we owned interests in 52 real estate properties either directly or through its interests in joint ventures. These properties are generating operating cash flow sufficient to cover our operating expenses and pay dividends to stockholders. Dividends declared for the first half of 2002 and the first half of 2001 were approximately $0.39 and $0.38 per share, respectively. In June 2002, our Board of Directors declared dividends for the third quarter of 2002 in the amount of approximately $0.19 per share.

Due primarily to the pace of our property acquisitions, as explained in more detail in the following paragraph, dividends paid in the first half of 2002 in the aggregate amount of $40,867,110 exceeded our Adjusted Funds From Operations for this period by $4,813,633.

We acquire properties that meet our standards of quality both in terms of the real estate and the creditworthiness of the tenants. Creditworthy tenants of the type we target are becoming more and more highly valued in the marketplace and, accordingly, there is increased competition in acquiring properties with these creditworthy tenants. As a result, the purchase prices for such properties have increased with corresponding reductions in cap rates and returns on investment. In addition, changes in market conditions have caused us to add to our internal procedures for ensuring the creditworthiness of our tenants before any commitment to buy a property is made. We continue to remain steadfast in our commitment to invest in quality properties that will produce quality income for our stockholders. Accordingly, because the marketplace is now placing a higher value on our type of properties and because of the additional time it now takes in the acquisition process for us to assess tenant credit—plus our commitment to adhere to purchasing properties with tenants that meet our investment criteria—it appears likely that, in the future, we will be required to lower our dividends.

**Cash Flows From Operating Activities**

Our net cash provided by operating activities was $33,138,287 and $16,288,309 for the six months ended June 30, 2002 and 2001, respectively. The increase in net cash provided by operating activities was due primarily to the net income generated by additional properties acquired during 2002 and 2001.

**Cash Flows Used In Investing Activities**

Our net cash used in investing activities was $278,447,051 and $23,768,731 for the six months ended June 30, 2002 and 2001, respectively. The increase in net cash used in investing activities was due primarily to investments in properties and the payment of related deferred project costs, partially offset by distributions received from joint ventures.

**Cash Flows From Financing Activities**

Our net cash provided by financing activities was $511,632,371 and $9,257,047 for the six months ended June 30, 2002 and 2001, respectively. The increase in net cash provided by financing activities was due primarily to the raising of additional capital and the lack of debt payments which were $138.7 million in the prior year. We raised $618,275,931 in offering proceeds for the six months ended June 30, 2002, as compared to $162,606,610 for the same period in 2001. Additionally, we paid dividends totaling $40.9 million in the first half of 2002 compared to $13.8 million in the first half of 2001.

**Results of Operations**

As of June 30, 2002, our real estate properties were 100% leased to tenants. Gross revenues were $43,832,954 and $21,560,953 for the six months ended June 30, 2002 and 2001, respectively. Gross revenues for the six months ended June 30, 2002 and 2001 were attributable to rental income, interest income earned on funds held by the Wells REIT prior to the investment in properties, and income earned from joint ventures. The increase in revenues in 2002 was primarily attributable to the purchase of $259,535,578 in additional properties during 2002 and the purchase of $227,933,858 in additional properties during the second half of 2001 which were not owned for the full first half of 2001. The purchase of additional properties also resulted in an increase in expenses which totaled $19,296,812 for the six months ended June 30, 2002, as compared to $13,246,710 for the six months ended June 30, 2001. Expenses in 2002 and 2001 consisted primarily of depreciation, operating costs, interest expense, management and leasing fees and general and administrative costs. As a result, our net income also

increased from $8,314,243 for the six months ended June 30, 2001 to $24,536,142 for the six months ended June 30, 2002.

While earnings of $0.22 per share remained stable for the six months ended June 30, 2002, compared to the six months ended June 30, 2001, earnings per share for the second quarter decreased from $0.12 per share for the three months ended June 30, 2001 to $0.11 per share for the three months ended June 30, 2002, primarily due to a substantial increase in the number of shares outstanding which was not completely matched by a corresponding increase in net income from new property investments.

**Funds From Operations**

Funds From Operations ("FFO"), as defined by the National Association of Real Estate Investment Trusts ("NAREIT"), generally means net income, computed in accordance with GAAP excluding extraordinary items (as defined by GAAP) and gains (or losses) from sales of property, plus depreciation and amortization on real estate assets, and after adjustments for unconsolidated partnerships, joint ventures and subsidiaries. We believe that FFO is helpful to investors as a measure of the performance of an equity REIT. However, our calculation of FFO, while consistent with NAREIT's definition, may not be comparable to similarly titled measures presented by other REITs. Adjusted Funds From Operations ("AFFO") is defined as FFO adjusted to exclude the effects of straight-line rent adjustments, deferred loan cost amortization and other non-cash and/or unusual items. Neither FFO nor AFFO represent cash generated from operating activities in accordance with GAAP and should not be considered as alternatives to net income as an indication of our performance or to cash flows as a measure of liquidity or ability to make distributions. The following table reflects the calculation of FFO and AFFO for the three and six months ended June 30, 2002 and 2001, respectively:

| | Three Months Ended | | Six Months Ended | |
|---|---|---|---|---|
| | June 30, 2002 | June 30, 2001 | June 30, 2002 | June 30, 2001 |
| **FUNDS FROM OPERATIONS:** | | | | |
| Net income | $ 13,756,478 | $ 5,038,898 | $ 24,536,142 | $ 8,314,243 |
| Add: | | | | |
| Depreciation | 7,158,830 | 3,206,638 | 12,903,282 | 6,393,817 |
| Amortization of deferred leasing costs | 78,066 | 75,837 | 150,815 | 151,673 |
| Depreciation and amortization— unconsolidated partnerships | 700,689 | 504,711 | 1,406,865 | 913,674 |
| Funds from operations (FFO) | 21,694,063 | 8,826,084 | 38,997,104 | 15,773,407 |
| Adjustments: | | | | |
| Loan cost amortization | 249,530 | 77,142 | 424,992 | 291,899 |
| Straight line rent | (2,127,906) | (613,155) | (3,166,284) | (1,222,716) |
| Straight line rent—unconsolidated Partnerships | (103,020) | (71,768) | (202,335) | (132,246) |
| Adjusted funds from operations | $ 19,712,667 | $ 8,218,303 | $ 36,053,477 | $ 14,710,344 |
| **BASIC AND DILUTED WEIGHTED AVERAGE SHARES** | 126,037,819 | 42,192,347 | 110,885,641 | 38,328,405 |

**Inflation**

The real estate market has not been affected significantly by inflation in the past three years due to the relatively low inflation rate. However, there are provisions in the majority of tenant leases which are intended to protect us from the impact of inflation. These provisions include reimbursement billings for common area maintenance charges, real estate tax and insurance reimbursements on a per square foot basis, or in some cases, annual reimbursement of operating expenses above a certain per square foot allowance.

**Critical Accounting Policies**

Our reported results of operations are impacted by management judgments related to application of accounting policies. A discussion of the accounting policies that management considers to be critical, in that they may require complex judgment in their application or require estimates about matters which are inherently uncertain, is included in Footnote 1 to the financial statements of the Wells REIT contained in this supplement.

**Financial Statements**

***Unaudited Financial Statements***

The financial statements of the Wells REIT, as of June 30, 2002, and for the six month periods ended June 30, 2002 and June 30, 2001, which are included in this supplement, have not been audited.

The Pro Forma Balance Sheet of the Wells REIT, as of June 30, 2002, the Pro Forma Statement of Income for the year ended December 31, 2001, and the Pro Forma Statement of Income for the six months ended June 30, 2002, which are included in this supplement, have not been audited.

## INDEX TO FINANCIAL STATEMENTS

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**
**AND SUBSIDIARY**
**CONSOLIDATED BALANCE SHEETS**

| | June 30, 2002 | December 31, 2001 |
|---|---|---|
| | (unaudited) | |
| **ASSETS** | | |
| **REAL ESTATE, at cost:** | | |
| Land | $ 110,330,449 | $ 86,246,985 |
| Building and improvements, less accumulated depreciation of $37,717,737 in 2002 and $24,814,454 in 2001 | 689,490,969 | 472,383,102 |
| Construction in progress | 16,081,841 | 5,738,573 |
| Total real estate | 815,903,259 | 564,368,660 |
| **INVESTMENT IN JOINT VENTURES** | 76,217,870 | 77,409,980 |
| **CASH AND CASH EQUIVALENTS** | 341,909,775 | 75,586,168 |
| **INVESTMENT IN BONDS** | 22,000,000 | 22,000,000 |
| **ACCOUNTS RECEIVABLE** | 10,709,104 | 6,003,179 |
| **NOTES RECEIVABLE** | 5,149,792 | 0 |
| **DEFERRED LEASE ACQUISITION COSTS, net** | 1,790,608 | 1,525,199 |
| **DEFERRED PROJECT COSTS** | 14,314,914 | 2,977,110 |
| **DUE FROM AFFILIATES** | 1,897,309 | 1,692,727 |
| **DEFERRED OFFERING COSTS** | 1,392,934 | 0 |
| **PREPAID EXPENSES AND OTHER ASSETS, net** | 1,881,308 | 718,389 |
| Total assets | $ 1,293,166,873 | $ 752,281,412 |
| **LIABILITIES AND SHAREHOLDERS' EQUITY** | | |
| **LIABILITIES:** | | |
| Notes payable | $ 15,658,141 | $ 8,124,444 |
| Obligation under capital lease | 22,000,000 | 22,000,000 |
| Accounts payable and accrued expenses | 11,840,214 | 8,727,473 |
| Dividends payable | 4,538,635 | 1,059,026 |
| Deferred rental income | 1,013,544 | 661,657 |
| Due to affiliates | 2,106,790 | 2,166,161 |
| Total liabilities | 57,157,324 | 42,738,761 |
| **MINORITY INTEREST OF UNIT HOLDER IN OPERATING PARTNERSHIP** | 200,000 | 200,000 |
| **SHAREHOLDERS' EQUITY:** | | |
| Common shares, $.01 par value; 125,000,000 shares authorized, 145,589,053 shares issued and 144,366,772 outstanding at June 30, 2002, and 83,761,469 shares issued and 83,206,429 shares outstanding at December 31, 2001 | 1,455,890 | 837,614 |
| Additional paid-in capital | 1,290,858,515 | 738,236,525 |
| Cumulative distributions in excess of earnings | (43,991,669) | (24,181,092) |
| Treasury stock, at cost, 1,222,381 shares at June 30, 2002 and 555,040 shares at December 31, 2001 | (12,223,808) | (5,550,396) |
| Other comprehensive loss | (289,379) | 0 |
| Total shareholders' equity | 1,235,809,549 | 709,342,651 |
| Total liabilities and shareholders' equity | $ 1,293,166,873 | $ 752,281,412 |

See accompanying condensed notes to financial statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**
**AND SUBSIDIARY**
**CONSOLIDATED STATEMENTS OF INCOME**
**(UNAUDITED)**

| | Three Months Ended | | Six Months Ended | |
|---|---|---|---|---|
| | June 30, 2002 | June 30, 2001 | June 30, 2002 | June 30, 2001 |
| **REVENUES:** | | | | |
| Rental income | $ 21,833,652 | $ 9,851,167 | $ 38,571,815 | $ 19,711,252 |
| Equity in income of joint ventures | 1,271,863 | 809,481 | 2,478,686 | 1,519,194 |
| Interest income | 1,534,636 | 93,092 | 2,648,351 | 193,007 |
| Take out fee | 0 | 137,500 | 134,102 | 137,500 |
| | 24,640,151 | 10,891,240 | 43,832,954 | 21,560,953 |
| **EXPENSES:** | | | | |
| Depreciation | 7,158,830 | 3,206,638 | 12,903,282 | 6,393,817 |
| Operating costs, net of reimbursements | 1,439,299 | 783,244 | 2,063,997 | 1,874,428 |
| Management and leasing fees | 1,003,587 | 552,188 | 1,903,082 | 1,117,902 |
| Administrative costs | 592,426 | 584,184 | 1,121,457 | 759,291 |
| Interest expense | 440,001 | 648,946 | 880,002 | 2,809,373 |
| Amortization of deferred financing costs | 249,530 | 77,142 | 424,992 | 291,899 |
| | 10,883,673 | 5,852,342 | 19,296,812 | 13,246,710 |
| **NET INCOME** | $ 13,756,478 | $ 5,038,898 | $ 24,536,142 | $ 8,314,243 |
| **BASIC AND DILUTED EARNINGS PER SHARE** | $ 0.11 | $ 0.12 | $ 0.22 | $ 0.22 |
| **BASIC AND DILUTED WEIGHTED AVERAGE SHARES** | 126,037,819 | 42,192,347 | 110,885,641 | 38,328,405 |

See accompanying condensed notes to financial statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**
**AND SUBSIDIARY CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**
**FOR THE YEAR ENDED DECEMBER 31, 2001**
**AND FOR THE SIX MONTHS ENDED JUNE 30, 2002 (UNAUDITED)**

| | Common Stock Shares | Common Stock Amount | Additional Paid-In Capital | Cumulative Distributions in Excess of Earnings | Retained Earnings | Treasury Stock Shares | Treasury Stock Amount | Other Comprehensive Income | Total Shareholders' Equity |
|---|---|---|---|---|---|---|---|---|---|
| **BALANCE, December 31, 2000** | 31,509,807 | $ 315,097 | $ 275,573,339 | $ (9,133,855) | $ 0 | (141,297) | $ (1,412,969) | $ 0 | $ 265,341,612 |
| Issuance of common stock | 52,251,662 | 522,517 | 521,994,103 | 0 | 0 | 0 | 0 | 0 | 522,516,620 |
| Treasury stock purchased | 0 | 0 | 0 | 0 | 0 | (413,743) | (4,137,427) | 0 | (4,137,427) |
| Net income | 0 | 0 | 0 | 0 | 21,723,967 | 0 | 0 | 0 | 21,723,967 |
| Dividends ($.76 per share) | 0 | 0 | 0 | (15,047,237) | (21,723,967) | 0 | 0 | 0 | (36,771,204) |
| Sales commissions and discounts | 0 | 0 | (49,246,118) | 0 | 0 | 0 | 0 | 0 | (49,246,118) |
| Other offering expenses | 0 | 0 | (10,084,799) | 0 | 0 | 0 | 0 | 0 | (10,084,799) |
| **BALANCE, December 31, 2001** | 83,761,469 | 837,614 | 738,236,525 | (24,181,092) | 0 | (555,040) | (5,550,396) | 0 | 709,342,651 |
| **Issuance of common stock** | **61,827,594** | **618,276** | **617,657,655** | **0** | **0** | **0** | **0** | **0** | **618,275,931** |
| **Treasury stock purchased** | **0** | **0** | **0** | **0** | **0** | **(667,341)** | **(6,673,412)** | **0** | **(6,673,412)** |
| **Net income** | **0** | **0** | **0** | **0** | **24,536,142** | **0** | **0** | **0** | **24,536,142** |
| **Dividends ($.39 per share)** | **0** | **0** | **0** | **(19,810,577)** | **(24,536,142)** | **0** | **0** | **0** | **(44,346,719)** |
| **Sales commissions and discounts** | **0** | **0** | **(58,958,984)** | **0** | **0** | **0** | **0** | **0** | **(58,958,984)** |
| **Other offering expenses** | **0** | **0** | **(6,076,681)** | **0** | **0** | **0** | **0** | **0** | **(6,076,681)** |
| **Gain/(loss) on interest rate swap** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **(289,379)** | **(289,379)** |
| **BALANCE, June 30, 2002 (unaudited)** | **145,589,063** | **$1,455,890** | **$1,290,858,515** | **$ (43,991,669)** | **$ 0** | **(1,222,381)** | **$(12,223,808)** | **$ (289,379)** | **$1,235,809,549** |

See accompanying condensed notes to financial statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**
**AND SUBSIDIARY**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

**(UNAUDITED)**

| | Six Months Ended | |
|---|---|---|
| | June 30, 2002 | June 30, 2001 |
| **CASH FLOWS FROM OPERATING ACTIVITIES:** | | |
| Net income | $ 24,536,142 | $ 8,314,243 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Equity in income of joint venture | (2,478,686) | (1,519,194) |
| Depreciation | 12,903,282 | 6,393,817 |
| Amortization of deferred financing costs | 424,992 | 291,899 |
| Amortization of deferred leasing costs | 150,815 | 151,674 |
| Changes in assets and liabilities: | | |
| Accounts receivable | (4,705,925) | (1,304,851) |
| Due from affiliates | (30,532) | |
| Deferred rental income | 351,887 | (285,776) |
| Accounts payable and accrued expenses | 3,112,741 | 425,824 |
| Prepaid expenses and other assets, net | (1,017,517) | 3,525,288 |
| Due to affiliates | (108,912) | 295,385 |
| Net cash provided by operating activities | 33,138,287 | 16,288,309 |
| **CASH FLOWS FROM INVESTING ACTIVITIES:** | | |
| Investments in real estate | (259,535,578) | (3,784,088) |
| Investment in joint venture | 0 | (16,126,925) |
| Deferred project costs paid | (22,008,219) | (5,642,317) |
| Distributions received from joint ventures | 3,496,746 | 1,784,599 |
| Deferred lease acquisition costs paid | (400,000) | 0 |
| Net cash used in investing activities | (278,447,051) | (23,768,731) |
| **CASH FLOWS FROM FINANCING ACTIVITIES:** | | |
| Proceeds from note payable | 7,533,697 | 21,398,850 |
| Repayment of note payable | 0 | (138,763,187) |
| Dividends paid | (40,867,110) | (13,795,534) |
| Issuance of common stock | 618,275,931 | 162,606,610 |
| Sales commissions paid | (58,958,984) | (15,314,860) |
| Offering costs paid | (6,817,978) | (4,836,272) |
| Treasury stock purchased | (6,673,412) | (1,397,561) |
| Deferred financing costs paid | (859,773) | (640,999) |
| Net cash provided by financing activities | 511,632,371 | 9,257,047 |
| **NET INCREASE IN CASH AND CASH EQUIVALENTS** | 266,323,607 | 1,776,625 |
| **CASH AND CASH EQUIVALENTS, beginning of year** | 75,586,168 | 4,298,301 |
| **CASH AND CASH EQUIVALENTS, end of period** | $ 341,909,775 | $ 6,074,926 |
| **SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING ACTIVITIES:** | | |
| Deferred project costs applied to real estate assets | $ 10,068,319 | $ 5,516,763 |
| Deferred project costs applied to joint ventures | $ 0 | $ 671,961 |
| Deferred project costs due to affiliate | $ 512,044 | $ 335,667 |
| Interest rate swap | $ (289,379) | $ 0 |
| Deferred offering costs due to affiliate | $ 1,392,934 | $ 731,573 |
| Other offering costs due to affiliate | $ 201,811 | $ 287,715 |

See accompanying condensed notes to financial statements.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**
**AND SUBSIDIARY**
**CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**
**JUNE 30, 2002**
**(UNAUDITED)**

## 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### (a) General

Wells Real Estate Investment Trust, Inc. (the "Company") is a Maryland corporation formed on July 3, 1997, which qualifies as a real estate investment trust ("REIT"). Substantially all of the Company's business is conducted through Wells Operating Partnership, L.P. ("Wells OP"), a Delaware limited partnership organized for the purpose of acquiring, developing, owning, operating, improving, leasing, and otherwise managing income producing commercial properties for investment purposes on behalf of the Company. The Company is the sole general partner of Wells OP.

On January 30, 1998, the Company commenced its initial public offering of up to 16,500,000 shares of common stock at $10 per share pursuant to a Registration Statement on Form S-11 filed under the Securities Act of 1933. The Company commenced active operations on June 5, 1998, upon receiving and accepting subscriptions for 125,000 shares. The Company terminated its initial public offering on December 19, 1999 at which time gross proceeds of approximately $132,181,919 had been received from the sale of approximately 13,218,192 shares. The Company commenced its second public offering of shares of common stock on December 20, 1999, which was terminated on December 19, 2000 after receipt of gross proceeds of approximately $175,229,193 from the sale of approximately 17,522,919 shares from the second public offering. The Company commenced its third public offering of the shares of common stock on December 20, 2000. As of June 30, 2002, the Company has received gross proceeds of approximately $1,148,480,413 from the sale of approximately 114,848,041 shares from its third public offering. Accordingly, as of June 30, 2002, the Company has received aggregate gross offering proceeds of approximately $1,455,891,526 from the sale of 145,589,153 shares of its common stock to investors. After payment of $50,528,371 in acquisition and advisory fees and acquisition expenses, payment of $163,576,134 in selling commissions and organization and offering expenses, capital contributions to joint ventures and acquisitions expenditures by Wells OP of $885,294,095 for property acquisitions, and common stock redemptions of $12,223,808 pursuant to the Company's share redemption program, the Company was holding net offering proceeds of $344,269,118 available for investment in properties, as of June 30, 2002.

### (b) Properties

As of June 30, 2002, the Company owned interests in 52 properties listed in the table below through its ownership in Wells OP. As of June 30, 2002, all of these properties were 100% leased.

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| Property Name | Tenant | Property Location | % Owned | Purchase Price | Square Feet | Annual Rent |
|---|---|---|---|---|---|---|
| MFS Phoenix | Massachusetts Financial Services Company | Phoenix, AZ | 100% | $25,800,000 | 148,605 | $2,347,959 |
| TRW Denver | TRW, Inc. | Aurora, CO | 100% | $21,060,000 | 108,240 | $2,870,709 |
| Agilent Boston | Agilent Technologies, Inc. | Boxborough, MA | 100% | $31,742,274 | 174,585 | $3,578,993 |
| Experian/TRW | Experian Information Solutions, Inc. | Allen, TX | 100% | $35,150,000 | 292,700 | $3,438,277 |
| BellSouth Ft. Lauderdale | BellSouth Advertising and Publishing Corporation | Ft. Lauderdale, FL | 100% | $ 6,850,000 | 47,400 | $ 747,033 |
| Agilent Atlanta | Agilent Technologies, Inc.<br>Koninklijke Philips Electronics N.V. | Alpharetta, GA | 100% | $15,100,000 | 66,811<br>34,396 | $1,344,905<br>$ 692,391 |
| Travelers Express Denver | Travelers Express Company, Inc. | Lakewood, CO | 100% | $10,395,845 | 68,165 | $1,012,250 |
| Dana Kalamazoo | Dana Corporation | Kalamazoo, MI | 100% | $41,950,000(1) | 147,004 | $1,842,800 |
| Dana Detroit | Dana Corporation | Farmington Hills, MI | 100% | (see above) (1) | 112,480 | $2,330,600 |
| Novartis Atlanta | Novartis Opthalmics, Inc. | Duluth, GA | 100% | $15,000,000 | 100,087 | $1,426,240 |
| Transocean Houston | Transocean Deepwater Offshore Drilling, Inc.<br>Newpark Drilling Fluids, Inc. | Houston, TX | 100% | $22,000,000 | 103,260<br>52,731 | $2,110,035<br>$1,153,227 |
| Arthur Andersen | Arthur Andersen LLP | Sarasota, FL | 100% | $21,400,000 | 157,700 | $1,988,454 |
| Windy Point I | TCI Great Lakes, Inc.<br>The Apollo Group, Inc.<br>Global Knowledge Network<br>Various other tenants | Schaumburg, IL | 100% | $32,225,000(2) | 129,157<br>28,322<br>22,028<br>8,884 | $2,067,204<br>$ 477,226<br>$ 393,776<br>$ 160,000 |
| Windy Point II | Zurich American Insurance | Schaumburg, IL | 100% | $57,050,000(2) | 300,034 | $5,091,577 |
| Convergys | Convergys Customer Management Group, Inc. | Tamarac, FL | 100% | $13,255,000 | 100,000 | $1,248,192 |
| ADIC | Advanced Digital Information Corporation | Parker, CO | 68.2% | $12,954,213 | 148,204 | $1,222,683 |
| Lucent | Lucent Technologies, Inc. | Cary, NC | 100% | $17,650,000 | 120,000 | $1,800,000 |
| Ingram Micro | Ingram Micro, L.P. | Millington, TN | 100% | $21,050,000 | 701,819 | $2,035,275 |
| Nissan (3) | Nissan Motor Acceptance Corporation | Irving, TX | 100% | $42,259,000(4) | 268,290 | $4,225,860(5) |
| IKON | IKON Office Solutions, Inc. | Houston, TX | 100% | $20,650,000 | 157,790 | $2,015,767 |
| State Street | SSB Realty, LLC | Quincy, MA | 100% | $49,563,000 | 234,668 | $6,922,706 |
| AmeriCredit | AmeriCredit Financial Services Corporation | Orange Park, FL | 68.2% | $12,500,000 | 85,000 | $1,336,200 |
| Comdata | Comdata Network, Inc. | Brentwood, TN | 55.0% | $24,950,000 | 201,237 | $2,458,638 |
| AT&T Oklahoma | AT&T Corp.<br>Jordan Associates, Inc. | Oklahoma City, OK | 55.0% | $15,300,000 | 103,500<br>25,000 | $1,242,000<br>$ 294,500 |
| Metris Minnesota | Metris Direct, Inc. | Minnetonka, MN | 100% | $52,800,000 | 300,633 | $4,960,445 |
| Stone & Webster | Stone & Webster, Inc.<br>SYSCO Corporation | Houston, TX | 100% | $44,970,000 | 206,048<br>106,516 | $4,533,056<br>$2,130,320 |
| Motorola Plainfield | Motorola, Inc. | S. Plainfield, NJ | 100% | $33,648,156 | 236,710 | $3,324,428 |
| Quest | Quest Software, Inc. | Irvine, CA | 15.8% | $ 7,193,000 | 65,006 | $1,287,119 |
| Delphi | Delphi Automotive Systems, LLC | Troy, MI | 100% | $19,800,000 | 107,193 | $1,955,524 |
| Avnet | Avnet, Inc. | Tempe, AZ | 100% | $13,250,000 | 132,070 | $1,516,164 |
| Siemens | Siemens Automotive Corp. | Troy, MI | 56.8% | $14,265,000 | 77,054 | $1,374,643 |
| Motorola Tempe | Motorola, Inc. | Tempe, AZ | 100% | $16,000,000 | 133,225 | $1,843,834 |
| ASML | ASM Lithography, Inc. | Tempe, AZ | 100% | $17,355,000 | 95,133 | $1,927,788 |
| Dial | Dial Corporation | Scottsdale, AZ | 100% | $14,250,000 | 129,689 | $1,387,672 |
| Metris Tulsa | Metris Direct, Inc. | Tulsa, OK | 100% | $12,700,000 | 101,100 | $1,187,925 |
| Cinemark | Cinemark USA, Inc.<br>The Coca-Cola Company | Plano, TX | 100% | $21,800,000 | 65,521<br>52,587 | $1,366,491<br>$1,354,184 |
| Gartner | The Gartner Group, Inc. | Ft. Myers, FL | 56.8% | $ 8,320,000 | 62,400 | $ 830,656 |
| Videojet Technologies Chicago | Videojet Technologies, Inc. | Wood Dale, IL | 100% | $32,630,940 | 250,354 | $3,376,746 |
| Johnson Matthey | Johnson Matthey, Inc. | Wayne, PA | 56.8% | $ 8,000,000 | 130,000 | $ 854,748 |
| Alstom Power Richmond (3) | Alstom Power, Inc. | Midlothian, VA | 100% | $11,400,000 | 99,057 | $1,213,324 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Sprint | Sprint Communications Company, L.P. | Leawood, KS | 56.8% | $ 9,500,000 | 68,900 | $1,102,404 |
| EYBL CarTex | EYBL CarTex, Inc. | Fountain Inn, SC | 56.8% | $ 5,085,000 | 169,510 | $ 550,908 |
| Matsushita (3) | Matsushita Avionics Systems Corporation | Lake Forest, CA | 100% | $18,431,206 | 144,906 | $2,005,464 |
| AT&T Pennsylvania | Pennsylvania Cellular Telephone Corp. | Harrisburg, PA | 100% | $12,291,200 | 81,859 | $1,442,116 |
| PwC | PricewaterhouseCoopers, LLP | Tampa, FL | 100% | $21,127,854 | 130,091 | $2,093,382 |
| Cort Furniture | Cort Furniture Rental Corporation | Fountain Valley, CA | 44.0% | $ 6,400,000 | 52,000 | $ 834,888 |
| Fairchild | Fairchild Technologies U.S.A., Inc. | Fremont, CA | 77.5% | $ 8,900,000 | 58,424 | $ 920,144 |

| Property Name | Tenant | Property Location | % Owned | Purchase Price | Square Feet | Annual Rent |
|---|---|---|---|---|---|---|
| Avaya | Avaya, Inc. | Oklahoma City, OK | 3.7% | $ 5,504,276 | 57,186 | $ 536,977 |
| Iomega | Iomega Corporation | Ogden, UT | 3.7% | $ 5,025,000 | 108,250 | $ 659,868 |
| Interlocken | ODS Technologies, L.P. and GAIAM, Inc. | Broomfield, CO | 3.7% | $ 8,275,000 | 51,975 | $1,070,515 |
| Ohmeda | Ohmeda, Inc. | Louisville, CO | 3.7% | $10,325,000 | 106,750 | $1,004,520 |
| Alstom Power Knoxville | Alstom Power, Inc. | Knoxville, TN | 3.7% | $ 7,900,000 | 84,404 | $1,106,520 |

(1) Dana Kalamazoo and Dana Detroit were purchased for an aggregate purchase price of $41,950,000.

(2) Windy Point I and Windy Point II were purchased for an aggregate purchase price of $89,275,000.

(3) Includes the actual costs incurred or estimated to be incurred by Wells OP to develop and construct the building in addition to the purchase price of the land.

(4) Includes estimated costs for the planning, design, development, construction and completion of the Nissan Property.

(5) Annual rent for Nissan Property does not take effect until construction of the building is completed and the tenant is occupying the building.

Wells OP owns interests in properties directly and through equity ownership in the following joint ventures:

| Joint Venture | Joint Venture Partners | Properties Held by Joint Venture |
|---|---|---|
| Fund XIII-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund XIII, L.P. | AmeriCredit<br>ADIC |
| Fund XII-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund XII, L.P. | Siemens<br>AT&T Oklahoma<br>Comdata |
| Fund XI-XII-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund XI, L.P.<br>Wells Real Estate Fund XII, L.P. | EYBL CarTex<br>Sprint<br>Johnson Matthey<br>Gartner |
| Fund IX-X-XI-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Wells Real Estate Fund IX, L.P.<br>Wells Real Estate Fund X, L.P.<br>Wells Real Estate Fund XI, L.P. | Alstom Power Knoxville<br>Ohmeda<br>Interlocken<br>Avaya<br>Iomega |
| Wells/Fremont Associates Joint Venture (the "Fremont Joint Venture") | Wells Operating Partnership, L.P.<br>Fund X-XI Joint Venture | Fairchild |
| Wells/Orange County Associates Joint Venture (the "Orange County Joint Venture") | Wells Operating Partnership, L.P.<br>Fund X-XI Joint Venture | Cort Furniture |
| Fund VIII-IX-REIT Joint Venture | Wells Operating Partnership, L.P.<br>Fund VIII-IX Joint Venture | Quest |

**(c) Critical Accounting Policies**

The Company's accounting policies have been established in accordance with accounting principles generally accepted in the United States ("GAAP"). The preparation of financial statements in conformity with GAAP requires management to use judgment in the application of accounting policies, including making estimates and assumptions.

These judgments affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenue and expenses during the reporting periods. If our judgment or interpretation of the facts and circumstances relating to various transactions had been different, it is possible that different accounting policies would have been applied; thus, resulting in a different presentation of our financial statements. Below is a discussion of the accounting policies that we consider to be critical in that they may require complex judgment in their application or require estimates about matters which are inherently uncertain.

***Revenue Recognition***

The Company recognizes rental income generated from all leases on real estate assets in which the Company has an ownership interest, either directly or through investments in joint ventures, on a straight-line basis over the terms of the respective leases. If a tenant was to encounter financial difficulties in future periods, the amount recorded as a receivable may not be realized.

***Operating Cost Reimbursements***

The Company generally bills tenants for operating cost reimbursements, either directly or through investments in joint ventures, on a monthly basis at amounts estimated largely based on actual prior period activity, the current year budget and the respective lease terms. Such billings are generally adjusted on an annual basis to reflect reimbursements owed to the landlord based on the actual costs incurred during the period and the respective lease terms. Financial difficulties encountered by tenants may result in receivables not being realized.

***Real Estate***

Management continually monitors events and changes in circumstances indicating that the carrying amounts of the real estate assets in which the Company has an ownership interest, either directly or through investments in joint ventures, may not be recoverable. When such events or changes in circumstances are present, management assesses the potential impairment by comparing the fair market value of the asset, estimated at an amount equal to the future undiscounted operating cash flows expected to be generated from tenants over the life of the asset and from its eventual disposition, to the carrying value of the asset. In the event that the carrying amount exceeds the estimated fair market value, the Company would recognize an impairment loss in the amount required to adjust the carrying amount of the asset to its estimated fair market value. Neither the Company nor its joint ventures have recognized impairment losses on real estate assets in 2002 or 2001.

***Deferred Project Costs***

The Company records acquisition and advisory fees and acquisition expenses payable to Wells Capital, Inc. (the "Advisor") by capitalizing deferred project costs and reimbursing the Advisor in an amount equal to 3.5% of cumulative capital raised to date. As the Company invests its capital proceeds, deferred project costs are applied to real estate assets, either directly or through contributions to joint ventures, and depreciated over the useful lives of the respective real estate assets. Acquisition and advisory fees and acquisition expenses paid as of June 30, 2002, amounted to $50,528,371 and represented approximately 3.5% of capital contributions received. These fees are allocated to specific properties as they are purchased or developed and are included in capitalized assets of the joint venture, or real estate assets. Deferred project costs at June 30, 2002 and December 31, 2001, represent fees paid, but not yet applied to properties.

***Deferred Offering Costs***

The Advisor expects to continue to fund 100% of the organization and offering costs and recognize related expenses, to the extent that such costs exceed 3% of cumulative capital raised, on behalf of the Company. Organization and offering costs include items such as legal and accounting fees, marketing and promotional costs, and printing costs, and specifically exclude sales costs and underwriting commissions. The Company records offering costs by accruing deferred offering costs, with an offsetting liability included in due to affiliates, at an amount equal to the lesser of 3% of cumulative capital raised to date or actual costs incurred from third-parties less reimbursements paid to the Advisor. As the actual equity is raised, the Company reverses the deferred offering costs accrual and recognizes a charge to stockholders' equity upon reimbursing the Advisor. As of June 30, 2002, the

Advisor had paid organization and offering expenses on behalf of the Company in an aggregate amount of $27,886,146, of which the Advisor had been reimbursed $25,572,034, which did not exceed the 3% limitation. Deferred offering costs in the accompanying balance sheet represent costs incurred by the Advisor which will be reimbursed by the Company.

**(d) Distribution Policy**

The Company will make distributions each taxable year (not including a return of capital for federal income tax purposes) equal to at least 90% of its real estate investment trusts' taxable income. The Company intends to make regular quarterly distributions to stockholders. Distributions will be made to those stockholders who are stockholders as of the record date selected by the Directors. The Company currently calculates quarterly dividends based on the daily record and dividend declaration dates; thus, stockholders are entitled to receive dividends immediately upon the purchase of shares.

Dividends to be distributed to the stockholders are determined by the Board of Directors and are dependent on a number of factors related to the Company, including funds available for payment of dividends, financial condition, capital expenditure requirements and annual distribution requirements in order to maintain the Company's status as a REIT under the Code. Operating cash flows are expected to increase as additional properties are added to the Company's investment portfolio.

**(e) Income Taxes**

The Company has made an election under Section 856 (C) of the Internal Revenue Code of 1986, as amended (the "Code"), to be taxed as a Real Estate Investment Trust ("REIT") under the Code beginning with its taxable year ended December 31, 1998. As a REIT for federal income tax purposes, the Company generally will not be subject to federal income tax on income that it distributes to its shareholders. If the Company fails to qualify as a REIT in any taxable year, it will then be subject to federal income tax on its taxable income at regular corporate rates and will not be permitted to qualify for treatment as a REIT for federal income tax purposes for four years following the year during which qualification is lost. Such an event could materially adversely affect the Company's net income and net cash available to distribute to shareholders. However, the Company believes that it is organized and operates in such a manner as to qualify for treatment as a REIT and intends to continue to operate in the foreseeable future in such a manner so that the Company will remain qualified as a REIT for federal income tax purposes.

**(f) Employees**

The Company has no direct employees. The employees of the Advisor and Wells Management Company, Inc. (Wells Management), an affiliate of the Company and the Advisor, perform a full range of real estate services including leasing and property management, accounting, asset management and investor relations for the Company. The Company has reimbursed the Advisor and Wells Management for allocated salaries, wages and other payroll related costs totaling $683,535 and $254,000 for the six months ended June 30, 2002 and 2001, respectively and $366,380 and $163,725 for the three months ended June 30, 2002 and 2001, respectively.

**(g) Insurance**

Wells Management Company, Inc., an affiliate of the Company and the Advisor, carries comprehensive liability and extended coverage with respect to all the properties owned directly or indirectly by the Company. In the opinion of management, the properties are adequately insured.

**(h) Competition**

The Company will experience competition for tenants from owners and managers of competing projects, which may include its affiliates. As a result, the Company may be required to provide free rent, reduced charges for tenant improvements and other inducements, all of which may have an adverse impact on results of operations. At the time the Company elects to dispose of its properties, the Company will also be in competition with sellers of similar properties to locate suitable purchasers for its properties.

**(i) Statement of Cash Flows**

For the purpose of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents. Cash equivalents include cash and short-term investments.

**(j) Basis of Presentation**

Substantially all of the Company's business is conducted through Wells OP. On December 31, 1997, Wells OP issued 20,000 limited partner units to the Advisor in exchange for a capital contribution of $200,000. The Company is the sole general partner in Wells OP; consequently, the accompanying consolidated balance sheet of the Company includes the amounts of the Company and Wells OP. The Advisor, a limited partner, is not currently receiving distributions from its investment in Wells OP.

The consolidated financial statements of the Company have been prepared in accordance with instructions to Form 10-Q and do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. These quarterly statements have not been examined by independent accountants, but in the opinion of the Board of Directors, the statements for the unaudited interim periods presented include all adjustments, which are of a normal and recurring nature, necessary to present a fair presentation of the results for such periods. Results for interim periods are not necessarily indicative of full year results. For further information, refer to the financial statements and footnotes included in the Company's Form 10-K for the year ended December 31, 2001.

**2 INVESTMENT IN JOINT VENTURES**

**(a) Basis of Presentation**

As of June 30, 2002, the Company owned interests in 17 properties in joint ventures with related entities through its ownership in Wells OP, which owns interests in seven such joint ventures. The Company does not have control over the operations of these joint ventures; however, it does exercise significant influence. Accordingly, investment in joint ventures is recorded using the equity method.

**(b) Summary of Operations**

The following information summarizes the operations of the unconsolidated joint ventures in which the Company, through Wells OP, had ownership interests as of June 30, 2002 and 2001, respectively. There were no additional investments in joint ventures made by the Company during the three months and six months ended June 30, 2002.

| | Total Revenues | | Net Income | | Wells OP's Share of Net Income | |
|---|---|---|---|---|---|---|
| | Three Months Ended | | Three Months Ended | | Three Months Ended | |
| | June 30, 2002 | June 30, 2001 | June 30, 2002 | June 30, 2001 | June 30, 2002 | June 30, 2001 |
| Fund IX-X-XI-REIT Joint Venture | $ 1,436,601 | $ 1,087,746 | $ 619,173 | $ 734,418 | $ 22,982 | $ 27,258 |
| Cort Joint Venture | 208,707 | 198,881 | 140,206 | 131,374 | 61,224 | 57,367 |
| Fremont Joint Venture | 227,023 | 225,178 | 140,944 | 135,990 | 109,237 | 105,398 |
| Fund XI-XII-REIT Joint Venture | 859,027 | 847,767 | 545,009 | 499,960 | 309,363 | 283,792 |
| Fund XII-REIT Joint Venture | 1,483,224 | 1,102,873 | 852,672 | 587,864 | 468,646 | 310,812 |
| Fund VIII-IX-REIT Joint Venture | 309,605 | 313,539 | 147,998 | 155,320 | 23,370 | 24,854 |
| Fund XIII-REIT Joint Venture | 707,919 | 0 | 406,236 | 0 | 277,041 | 0 |
| | $5,232,106 | $3,775,984 | $2,852,238 | $2,244,926 | $1,271,863 | $ 809,481 |

| | Total Revenues | | Net Income | | Wells OP's Share of Net Income | |
|---|---|---|---|---|---|---|
| | Six Months Ended | | Six Months Ended | | Six Months Ended | |
| | June 30, 2002 | June 30, 2001 | June 30, 2002 | June 30, 2001 | June 30, 2002 | June 30, 2001 |
| Fund IX-X-XI-REIT Joint Venture | $ 2,815,660 | $ 2,181,096 | $ 1,173,441 | $ 1,372,853 | $ 43,554 | $ 50,954 |
| Cort Joint Venture | 420,713 | 398,468 | 269,956 | 265,127 | 117,882 | 115,773 |
| Fremont Joint Venture | 452,184 | 450,356 | 276,892 | 278,602 | 214,602 | 215,928 |
| Fund XI-XII-REIT Joint Venture | 1,717,246 | 1,689,191 | 1,042,158 | 1,014,237 | 591,560 | 575,710 |
| Fund XII-REIT Joint Venture | 3,154,087 | 1,896,195 | 1,658,185 | 1,033,184 | 911,372 | 519,445 |
| Fund VIII-IX-REIT Joint Venture | 633,351 | 580,923 | 308,694 | 260,352 | 48,744 | 41,384 |
| Fund XIII-REIT Joint Venture | 1,408,567 | 0 | 807,910 | 0 | 550,972 | 0 |
| | $ 10,601,808 | $ 7,196,229 | $ 5,537,236 | $ 4,224,355 | $ 2,478,686 | $ 1,519,194 |

## 3. INVESTMENTS IN REAL ESTATE

As of June 30, 2002, the Company, through its ownership in Wells OP, owns 35 properties directly. The following describes acquisitions made directly by Wells OP during the three months ended June 30, 2002.

***The Travelers Express Denver Building***

On April 10, 2002, Wells OP purchased the Travelers Express Denver Building, a one-story office building containing 68,165 rentable square feet located in Lakewood, Jefferson County, Colorado for a purchase price of $10,395,845, excluding closing costs. Travelers Express Building is 100% leased to Travelers Express Company, Inc. ("Travelers Express"). The Travelers Express lease is a net lease that commenced in April 2002 and expires in March 2012. The current annual base rent payable under the Travelers Express lease is $1,012,250. Travelers Express, at its option, has the right to extend the initial term of its lease for two additional five-year terms. Base rent for the first renewal term shall be $19.00 per square foot for years 1-3 and $20.50 per square foot for years 4-5. The base rent for the second renewal term shall be at the then-current market rental rate.

***The Agilent Atlanta Building***

On April 18, 2002, Wells OP purchased the Agilent Atlanta Building, a two-story office building containing 101,207 rentable square feet located in Alpharetta, Fulton County, Georgia for a purchase price of $15,100,000, excluding closing costs. The Agilent Atlanta Building is leased to Agilent Technologies, Inc. ("Agilent") and Koninklijke Philips Electronics N.V. ("Philips").

The Agilent lease is a net lease that covers approximately 66,811 square feet commencing in September 2001 and expiring in September 2011. The initial annual base rent payable under the Agilent lease is $1,344,905. Agilent, at its option, has the right to extend the initial term of its lease for either (1) one additional three-year period, or (2) one additional five-year period, at the then-current market rental rate. In addition, Agilent may terminate the lease at the end of the seventh lease year by paying a $763,650 termination fee.

The Philips lease is a net lease that covers approximately 34,396 rentable square feet commencing in September 2001 and expiring in September 2011. The current annual base rent payable under the Philips lease is $692,391. Philips, at its option, has the right to extend the initial term of its lease for either (1) one additional three-year period, or (2) one additional five-year period, at the then-current market rental rate. In addition, Philips may terminate the lease at the end of the seventh lease year by paying a $393,146 termination fee.

***The BellSouth Ft. Lauderdale Building***

On April 18, 2002, Wells OP purchased the BellSouth Ft. Lauderdale Building, a one-story office building containing 47,400 rentable square feet located in Ft. Lauderdale, Broward County, Florida for a purchase price of $6,850,000, excluding closing costs. The BellSouth Ft. Lauderdale Building is 100% leased to BellSouth Advertising and Publishing Corporation ("BellSouth"). The BellSouth lease is a net lease that commenced in July 2001 and expires in July 2008. The current annual base rent payable under the BellSouth lease is $747,033. BellSouth, at its option, has the right to extend the initial term of its lease for three additional five-year periods at 95% of the then-current market rental rate.

***The Experian/TRW Buildings***

On May 1, 2002, Wells OP purchased the Experian/TRW Buildings, two two-story office buildings containing 292,700 rentable square feet located in Allen, Collin County, Texas for a purchase price of $35,150,000, excluding closing costs. The Experian/TRW Buildings are both 100% leased to Experian, Inc. ("Experian"). The Experian lease is a net lease that commenced in April 1993 and expires in October 2010. The current annual base rent payable under the Experian lease is $3,438,277. Experian, at its option, has the right to extend the initial term of its lease for four additional five-year periods at 95% of the then-current market rental rate. TRW, Inc., the original tenant on the Experian lease, assigned its interest in the Experian lease to Experian in 1996 but remains as an obligor of the Experian lease.

***The Agilent Boston Building***

On May 3, 2002, Wells OP purchased the Agilent Boston Building, a three-story office building containing 174,585 rentable square feet located in Boxborough, Middlesex County, Massachusetts for a purchase price of $31,742,274, excluding closing costs. In addition, Wells OP has assumed the obligation, as the landlord, to provide Agilent $3,407,496 for tenant improvements. The Agilent Boston Building is 100% leased to Agilent Technologies, Inc. ("Agilent"). The Agilent Boston lease is a net lease that commenced in September 2001 and expires in September 2011. The current annual base rent payable under the Agilent Boston lease is $3,578,993. Agilent, at its option, has the right to extend the initial term of its lease for one additional five-year period at a rate equal to the greater of (1) the then-current market rental rate, or (2) 75% of the annual base rent in the final year of the initial term of the Agilent Boston lease. In addition, Agilent may terminate the lease at the end of the seventh lease year by paying a $4,190,000 termination fee.

***The TRW Denver Building***

On May 29, 2002, Wells OP purchased the TRW Denver Building, a three-story office building containing 108,240 rentable square feet located in Aurora, Arapahoe County, Colorado for a purchase price of $21,060,000, excluding closing costs. The TRW Denver Building is 100% leased to TRW, Inc. ("TRW"). The TRW lease is a net lease that commenced in October 1997 and expires in September 2007. The current annual base rent payable under the TRW lease is $2,870,709. TRW, at its option, has the right to extend the initial term of its lease for two additional five-year periods at 95% of the then-current market rental rate.

***The MFS Phoenix Building***

On June 5, 2002, Wells OP purchased the MFS Phoenix Building, a three-story office building containing 148,605 rentable square feet located in Phoenix, Maricopa County, Arizona for a purchase price of $25,800,000, excluding closing costs. The MFS Phoenix Building is 100% leased to Massachusetts Financial Services Company ("MFS"). The MFS lease is a net lease that commenced in April 2001 and expires in July 2011. The current annual base rent payable under the MFS lease is $2,347,959. MFS, at its option, has the right to extend the initial term of its lease for two additional five-year periods at 95% of the then-current market rental rate.

**4. NOTE RECEIVABLE**

In connection with the purchase of the TRW Denver Building, Wells OP acquired a note receivable from the building's sole tenant, TRW, Inc., in the amount of $5,210,000. The loan was made to fund above-standard tenant

improvement costs to the building. The note receivable will be fully amortized over the remaining lease term, which expires September 2007, at 11% interest with TRW making monthly loan payments of $107,966.

**5. NOTES PAYABLE**

Wells OP has established four secured lines of credit with SouthTrust Bank totaling $72,140,000 which are secured by first priority mortgages against the Cinemark, ASML, Dial, PwC, Motorola Tempe, Alstom Power Richmond and Avnet Buildings. Notes payable at June 30, 2002 consists of (i) $7,655,600 of draws on a $7,900,000 line of credit from SouthTrust Bank secured by a first mortgage on the Alstom Power Richmond Building and (ii) $8,002,541 outstanding on the construction loan from Bank of America, N.A.(Bank of America) which is being used to fund the development of the Nissan Property.

**6. INTEREST RATE SWAP**

Wells OP entered into an interest rate swap agreement with Bank of America in an attempt to hedge its interest rate exposure on the Bank of America construction loan for the Nissan Property. The interest rate swap became effective January 15, 2002 and terminates on June 15, 2003, the maturity date of the construction loan. The notional amount of the interest rate swap is the balance outstanding on the construction loan on the payment date, which is the fifteenth of each month. The interest rate swap agreement involves the exchange of amounts based on a fixed interest rate for amounts based on a variable interest rate over the life of the loan agreement without an exchange of the notional amount upon which the payments are based. Wells OP, as the fixed rate payer, has an interest rate of 5.9%. Bank of America, the variable rate payer, pays at a rate equal to U.S. dollar LIBOR on the payment date. During the six months ended June 30, 2002, Wells OP made interest payments totaling approximately $23,100 under the terms of the interest rate swap. At June 30, 2002, the estimated fair value of the interest rate swap was ($289,379).

On January 1, 2001, the Company adopted SFAS No. 133, as amended by SFAS No. 137 and No. 138 Accounting for Derivative Instruments and Hedging Activities. The effect of adopting the SFAS No. 133 did not have a material effect on the Company's consolidated financial statements.

**7. DUE TO AFFILIATES**

Due to affiliates consists of amounts due to the Advisor for acquisitions and advisory fees and acquisition expenses, deferred offering costs, and other operating expenses paid on behalf of the Company. Also included in due to affiliates is the amount due to the Fund VIII-IX Joint Venture related to the Matsushita lease guarantee, which is explained in greater detail in the financial statements and footnotes included in the Company's Form 10-K for the year ended December 31, 2001. Payments of $601,963 have been made as of June 30, 2002 toward funding the obligation under the Matsushita agreement.

**8. COMMITMENTS AND CONTINGENCIES**

***Take Out Purchase and Escrow Agreement***

An affiliate of the Advisor ("Wells Exchange") has developed a program (the "Wells Section 1031 Program") involving the acquisition by Wells Exchange of income-producing commercial properties and the formation of a series of single member limited liability companies for the purpose of facilitating the resale of co-tenancy interests in such real estate properties to be owned in co-tenancy arrangements with persons ("1031 Participants") who are looking to invest the proceeds from a sale of real estate held for investment in another real estate investment for purposes of qualifying for like-kind exchange treatment under Section 1031 of the Code. Each of these properties will be financed by a combination of permanent first mortgage financing and interim loan financing obtained from institutional lenders.

Following the acquisition of each property, Wells Exchange will attempt to sell co-tenancy interests to 1031 Participants, the proceeds of which will be used to pay off the interim financing. In consideration for the payment of a take out fee to the Company, and following approval of the potential property acquisition by the Company's Board of Directors, it is anticipated that Wells OP will enter into a contractual relationship providing that, in the event that Wells Exchange is unable to sell all of the co-tenancy interests in that particular property to 1031 Participants, Wells OP will purchase, at Wells Exchange's cost, any co-tenancy interests remaining unsold at the end of the offering period. As a part of the initial transaction in the Wells Section 1031 Program, Wells OP entered into a take out purchase and escrow agreement dated April 16, 2001 providing, among other things, that Wells OP would be obligated to acquire, at Wells Exchange's cost, any unsold co-tenancy interests in the building known as the Ford Motor Credit Complex which remained unsold at the expiration of the offering of Wells Exchange, which was extended to April 15, 2002. Wells OP was compensated for its takeout commitment in the amount of $137,500 in 2001 and $134,102 in 2002. On April 12, 2002, Wells Exchange paid off the interim financing on the Ford Motor Credit Complex. Pay off of the loan triggered the release of Wells OP from its prior obligations under the take out purchase and escrow agreement relating to such property.

**9. SUBSEQUENT EVENTS**

***The ISS Atlanta Buildings***

On July 1, 2002, Wells OP purchased two five-story buildings containing a total of 238,600 rentable square feet located in Atlanta, Georgia for a purchase price of $40,500,000, excluding closing costs. The ISS Atlanta Buildings were acquired by assigning to Wells OP an existing ground lease with the Development Authority of Fulton County ("Development Authority"). Fee simple title to the land upon which the ISS Atlanta Buildings are located is held by the Development Authority, which issued Development Authority of Fulton County Taxable Revenue Bonds ("Bonds") totaling $32,500,000 in connection with the construction of these buildings. The Bonds, which entitle Wells OP to certain real property tax abatement benefits, were also assigned to Wells OP at the closing. Fee title interest to the land will be transferred to Wells OP upon payment of the outstanding balance on the Bonds, either by prepayment by Wells OP or at the expiration of the ground lease on December 1, 2015.

The entire rentable area of the ISS Atlanta Buildings is leased to Internet Security Systems, Inc., a Georgia corporation ("ISS"). The ISS Atlanta lease is a net lease that commenced in November 2000 and expires in May 2013. The current annual base rent payable under the ISS Atlanta lease is $4,623,445. ISS, at its option, has the right to extend the initial term of its lease for three additional five-year periods at 95% of the then-current market rental rate.

***The PacifiCare San Antonio Building***

On July 12, 2002, Wells OP purchased the PacifiCare San Antonio Building, a two-story office building containing 142,500 rentable square feet located in San Antonio, Texas for a purchase price of $14,650,000, excluding closing costs. The PacifiCare San Antonio Building is 100% leased to PacifiCare Health Systems, Inc. ("PacifiCare"). The PacifiCare lease is a net lease that commenced on November 20, 2000 and expires on November 30, 2010. The current annual base rent payable under the PacifiCare lease is $1,471,700. PacifiCare, at its option, has the right to extend the initial term of its lease for three additional five-year periods. Monthly base rent for the first renewal term will be $163,994 and monthly base rent for the second and third renewal terms will be the then-current market rental rate.

***The Kerr McGee Property***

On July 29, 2002, Wells OP purchased the Kerr McGee Property, a 4.2-acre tract of land located in Houston, Harris County, Texas for a purchase price of $1,738,044, excluding closing costs. Wells OP has entered into agreements to construct a four-story office building containing approximately 100,000 rentable square feet (the "Kerr McGee Project") on the Kerr McGee Property. It is currently anticipated that the aggregate of all costs and expenses to be incurred by Wells OP with respect to the acquisition of the Kerr McGee Property and the planning, design, development, construction and completion of the Kerr McGee Project will total approximately $15,760,000.

The entire 100,000 rentable square feet of the Kerr McGee Project will be leased to Kerr McGee Oil & Gas Corporation ("Kerr McGee"), a wholly owned subsidiary of Kerr McGee Corporation. The initial term of the Kerr McGee lease will extend 11 years and 1 month beyond the rent commencement date. Construction on the building is scheduled to be completed by July 2003. The rent commencement date will occur no later than July 1, 2003. Kerr McGee has the right to extend the initial term of this lease for one additional period of twenty years or the option to extend the initial term for any combination of additional periods of ten years or five years for a total additional period of not more than twenty years. The base rental rate will be 95% of the existing market rate. The initial annual base rent payable under the Kerr McGee lease will be calculated as 10.5% of project costs.

Wells OP obtained a construction loan in the amount of $13,700,000 from Bank of America to fund the construction of a building on the Kerr McGee Property. The loan requires monthly payments of interest only and matures on January 29, 2004. The interest rate on the loan as of August 6, 2002 was 3.80%. The Bank of America loan is secured by a first priority mortgage on the Kerr McGee Property.

***The BMG Greenville Building***

On July 31, 2002, Wells OP purchased the BMG Greenville Buildings, two one-story office buildings containing 786,778 rentable square feet located in Duncan, Spartanburg County, South Carolina for a purchase price of $26,900,000, excluding closing costs. The BMG Greenville Buildings are leased to BMG Direct Marketing, Inc. ("BMG Marketing") and BMG Music ("BMG Music").

The BMG Marketing lease is a net lease that covers approximately 473,398 square feet commencing in March 1988 and expiring in March 2011. The initial annual base rent payable under the BMG Marketing lease is $1,394,156. BMG Marketing, at its option, has the right to extend the initial term of its lease for two consecutive ten-year periods at 95% of the then-current market rental rate.

The BMG Music lease is a net lease that covers approximately 313,380 rentable square feet commencing in December 1987 and expiring in March 2011. The current annual base rent payable under the BMG Music lease is $763,600. BMG Music, at its option, has the right to extend the initial term of its lease for two consecutive ten-year periods at 95% of the then-current market rental rate.

***The Kraft Atlanta Building***

On August 1, 2002, Wells OP purchased the Kraft Atlanta Building, a one-story office building containing 87,219 rentable square feet located in Suwanee, Forsyth County, Georgia for a purchase price of $11,625,000, excluding closing costs. The Kraft Atlanta Building is leased to Kraft Foods North America, Inc. ("Kraft") and PerkinElmer Instruments, LLC ("PerkinElmer").

The Kraft lease is a net lease that covers approximately 73,264 square feet commencing in February 2002 and expiring in January 2012. The initial annual base rent payable under the Kraft lease is $1,263,804. Kraft, at its option, has the right to extend the initial term of its lease for two additional five-year periods at the then-current market rental rate. In addition, Kraft may terminate the lease (1) at the end of the third year by paying a $7,000,000 termination fee, or (2) at the end of the seventh lease year by paying a $1,845,296 termination fee.

The PerkinElmer lease is a net lease that covers approximately 13,955 rentable square feet commencing in December 2001 and expiring in November 2016. The current annual base rent payable under the PerkinElmer lease is $194,672. PerkinElmer, at its option, has the right to extend the initial term of its lease for two additional five-year periods at the then-current market rental rate. In addition, PerkinElmer may terminate the lease at the end of the tenth lease year by paying a $325,000 termination fee.

***Issuance of Common Stock***

From July 1, 2002 through August 7, 2002, the Company raised $170,921,990 through the issuance of 17,092,199 shares of common stock in the Company.

***The Fourth Offering of Common Stock***

The Company terminated it third public offering and commenced its fourth public offering of common stock on July 26, 2002, the effective date of the Registration Statement initially filed with the Securities and Exchange Commission on April 8, 2002. The Company is offering up to an aggregate of $3,300,000,000 (330,000,000 shares) of which $3,000,000,000 (300,000,000 shares) are being offered to the public and $300,000,000 (30,000,000 shares) are being offered pursuant to the dividend reinvestment plan.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**
**SUMMARY OF UNAUDITED PRO FORMA FINANCIAL STATEMENTS**

This pro forma information should be read in conjunction with the financial statements and notes of Wells Real Estate Investment Trust, Inc. included in its annual report on Form 10-K for the year ended December 31, 2001 and quarterly report on Form 10-Q for the period ended June 30, 2002. In addition, this pro forma information should be read in conjunction with the financial statements and notes of certain acquired properties included in various Form 8-Ks filed in the previous two years.

The following unaudited pro forma balance sheet as of June 30, 2002 has been prepared to give effect to the third quarter 2002 acquisitions of the PacifiCare San Antonio Building, the Kerr McGee Property, the BMG Greenville Buildings and the Kraft Atlanta Building (collectively, the "Recent Acquisitions") by Wells OP as if the acquisitions occurred on June 30, 2002.

The following unaudited pro forma statement of income for the six months ended June 30, 2002 has been prepared to give effect to the first and second quarter 2002 acquisitions of the Arthur Andersen Building, the Transocean Houston Building, Novartis Atlanta Building, the Dana Corporation Buildings, the Travelers Express Denver Buildings, the Agilent Atlanta Building, the BellSouth Ft. Lauderdale Building, the Experian/TRW Buildings, the Agilent Boston Building, the TRW Denver Building, the MFS Phoenix Building (collectively, the "2002 Acquisitions") and the Recent Acquisitions as if the acquisitions occurred on January 1, 2001. The Kerr McGee Property had no operations during the six months ended June 30, 2002.

The following unaudited pro forma statement of income for the year ended December 31, 2001 has been prepared to give effect to the 2001 acquisitions of the Comdata Building, the AmeriCredit Building, the State Street Bank Building, the IKON Buildings, the Ingram Micro Building, the Lucent Building, the ADIC Buildings, the Convergys Building, the Windy Point Buildings (collectively, the "2001 Acquisitions"), the 2002 Acquisitions and the Recent Acquisitions as if the acquisitions occurred on January 1, 2001. The Nissan Property, the Travelers Express Denver Buildings and the Kerr McGee Property had no operations during 2001.

Wells OP is a Delaware limited partnership that was organized to own and operate properties on behalf of the Wells Real Estate Investment Trust, Inc., a Maryland corporation. As the sole general partner of Wells OP, Wells Real Estate Investment Trust, Inc. possesses full legal control and authority over the operations of Wells OP. Accordingly, the accounts of Wells OP are consolidated with the accompanying pro forma financial statements of Wells Real Estate Investment Trust, Inc.

These unaudited pro forma financial statements are prepared for informational purposes only and are not necessarily indicative of future results or of actual results that would have been achieved had the acquisitions of the 2001 Acquisitions, 2002 Acquisitions and the Recent Acquisitions been consummated as of January 1, 2001.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**PRO FORMA BALANCE SHEET**

**JUNE 30, 2002**

**(Unaudited)**

**ASSETS**

| | | Pro Forma Adjustments | | | | | |
|---|---|---|---|---|---|---|---|
| | | Recent Acquisitions | | | | | |
| | Wells Real Estate Investment Trust, Inc (e) | Other | PacifiCare San Antonio | Kerr McGee | BMG Greenville | Kraft Atlanta | Pro Forma Total |
| **REAL ESTATE ASSETS, at cost:** | | | | | | | |
| Land | $ 110,330,449 | $ 0 | $ 2,450,000(a) | $ 1,738,044(a) | $ 1,600,000(a) | $ 2,700,000(a) | $ 119,163,936 |
| | | 0 | 99,709(b) | 70,734(b) | 65,116(b) | 109,884(b) | |
| Buildings, less accumulated depreciation of $37,717,737 | 689,490,969 | 0 | 12,239,827(a) | 0 | 25,087,017(a) | 8,975,771(a) | 737,677,992 |
| | | 0 | 498,132(b) | 0 | 1,020,983(b) | 365,293(b) | |
| Construction in progress | 16,081,841 | 0 | 0 | 379,901(a) | 0 | 0 | 16,461,742 |
| Total real estate assets | 815,903,259 | 0 | 15,287,668 | 2,188,679 | 27,773,116 | 12,150,948 | 873,303,670 |
| **CASH AND CASH EQUIVALENTS** | 341,909,775 | 145,053,219(c) | (14,689,827)(a) | (2,103,115)(a) | (14,984,256)(a) | (11,675,771)(a) | 438,433,162 |
| | | (5,076,863)(d) | | | | | |
| **INVESTMENT IN JOINT VENTURES** | 76,217,870 | 0 | 0 | 0 | 0 | 0 | 76,217,870 |
| **INVESTMENT IN BONDS** | 22,000,000 | 0 | 0 | 0 | 0 | 0 | 22,000,000 |
| **ACCOUNTS RECEIVABLE** | 10,709,104 | 0 | 0 | 0 | 0 | 0 | 10,709,104 |
| **DEFERRED LEASE ACQUISITION COSTS, net** | 1,790,608 | 0 | 0 | 0 | 0 | 0 | 1,790,608 |
| **DEFERRED PROJECT COSTS** | 14,314,914 | 5,076,863(d) | (597,841)(b) | (70,734)(b) | (1,086,099)(b) | (475,177)(b) | 17,161,926 |
| **DEFERRED OFFERING COSTS** | 1,392,934 | 0 | 0 | 0 | 0 | 0 | 1,392,934 |
| **DUE FROM AFFILIATES** | 1,897,309 | 0 | 0 | 0 | 0 | 0 | 1,897,309 |
| **NOTE RECEIVABLE** | 5,149,792 | 0 | 0 | 0 | 0 | 0 | 5,149,792 |
| **PREPAID EXPENSES AND OTHER ASSETS, net** | 1,881,308 | 0 | 0 | 0 | 0 | 0 | 1,881,308 |
| Total assets | $1,293,166,873 | $145,053,219 | $ 0 | $ 14,830 | $ 11,702,761 | $ 0 | $1,449,937,683 |

## LIABILITIES AND SHAREHOLDERS' EQUITY

| | Wells Real Estate Investment Trust, Inc (e) | Pro Forma Adjustments | | | | | Pro Forma Total |
|---|---|---|---|---|---|---|---|
| | | Recent Acquisitions | | | | | |
| | | Other | PacifiCare San Antonio | Kerr McGee | BMG Greenville | Kraft Atlanta | |
| **LIABILITIES:** | | | | | | | |
| Accounts payable and accrued expenses | $ 11,840,214 | $ 0 | $ 0 | $ 14,830(a) | $ 0 | $ 0 | $ 11,855,044 |
| Notes payable | 15,658,141 | 0 | 0 | 0 | 11,702,761(a) | 0 | 27,360,902 |
| Obligations under capital lease | 22,000,000 | 0 | 0 | 0 | 0 | 0 | 22,000,000 |
| Dividends payable | 4,538,635 | 0 | 0 | 0 | 0 | 0 | 4,538,635 |
| Due to affiliates | 2,106,790 | 0 | 0 | 0 | 0 | 0 | 2,106,790 |
| Deferred rental income | 1,013,544 | 0 | 0 | 0 | 0 | 0 | 1,013,544 |
| Total liabilities | 57,157,324 | 0 | 0 | 14,830 | 11,702,761 | 0 | 68,874,915 |
| **COMMITMENTS AND CONTINGENCIES** | | | | | | | |
| **MINORITY INTEREST OF UNIT HOLDER IN OPERATING PARTNERSHIP** | 200,000 | 0 | 0 | 0 | 0 | 0 | 200,000 |
| **SHAREHOLDERS' EQUITY:** | | | | | | | |
| Common shares, $.01 par value; 125,000,000 shares authorized, 145,589,053 shares issued and 144,366,772 outstanding at June 30, 2002 | 1,455,890 | 145,053(c) | 0 | 0 | 0 | 0 | 1,600,943 |
| Additional paid-in capital | 1,290,858,515 | 144,908,166(c) | 0 | 0 | 0 | 0 | 1,435,766,681 |
| Cumulative distributions in excess of earnings | (43,991,669) | 0 | 0 | 0 | 0 | 0 | (43,991,669) |
| Treasury stock, at cost, 1,222,381 shares | (12,223,808) | 0 | 0 | 0 | 0 | 0 | (12,223,808) |
| Other comprehensive loss | (289,379) | 0 | 0 | 0 | 0 | 0 | (289,379) |
| Total shareholders' equity | 1,235,809,549 | 145,053,219 | 0 | 0 | 0 | 0 | 1,380,862,768 |
| Total liabilities and shareholders' equity | $ 1,293,166,873 | $ 145,053,219 | $ 0 | $ 14,830 | $ 11,702,761 | $ 0 | $ 1,449,937,683 |

(a) Reflects Wells Real Estate Investment Trust, Inc.'s purchase price for the land, building and liabilities assumed.

(b) Reflects deferred project costs applied to the land and building at approximately 4.07% of the purchase price.

(c) Reflects capital raised through issuance of additional shares subsequent to June 30, 2002 through Kraft Atlanta acquisition date.

(d) Reflects deferred project costs capitalized as a result of additional capital raised described in note (c) above.

(e) Historical financial information derived from quarterly report on Form 10-Q

The accompanying notes are an integral part of this statement.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**PRO FORMA STATEMENT OF INCOME**

**FOR THE YEAR ENDED DECEMBER 31, 2001**

**(Unaudited)**

| | | Pro Forma Adjustments | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | Recent Acquisitions | | | |
| | Wells Real Estate Investment Trust, Inc. (f) | 2001 Acquisitions | 2002 Acquisitions | PacifiCare San Antonio | BMG Greenville | Kraft Atlanta | Pro Forma Total |
| **REVENUES:** | | | | | | | |
| Rental income | $ 44,204,279 | $ 11,349,076(a) | $ 14,846,431(a) | $ 1,556,473(a) | $ 2,445,210(a) | $ 18,429(a) | $ 74,419,898 |
| Equity in income of joint ventures | 3,720,959 | 1,111,850(b) | 0 | 0 | 0 | 0 | 4,832,809 |
| Interest income | 1,246,064 | 0 | 0 | 0 | 0 | 0 | 1,246,064 |
| Take out fee | 137,500 | 0 | 0 | 0 | 0 | 0 | 137,500 |
| | 49,308,802 | 12,460,926 | 14,846,431 | 1,556,473 | 2,445,210 | 18,429 | 80,636,271 |
| **EXPENSES:** | | | | | | | |
| Depreciation and amortization | 15,344,801 | 5,772,761(c) | 5,356,374(c) | 509,518(c) | 1,044,320(c) | 31,137(c) | 28,058,911 |
| Interest | 3,411,210 | 0 | 0 | 0 | 0 | 0 | 3,411,210 |
| Operating costs, net of reimbursements | 4,128,883 | 2,854,275(d) | 1,505,269(d) | 0 | 0 | 5,452(d) | 8,493,879 |
| Management and leasing fees | 2,507,188 | 510,708(e) | 668,090(e) | 70,041(e) | 110,034(e) | 829(e) | 3,866,890 |
| General and administrative | 973,785 | 0 | 0 | 0 | 0 | 0 | 973,785 |
| Amortization of deferred financing costs | 770,192 | 0 | 0 | 0 | 0 | 0 | 770,192 |
| Legal and accounting | 448,776 | 0 | 0 | 0 | 0 | 0 | 448,776 |
| | 27,584,835 | 9,137,744 | 7,529,733 | 579,559 | 1,154,354 | 37,418 | 46,023,643 |
| **NET INCOME** | $ 21,723,967 | $ 3,323,182 | $ 7,316,698 | $ 976,914 | $ 1,290,856 | $ (18,989) | $ 34,612,628 |
| **EARNINGS PER SHARE, basic and diluted** | $ 0.43 | | | | | | $ 0.22 |
| **WEIGHTED AVERAGE SHARES, basic and diluted** | 50,520,853 | | | | | | 158,872,092 |

(a) Rental income is recognized on a straight-line basis.

(b) Reflects Wells Real Estate Investment Trust, Inc.'s equity in income of Wells XII-REIT Joint Venture related to the acquisition of the Comdata Building and equity in income of Wells XIII-REIT Joint Venture related to the acquisition of the AmeriCredit Building and the ADIC Building.

(c) Depreciation expense on the buildings is recognized using the straight-line method and a 25-year life.

(d) Consists of nonreimbursable operating expenses.

(e) Management and leasing fees are calculated at 4.5% of rental income.

(f) Historical financial information derived from annual report on Form 10-K

The accompanying notes are an integral part of this statement.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**PRO FORMA STATEMENT OF INCOME**

**FOR THE SIX MONTHS ENDED JUNE 30, 2002**

**(Unaudited)**

| | | Pro Forma Adjustments | | | | |
|---|---|---|---|---|---|---|
| | | | Recent Acquisitions | | | |
| | Wells Real Estate Investment Trust, Inc. (e) | 2002 Acquisitions | PacifiCare San Antonio | BMG Greenville | Kraft Atlanta | Pro Forma Total |
| **REVENUES:** | | | | | | |
| Rental income | $ 38,571,815 | $ 7,307,774(a) | $ 778,237(a) | $ 1,222,605(a) | $ 651,493(a) | $ 48,531,924 |
| Equity in income of joint ventures | 2,478,686 | 0 | 0 | 0 | 0 | 2,478,686 |
| Interest income | 2,648,351 | 0 | 0 | 0 | 0 | 2,648,351 |
| Take out fee | 134,102 | 0 | 0 | 0 | 0 | 134,102 |
| | 43,832,954 | 7,307,774 | 778,237 | 1,222,605 | 651,493 | 53,793,063 |
| **EXPENSES:** | | | | | | |
| Depreciation and amortization | 12,903,282 | 2,588,546(b) | 254,759(b) | 522,160(b) | 186,821(b) | 16,455,568 |
| Interest | 880,002 | 0 | 0 | 0 | 0 | 880,002 |
| Operating costs, net of reimbursements | 2,063,997 | 300,018(c) | 0 | 0 | 79,067(c) | 2,443,082 |
| Management and leasing fees | 1,903,082 | 328,850(d) | 35,021(d) | 55,017(d) | 29,317(d) | 2,351,287 |
| General and administrative | 1,121,457 | 0 | 0 | 0 | 0 | 1,121,457 |
| Amortization of deferred financing costs | 424,992 | 0 | 0 | 0 | 0 | 424,992 |
| | 19,296,812 | 3,217,414 | 289,780 | 577,177 | 295,205 | 23,676,388 |
| **NET INCOME** | $ 24,536,142 | $ 4,090,360 | $ 488,457 | $ 645,428 | $ 356,288 | $ 30,116,675 |
| **EARNINGS PER SHARE, basic and diluted** | $ 0.22 | | | | | $ 0.19 |
| **WEIGHTED AVERAGE SHARES, basic and diluted** | 110,885,641 | | | | | 158,872,092 |

(a) Rental income is recognized on a straight-line basis.

(b) Depreciation expense on the buildings is recognized using the straight-line method and a 25-year life.

(c) Consists of nonreimbursable operating expenses.

(d) Management and leasing fees are calculated at 4.5% of rental income.

(e) Historical financial information derived from quarterly report on Form 10-Q

The accompanying notes are an integral part of this statement.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**
**SUPPLEMENT NO. 2 DATED AUGUST 29, 2002 TO THE PROSPECTUS**
**DATED JULY 26, 2002**

*This document supplements, and should be read in conjunction with, the prospectus of Wells Real Estate Investment Trust, Inc. dated July 26, 2002, as supplemented and amended by Supplement No. 1 dated August 14, 2002. When we refer to the "prospectus" in this supplement, we are also referring to any and all supplements to the prospectus. Unless otherwise defined in this supplement, capitalized terms used in this supplement shall have the same meanings as set forth in the prospectus.*

The purpose of this supplement is to describe the following:

(1) Status of the offering of shares in Wells Real Estate Investment Trust, Inc. (Wells REIT);

(2) The declaration of dividends for the fourth quarter of 2002;

(3) Revisions to the "Description of Real Estate Investments" section of the prospectus to describe the following real property matters:

  (A) Acquisition of three office buildings in Irving, Texas (Nokia Dallas Buildings);

  (B) Acquisition of a seven-story office building in Austin, Texas (Harcourt Austin Building); and

  (C) Execution of a lease with AmeriCredit Financial Services in connection with a build-to-suit three-story office building in Chandler, Arizona (AmeriCredit Arizona Building);

(4) Revisions to the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of the prospectus; and

(5) Unaudited pro forma financial statements of the Wells REIT reflecting the acquisition of the Nokia Dallas Buildings.

**Status of the Offering**

We commenced our initial public offering of common stock on January 30, 1998. Our initial public offering was terminated on December 19, 1999. We received approximately $132,181,919 in gross offering proceeds from the sale of 13,218,192 shares in our initial public offering. We commenced our second offering of common stock on December 20, 1999. Our second public offering was terminated on December 19, 2000. We received approximately $175,229,193 in gross offering proceeds from the sale of 17,522,919 shares in our second public offering. We commenced our third public offering of common stock on December 20, 2000. Our third public offering was terminated on July 26, 2002. We received approximately $1,292,032,232 in gross offering proceeds from the sale of 129,203,223 shares in our third public offering.

Pursuant to the prospectus, we commenced our fourth public offering of common stock on July 26, 2002. As of August 25, 2002, we had received additional gross proceeds of approximately $84,871,857 from the sale of approximately 8,487,186 shares in our fourth public offering.

**Dividends**

As we described in Supplement No. 1 to the prospectus, we acquire properties that meet our standards of quality both in terms of the real estate and the creditworthiness of the tenants. Creditworthy tenants of the type we target are becoming more and more highly valued in the marketplace and, accordingly, there is increased competition in acquiring properties with these creditworthy tenants. As a result, the purchase prices for such properties have increased with corresponding reductions in cap rates and returns on investment. In addition, changes in market conditions have caused us to add to our internal procedures for ensuring the creditworthiness of our tenants before any commitment to buy a property is made. We continue to remain steadfast in our commitment to invest in quality properties that will produce quality income for our stockholders. Accordingly, because the marketplace is now placing a higher value on our type of properties and because of the additional time it now takes in the acquisition process for us to assess tenant credit – plus our commitment to adhere to purchasing properties with tenants that meet our investment criteria – we were required to lower our dividend yield to investors.

As a result of the factors described in the preceding paragraph, on August 29, 2002, our board of directors declared dividends for the fourth quarter of 2002 in an amount equal to a 7.0% annualized percentage rate return on an investment of $10 per share to be paid in December 2002. Our fourth quarter dividends are calculated on a daily record basis of $0.001923 (0.1923 cents) per day per share on the outstanding shares of common stock payable to stockholders of record of such shares as shown on the books of the Wells REIT at the close of business on each day during the period, commencing on September 16, 2002, and continuing on each day thereafter through and including December 15, 2002.

**Description of Properties**

As of August 25, 2002, we had purchased interests in 59 real estate properties located in 19 states, each of which was 100% leased to tenants. Below are the descriptions of our recent real property acquisitions through August 25, 2002.

***Nokia Dallas Buildings***

On August 15, 2002, Wells Operating Partnership, L.P. (Wells OP), a Delaware limited partnership formed to acquire, own, lease and operate real properties on behalf of the Wells REIT, purchased three adjacent office buildings containing an aggregate of 604,234 rentable square feet located in Irving, Texas for an aggregate purchase price of $119,550,000, plus closing costs (Nokia Dallas Buildings). The Nokia Dallas Buildings consist of (1) a nine-story office building located at 6031 Connection Drive (Nokia I Building), (2) a seven-story office building located at 6021 Connection Drive (Nokia II Building), and (3) a six-story office building located at 6011 Connection Drive (Nokia III Building). The Nokia I Building and Nokia III Building were built in 1999, and the Nokia II Building was built in 2000.

The Nokia Dallas Buildings are all leased entirely to Nokia, Inc., the U.S. operating subsidiary of Nokia Corporation (Nokia), under long-term net leases (i.e., operating costs and maintenance costs are paid by the tenant) for periods of 10 years, with approximately seven to eight years remaining on such leases. Nokia, the guarantor of the Nokia, Inc. leases, is a Finnish corporation whose shares are traded on the New York Stock Exchange. Nokia is a mobile communications company that supplies mobile phones and mobile, fixed broadband, and Internet protocol networks. Nokia sells its products in over 130 countries worldwide. Nokia reported a net worth, as of December 31, 2001, of approximately $12 billion Euros.

Since the Dallas Nokia Buildings are leased to a single tenant on a long-term basis under net leases that transfer substantially all of the operating costs to the tenant, we believe that financial information about the guarantor of the leases, Nokia, is more relevant to investors than financial statements of the property acquired. Nokia is a public company which currently files its financial statements in reports filed with the Securities and Exchange Commission, and following is summary financial data regarding Nokia taken from its previously filed public reports:

**Consolidated Profit and Loss Accounts**

| | For the Fiscal Year Ended | | |
|---|---|---|---|
| | December 31, 2001 | December 31, 2000 | December 31, 1999 |
| | (In millions of Euros) | | |
| Net Sales | 31,191 | 30,376 | 19,772 |
| Operating Profit | 3,362 | 5,776 | 3,908 |
| Net Profit | 2,200 | 3,938 | 2,577 |

**Consolidated Balance Sheet Data**

| | December 31, 2001 | December 31, 2000 |
|---|---|---|
| | (In millions of Euros) | |
| Total Assets | 22,427 | 19,890 |
| Long-term liabilities | 460 | 311 |
| Shareholders' Equity | 12,205 | 10,808 |

If you would like to review more detailed financial information regarding Nokia, please refer to the financial statements of Nokia, which are publicly available with the Securities and Exchange Commission at http://www.sec.gov.

The Nokia I Building is a nine-story building containing 228,678 rentable square feet. The Nokia I Building lease fully commenced in July 1999 and expires in July 2009. The current annual base rent payable under the Nokia I Building lease is $4,413,485.

The Nokia II Building is a seven-story building containing 223,470 rentable square feet. The Nokia II Building lease commenced in December 2000 and expires in December 2010. The current annual base rent payable under the Nokia II Building lease is $4,547,614.

The Nokia III Building is a six-story building containing 152,086 rentable square feet. The Nokia III Building lease commenced in June 1999 and expires in July 2009. The current annual base rent payable under the Nokia III Building lease is $3,024,990.

Nokia, Inc. has a right of first offer on the future sale of each of the Nokia Dallas Buildings.

***Harcourt Austin Building***

On August 15, 2002, Wells OP purchased a seven-story office building containing 195,230 rentable square feet located in Austin, Texas (Harcourt Austin Building) for a purchase price of $39,000,000, plus closing costs. The Harcourt Austin Building was built in 2001 and is located at 10801 North Mopac Expressway, Austin, Texas.

The Harcourt Austin Building is leased entirely to Harcourt, Inc., a wholly owned subsidiary of Harcourt General, Inc. (Harcourt General), the guarantor of the Harcourt lease. Harcourt General is a Delaware corporation having its corporate headquarters in Newton, Massachusetts. Harcourt General is a worldwide education company that provides books, print, and electronic learning materials, assessments, and professional development programs to students and teachers in pre-kindergarten through 12$^{th}$ grade. Harcourt General was acquired in July 2001, by, and became a wholly owned subsidiary of, Reed Elsevier PLC, a privately held company.

The Harcourt lease commenced in July 2001 and expires in June 2016. The current annual base rent payable under the Harcourt lease is $3,353,040.

**Lease of AmeriCredit Arizona Building**

On August 9, 2002, Wells OP entered into a 10-year lease with AmeriCredit Financial Services, Inc. (AmeriCredit) for a build-to-suit property on a 14-acre tract of land located in Chandler, Arizona (AmeriCredit Arizona Property). Wells OP expects to enter into a definitive agreement to acquire the AmeriCredit Arizona Property in the near future.

AmeriCredit is wholly-owned by, and serves as the primary operating subsidiary for, AmeriCredit Corp., a Texas corporation whose common stock is publicly traded on the NYSE. AmeriCredit Corp. is the guarantor of the lease. AmeriCredit is the world's largest independent middle-market automobile finance company. AmeriCredit purchases loans made by franchised and select independent dealers to consumers buying late model used and, to a lesser extent, new automobiles. AmeriCredit Corp. reported a net worth, as of December 31, 2001, of approximately $1.2 billion.

The AmeriCredit Arizona lease will commence shortly after completion of construction of a three-story office building containing approximately 153,494 rentable square feet on the AmeriCredit Arizona Property, which we expect to occur in approximately March 2003 at a total estimated cost of $24,700,000. The AmeriCredit Arizona lease expires 10 years and four months after lease commencement. AmeriCredit has the right to extend the initial term of this lease for two additional five-year terms at 95% of the then-current market rental rate. In addition, AmeriCredit may terminate the AmeriCredit Arizona lease at the end of the 88$^{th}$ month by paying a $2,512,697 termination fee.

As an inducement for Wells OP to enter into the AmeriCredit Arizona lease, AmeriCredit has prepaid to Wells OP the first three years of base rent on the AmeriCredit Arizona Building at a discounted amount equal to $4,827,945 rather than the amount of base rent that would otherwise have been payable ratably over the first three years of the lease term. Wells OP will be required to repay this prepaid rent or some portion thereof under certain circumstances described in the AmeriCredit Arizona lease such as failure of Wells OP to substantially complete construction of the building in accordance with specifications by August 1, 2003, damage or destruction of the building, eminent domain taking of the property and failure of Wells OP to make required repairs to the building. Wells OP has obtained and delivered an irrevocable stand-by letter of credit from Bank of America, N.A. to AmeriCredit in the amount of the prepaid rent to secure Wells OP's obligation to repay the prepaid rent under these conditions.

**Property Management Fees**

Wells Management Company, Inc. (Wells Management), an affiliate of the Wells REIT and our advisor, will be paid management and leasing fees in the amount of 4.5% of gross revenues from the Nokia Dallas Buildings, the Harcourt Austin Building and the AmeriCredit Arizona Building, subject to certain limitations. In addition, Wells Management will receive a one-time initial lease-up fee relating to the leasing of the AmeriCredit Arizona Building equal to one month's rent estimated to be approximately $207,000.

**Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following information should be read in conjunction with the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section beginning on page 101 of the prospectus, as supplemented by Supplement No. 1 dated August 14, 2002.

We commenced our initial public offering of common stock on January 30, 1998. Our initial public offering was terminated on December 19, 1999. We received approximately $132,181,919 in gross offering proceeds from the sale of 13,218,192 shares in our initial public offering. We commenced our second offering of common stock on December 20, 1999. Our second public offering was terminated on December 19, 2000. We received approximately $175,229,193 in gross offering proceeds from the sale of 17,522,919 shares in our second public offering. We commenced our third public offering of common stock on December 20, 2000. Our third public offering was terminated on July 26, 2002. We received approximately $1,292,032,232 in gross offering proceeds from the sale of 129,203,223 shares in our third public offering.

Pursuant to the prospectus, we commenced our fourth public offering of common stock on July 26, 2002. As of August 25, 2002, we had received additional gross proceeds of approximately $84,871,857 from the sale of approximately 8,487,186 shares in our fourth public offering. Accordingly, as of August 25, 2002, we had received aggregate gross offering proceeds of approximately $1,684,315,201 from the sale of approximately 168,431,520 shares in all of our public offerings. After payment of $58,452,949 in acquisition and advisory fees and acquisition expenses, payment of $187,490,370 in selling commissions and organization and offering expenses, and common stock redemptions of $14,230,931 pursuant to our share redemption program, as of August 25, 2002, we had raised aggregate net offering proceeds available for investment in properties of $1,424,140,951, out of which $1,128,348,590 had been invested in real estate properties, and $295,792,361 remained available for investment in real estate properties.

**Financial Statements**

The pro forma balance sheet of the Wells REIT, as of June 30, 2002, the pro forma statement of income for the year ended December 31, 2001, and the pro forma statement of income for the six months ended June 30, 2002, which are included in this supplement, have not been audited.

## INDEX TO FINANCIAL STATEMENTS

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**Summary of Unaudited Pro Forma Financial Statements**

This pro forma information should be read in conjunction with the financial statements and notes of Wells Real Estate Investment Trust, Inc. included in its annual report on Form 10-K for the year ended December 31, 2001 and quarterly report on Form 10-Q for the period ended June 30, 2002. In addition, this pro forma information should be read in conjunction with the financial statements and notes of certain acquired properties included in various Form 8-Ks previously filed.

The following unaudited pro forma balance sheet as of June 30, 2002 has been prepared to give effect to the third quarter 2002 acquisitions of the PacifiCare San Antonio Building, the Kerr McGee Property, the BMG Greenville Buildings, the Kraft Atlanta Building (the "Other Recent Acquisitions") and the Nokia Dallas Buildings (collectively, the "Recent Acquisitions") by Wells OP as if the acquisitions occurred on June 30, 2002.

The following unaudited pro forma statement of income for the six months ended June 30, 2002 has been prepared to give effect to the first and second quarter 2002 acquisitions of the Arthur Andersen Building, the Transocean Houston Building, Novartis Atlanta Building, the Dana Corporation Buildings, the Travelers Express Denver Buildings, the Agilent Atlanta Building, the BellSouth Ft. Lauderdale Building, the Experian/TRW Buildings, the Agilent Boston Building, the TRW Denver Building, the MFS Phoenix Building (collectively, the "2002 Acquisitions") and the Recent Acquisitions as if the acquisitions occurred on January 1, 2001. The Kerr McGee Property had no operations during the six months ended June 30, 2002.

The following unaudited pro forma statement of income for the year ended December 31, 2001 has been prepared to give effect to the 2001 acquisitions of the Comdata Building, the AmeriCredit Building, the State Street Bank Building, the IKON Buildings, the Ingram Micro Building, the Lucent Building, the ADIC Buildings, the Convergys Building, the Windy Point Buildings (collectively, the "2001 Acquisitions"), the 2002 Acquisitions and the Recent Acquisitions as if the acquisitions occurred on January 1, 2001. The Nissan Property, the Travelers Express Denver Buildings and the Kerr McGee Property had no operations during 2001.

Wells OP is a Delaware limited partnership that was organized to own and operate properties on behalf of the Wells Real Estate Investment Trust, Inc., a Maryland corporation. As the sole general partner of Wells OP, Wells Real Estate Investment Trust, Inc. possesses full legal control and authority over the operations of Wells OP. Accordingly, the accounts of Wells OP are consolidated with the accompanying pro forma financial statements of Wells Real Estate Investment Trust, Inc.

These unaudited pro forma financial statements are prepared for informational purposes only and are not necessarily indicative of future results or of actual results that would have been achieved had the acquisitions of the 2001 Acquisitions, 2002 Acquisitions and the Recent Acquisitions been consummated as of January 1, 2001.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**PRO FORMA BALANCE SHEET**

**JUNE 30, 2002**

**(Unaudited)**

**ASSETS**

| | Wells Real Estate Investment Trust, Inc. (e) | Pro Forma Adjustments | | Pro Forma Total |
|---|---|---|---|---|
| | | Recent Acquisitions | | |
| | | Other | Nokia Dallas | |
| **REAL ESTATE ASSETS, at cost:** | | | | |
| Land | $ 110,330,449 | $ 8,488,044 (a)<br>345,443 (b) | $ 9,100,000 (a)<br>370,348 (b) | $ 128,634,284 |
| Buildings, less accumulated depreciation of $37,717,737 | 689,490,969 | 46,302,615 (a)<br>1,884,408 (b) | 110,831,069 (a)<br>4,510,567 (b) | 853,019,628 |
| Construction in progress | 16,081,841 | 379,901 (a) | 0 | 16,461,742 |
| Total real estate assets | 815,903,259 | 57,400,411 | 124,811,984 | 998,115,654 |
| **CASH AND CASH EQUIVALENTS** | 341,909,775 | (43,452,969)(a)<br>200,566,384 (c)<br>(7,019,823)(d) | (119,931,069)(a) | 372,072,298 |
| **INVESTMENT IN JOINT VENTURES** | 76,217,870 | 0 | 0 | 76,217,870 |
| **INVESTMENT IN BONDS** | 22,000,000 | 0 | 0 | 22,000,000 |
| **ACCOUNTS RECEIVABLE** | 10,709,104 | 0 | 0 | 10,709,104 |
| **DEFERRED LEASE ACQUISITION COSTS, net** | 1,790,608 | 0 | 0 | 1,790,608 |
| **DEFERRED PROJECT COSTS** | 14,314,914 | (2,229,851)(b)<br>7,019,823 (d) | (4,880,915)(b) | 14,223,971 |
| **DEFERRED OFFERING COSTS** | 1,392,934 | 0 | 0 | 1,392,934 |
| **DUE FROM AFFILIATES** | 1,897,309 | 0 | 0 | 1,897,309 |
| **NOTE RECEIVABLE** | 5,149,792 | 0 | 0 | 5,149,792 |
| **PREPAID EXPENSES AND OTHER ASSETS, net** | 1,881,308 | 0 | 0 | 1,881,308 |
| Total assets | $ 1,293,166,873 | $ 212,283,975 | $ 0 | $ 1,505,450,848 |

**LIABILITIES AND SHAREHOLDERS' EQUITY**

| | Wells Real Estate Investment Trust, Inc. (e) | Pro Forma Adjustments | | Pro Forma Total |
|---|---|---|---|---|
| | | Recent Acquisitions | | |
| | | Other | Nokia Dallas | |
| **LIABILITIES:** | | | | |
| Accounts payable and accrued expenses | $ 11,840,214 | $ 14,830(a) | $ 0 | $ 11,855,044 |
| Notes payable | 15,658,141 | 11,702,761(a) | 0 | 27,360,902 |
| Obligations under capital lease | 22,000,000 | 0 | 0 | 22,000,000 |
| Dividends payable | 4,538,635 | 0 | 0 | 4,538,635 |
| Due to affiliates | 2,106,790 | 0 | 0 | 2,106,790 |
| Deferred rental income | 1,013,544 | 0 | 0 | 1,013,544 |
| Total liabilities | 57,157,324 | 11,717,591 | 0 | 68,874,915 |
| **COMMITMENTS AND CONTINGENCIES** | | | | |
| **MINORITY INTEREST OF UNIT HOLDER IN OPERATING PARTNERSHIP** | 200,000 | 0 | 0 | 200,000 |
| **SHAREHOLDERS' EQUITY:** | | | | |
| Common shares, $.01 par value; 125,000,000 shares authorized, 145,589,053 shares issued and 144,366,772 outstanding at June 30, 2002 | 1,455,890 | 200,566(c) | 0 | 1,656,456 |
| Additional paid-in capital | 1,290,858,515 | 200,365,818(c) | 0 | 1,491,224,333 |
| Cumulative distributions in excess of earnings | (43,991,669) | 0 | 0 | (43,991,669) |
| Treasury stock, at cost, 1,222,381 shares | (12,223,808) | 0 | 0 | (12,223,808) |
| Other comprehensive loss | (289,379) | 0 | 0 | (289,379) |
| Total shareholders' equity | 1,235,809,549 | 200,566,384 | 0 | 1,436,375,933 |
| Total liabilities and shareholders' equity | $ 1,293,166,873 | $ 212,283,975 | $ 0 | $ 1,505,450,848 |

(a) Reflects Wells Real Estate Investment Trust, Inc.'s purchase price for the land, building and liabilities assumed.

(b) Reflects deferred project costs applied to the land and building at approximately 4.07% of the purchase price.

(c) Reflects capital raised through issuance of additional shares subsequent to June 30, 2002 through Nokia Dallas acquisition date.

(d) Reflects deferred project costs capitalized as a result of additional capital raised described in note (c) above.

(e) Historical financial information derived from quarterly report on Form 10-Q.

The accompanying notes are an integral part of this statement.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**PRO FORMA STATEMENT OF INCOME**

**FOR THE YEAR ENDED DECEMBER 31, 2001**

**(Unaudited)**

| | | Pro Forma Adjustments | | | | |
|---|---|---|---|---|---|---|
| | | | | Recent Acquisitions | | |
| | Wells Real Estate Investment Trust, Inc.(f) | 2001 Acquisitions | 2002 Acquisitions | Other | Nokia Dallas | Pro Forma Total |
| **REVENUES:** | | | | | | |
| Rental income | $44,204,279 | $11,349,076(a) | $14,846,431(a) | $4,020,112(a) | $12,518,628(a) | $ 86,938,526 |
| Equity in income of joint ventures | 3,720,959 | 1,111,850(b) | 0 | 0 | 0 | 4,832,809 |
| Interest income | 1,246,064 | 0 | 0 | 0 | 0 | 1,246,064 |
| Take out fee | 137,500 | 0 | 0 | 0 | 0 | 137,500 |
| | 49,308,802 | 12,460,926 | 14,846,431 | 4,020,112 | 12,518,628 | 93,154,899 |
| **EXPENSES:** | | | | | | |
| Depreciation | 15,344,801 | 5,772,761(c) | 5,356,374(c) | 1,584,975(c) | 4,613,665(c) | 32,672,576 |
| Interest | 3,411,210 | 0 | 0 | 0 | 0 | 3,411,210 |
| Operating costs, net of reimbursements | 4,128,883 | 2,854,275(d) | 1,505,269(d) | 5,452(d) | 0 | 8,493,879 |
| Management and leasing fees | 2,507,188 | 510,708(e) | 668,090(e) | 180,904(e) | 563,338(e) | 4,430,228 |
| General and administrative | 973,785 | 0 | 0 | 0 | 0 | 973,785 |
| Amortization of deferred financing costs | 770,192 | 0 | 0 | 0 | 0 | 770,192 |
| Legal and accounting | 448,776 | 0 | 0 | 0 | 0 | 448,776 |
| | 27,584,835 | 9,137,744 | 7,529,733 | 1,771,331 | 5,177,003 | 51,200,646 |
| **NET INCOME** | $21,723,967 | $ 3,323,182 | $ 7,316,698 | $2,248,781 | $ 7,341,625 | $ 41,954,253 |
| **EARNINGS PER SHARE, basic and diluted** | $ 0.43 | | | | | $ 0.26 |
| **WEIGHTED AVERAGE SHARES, basic and diluted** | 50,520,853 | | | | | 164,423,411 |

(a) Rental income is recognized on a straight-line basis.

(b) Reflects Wells Real Estate Investment Trust, Inc.'s equity in income of Wells XII-REIT Joint Venture related to the acquisition of the Comdata Building and equity in income of Wells XIII-REIT Joint Venture related to the acquisition of the AmeriCredit Building and the ADIC Building.

(c) Depreciation expense on the buildings is recognized using the straight-line method and a 25-year life.

(d) Consists of nonreimbursable operating expenses.

(e) Management and leasing fees are calculated at 4.5% of rental income.

(f) Historical financial information derived from annual report on Form 10-K.

The accompanying notes are an integral part of this statement.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**PRO FORMA STATEMENT OF INCOME**

**FOR THE SIX MONTHS ENDED JUNE 30, 2002**

**(Unaudited)**

| | | Pro Forma Adjustments | | | |
|---|---|---|---|---|---|
| | | | Recent Acquisitions | | |
| | Wells Real Estate Investment Trust, Inc.(e) | 2002 Acquisitions | Other | Nokia Dallas | Pro Forma Total |
| **REVENUES:** | | | | | |
| Rental income | $ 38,571,815 | $ 7,307,774(a) | $ 2,652,335(a) | $ 6,259,314(a) | $ 54,791,238 |
| Equity in income of joint ventures | 2,478,686 | 0 | 0 | 0 | 2,478,686 |
| Interest income | 2,648,351 | 0 | 0 | 0 | 2,648,351 |
| Take out fee | 134,102 | 0 | 0 | 0 | 134,102 |
| | 43,832,954 | 7,307,774 | 2,652,335 | 6,259,314 | 60,052,377 |
| **EXPENSES:** | | | | | |
| Depreciation | 12,903,282 | 2,588,546(b) | 963,740(b) | 2,306,833(b) | 18,762,401 |
| Interest | 880,002 | 0 | 0 | 0 | 880,002 |
| Operating costs, net of reimbursements | 2,063,997 | 300,018(c) | 79,067(c) | 0 | 2,443,082 |
| Management and leasing fees | 1,903,082 | 328,850(d) | 119,355(d) | 281,669(d) | 2,632,956 |
| General and administrative | 1,121,457 | 0 | 0 | 0 | 1,121,457 |
| Amortization of deferred financing costs | 424,992 | 0 | 0 | 0 | 424,992 |
| | 19,296,812 | 3,217,414 | 1,162,162 | 2,588,502 | 26,264,890 |
| **NET INCOME** | $ 24,536,142 | $ 4,090,360 | $ 1,490,173 | $ 3,670,812 | $ 33,787,487 |
| **EARNINGS PER SHARE, basic and diluted** | $ 0.22 | | | | $ 0.21 |
| **WEIGHTED AVERAGE SHARES, basic and diluted** | 110,885,641 | | | | 164,423,411 |

(a) Rental income is recognized on a straight-line basis.

(b) Depreciation expense on the buildings is recognized using the straight-line method and a 25-year life.

(c) Consists of nonreimbursable operating expenses.

(d) Management and leasing fees are calculated at 4.5% of rental income.

(e) Historical financial information derived from quarterly report on Form 10-Q.

The accompanying notes are an integral part of this statement.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**
**SUPPLEMENT NO. 3 DATED OCTOBER 15, 2002 TO THE PROSPECTUS**
**DATED JULY 26, 2002**

*This document supplements, and should be read in conjunction with, the prospectus of Wells Real Estate Investment Trust, Inc. dated July 26, 2002, as supplemented and amended by Supplement No. 1 dated August 14, 2002 and Supplement No. 2 dated August 29, 2002. When we refer to the "prospectus" in this supplement, we are also referring to any and all supplements to the prospectus. Unless otherwise defined in this supplement, capitalized terms used in this supplement shall have the same meanings as set forth in the prospectus.*

The purpose of this supplement is to describe the following:

(1) Status of the offering of shares in Wells Real Estate Investment Trust, Inc. (Wells REIT);

(2) Revisions to the "Description of Real Estate Investments" section of the prospectus to describe the following real property acquisitions:

  (A) Acquisition of a two-story office building and a one-story daycare facility in Holtsville, New York (IRS Long Island Buildings);

  (B) Acquisition of a 14.74 acre tract of land and the build-to-suit construction of a three-story office building in Chandler, Arizona (AmeriCredit Phoenix Building);

  (C) Acquisition of a four-story office building in Parsippany, New Jersey (KeyBank Parsippany Building);

  (D) Acquisition of a one-story office building located in Indianapolis, Indiana (Allstate Indianapolis Building);

  (E) Acquisition of a three-story office building located in Colorado Springs, Colorado (Federal Express Colorado Springs Building);

  (F) Acquisition of a one-story office and distribution building in Des Moines, Iowa (EDS Des Moines Building);

  (G) Acquisition of a two-story office building with a three-story wing located in Plano, Texas (Intuit Dallas Building); and

  (H) Acquisition of a two-story office building in Westlake, Texas (Daimler Chrysler Dallas Building);

(3) Revisions to the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of the prospectus;

(4) Status of the development of the Nissan Project;

(5) Audited financial statements relating to the Harcourt Austin Building, which acquisition was described in Supplement No. 2 dated August 29, 2002, the IRS Long Island Buildings and the KeyBank Parsippany Building; and

(6) Unaudited pro forma financial statements of the Wells REIT reflecting the acquisition of the Harcourt Austin Building, IRS Long Island Buildings, AmeriCredit Phoenix Property, KeyBank Parsippany Building, Allstate Indianapolis Building, Federal Express Colorado Springs Building, EDS Des Moines Building, Intuit Dallas Building and Daimler Chrysler Dallas Building.

**Status of the Offering**

We commenced our initial public offering of common stock on January 30, 1998. Our initial public offering was terminated on December 19, 1999. We received approximately $132,181,919 in gross offering proceeds from the sale of 13,218,192 shares in our initial public offering. We commenced our second offering of common stock on December 20, 1999. Our second public offering was terminated on December 19, 2000. We received approximately $175,229,193 in gross offering proceeds from the sale of 17,522,919 shares in our second public offering. We commenced our third public offering of common stock on December 20, 2000. Our third public offering was terminated on July 26, 2002. We received approximately $1,282,976,865 in gross offering proceeds from the sale of 128,297,687 shares in our third public offering.

Pursuant to the prospectus, we commenced our fourth public offering of common stock on July 26, 2002. As of October 15, 2002, we had received additional gross proceeds of approximately $276,782,914 from the sale of approximately 27,678,291 shares in our fourth public offering.

**Description of Properties**

As of October 15, 2002, we had purchased interests in 67 real estate properties located in 22 states. Below are the descriptions of our recent real property acquisitions.

**IRS Long Island Buildings**

On September 16, 2002, Wells REIT-Holtsville, NY, LLC (REIT-Holtsville), a Georgia limited liability company wholly-owned by Wells Operating Partnership, L.P. (Wells OP), a Delaware limited partnership formed to acquire, own, lease and operate real properties on behalf of the Wells REIT, purchased a two-story office building (IRS Office Building) and a one-story daycare facility (IRS Daycare Facility) containing an aggregate 259,700 rentable square feet located in Holtsville, New York for a purchase price of $50,975,000, plus closing costs from HIRS Associates LLC (HIRS). HIRS is not in any way affiliated with the Wells REIT, Wells OP, REIT-Holtsville, or our advisor, Wells Capital, Inc.

The IRS Office Building was built in 2000 and is located at 5000 Corporate Court in Holtsville, New York on a 36.25-acre tract of land. The IRS Daycare Facility was built in 1999 and is located on a 1.87-acre tract of land located at 2 Corporate Drive in Holtsville, New York. The IRS Office Building is located in central Long Island in a campus setting. The property was developed as a flagship campus for the Internal Revenue Service (IRS) and is one of only eight processing and collection facilities in the country.

Approximately 191,050 of the aggregate rentable square feet of the IRS Long Island Buildings (74%) is currently leased to the United States of America (U.S.A.) through the U.S. General Services Administration (GSA) for occupancy by the IRS under three separate lease agreements for the processing & collection division of the IRS (IRS Collection), the compliance division of the IRS (IRS Compliance), and the IRS Daycare Facility. The GSA is a centralized federal procurement and property management agency which acquires office space, equipment, telecommunications, information technology, supplies and services for federal agencies such as the IRS.

REIT-Holtsville is negotiating for the remaining 26% of the IRS Long Island Buildings to be leased by the U.S.A. on behalf of the IRS or to another suitable tenant. If REIT-Holtsville should lease this space to the U.S.A. or another suitable tenant within 18 months, REIT-Holtsville would owe the seller an additional amount of up to $14,500,000 as additional purchase price for the IRS Long Island Buildings pursuant to the terms of an earnout agreement entered into between REIT-Holtsville and the seller at the closing.

All three of the IRS leases are net leases (i.e., operating costs and maintenance costs are paid by the tenant) which include provisions that require the landlord and the property manager to comply with various employment related practices and other various laws typically required by government entities. Although we believe that the Wells REIT, Wells OP and REIT-Holtsville should be deemed exempt from these requirements, if a determination were made that these or other affiliated entities violated these lease provisions, the tenant has the right under each of the IRS leases to terminate the lease or to require compliance by the appropriate entities. REIT-Holtsville, as the landlord, is responsible for maintaining and repairing the roof, structural elements and mechanical systems of the IRS Long Island Buildings.

The IRS Collection lease, which encompasses 128,000 rentable square feet of the IRS Office Building, commenced in August 2000 and expires in August 2005. The current annual base rent payable under the IRS Collection lease is $5,029,380. The annual base rent payable under the IRS Collection lease for the remaining two years of the initial lease term will be $2,814,900. The U.S.A., at its option, has the right to extend the initial term of its lease for two additional five-year periods at annual rental rates of $4,209,869 and $4,999,219, respectively.

The IRS Compliance lease, which encompasses 50,949 rentable square feet of the IRS Office Building, commenced in December 2001 and expires in December 2011. The annual base rent payable under the IRS Compliance lease for the initial term of the lease is $1,663,200. The U.S.A., at its option, has the right to extend the initial term of its lease for one additional ten-year period at an annual rental rate of $2,217,600.

The IRS Daycare Facility lease, which encompasses the entire 12,100 rentable square feet of the IRS Daycare Facility, commenced in October 1999 and expires in September 2004. The annual base rent payable under the IRS Daycare Facility lease for the initial term of the lease is $486,799. The U.S.A., at its option, has the right to extend the initial term of its lease for two additional five-year periods at an annual rental rate of $435,600.

AmCap Management Corporation, an affiliate of HIRS, the seller of the property, will serve as the initial property manager of the IRS Long Island Buildings for a period of up to 18 months. AmCap Management Corporation is not in any way affiliated with the Wells REIT, Wells OP, REIT-Holtsville or our advisor. Prior to the expiration of the 18-month term of the property management agreement, REIT-Holtsville will be required to locate and hire a new property manager for the IRS Long Island Buildings.

**The AmeriCredit Phoenix Property**

On September 12, 2002, Wells OP purchased a 14.74 acre tract of land located in Chandler, Maricopa County, Arizona (AmeriCredit Phoenix Property (formerly referred to as AmeriCredit Arizona Property)) for $2,632,298, plus closing costs from Price & Germann Roads, L.L.C., an Arizona limited liability company (Price). Price is not in any way affiliated with the Wells REIT, Wells OP or our advisor.

Wells OP has entered into a development agreement and an owner-contractor agreement to construct a three-story office building containing 153,494 rentable square feet (AmeriCredit Phoenix Project) on the AmeriCredit Phoenix Property. Wells OP anticipates that the aggregate of all costs and expenses to be incurred with respect to the acquisition of the AmeriCredit Phoenix Property, and the planning, design, development, construction and completion of the AmeriCredit Phoenix Project will total approximately $24,700,000.

*Development Agreement*. Wells OP entered into a Development Agreement (Development Agreement) with ADEVCO Corporation, a Georgia corporation (Developer), as the exclusive development manager to supervise, manage and coordinate the planning, design, construction and completion of the AmeriCredit Phoenix Project. As compensation for the services to be rendered by the Developer under the Development Agreement, Wells OP will pay a development fee payable ratably (on

the basis of the percentage of construction completed) as the construction and development of the AmeriCredit Phoenix Project is completed.

*Owner-Contractor Agreement.* Wells OP entered into an Owner-Contractor Agreement (Construction Agreement) with Bovis Lend Lease, Inc. (Contractor) for the construction of the AmeriCredit Phoenix Project. The Contractor is a worldwide construction company with U.S. headquarters in New York. The Contractor provides services in a variety of sectors in the construction industry, including commercial, residential, industrial, pharmaceutical, sports and leisure, and retail and entertainment. The Contractor began construction in September 2002 of a three-story office building containing approximately 153,494 rentable square feet (AmeriCredit Phoenix Building).

The Construction Agreement provides that Wells OP will pay the Contractor a maximum of $10,398,274 for the construction of the AmeriCredit Phoenix Project which includes all estimated fees and costs, including the architect fees. The Contractor will be responsible for all costs of labor, materials, construction equipment and machinery necessary for completion of the AmeriCredit Phoenix Project. In addition, the Contractor will be required to secure and pay for any additional business licenses, tap fees and building permits which may be necessary for construction of the AmeriCredit Phoenix Project.

*AmeriCredit Phoenix Lease.* The AmeriCredit Phoenix Building will be leased entirely to AmeriCredit Financial Services, Inc. (AmeriCredit). AmeriCredit is wholly-owned by, and serves as the primary operating subsidiary for, AmeriCredit Corp., a Texas corporation whose common stock is publicly traded on the New York Stock Exchange (NYSE). AmeriCredit Corp. is the guarantor of the lease. AmeriCredit is the world's largest independent middle-market automobile finance company. AmeriCredit purchases loans made by franchised and select independent dealers to consumers buying late model used and, to a lesser extent, new automobiles. AmeriCredit Corp. reported a net worth, as of December 31, 2001, of approximately $1.2 billion.

The AmeriCredit Phoenix lease is a net lease (i.e., operating costs and maintenance costs to be paid by the tenant) and will commence shortly after completion of construction of the AmeriCredit Phoenix Building, which we currently expect to occur in approximately March 2003. The AmeriCredit Phoenix lease expires 10 years and four months after lease commencement. AmeriCredit has the right to extend the initial term of this lease for two additional five-year terms at 95% of the then-current market rental rate. In addition, AmeriCredit may terminate the AmeriCredit Phoenix lease at the end of the 88$^{th}$ month by paying a $2,512,697 termination fee. Wells OP, as the landlord, will be responsible for maintaining the roof, foundation, structural walls, exterior windows, parking lot, driveways, and light poles.

As an inducement for Wells OP to enter into the AmeriCredit Phoenix lease, AmeriCredit has prepaid to Wells OP the first three years of base rent on the AmeriCredit Phoenix Building at a discounted amount equal to $4,827,945 rather than the amount of base rent that would otherwise have been payable ratably over the first three years of the lease term. Wells OP will be required to repay this prepaid rent or some portion thereof under certain circumstances described in the AmeriCredit Phoenix lease such as failure of Wells OP to substantially complete construction of the building in accordance with specifications by August 1, 2003, damage or destruction of the building, eminent domain taking of the property and failure of Wells OP to make required repairs to the building. Wells OP has obtained and delivered an irrevocable stand-by letter of credit from Bank of America, N.A. to AmeriCredit in the amount of the prepaid rent to secure Wells OP's obligation to repay the prepaid rent under these conditions.

**KeyBank Parsippany Building**

On September 27, 2002, Wells OP purchased a four-story office building containing 404,515 rentable square feet located on a 19.06 acre tract of land in Parsippany, New Jersey (KeyBank Parsippany Building) for a purchase price of $101,350,000, plus closing costs from Two Gatehall Associates, L.L.C. (Gatehall) and Asset Preservation, Inc. (Asset). Neither Gatehall nor Asset are in any way affiliated with the Wells REIT, Wells OP or our advisor.

The Key Bank Parsippany Building was completed in 1985 and is located at Two Gatehall Drive in Parsippany, Morris County, New Jersey. The KeyBank Parsippany Building is leased to Key Bank U.S.A., N.A. (KeyBank) and Gemini Technology Services (Gemini).

KeyBank is a national banking association and a wholly-owned subsidiary of KeyCorp, the guarantor on the lease. KeyCorp, whose shares are traded on the NYSE, is a bank-based financial services company that provides investment management, retail and commercial banking, retirement, consumer finance, and investment banking products and services to individuals and companies throughout the United States and internationally. KeyCorp operates approximately 2,300 ATMs across the United States. KeyCorp reported a net worth, as of June 30, 2002, of approximately $6.6 billion.

The KeyBank lease covers 200,000 rentable square feet (49%) and is a net lease (i.e., operating costs and maintenance costs are paid by the tenant) which commenced in March 2001 and expires in February 2016. The current annual base rent payable under the KeyBank lease is $3,800,000. KeyBank, at its option, has the right to extend the initial term of its lease for three additional five-year periods at the then-current market rental rate.

Gemini Technology Services is an information technology subsidiary of Deutsch Bank AG (Deutsch Bank). Deutsch Bank provides financial services around the world to individuals and institutional clients and serves more than 12 million customers in 75 countries worldwide.

The Gemini lease covers 204,515 rentable square feet (51%) and is a gross lease (i.e., operating costs and maintenance costs are the responsibility of the landlord) that commenced in December 2000 and expires in December 2013. The current annual base rent payable under the Gemini lease is $5,726,420. Gemini secured its obligations under the Gemini lease with a $35,000,000 irrevocable letter of credit, which amount decreases over time during the initial term of the Gemini lease. Gemini, at its option, has the right to extend the initial term of its lease for three additional five-year periods at a rate equal to the greater of (1) the annual rent during the final year of the initial lease term, or (2) 95% of the then-current market rental rate.

**Allstate Indianapolis Building**

On September 27, 2002, Wells OP purchased a one-story office building containing 89,956 rentable square feet located on a 12.71 acre tract of land in Indianapolis, Indiana (Allstate Indianapolis Building) for a purchase price of $10,900,000, plus closing costs from Hartsfield Building, LLC (Hartsfield). In addition, at closing, Hartsfield assigned to Wells OP a purchase option agreement for the right to purchase an additional adjacent 2.38 acre tract of land for $249,000 on or before January 2007. Hartsfield is not in any way affiliated with the Wells REIT, Wells OP or our advisor.

The Allstate Indianapolis Building was completed in 2002 and is located at 5757 Decatur Blvd. in Indianapolis, Marion County, Indiana. The Allstate Indianapolis Building is leased to Allstate Insurance Company (Allstate) and Holladay Property Services Midwest, Inc. (Holladay).

Allstate Corporation, the holding company for Allstate whose shares are traded on the NYSE, provides automobile, homeowner's, and life insurance throughout the United States, as well as numerous investment products, including retirement planning, annuities and mutual funds. Allstate Corporation reported a net worth, as of June 30, 2002, of approximately $17.2 billion.

The Allstate lease, a gross lease (i.e., operating costs and maintenance costs are paid by the landlord) which covers 84,200 rentable square feet (94%), commenced in March 2002 and expires in August 2012. The current annual base rent payable under the Allstate lease is $1,246,164. Allstate at its option has the right to (1) terminate the initial term of the Allstate lease at the end of the fifth lease year (August 2007) upon payment of a $385,000 fee, or (2) reduce its area of occupancy to not less than 20,256 rentable square feet, by providing written notice on or before August 2006. Allstate, at its option, has the right to extend the initial term of its lease for two additional five-year periods at the then-current market rental rate. In addition, Allstate has a right of first refusal for the leasing of additional space in the Allstate Indianapolis Building. Wells OP, as the landlord, will be responsible for maintaining the exterior of the building, parking lots, driveways, roof and all structural parts of the building.

Holladay is a property management company that manages the Allstate Indianapolis Building from the site. The Holladay lease, a gross lease (i.e., operating costs and maintenance costs are paid by the landlord) which covers 5,756 rentable square feet (6%), commenced in October 2001 and expires in September 2006. The current annual base rent payable under the Holladay lease is $74,832.

**Federal Express Colorado Springs Building**

On September 27, 2002, Wells OP purchased a three-story office building containing 155,808 rentable square feet located on a 28.01 acre tract of land in Colorado Springs, Colorado (Federal Express Colorado Springs Building) for a purchase price of $26,000,000, plus closing costs from KDC-CO I Investment Limited Partnership (KDC). KDC is not in any way affiliated with the Wells REIT, Wells OP or our advisor.

The Federal Express Colorado Springs Building was completed in 2001 and is located at 350 Spectrum Loop in Colorado Springs, El Paso County, Colorado. The Federal Express Colorado Springs Building is leased entirely to Federal Express Corporation (Federal Express). The Federal Express lease is a net lease (i.e., operating costs and maintenance costs are paid by the tenant) which commenced in July 2001 and expires in October 2016. Federal Express, whose shares are traded on the NYSE, provides transportation, e-commerce and supply chain management services in over 210 countries through its numerous subsidiaries.

Since the Federal Express Colorado Springs Building is leased to a single tenant on a long-term basis under a net lease that transfers substantially all of the operating costs to the tenant, we believe that financial information about Federal Express is more relevant to investors than financial statements of the property acquired.

Federal Express currently files its financial statements in reports filed with the Securities and Exchange Commission (SEC), and the following summary financial data regarding Federal Express is taken from its previously filed public reports:

| | FOR THE FISCAL YEAR ENDED | | |
|---|---|---|---|
| | MAY 31, 2002 | MAY 31, 2001 | MAY 31, 2000 |
| | | (IN MILLIONS) | |
| **CONSOLIDATED STATEMENTS OF OPERATIONS:** | | | |
| Revenues | $ 15,327 | $ 15,534 | $ 15,068 |
| Operating Income | $ 811 | $ 847 | $ 900 |
| Net Income | $ 443 | $ 499 | $ 510 |

| | MAY 31, 2002 | MAY 31, 2001 |
|---|---|---|
| | (IN MILLIONS) | |
| **CONSOLIDATED BALANCE SHEET DATA:** | | |
| Total Assets | $ 9,949 | $ 9,623 |
| Long-Term Debt | $ 851 | $ 852 |
| Stockholders' Equity | $ 4,673 | $ 4,248 |

For more detailed financial information regarding Federal Express, please refer to the financial statements of Federal Express Corporation, which are publicly available with the SEC at http://www.sec.gov.

The current annual base rent payable under the Federal Express lease is $2,248,309. Federal Express, at its option, has the right to extend the initial term of its lease for four additional five-year periods at 90% of the then-current market rental rate. In addition, Federal Express has an expansion option under its lease pursuant to which Wells OP would be required to construct an additional office building. Wells OP has agreed to allow Koll Development Company, LLC (Koll Development), an affiliate of the seller of the property, to develop such expansion provided that Wells OP shall have the right of first refusal to purchase such expansion property within three years after completion. Koll Development is not in any way affiliated with the Wells REIT, Wells OP or our advisor.

Wells OP, as the landlord, will be responsible for maintaining the roof, foundation, exterior walls, structural components of the parking areas, drives and sidewalks and the underground utilities of the Federal Express Colorado Springs Building. In addition, Wells OP is responsible for the capital replacements of the mechanical and electrical systems for the Federal Express Colorado Springs Building.

**EDS Des Moines Building**

On September 27, 2002, Wells OP purchased from KDC-EDS Des Moines Investments, LLC (KDC-EDS), Koll Development and Koll Corporate Development I-Iowa, L.P. (Koll Corporate) all of the partnership interests in KDC-EDS Des Moines Investment Limited Partnership, a Texas limited partnership, which owns a one-story office and distribution building containing 115,000 rentable square feet of office space and 290,000 rentable square feet of warehouse space located on a 27.97 acre tract of land in Des Moines, Iowa (EDS Des Moines Building) for a purchase price of $26,500,000, plus closing costs. Neither KDC-EDS, Koll Development nor Koll Corporate are in any way affiliated with the Wells REIT, Wells OP or our advisor.

The EDS Des Moines Building was completed in 2002 and is located at 3600 Army Post Road in Des Moines, Polk County, Iowa. The EDS Des Moines Building is leased entirely to EDS Information Services L.L.C. (EDS), a wholly-owned subsidiary of Electronic Data Systems Corporation (EDS Corp). EDS Corp is the guarantor of the EDS lease. The EDS lease is a net lease (i.e., operating costs and maintenance costs are paid by the tenant) which commenced in May 2002 and expires in April 2012. EDS Corp, whose shares are traded on the NYSE, is a global information technology services company with services ranging from computer support to server management to web hosting. EDS Corp operates in 60 countries worldwide.

Since the EDS Des Moines Building is leased to a single tenant on a long-term basis under a net lease that transfers substantially all of the operating costs to the tenant, we believe that financial information about EDS Corp, the guarantor of the EDS lease, is more relevant to investors than financial statements of the property acquired.

EDS Corp currently files its financial statements in reports filed with the SEC, and the following summary financial data regarding EDS Corp is taken from its previously filed public reports:

| | FOR THE FISCAL YEAR ENDED | | |
|---|---|---|---|
| | DECEMBER 31, 2001 | DECEMBER 31, 2000 | DECEMBER 31, 1999 |
| | | (IN MILLIONS) | |
| **CONSOLIDATED STATEMENTS OF OPERATIONS:** | | | |
| Revenues | $ 21,543 | $ 19,227 | $ 18,732 |
| Operating Income | $ 2,096 | $ 1,818 | $ 473 |
| Net Income | $ 1,363 | $ 1,143 | $ 421 |

| | DECEMBER 31, 2001 | DECEMBER 31, 2000 |
|---|---|---|
| | (IN MILLIONS) | |
| **CONSOLIDATED BALANCE SHEET DATA:** | | |
| Total Assets | $ 16,353 | $ 12,692 |
| Long-Term Debt | $ 4,692 | $ 2,585 |
| Stockholders' Equity | $ 6,446 | $ 5,139 |

For more detailed financial information regarding EDS Corp, please refer to the financial statements of Electronic Data Systems Corporation, which are publicly available with the SEC at http://www.sec.gov.

The current annual base rent payable under the EDS lease is $2,389,500. EDS, at its option, has the right to extend the initial term of its lease for two additional five-year periods at the then-current market rental rate. In addition, EDS has an expansion option under its lease for up to an additional 100,000 rentable square feet. Wells OP, as the landlord, is responsible for maintaining the roof, foundation, exterior walls, plumbing and electrical lines for the EDS Des Moines Building.

**Intuit Dallas Building**

On September 27, 2002, Wells OP purchased a two-story office building with a three-story wing containing 166,238 rentable square feet located on a 10.7 acre tract of land in Plano, Texas (Intuit Dallas Building) for a purchase price of $26,500,000, plus closing costs from KDC-TX I Investment Limited Partnership (KDC-TX). KDC-TX is not in any way affiliated with the Wells REIT, Wells OP or our advisor.

The Intuit Dallas Building was completed in 2001 and is located at 5601 Headquarters Drive in Plano, Collin County, Texas. The Intuit Dallas Building is leased entirely to Lacerte Software Corporation (Lacerte), a wholly-owned subsidiary of Intuit, Inc. (Intuit). Intuit is the guarantor of the Lacerte lease. The Lacerte lease is a net lease (i.e., operating costs and maintenance costs are paid by the tenant) which commenced in July 2001 and expires in June 2011.

Lacerte is a tax software development company that offers a variety of tax software products and customer support services. Intuit, whose shares are traded on the NASDAQ, provides small business, tax preparation and personal finance software products and Web-based services that simplify complex financial tasks for consumers, small businesses and accounting professionals.

Since the Intuit Dallas Building is leased to a single tenant on a long-term basis under a net lease that transfers substantially all of the operating costs to the tenant, we believe that financial information about the guarantor of the lease, Intuit, is more relevant to investors than financial statements of the property acquired.

Intuit currently files its financial statements in reports filed with the SEC, and the following summary financial data regarding Intuit is taken from its previously filed public reports:

| | FOR THE FISCAL YEAR ENDED | | |
|---|---|---|---|
| | JULY 31, 2002 | JULY 31, 2001 | JULY 31, 2000 |
| | | (IN MILLIONS) | |
| **CONSOLIDATED STATEMENTS OF OPERATIONS:** | | | |
| Revenues | $ 1,358 | $ 1,148 | $ 1,037 |
| Income (Loss) from Continuing Operations | $ 59 | $ (74) | $ 9 |
| Net Income (Loss) | $ 140 | $ (83) | $ 306 |

| | JULY 31, 2002 | JULY 31, 2001 |
|---|---|---|
| | (IN MILLIONS) | |
| **CONSOLIDATED BALANCE SHEET DATA:** | | |
| Total Assets | $ 2,963 | $ 2,862 |
| Long-Term Debt | $ 15 | $ 12 |
| Stockholders' Equity | $ 2,216 | $ 2,161 |

For more detailed financial information regarding Intuit, please refer to the financial statements of Intuit, Inc., which are publicly available with the SEC at http://www.sec.gov.

The current annual base rent payable under the Lacerte lease is $2,461,985. Lacerte, at its option, has the right to extend the initial term of its lease for two additional five-year periods at rental rates of $17.92 per square foot and $19.71 per square foot, respectively. In addition, Lacerte has an expansion option through November 2004 pursuant to which Wells OP would be required to purchase an additional 19-acre tract of land and to construct up to an approximately 600,000 rentable square foot building thereon. Wells OP has agreed to allow Koll Development, an affiliate of KDC-TX, the seller of the property, to develop any such expansion. Wells OP, as the landlord, is responsible for maintaining the structural elements of the building, including the parking deck, roof, building facade, foundation, load bearing walls and building and utility systems for the Intuit Dallas Building.

**Daimler Chrysler Dallas Building**

On September 30, 2002, Wells OP purchased from Hillwood Operating, L.P. (Hillwood) and ABI Commercial L.P. (ABI) all of the partnership interests in CT Corporate Center No. 1, L.P. (CT), a Texas limited partnership, which owns a two-story office building containing 130,290 rentable square feet located in Westlake, Texas (Daimler Chrysler Dallas Building) for a purchase price of $25,100,000, plus closing costs. Neither Hillwood nor ABI are in any way affiliated with the Wells REIT, Wells OP or our advisor.

The Daimler Chrysler Dallas Building was completed in 2001 and is located at 2050 Roanoke Road in Westlake, Tarrant County, Texas. The Daimler Chrysler Dallas Building is leased entirely to Daimler Chrysler Services North America LLC (Daimler Chrysler NA). Daimler Chrysler NA is a wholly owned subsidiary of DaimlerChrysler AG (DaimlerChrysler). DaimlerChrysler is one of the world's leading automotive, transportation and services companies and has over 50 operating plants worldwide.

The Daimler Chrysler NA lease is a gross lease (i.e., operating costs and maintenance costs are paid by the landlord) which commenced in January 2002 and expires in December 2011. The current annual base rent payable under the Daimler Chrysler NA lease is $3,189,499. Daimler Chrysler NA, at its option, has the right to extend the initial term of its lease for three additional five-year periods at 98% of the then-current market rental rate. In addition, Daimler Chrysler NA has an expansion option for up to an additional 70,000 rentable square feet and a right of first offer if Wells OP desires to sell the Daimler Chrysler Dallas Building during the term of the lease. Wells OP, as the landlord, is responsible for maintaining the roof, foundation, and structural members of the exterior walls of the building, trash

removal, janitorial and window-washing services, pest control, landscaping maintenance, water, lighting and passenger elevator service for the Daimler Chrysler Dallas Building.

**Property Management Fees**

Wells Management Company, Inc. (Wells Management), an affiliate of the Wells REIT and our advisor, will be paid management and leasing fees in the amount of up to 4.5% of gross revenues from the AmeriCredit Phoenix Building, the KeyBank Parsippany Building, the Allstate Indianapolis Building, the Federal Express Colorado Springs Building, the EDS Des Moines Building, the Intuit Dallas Building and the Daimler Chrysler Dallas Building subject to certain limitations. In addition, Wells Management will receive a one-time initial lease-up fee relating to the leasing of the AmeriCredit Phoenix Building equal to one month's rent estimated to be approximately $207,000.

**Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following information should be read in conjunction with the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section beginning on page 101 of the prospectus, as supplemented by Supplement No. 1 dated August 14, 2002 and Supplement No. 2 dated August 29, 2002.

We commenced our initial public offering of common stock on January 30, 1998. Our initial public offering was terminated on December 19, 1999. We received approximately $132,181,919 in gross offering proceeds from the sale of 13,218,192 shares in our initial public offering. We commenced our second offering of common stock on December 20, 1999. Our second public offering was terminated on December 19, 2000. We received approximately $175,229,193 in gross offering proceeds from the sale of 17,522,919 shares in our second public offering. We commenced our third public offering of common stock on December 20, 2000. Our third public offering was terminated on July 26, 2002. We received approximately $1,282,976,865 in gross offering proceeds from the sale of 128,297,687 shares in our third public offering.

Pursuant to the prospectus, we commenced our fourth public offering of common stock on July 26, 2002. As of October 15, 2002, we had received additional gross proceeds of approximately $276,782,914 from the sale of approximately 27,678,291 shares in our fourth public offering. Accordingly, as of October 15, 2002, we had received aggregate gross offering proceeds of approximately $1,876,226,258 from the sale of approximately 187,622,626 shares in all of our public offerings. After payment of $65,068,579 in acquisition and advisory fees and acquisition expenses, payment of $208,356,782 in selling commissions and organization and offering expenses, and common stock redemptions of $17,123,992 pursuant to our share redemption program, as of October 15, 2002, we had raised aggregate net offering proceeds available for investment in properties of $1,585,676,905, out of which $1,400,791,370 had been invested in real estate properties, and $184,885,535 remained available for investment in real estate properties.

**Status of the Nissan Project**

As of September 30, 2002, Wells OP had expended $24,226,880 towards the construction of the three-story approximately 268,290 rentable square foot office building in Irving, Texas. The Nissan Project is approximately 47% complete and is currently expected to be completed in February 2003. We estimate that the aggregate cost and expenses to be incurred by Wells OP with respect to the acquisition and construction of the Nissan Project will total approximately $41,855,600, which is within the budgeted amount for the property.

**Financial Statements**

***Audited Financial Statements***

The statements of revenues over certain operating expenses of the Harcourt Austin Building, the IRS Long Island Buildings and the KeyBank Parsippany Building for the year ended December 31, 2001, which are included in this supplement, have been audited by Ernst & Young LLP, independent auditors, as set forth in their reports appearing elsewhere herein, and are included in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

***Unaudited Financial Statements***

The statements of revenues over certain operating expenses of the Harcourt Austin Building, the IRS Long Island Buildings and the KeyBank Parsippany Building for the six months ended June 30, 2002, which are included in this supplement, have not been audited.

The pro forma balance sheet of the Wells REIT, as of June 30, 2002, the pro forma statement of income for the year ended December 31, 2001, and the pro forma statement of income for the six months ended June 30, 2002, which are included in this supplement, have not been audited.

## INDEX TO FINANCIAL STATEMENTS

**Report of Independent Auditors**

Shareholders and Board of Directors
Wells Real Estate Investment Trust, Inc.

We have audited the accompanying statement of revenues over certain operating expenses of the Harcourt Austin Building (the "Building") for the year ended December 31, 2001. This statement is the responsibility of the Building's management. Our responsibility is to express an opinion on this statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement of revenues over certain operating expenses is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of revenues over certain operating expenses. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the statement of revenues over certain operating expenses. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statement of revenues over certain operating expenses was prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission, as described in Note 2, and is not intended to be a complete presentation of the Building's revenues and expenses.

In our opinion, the statement of revenues over certain operating expenses referred to above presents fairly, in all material respects, the revenues and certain operating expenses described in Note 2 of the Harcourt Austin Building for the year ended December 31, 2001 in conformity with accounting principles generally accepted in the United States.

/s/ ERNST & YOUNG LLP

Atlanta, Georgia
October 21, 2002

**Harcourt Austin Building**

**Statements of Revenues Over Certain Operating Expenses**

For the year ended December 31, 2001 and the six months ended June 30, 2002 (unaudited)

| | 2002 | 2001 |
|---|---|---|
| | (Unaudited) | |
| Rental revenues | $ 1,770,085 | $ 1,770,085 |
| Operating expenses, net of reimbursements | 64,780 | 67,131 |
| Revenues over certain operating expenses | $ 1,705,305 | $ 1,702,954 |

*See accompanying notes.*

**Harcourt Austin Building**

**Notes to Statements of Revenues Over Certain Operating Expenses**

For the year ended December 31, 2001 and the six months ended June 30, 2002 (unaudited)

## 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

### Description of Real Estate Property Acquired

On August 15, 2002, the Wells Operating Partnership, L.P. ("Wells OP') acquired the Harcourt Austin Building from Carr Development & Construction, LP ("Carr"). Wells OP is a Delaware limited partnership formed to acquire, own, lease, operate, and manage real properties on behalf of Wells Real Estate Investment Trust, Inc., a Maryland corporation. As the sole general partner of Wells OP, Wells Real Estate Investment Trust, Inc. possesses full legal control and authority over the operations of Wells OP.

Harcourt, Inc. ("Harcourt") currently occupies the entire 195,230 rentable square feet of the seven-story office building under a lease agreement (the "Harcourt Lease"). Harcourt is a Delaware corporation owned equally by Reed Elsevier PLC and Reed Elsevier NV whose shares are traded on the New York Stock Exchange. Carr's interest in the Harcourt Lease was assigned to Wells OP upon acquisition of the building. The initial term of the Harcourt Lease commenced in July 2001 and expires in June 2016. Under the Harcourt Lease, Harcourt is required to pay, as additional rent, all operating costs, including but not limited to electricity, water, sewer, insurance, taxes and a management fee not to exceed 3.5% of rent. Furthermore, Harcourt will be required to reimburse the landlord for costs of capital improvements that are intended to reduce operating costs or improve safety and any replacement or capital repairs to the Building's HVAC systems. Wells OP will be responsible for maintaining and repairing the Building's roof, structural elements and mechanical systems.

### Rental Revenues

Rental income is recognized on a straight-line basis over the term of the lease. The accompanying statements of revenues over certain operating expenses include rental revenues from the date of commencement of the Harcourt Lease in July 2001.

## 2. BASIS OF ACCOUNTING

The accompanying statements of revenues over certain operating expenses are presented in conformity with accounting principles generally accepted in the United States and in accordance with the applicable rules and regulations of the Securities and Exchange Commission for real estate properties acquired. Accordingly, these statements exclude certain historical expenses that are not comparable to the proposed future operations of the property such as depreciation and interest. Therefore, these statements are not comparable to the statement of operations of the Harcourt Austin Building after its acquisition by Wells OP.

**Notes to Statements of Revenues Over Certain Operating Expenses**
**(Continued)**

## 3. FUTURE MINIMUM RENTAL COMMITMENTS

Future minimum rental commitments for the years ended December 31 are as follows:

| | |
|---|---|
| 2002 | $ 3,104,157 |
| 2003 | 3,104,157 |
| 2004 | 3,104,157 |
| 2005 | 3,104,157 |
| 2006 | 3,314,029 |
| Thereafter | 35,819,824 |
| | $ 51,550,481 |

## 4. INTERIM UNAUDITED FINANCIAL INFORMATION

The financial statement for the six months ended June 30, 2002 is unaudited, however in the the opinion of management, all adjustments (consisting solely of normal, recurring adjustments) necessary for the fair presentation of the financial statement for the interim period have been included. The results of the interim period are not necessarily indicative of the results to be obtained for a full fiscal year.

**Report of Independent Auditors**

Shareholders and Board of Directors
Wells Real Estate Investment Trust, Inc.

We have audited the accompanying statement of revenues over certain operating expenses of the IRS Long Island Buildings (the "Buildings") for the year ended December 31, 2001. This statement is the responsibility of the Buildings' management. Our responsibility is to express an opinion on this statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement of revenues over certain operating expenses is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of revenues over certain operating expenses. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the statement of revenues over certain operating expenses. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statement of revenues over certain operating expenses was prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission, as described in Note 2, and is not intended to be a complete presentation of the Buildings' revenues and expenses.

In our opinion, the statement of revenues over certain operating expenses referred to above presents fairly, in all material respects, the revenues and certain operating expenses described in Note 2 of the IRS Long Island Buildings for the year ended December 31, 2001 in conformity with accounting principles generally accepted in the United States.

/s/ ERNST & YOUNG LLP

Atlanta, Georgia
September 26, 2002

**IRS Long Island Buildings**

**Statements of Revenues Over Certain Operating Expenses**

Year ended December 31, 2001 and the six months ended June 30, 2002 (unaudited)

| | 2002 | 2001 |
|---|---|---|
| | (Unaudited) | |
| Rental revenues | $ 3,106,658 | $ 4,665,840 |
| Operating expenses, net of reimbursements | 641,803 | 745,258 |
| Revenues over certain operating expenses | $ 2,464,855 | $ 3,920,582 |

*See accompanying notes.*

**IRS Long Island Buildings**

**Notes to Statements of Revenues Over Certain Operating Expenses**

Year ended December 31, 2001 and the six months ended June 30, 2002 (unaudited)

## 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

### Description of Real Estate Property Acquired

On September 13, 2002, Wells REIT—Holtsville, NY, LLC (the "Company") acquired the IRS Long Island Buildings (the "Buildings") from HIRS Associates, LLC ("HIRS"). The Company, a Georgia limited liability company, was created on September 10, 2002 by the Wells Operating Partnership, L.P. ("Wells OP') as the sole member of the Company. Wells OP is a Delaware limited partnership formed to acquire, own, lease, operate, and manage real properties on behalf of Wells Real Estate Investment Trust, Inc., a Maryland corporation. As the sole general partner of Wells OP, Wells Real Estate Investment Trust, Inc. possesses full legal control and authority over the operations of Wells OP.

The United States of America, through the U.S. General Services Administration ("GSA"), currently leases 191,049 of the total 259,700 rentable square feet on behalf of the Internal Revenue Service under three leases (the "IRS Collection Lease", the "IRS Compliance Lease" and the "IRS Daycare Facility Lease", collectively, the "IRS Leases"). The GSA is a centralized federal procurement and property management agency created by Congress to improve government efficiency and effectiveness. GSA acquires on the government's behalf, the office space, equipment, telecommunications, information technology, supplies and services they need to achieve their agency's mission of services to the public. HIRS's interests in the GSA Leases were assigned to Wells OP upon acquisition of the Buildings. The IRS Collection Lease commenced in August 2000 and expires in August 2005. The IRS Compliance Lease commenced in December 2001 and expires in December 2011. The IRS Daycare Facility Lease commenced in October 1999 and expires in September 2004. Under the IRS Leases, beginning in the second lease year and each year after, the tenant will pay, as adjusted rent, changes in costs from the first lease year for cleaning services, supplies, materials, maintenance, trash removal, landscaping, sewer charges and certain administrative expenses attributable to occupancy. The amount of the adjustment will be computed using the Cost of Living Index. Wells OP will be responsible for maintaining and repairing the Buildings' roof, structural elements and mechanical systems.

If the Company secures an additional lease with the IRS or another suitable tenant for the remaining 68,651 square feet of vacant space in the Buildings within 18 months, the Company would owe an additional amount of up to $14,500,000 as additional purchase price for the Buildings pursuant to the terms of an earnout agreement entered into between the Company and HIRS at closing.

### Rental Revenues

Rental income is recognized on a straight-line basis over the term of the lease.

## 2. BASIS OF ACCOUNTING

The accompanying statements of revenues over certain operating expenses are presented in conformity with accounting principles generally accepted in the United States and in accordance with the applicable rules and regulations of the Securities and Exchange Commission for real estate properties acquired.

**Notes to Statements of Revenues Over Certain Operating Expenses**
**(Continued)**

Accordingly, these statements exclude certain historical expenses that are not comparable to the proposed future operations of the property such as depreciation, interest, and management fees. Therefore, these statements are not comparable to the statement of operations of the Buildings after its acquisition by Wells OP.

**3. FUTURE MINIMUM RENTAL COMMITMENTS**

Future minimum rental commitments for the years ended December 31 are as follows:

| | |
|---|---|
| 2002 | $ 6,761,367 |
| 2003 | 6,256,896 |
| 2004 | 4,843,722 |
| 2005 | 3,305,530 |
| 2006 | 1,663,200 |
| Thereafter | 8,316,000 |
| | $ 31,146,715 |

**4. INTERIM UNAUDITED FINANCIAL INFORMATION**

The financial statement for the six months ended June 30, 2002 is unaudited, however in the the opinion of management, all adjustments (consisting solely of normal, recurring adjustments) necessary for the fair presentation of the financial statement for the interim period have been included. The results of the interim period are not necessarily indicative of the results to be obtained for a full fiscal year.

**Report of Independent Auditors**

Board of Directors and Stockholders
Wells Real Estate Investment Trust, Inc.

We have audited the accompanying statement of revenues over certain operating expenses of the KeyBank Parsippany Building (the "Building") for the year ended December 31, 2001. This statement is the responsibility of the Building's management. Our responsibility is to express an opinion on this statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement of revenues over certain operating expenses is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of revenues over certain operating expenses. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the statement of revenues over certain operating expenses. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statement of revenues over certain operating expenses was prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission, as described in Note 2, and is not intended to be a complete presentation of the Building's revenues and expenses.

In our opinion, the statement of revenues over certain operating expenses referred to above presents fairly, in all material respects, the revenues and certain operating expenses described in Note 2 of the KeyBank Parsippany Building for the year ended December 31, 2001, in conformity with accounting principles generally accepted in the United States.

/S/ ERNST & YOUNG LLP

New York, New York
January 31, 2002

**KeyBank Parsippany**

**Statements of Revenues Over Certain Operating Expenses**
*(Amounts in thousands)*

| | Six Months Ended June 30, 2002 | Year Ended December 31, 2001 |
|---|---|---|
| | (Unaudited) | |
| Revenues: | | |
| Base rent | **$ 5,089** | $ 9,421 |
| Tenant reimbursements | **1,117** | 1,833 |
| Total revenues | **6,206** | 11,254 |
| Operating expenses | **1,522** | 3,159 |
| Revenues over certain operating expenses | **$ 4,684** | $ 8,095 |

*See accompanying notes.*

**KeyBank Parsippany**

**Notes to Statements of Revenues Over Certain Operating Expenses**
**For the year ended December 31, 2001 and the six months ended**
**June 30, 2002 (Unaudited)**
*(Amounts in thousands)*

## 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

### Description of Real Estate Property Acquired

On September 27, 2002, the Wells Operating Partnership acquired the KeyBank Parsippany Building (the "Building"), a 404,515 square foot office building in Parsippany, New Jersey, from Two Gatehall Acquisition, L.L.C. and Asset Preservation, Inc. (collectively the "Seller").

At December 31, 2001, the Building was 100% leased to two tenants, Exodus Communications, Inc. ("Exodus") and KeyBank USA National Association, under operating leases that were both executed in 2000. Both operating leases expire over the next 15 years.

Exodus filed bankruptcy in 2001. On January 17, 2002, the Exodus lease was assigned to Gemini Technology Services, Inc., an affiliate of Deutsche Bank, AG. Deutsche Bank, AG assumed all of the obligations of Exodus under the lease.

The lease agreements provide for certain reimbursements of real estate taxes, insurance and certain common area maintenance costs.

### Revenue Recognition

Rental revenue is recognized on a straight-line basis over the initial term of the lease. The excess of rents so recognized over amounts contractually due pursuant to the underlying leases for the six months ended June 30, 2002 and the year ended December 31, 2001 was $326 (unaudited) and $3,279, respectively. Such amounts are included in rental and reimbursement revenues in the accompanying financial statements.

### Use of Estimates

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

## 2. BASIS OF ACCOUNTING

The accompanying statements of revenues over certain operating expenses are presented in conformity with accounting principles generally accepted in the United States and in accordance with the applicable rules and regulations of the Securities and Exchange Commission for real estate properties acquired. Accordingly, these statements exclude certain historical expenses that are not comparable to the proposed future operations of the Building such as depreciation and interest.

**3. LEASE AGREEMENTS**

The minimum rental receipts due on the noncancelable operating leases as of December 31, 2001 are as follows:

| | | |
|---|---|---|
| 2002 | $ | 9,526 |
| 2003 | | 9,526 |
| 2004 | | 9,526 |
| 2005 | | 9,526 |
| 2006 | | 10,464 |
| Thereafter | | 88,139 |
| | $ | 136,707 |

Reimbursement revenue was $1,117 (unaudited) and $1,833 for the six months ended June 30, 2002 and the year ended December 31, 2001, respectively.

**4. RELATED PARTY TRANSACTIONS**

Pursuant to a management agreement, an affiliate of the Seller has responsibilities of property management and leasing of the Building.

**5. INTERIM UNAUDITED FINANCIAL INFORMATION**

The financial statement for the six months ended June 30, 2002 is unaudited, however, in the opinion of management, all adjustments (consisting solely of normal, recurring adjustments) necessary for the fair presentation of the financial statement for the interim period have been included. The results of the interim period are not necessarily indicative of the results to be obtained for a full fiscal year.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**SUMMARY OF UNAUDITED PRO FORMA FINANCIAL STATEMENTS**

This pro forma information should be read in conjunction with the financial statements and notes of Wells Real Estate Investment Trust, Inc. included in its annual report on Form 10-K for the year ended December 31, 2001 and quarterly report on Form 10-Q for the period ended June 30, 2002. In addition, this pro forma information should be read in conjunction with the financial statements and notes of certain acquired properties included in various Form 8-Ks previously filed.

The following unaudited pro forma balance sheet as of June 30, 2002 has been prepared to give effect to the third quarter 2002 acquisitions of the ISS Atlanta Buildings, the PacifiCare San Antonio Building, the Kerr McGee Property, the BMG Greenville Buildings, the Kraft Atlanta Building, the Nokia Dallas Buildings (the "Other Recent Acquisitions"), the Harcourt Austin Building, the AmeriCredit Phoenix Property, the IRS Long Island Buildings, the KeyBank Parsippany Building, the Allstate Indianapolis Building, the Federal Express Colorado Springs Building, the EDS Des Moines Building, the Intuit Dallas Building and the Daimler Chrysler Dallas Building (collectively, the "Recent Acquisitions") by Wells OP as if the acquisitions occurred on June 30, 2002.

The following unaudited pro forma statement of income for the six months ended June 30, 2002 has been prepared to give effect to the first and second quarter 2002 acquisitions of the Arthur Andersen Building, the Transocean Houston Building, Novartis Atlanta Building, the Dana Corporation Buildings, the Travelers Express Denver Buildings, the Agilent Atlanta Building, the BellSouth Ft. Lauderdale Building, the Experian/TRW Buildings, the Agilent Boston Building, the TRW Denver Building, the MFS Phoenix Building (collectively, the "2002 Acquisitions") and the Recent Acquisitions as if the acquisitions occurred on January 1, 2001. The Kerr McGee Property and the AmeriCredit Phoenix Property had no operations during the six months ended June 30, 2002.

The following unaudited pro forma statement of income for the year ended December 31, 2001 has been prepared to give effect to the 2001 acquisitions of the Comdata Building, the AmeriCredit Building, the State Street Bank Building, the IKON Buildings, the Ingram Micro Building, the Lucent Building, the ADIC Buildings, the Convergys Building, the Windy Point Buildings (collectively, the "2001 Acquisitions"), the 2002 Acquisitions and the Recent Acquisitions as if the acquisitions occurred on January 1, 2001. The Nissan Property, the Travelers Express Denver Buildings, the Kerr McGee Property, the AmeriCredit Phoenix Property and the EDS Des Moines Building had no operations during 2001.

Wells OP is a Delaware limited partnership that was organized to own and operate properties on behalf of the Wells Real Estate Investment Trust, Inc., a Maryland corporation. As the sole general partner of Wells OP, Wells Real Estate Investment Trust, Inc. possesses full legal control and authority over the operations of Wells OP. Accordingly, the accounts of Wells OP are consolidated with the accompanying pro forma financial statements of Wells Real Estate Investment Trust, Inc.

These unaudited pro forma financial statements are prepared for informational purposes only and are not necessarily indicative of future results or of actual results that would have been achieved had the acquisitions of the 2001 Acquisitions, 2002 Acquisitions and the Recent Acquisitions been consummated as of January 1, 2001.

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**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**PRO FORMA BALANCE SHEET**

**JUNE 30, 2002**

**(Unaudited)**

**ASSETS**

| | | Pro Forma Adjustments | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Recent Acquisitions | | | | | | | | | | |
| | Wells Real Estate Investment Trust, Inc.(i) | Other | Harcourt Austin | AmeriCredit Phoenix | IRS Long Island | KeyBank Parsippany | Allstate Indianapolis | Federal Express Colorado Springs | EDS Des Moines | Intuit Dallas | Daimler Chrysler Dallas | Pro Forma Total |
| **REAL ESTATE ASSETS, at cost:** | | | | | | | | | | | | |
| Land | $ 110,330,449 | $ 20,288,044(a) | $ 5,860,000(a) | $ 2,671,324(a) | $ 4,200,000(a) | $ 8,700,000(a) | $ 1,275,000(a) | $ 2,100,000(a) | $ 850,000(a) | $ 3,030,000(a) | $ 2,585,000(a) | $ 163,989,961 |
| | | 825,675(b) | 238,488(b) | 108,717(b) | 174,724(b) | 353,694(b) | 51,753(b) | 85,465(b) | 34,593(b) | 123,314(b) | 103,721(b) | |
| Buildings, less accumulated depreciation of $37,717,737 | 689,490,969 | 195,198,843(a) | 33,143,323(a) | 0 | 46,287,120(a) | 92,943,893(a) | 9,679,933(a) | 23,987,714(a) | 25,727,376(a) | 23,639,654(a) | 22,587,753(a) | 1,181,968,343 |
| | | 7,944,138(b) | 1,348,856(b) | 0 | 1,925,583(b) | 3,778,591(b) | 392,914(b) | 976,244(b) | 1,047,044(b) | 962,079(b) | 906,316(b) | |
| Construction in progress | 16,081,841 | 379,901(a) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 16,461,742 |
| Total real estate assets | 815,903,259 | 224,636,601 | 40,590,667 | 2,780,041 | 52,587,427 | 105,776,178 | 11,399,600 | 27,149,423 | 27,659,013 | 27,755,047 | 26,182,790 | 1,362,420,046 |
| **CASH AND CASH EQUIVALENTS** | 341,909,775 | (203,990,460)(a) | (39,003,323)(a) | (2,671,324)(a) | (51,454,530)(a) | (101,643,893)(a) | (10,954,933)(a) | (26,087,714)(a) | (26,577,376)(a) | (26,669,654)(a) | 25,128,513)(a) | 185,098,497 |
| | | 365,329,012(c) | | 4,827,945(h) | | | | | | | | |
| | | (12,786,515)(e) | | | | | | | | | | |
| **INVESTMENT IN JOINT VENTURES** | 76,217,870 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 76,217,870 |
| **INVESTMENT IN BONDS** | 22,000,000 | 32,500,000(e) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 54,500,000 |
| **ACCOUNTS RECEIVABLE** | 10,709,104 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10,709,104 |
| **DEFERRED LEASE ACQUISITION COSTS, NET** | 1,790,608 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,790,608 |
| **DEFERRED PROJECT COSTS** | 14,314,914 | (8,769,813)(b) | (1,587,344)(b) | (108,717)(b) | (2,100,307)(b) | (4,132,285)(b) | (444,667)(b) | (1,061,709)(b) | (1,081,637)(b) | (1,085,393)(b) | (1,010,037)(b) | 5,719,520 |
| | | 12,786,515(e) | | | | | | | | | | |
| **DEFERRED OFFERING COSTS** | 1,392,934 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,392,934 |
| **DUE FROM AFFILIATES** | 1,897,309 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,897,309 |
| **NOTE RECEIVABLE** | 5,149,792 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5,149,792 |
| **PREPAID EXPENSES AND OTHER ASSETS, NET** | 1,881,308 | 0 | 0 | 0 | 967,410(g) | 0 | 0 | 0 | 0 | 0 | 0 | 2,848,718 |
| Total assets | $1,293,166,873 | $ 409,705,340 | $ 0 | $ 4,827,945 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 44,240 | $1,707,744,398 |

## LIABILITIES AND SHAREHOLDERS' EQUITY

| | Wells Real Estate Investment Trust, Inc. (i) | Pro Forma Adjustments | | | | | | | | | | Pro Forma Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Recent Acquisitions | | | | | | | | | | |
| | | Other | Harcourt Austin | AmeriCredit Phoenix | IRS Long Island | KeyBank Parsippany | Allstate Indianapolis | Federal Express Colorado Springs | EDS Des Moines | Intuit Dallas | Daimler Chrysler Dallas | |
| **LIABILITIES:** | | | | | | | | | | | | |
| Accounts payable and accrued expenses | $ 11,840,214 | $ 173,567(a) | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 44,240(a) | $ 12,058,021 |
| Notes payable | 15,658,141 | 11,702,761(a) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 27,360,902 |
| Obligations under capital lease | 22,000,000 | 32,500,000(f) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 54,500,000 |
| Dividends payable | 4,538,635 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4,538,635 |
| Due to affiliates | 2,106,790 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2,106,790 |
| Deferred rental income | 1,013,544 | 0 | 0 | 4,827,945(h) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5,841,489 |
| Total liabilities | 57,157,324 | 44,376,328 | 0 | 4,827,945 | 0 | 0 | 0 | 0 | 0 | 0 | 44,240 | 106,405,837 |
| **COMMITMENTS AND CONTINGENCIES** | | | | | | | | | | | | |
| **MINORITY INTEREST OF UNIT HOLDER IN OPERATING PARTNERSHIP** | 200,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 200,000 |
| **SHAREHOLDERS' EQUITY:** | | | | | | | | | | | | |
| Common shares, $.01 par value; 125,000,000 shares authorized, 145,589,053 shares issued and 144,366,772 outstanding at June 30, 2002 | 1,455,890 | 365,329(c) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,821,219 |
| Additional paid-in capital | 1,290,858,515 | 364,963,683(c) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,655,822,198 |
| Cumulative distributions in excess of earnings | (43,991,669) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | (43,991,669) |
| Treasury stock, at cost, 1,222,381 shares | (12,223,808) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | (12,223,808) |
| Other comprehensive loss | (289,379) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | (289,379) |
| Total shareholders' equity | 1,235,809,549 | 365,329,012 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,601,138,561 |
| Total liabilities and shareholders' equity | $1,293,166,873 | $409,705,340 | $ 0 | $ 4,827,945 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 44,240 | $1,707,744,398 |

(a) Reflects Wells Real Estate Investment Trust, Inc.'s purchase price for the land, building and liabilities assumed.

(b) Reflects deferred project costs applied to the land and building at approximately 4.07% of the cash paid for purchase.

(c) Reflects capital raised through issuance of additional shares subsequent to June 30, 2002 through Daimler Chrysler acquisition date.

(d) Reflects deferred project costs capitalized as a result of additional capital raised described in note (c) above.

(e) Reflects investment in bonds for which 100% of the principal balance becomes payable on December 1, 2015.

(f) Reflects mortgage note secured by the Deed of Trust to the ISS Atlanta Buildings for which 100% of the principal balance becomes payable on December 1, 2015.

(g) Reflects portion of purchase price placed in escrow to ensure completion of seller repairs.

(h) Reflects prepaid rent received for the three years of the AmeriCredit lease agreement.

(i) Historical financial information derived from quarterly report on Form 10-Q.

The accompanying notes are an integral part of this statement.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**PRO FORMA STATEMENT OF INCOME**

**FOR THE YEAR ENDED DECEMBER 31, 2001**

**(Unaudited)**

| | | Pro Forma Adjustments | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Recent Acquisitions | | | | | | | | |
| | Wells Real Estate Investment Trust, Inc. (f) | 2001 Acquisitions | 2002 Acquisitions | Other | Harcourt Austin | IRS Long Island | KeyBank Parsippany | Allstate Indianapolis | Federal Express Colorado Springs | Intuit Dallas | Daimler Chrysler Dallas | Pro Forma Totals |
| **REVENUES:** | | | | | | | | | | | | |
| Rental income | $ 44,204,279 | $ 11,349,076(a) | $ 14,846,431(a) | $20,937,018(a) | $1,770,085(a) | $4,605,406(a) | $ 9,650,085(a) | $ 18,708(a) | $ 1,210,670(a) | $1,292,500(a) | $ 284,617(a) | $110,168,875 |
| Equity in income of joint ventures | 3,720,959 | 1,111,850(b) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4,832,809 |
| Interest income | 1,246,064 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,246,064 |
| Take out fee | 137,500 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 137,500 |
| | 49,308,802 | 12,460,926 | 14,846,431 | 20,937,018 | 1,770,085 | 4,605,406 | 9,650,085 | 18,708 | 1,210,670 | 1,292,500 | 284,617 | 116,385,248 |
| **EXPENSES:** | | | | | | | | | | | | |
| Depreciation | 15,344,801 | 5,772,761(c) | 5,356,374(c) | 7,783,213(c) | 689,844(c) | 1,928,508(c) | 3,868,899(c) | 100,728(c) | 499,279(c) | 492,035(c) | 78,314(c) | 41,914,756 |
| Interest | 3,411,210 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3,411,210 |
| Operating costs, net of reimbursements | 4,128,883 | 2,854,275(d) | 1,505,269(d) | 5,452(d) | 0 | 814,339(d) | 1,326,000(d) | 2,962(d) | 0 | 0 | 14,321(d) | 10,651,501 |
| Management and leasing fees | 2,507,188 | 510,708(e) | 668,090(e) | 942,165(e) | 79,654(e) | 0 | 434,254(e) | 842(e) | 54,480(e) | 58,163(e) | 12,808(e) | 5,268,352 |
| General and administrative | 973,785 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 973,785 |
| Amortization of deferred financing costs | 770,192 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 770,192 |
| Legal and accounting | 448,776 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 448,776 |
| | 27,584,835 | 9,137,744 | 7,529,733 | 8,730,830 | 769,498 | 2,742,847 | 5,629,153 | 104,532 | 553,759 | 550,198 | 105,443 | 63,438,572 |
| **NET INCOME** | $ 21,723,967 | $ 3,323,182 | $ 7,316,698 | $12,206,188 | $1,000,587 | $1,862,559 | $ 4,020,932 | $ (85,824) | $ 656,911 | $ 742,302 | $ 179,174 | $ 52,946,676 |
| **EARNINGS PER SHARE, basic and diluted** | $ 0.43 | | | | | | | | | | | $ 0.29 |
| **WEIGHTED AVERAGE SHARES, basic and diluted** | 50,520,853 | | | | | | | | | | | 180,899,673 |

(a) Rental income is recognized on a straight-line basis.

(b) Reflects Wells Real Estate Investment Trust, Inc.'s equity in income of Wells XII-REIT Joint Venture related to the acquisition of the Comdata Building and equity in income of Wells XIII-REIT Joint Venture related to the acquisition of the AmeriCredit Building and the ADIC Building.

(c) Depreciation expense on the buildings is recognized using the straight-line method and a 25-year life.

(d) Consists of operating expenses, net of reimbursements.

(e) Management and leasing fees are calculated at 4.5% of rental income.

(f) Historical financial information derived from annual report on Form 10-K.

The accompanying notes are an integral part of this statement.

**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

**PRO FORMA STATEMENT OF INCOME**

**FOR THE SIX MONTHS ENDED JUNE 30, 2002**

**(Unaudited)**

| | | Pro Forma Adjustments | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Recent Acquisitions | | | | | | | | | |
| | Wells Real Estate Investment Trust, Inc. (e) | 2002 Acquisitions | Other | Harcourt Austin | IRS Long Island | KeyBank Parsippany | Allstate Indianapolis | Federal Express Colorado Springs | EDS Des Moines | Intuit Dallas | Daimler Chrysler Dallas | Pro Forma Total |
| **REVENUES:** | | | | | | | | | | | | |
| Rental income | $ 38,571,815 | $ 7,307,774(a) | $11,110,788(a) | $1,770,085(a) | $ 3,076,351(a) | $ 5,172,857(a) | $ 463,071(a) | $ 1,210,670(a) | $ 456,549(a) | $1,292,500(a) | $ 1,707,699(a) | $ 72,140,159 |
| Equity in income of joint ventures | 2,478,686 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2,478,686 |
| Interest income | 2,648,351 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2,648,351 |
| Take out fee | 134,102 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 134,102 |
| | 43,832,954 | 7,307,774 | 11,110,788 | 1,770,085 | 3,076,351 | 5,172,857 | 463,071 | 1,210,670 | 456,549 | 1,292,500 | 1,707,699 | 77,401,298 |
| **EXPENSES:** | | | | | | | | | | | | |
| Depreciation | 12,903,282 | 2,588,546(b) | 4,062,859(b) | 689,844(b) | 964,254(b) | 1,934,450(b) | 201,457(b) | 499,279(b) | 178,496(b) | 492,035(b) | 469,881(b) | 24,984,383 |
| Interest | 880,002 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 880,002 |
| Operating costs, net of reimbursements | 2,063,997 | 300,018(c) | 79,067(c) | 0 | 687,948(c) | 405,000(c) | 34,940(c) | 0 | 0 | 0 | 317,939(c) | 3,888,909 |
| Management and leasing fees | 1,903,082 | 328,850(d) | 499,985(d) | 79,654(d) | 0 | 232,779(d) | 20,838(d) | 54,480(d) | 20,545(d) | 58,163(d) | 76,846(d) | 3,275,222 |
| General and administrative | 1,121,457 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,121,457 |
| Amortization of deferred financing costs | 424,992 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 424,992 |
| | 19,296,812 | 3,217,414 | 4,641,911 | 769,498 | 1,652,202 | 2,572,229 | 257,235 | 553,759 | 199,041 | 550,198 | 864,666 | 34,574,965 |
| **NET INCOME** | $ 24,536,142 | $ 4,090,360 | $ 6,468,877 | $1,000,587 | $ 1,424,149 | $ 2,600,628 | $ 205,836 | $ 656,911 | $ 257,508 | $ 742,302 | $ 843,033 | $ 42,826,333 |
| **EARNINGS PER SHARE, basic and diluted** | $ 0.22 | | | | | | | | | | | $ 0.24 |
| **WEIGHTED AVERAGE SHARES, basic and diluted** | 110,885,641 | | | | | | | | | | | 180,899,673 |

(a) Rental income is recognized on a straight-line basis.

(b) Depreciation expense on the buildings is recognized using the straight-line method and a 25-year life.

(c) Consists of operating expenses, net of reimbursements.

(d) Management and leasing fees are calculated at 4.5% of rental income.

(e) Historical financial information derived from quarterly report on Form 10-Q.

The accompanying notes are an integral part of this statement.

## PART II

## INFORMATION NOT REQUIRED IN PROSPECTUS

Items 31 through 35 and Item 37 of Part II are incorporated by reference to the Registrant's Registration Statement, as amended to date, Commission File No. 333-85848

Item 36 *Financial Statements and Exhibits.*

(a) *Financial Statements:*

The following financial statements of Registrant are filed as part of this Registration Statement and included in the Prospectus:

*Audited Financial Statements*

(1) Report of Independent Public Accountants,

(2) Consolidated Balance Sheets as of December 31, 2001 and December 31, 2000,

(3) Consolidated Statements of Income for the years ended December 31, 2001, 2000 and 1999,

(4) Consolidated Statements of Shareholders' Equity for the years ended December 31, 2001, 2000 and 1999,

(5) Consolidated Statements of Cash Flows for the years ended December 31, 2001, 2000 and 1999, and

(6) Notes to Consolidated Financial Statements.

*Unaudited Financial Statements*

(1) Schedule III–Real Estate Investments and Accumulated Depreciation as of December 31, 2001,

(2) Consolidated Balance Sheets as of March 31, 2002 and December 31, 2001,

(3) Consolidated Statements of Income for the three months ended March 31, 2002 and March 31, 2001,

(4) Consolidated Statements of Shareholders' Equity for the year ended December 31, 2001 and for the three months ended March 31, 2002,

(5) Consolidated Statements of Cash Flows for the three months ended March 31, 2002 and March 31, 2001, and

(6) Condensed Notes to Consolidated Financial Statements March 31, 2002

The following financial statements of the Registrant are filed as part of this Registration Statement and included in Supplement No. 1 to the Prospectus:

*Unaudited Financial Statements*

(1) Consolidated Balance Sheets as of June 30, 2002 and December 31, 2001,

(2) Consolidated Statements of Income for the three months ended June 30, 2002 and June 30, 2001 and for the six months ended June 30, 2002 and June 30, 2001,

(3) Consolidated Statements of Shareholders' Equity for the year ended December 31, 2001 and for the six months ended June 30, 2002,

(4) Consolidated Statements of Cash Flows for the six months ended June 30, 2002 and June 30, 2001, and

(5) Condensed Notes to Consolidated Financial Statements.

The following unaudited pro forma financial statements of the Registrant are filed as part of this Registration Statement and included in Supplement No. 1 to the Prospectus:

(1) Summary of Unaudited Pro Forma Financial Statements,

(2) Pro Forma Balance Sheet as of June 30, 2002,

(3) Pro Forma Statement of Income for the year ended December 31, 2001, and

(4) Pro Forma Statement of Income for the six months ended June 30, 2002.

The following unaudited pro forma financial statements of the Registrant are filed as part of this Registration Statement and included in Supplement No. 2 to the Prospectus:

(1) Summary of Unaudited Pro Forma Financial Statements,

(2) Pro Forma Balance Sheet as of June 30, 2002,

(3) Pro Forma Statement of Income for the year ended December 31, 2001, and

(4) Pro Forma Statement of Income for the six months ended June 30, 2002.

The following financial statements relating to the acquisition of the Harcourt Austin Building are filed as part of this Registration Statement and included in Supplement No. 3 to the Prospectus:

(1) Report of Independent Auditors.

(2) Statements of Revenues over Certain Operating Expenses for the year ended December 31, 2001 (audited) and the six months ended June 30, 2002 (unaudited) and

(3) Notes to Statements of revenues over Certain Operating Expenses for the year ended December 31, 2001 (audited) and the six months ended June 30, 2002 (unaudited).

The following financial statements relating to the acquisition of the IRS Long Island Buildings are filed as part of this Registration Statement and included in Supplement No. 3 to the Prospectus:

(1) Report of Independent Auditors,

(2) Statements of Revenues over Certain Operating Expenses for the year ended December 31, 2001 (audited) and the six months ended June 30, 2002 (unaudited), and

(3) Notes to Statements of Revenues over Certain Operating Expenses for the year ended December 31, 2001 (audited) and the six months ended June 30, 2002 (unaudited).

The following financial statements relating to the acquisition of the KeyBank Parsippany Building are filed as part of this Registration Statement and included in Supplement No. 3 to the Prospectus:

(1) Report of Independent Auditors,

(2) Statements of Revenues over Certain Operating Expenses for the year ended December 31, 2001 (audited) and the six months ended June 30, 2002 (unaudited), and

(3) Notes to Statements of Revenues over Certain Operating Expenses for the year ended December 31, 2001 (audited) and the six months ended June 30, 2002 (unaudited).

The following unaudited pro forma financial statements of the Registrant are filed as part of this Registration Statement and included in Supplement No. 3 to the Prospectus:

(1) Summary of Unaudited Pro Forma Financial Statements,

(2) Pro Forma Balance Sheet as of June 30, 2002,

(3) Pro Forma Statement of Income for the year ended December 31, 2001, and

(4) Pro Forma Statement of Income for the six months ended June 30, 2002.

(b) *Exhibits (See Exhibit Index):*

| Exhibit No. | Description |
|---|---|
| 1.1 | Form of Dealer Manager Agreement (previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on June 10, 2002) |
| 1.2 | Form of Warrant Purchase Agreement (previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on June 10, 2002) |
| 3.1 | Amended and Restated Articles of Incorporation dated as of July 1, 2000 (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on August 31, 2000) |
| 3.2 | Articles of Amendment to Amended and Restated Articles of Incorporation dated as June 26, 2002 (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 3.3 | Bylaws (previously filed in and incorporated by reference to Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on January 23, 1998) |
| 3.4 | Amendment No. 1 to Bylaws (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on April 15, 1999) |
| 4.1 | Form of Subscription Agreement and Subscription Agreement Signature Page (included as Exhibit A to Prospectus) |
| 5.1 | Opinion of Holland & Knight LLP as to legality of securities (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 8.1 | Opinion of Holland & Knight LLP as to tax matters (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 8.2 | Opinion of Holland & Knight LLP as to ERISA matters (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 10.1 | Advisory Agreement dated January 30, 2002 (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on April 8, 2002) |
| 10.2 | Amended and Restated Property Management and Leasing Agreement among Registrant, Wells Operating Partnership, L.P. and Wells Management Company, Inc. (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.3 | Amended and Restated Joint Venture Agreement of The Fund IX, Fund X, Fund XI and REIT Joint Venture (previously filed in and incorporated by reference to Post-Effective Amendment No. 2 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on July 9, 1998) |
| 10.4 | Joint Venture Agreement of Wells/Fremont Associates (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on August 14, 1998) |

| | |
|---|---|
| 10.5 | Joint Venture Agreement of Wells/Orange County Associates (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on August 14, 1998) |
| 10.6 | Amended and Restated Joint Venture Partnership Agreement of The Wells Fund XI-Fund XII – REIT Joint Venture (previously filed in and incorporated by reference to Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on November 17, 1999) |
| 10.7 | Joint Venture Partnership Agreement of Wells Fund XII-REIT Joint Venture Partnership (previously filed as Exhibit 10.11 and incorporated by reference to Post-Effective Amendment No. 2 to Form S-11 Registration Statement of Wells Real Estate Fund XII, L.P. on Form S-11, Commission File No. 33-66657, filed on April 25, 2000) |
| 10.8 | Joint Venture Partnership Agreement of Fund VIII-IX-REIT Joint Venture (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on August 31, 2000) |
| 10.9 | Joint Venture Partnership Agreement of Wells Fund XIII-REIT Joint Venture Partnership (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on July 23, 2001) |
| 10.10 | Agreement of Limited Partnership of Wells Operating Partnership, L.P. as Amended and Restated as of January 1, 2000 (previously filed in and incorporated by reference to Form 10-K of Registrant for the fiscal year ended December 31, 2000, Commission File No. 0-25739) |
| 10.11 | Amended and Restated Promissory Note for $15,500,000 for the SouthTrust Loan (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on January 15, 1999) |
| 10.12 | Amendment No. 1 to Mortgage and Security Agreement and other Loan Documents for the PwC Building securing the SouthTrust Loan (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on January 15, 1999) |
| 10.13 | Loan Agreement with SouthTrust Bank, N.A. for a $35,000,000 revolving line of credit dated May 3, 2000 (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on September 8, 2000) |
| 10.14 | Promissory Note for $35,000,000 to SouthTrust Bank, N.A. (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on September 8, 2000) |
| 10.15 | Allonge to Revolving Note relating to the SouthTrust Bank N.A. $32,393,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.16 | First Amendment to Revolving Loan Agreement and Other Loan Documents relating to the SouthTrust Bank N.A. $32,393,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.17 | Second Note Modification Agreement relating to the SouthTrust Bank N.A. $12,844,000 revolving line of credit (previously filed in and incorporated by reference |

to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000)

10.18 Second Amendment to Amended and Restated Loan Agreement and Other Loan Documents relating to the SouthTrust Bank N.A. $12,844,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000)

10.19 Revolving Note relating to the SouthTrust Bank N.A. $19,003,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000)

10.20 Revolving Loan Agreement relating to the SouthTrust Bank N.A. $19,003,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000)

10.21 Amended and Restated Revolving Note relating to the SouthTrust Bank N.A. $7,900,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000)

10.22 Amended and Restated Loan Agreement relating to the SouthTrust Bank N.A. $7,900,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000)

10.23 Revolving Credit Agreement relating to the Bank of America, N.A. $85,000,000 revolving line of credit (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on April 8, 2002)

10.24 Construction Loan Agreement relating to the Bank of America, N.A. $34,200,000 construction loan (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on April 8, 2002)

10.25 Lease for the PwC Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on January 15, 1999)

10.26 Office Lease for the Matsushita Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on April 15, 1999)

10.27 Guaranty of Lease for the Matsushita Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on April 15, 1999)

10.28 Lease Agreement with Cinemark USA, Inc. for a portion of the Cinemark Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on March 15, 2000)

10.29 Lease Agreement with The Coca-Cola Company for a portion of the Cinemark Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on March 15, 2000)

10.30 Lease Agreement for the Motorola Tempe Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 2 to Registrant's

Registration Statement on Form S-11, Commission File No. 333-83933, filed on June 9, 2000)

10.31 First Amendment to Lease Agreement for the Motorola Tempe Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on June 9, 2000)

10.32 Ground Lease Agreement for the Motorola Tempe Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on June 9, 2000)

10.33 Lease Agreement for the Motorola Plainfield Building (previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 1, 2000)

10.34 Lease Agreement with Stone & Webster, Inc. for a portion of the Stone & Webster Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001)

10.35 Lease Agreement with Sysco Corporation for a portion of the Stone & Webster Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001)

10.36 Lease Agreement for the Metris Minnesota Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001)

10.37 Fourth Amendment to Lease Agreement for the Metris Minnesota Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001)

10.38 Guaranty of Lease for the Metris Minnesota Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001)

10.39 Lease Agreement for the Comdata Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on July 23, 2001)

10.40 First Amendment to Lease Agreement for the Comdata Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on July 23, 2001)

10.41 Lease Agreement for the State Street Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001)

10.42 Lease Agreement for the IKON Buildings (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001)

10.43 First Amendment to Lease Agreement for the IKON Buildings (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001)

| | |
|---|---|
| 10.44 | Reinstatement of and Second Amendment to Lease Agreement for the IKON Buildings (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.45 | Agreement of Sale for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.46 | Lease Agreement for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.47 | Guaranty of Lease for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.48 | Development Agreement for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.49 | Design and Build Construction Agreement for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.50 | Indenture of Lease Agreement for Ingram Micro Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.51 | Guaranty of Lease Agreement for Ingram Micro Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.52 | Absolute Assignment of Lease and Assumption Agreement for Ingram Micro Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.53 | Bond Real Property Lease Agreement for the Ingram Micro Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.54 | Second Amendment to Lease Agreement for Matsushita Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.55 | Lease Agreement with TCI Great Lakes, Inc. for a portion of the Windy Point I Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002) |
| 10.56 | First Amendment to Office Lease with TCI Great Lakes, Inc. (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002) |
| 10.57 | Lease Agreement with Zurich American Insurance Company for the Windy Point II Building (previously filed in and incorporated by reference to Post-Effective |

Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002)

10.58 Third Amendment to Office Lease with Zurich American Insurance Company (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002)

10.59 Lease Agreement for the Arthur Andersen Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002)

10.60 Lease Agreement with Transocean Deepwater Offshore Drilling, Inc. for a portion of the Transocean Houston Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 6 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on April 22, 2002)

10.61 Lease Agreement with Newpark Drilling Fluids, Inc. for a portion of the Transocean Houston Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 6 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on April 22, 2002)

10.62 Lease Agreement for the Dana Detroit Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 6 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on April 22, 2002)

10.63 Second Amendment to Lease Agreement for the Dana Detroit Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 6 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on April 22, 2002)

10.64 Lease Agreement for the Dana Kalamazoo Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 6 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on April 22, 2002)

10.65 Second Amendment to Lease Agreement for the Dana Kalamazoo Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 6 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on April 22, 2002)

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| 10.71 | Purchase and Sale Agreement for the TRW Denver Building (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
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| 10.76 | Lease Agreement for the ISS Atlanta Buildings (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 10.77 | Amendment No. 5 to Lease Agreement for the ISS Atlanta Buildings (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 10.78 | Ground Lease Agreement for ISS Atlanta Buildings (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 10.79 | Purchase and Sale Agreement for the Nokia Dallas Buildings |
| 10.80 | Lease Agreement for Building No. 1 of the Nokia Dallas Buildings |
| 10.81 | Amendment to Lease Agreement for Building No. 1 of the Nokia Dallas Buildings |
| 10.82 | Lease Agreement for Building No. 2 of the Nokia Dallas Buildings |
| 10.83 | Amendment to Lease Agreement for Building No. 2 of the Nokia Dallas Buildings |
| 10.84 | Lease Agreement for Building No. 3 of the Nokia Dallas Buildings |
| 10.85 | Amendment to Lease Agreement for Building No. 3 of the Nokia Dallas Buildings |
| 10.86 | Agreement of Sale for the KeyBank Parsippany Building |
| 10.87 | Lease Agreement with KeyBank U.S.A., N.A. for a portion of the KeyBank Parsippany Building |
| 10.88 | Lease Agreement with Gemini Technology Services for a portion of the KeyBank Parsippany Building |
| 10.89 | Amendment to Lease Agreement with Gemini Technology Services for a portion of the KeyBank Parsippany Building |
| 23.1 | Consent of Holland & Knight LLP (included in exhibits 5.1 and 8.1) |
| 23.2 | Consent of Arthur Andersen LLP (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on April 8, 2002) |
| 23.3 | Consent of Ernst & Young LLP |
| 23.4 | Consent of Ernst & Young LLP |
| 24.1 | Power of Attorney |
| 24.2 | Power of Attorney of Michael R. Buchanan |

Table of Contents

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-11 and has duly caused this Post-Effective Amendment No. 1 to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, and State of Georgia, on the 25th day of October, 2002.

WELLS REAL ESTATE INVESTMENT TRUST, INC.
A Maryland corporation
(Registrant)

By: /S/ LEO F. WELLS, III

**Leo F. Wells, III, President**

Pursuant to the requirements of the Securities Act of 1933, this Post-Effective Amendment No. 1 to Registration Statement has been signed below on October 25, 2002 by the following persons in the capacities indicated.

| Name | Title |
|---|---|
| /S/ LEO F. WELLS, III<br>**Leo F. Wells, III** | President and Director<br>(Principal Executive Officer) |
| /S/ DOUGLAS P. WILLIAMS<br>**Douglas P. Williams** | Executive Vice President and Director (Principal Financial and Accounting Officer) |
| /S/ JOHN L. BELL*<br>**John L. Bell (By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ MICHAEL R. BUCHANAN**<br>**Michael R. Buchanan (By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ RICHARD W. CARPENTER*<br>**Richard W. Carpenter (By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ BUD CARTER*<br>**Bud Carter (By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ WILLIAM H. KEOGLER, JR.*<br>**William H. Keogler, Jr. (By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ DONALD S. MOSS*<br>**Donald S. Moss (By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ WALTER W. SESSOMS*<br>**Walter W. Sessoms (By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ NEIL H. STRICKLAND*<br>**Neil H. Strickland (By Douglas P. Williams, as Attorney-in-fact)** | Director |

* By Douglas P. Williams, as Attorney-in-fact, pursuant to Power of Attorney dated April 5, 2002 and included as Exhibit 24.1 herein.
** By Douglas P. Williams, as Attorney-in-fact, pursuant to Power of Attorney dated July 10, 2002 and included as Exhibit 24.2 herein.

## EXHIBIT INDEX

| Exhibit No. | Description |
|---|---|
| 1.1 | Form of Dealer Manager Agreement (previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on June 10, 2002) |
| 1.2 | Form of Warrant Purchase Agreement (previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on June 10, 2002) |
| 3.1 | Amended and Restated Articles of Incorporation dated as of July 1, 2000 (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on August 31, 2000) |
| 3.2 | Articles of Amendment to Amended and Restated Articles of Incorporation dated as June 26, 2002 (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 3.3 | Bylaws (previously filed in and incorporated by reference to Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on January 23, 1998) |
| 3.4 | Amendment No. 1 to Bylaws (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on April 15, 1999) |
| 4.1 | Form of Subscription Agreement and Subscription Agreement Signature Page (included as Exhibit A to Prospectus) |
| 5.1 | Opinion of Holland & Knight LLP as to legality of securities (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 8.1 | Opinion of Holland & Knight LLP as to tax matters (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 8.2 | Opinion of Holland & Knight LLP as to ERISA matters (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 10.1 | Advisory Agreement dated January 30, 2002 (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on April 8, 2002) |
| 10.2 | Amended and Restated Property Management and Leasing Agreement among Registrant, Wells Operating Partnership, L.P. and Wells Management Company, Inc. (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.3 | Amended and Restated Joint Venture Agreement of The Fund IX, Fund X, Fund XI and REIT Joint Venture (previously filed in and incorporated by reference to Post-Effective Amendment No. 2 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on July 9, 1998) |

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| 10.4 | Joint Venture Agreement of Wells/Fremont Associates (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on August 14, 1998) |
| 10.5 | Joint Venture Agreement of Wells/Orange County Associates (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on August 14, 1998) |
| 10.6 | Amended and Restated Joint Venture Partnership Agreement of The Wells Fund XI-Fund XII – REIT Joint Venture (previously filed in and incorporated by reference to Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on November 17, 1999) |
| 10.7 | Joint Venture Partnership Agreement of Wells Fund XII-REIT Joint Venture Partnership (previously filed as Exhibit 10.11 and incorporated by reference to Post-Effective Amendment No. 2 to Form S-11 Registration Statement of Wells Real Estate Fund XII, L.P. on Form S-11, Commission File No. 33-66657, filed on April 25, 2000) |
| 10.8 | Joint Venture Partnership Agreement of Fund VIII-IX-REIT Joint Venture (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on August 31, 2000) |
| 10.9 | Joint Venture Partnership Agreement of Wells Fund XIII-REIT Joint Venture Partnership (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on July 23, 2001) |
| 10.10 | Agreement of Limited Partnership of Wells Operating Partnership, L.P. as Amended and Restated as of January 1, 2000 (previously filed in and incorporated by reference to Form 10-K of Registrant for the fiscal year ended December 31, 2000, Commission File No. 0-25739) |
| 10.11 | Amended and Restated Promissory Note for $15,500,000 for the SouthTrust Loan (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on January 15, 1999) |
| 10.12 | Amendment No. 1 to Mortgage and Security Agreement and other Loan Documents for the PwC Building securing the SouthTrust Loan (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on January 15, 1999) |
| 10.13 | Loan Agreement with SouthTrust Bank, N.A. for a $35,000,000 revolving line of credit dated May 3, 2000 (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on September 8, 2000) |
| 10.14 | Promissory Note for $35,000,000 to SouthTrust Bank, N.A. (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on September 8, 2000) |
| 10.15 | Allonge to Revolving Note relating to the SouthTrust Bank N.A. $32,393,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.16 | First Amendment to Revolving Loan Agreement and Other Loan Documents relating to the SouthTrust Bank N.A. $32,393,000 revolving line of credit (previously filed in and |

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| | incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.17 | Second Note Modification Agreement relating to the SouthTrust Bank N.A. $12,844,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.18 | Second Amendment to Amended and Restated Loan Agreement and Other Loan Documents relating to the SouthTrust Bank N.A. $12,844,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.19 | Revolving Note relating to the SouthTrust Bank N.A. $19,003,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.20 | Revolving Loan Agreement relating to the SouthTrust Bank N.A. $19,003,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.21 | Amended and Restated Revolving Note relating to the SouthTrust Bank N.A. $7,900,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.22 | Amended and Restated Loan Agreement relating to the SouthTrust Bank N.A. $7,900,000 revolving line of credit (previously filed in and incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 18, 2000) |
| 10.23 | Revolving Credit Agreement relating to the Bank of America, N.A. $85,000,000 revolving line of credit (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on April 8, 2002) |
| 10.24 | Construction Loan Agreement relating to the Bank of America, N.A. $34,200,000 construction loan (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on April 8, 2002) |
| 10.25 | Lease for the PwC Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on January 15, 1999) |
| 10.26 | Office Lease for the Matsushita Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on April 15, 1999) |
| 10.27 | Guaranty of Lease for the Matsushita Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 of the Registrant's Registration Statement on Form S-11, Commission File No. 333-32099, filed on April 15, 1999) |

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| 10.28 | Lease Agreement with Cinemark USA, Inc. for a portion of the Cinemark Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on March 15, 2000) |
| 10.29 | Lease Agreement with The Coca-Cola Company for a portion of the Cinemark Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on March 15, 2000) |
| 10.30 | Lease Agreement for the Motorola Tempe Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on June 9, 2000) |
| 10.31 | First Amendment to Lease Agreement for the Motorola Tempe Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on June 9, 2000) |
| 10.32 | Ground Lease Agreement for the Motorola Tempe Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-83933, filed on June 9, 2000) |
| 10.33 | Lease Agreement for the Motorola Plainfield Building (previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on December 1, 2000) |
| 10.34 | Lease Agreement with Stone & Webster, Inc. for a portion of the Stone & Webster Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001) |
| 10.35 | Lease Agreement with Sysco Corporation for a portion of the Stone & Webster Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001) |
| 10.36 | Lease Agreement for the Metris Minnesota Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001) |
| 10.37 | Fourth Amendment to Lease Agreement for the Metris Minnesota Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001) |
| 10.38 | Guaranty of Lease for the Metris Minnesota Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on February 9, 2001) |
| 10.39 | Lease Agreement for the Comdata Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on July 23, 2001) |

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| 10.40 | First Amendment to Lease Agreement for the Comdata Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 3 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on July 23, 2001) |
| 10.41 | Lease Agreement for the State Street Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.42 | Lease Agreement for the IKON Buildings (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.43 | First Amendment to Lease Agreement for the IKON Buildings (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.44 | Reinstatement of and Second Amendment to Lease Agreement for the IKON Buildings (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.45 | Agreement of Sale for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.46 | Lease Agreement for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.47 | Guaranty of Lease for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.48 | Development Agreement for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.49 | Design and Build Construction Agreement for the Nissan Property (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.50 | Indenture of Lease Agreement for Ingram Micro Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.51 | Guaranty of Lease Agreement for Ingram Micro Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.52 | Absolute Assignment of Lease and Assumption Agreement for Ingram Micro Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |

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| 10.53 | Bond Real Property Lease Agreement for the Ingram Micro Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.54 | Second Amendment to Lease Agreement for Matsushita Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 4 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on October 23, 2001) |
| 10.55 | Lease Agreement with TCI Great Lakes, Inc. for a portion of the Windy Point I Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002) |
| 10.56 | First Amendment to Office Lease with TCI Great Lakes, Inc. (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002) |
| 10.57 | Lease Agreement with Zurich American Insurance Company for the Windy Point II Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002) |
| 10.58 | Third Amendment to Office Lease with Zurich American Insurance Company (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002) |
| 10.59 | Lease Agreement for the Arthur Andersen Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 5 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on January 23, 2002) |
| 10.60 | Lease Agreement with Transocean Deepwater Offshore Drilling, Inc. for a portion of the Transocean Houston Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 6 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on April 22, 2002) |
| 10.61 | Lease Agreement with Newpark Drilling Fluids, Inc. for a portion of the Transocean Houston Building (previously filed in and incorporated by reference to Post-Effective Amendment No. 6 to the Registrant's Registration Statement on Form S-11, Commission File No. 333-44900, filed on April 22, 2002) |
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| 10.77 | Amendment No. 5 to Lease Agreement for the ISS Atlanta Buildings (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 10.78 | Ground Lease Agreement for the ISS Atlanta Buildings (previously filed in and incorporated by reference to Amendment No. 2 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on July 15, 2002) |
| 10.79 | Purchase and Sale Agreement for the Nokia Dallas Buildings, filed herewith |
| 10.80 | Lease Agreement for Building No. 1 of the Nokia Dallas Buildings, filed herewith |
| 10.81 | Amendment to Lease Agreement for Building No. 1 of the Nokia Dallas Buildings, filed herewith |
| 10.82 | Lease Agreement for Building No. 2 of the Nokia Dallas Buildings, filed herewith |

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| 10.83 | Amendment to Lease Agreement for Building No. 2 of the Nokia Dallas Buildings, filed herewith |
| 10.84 | Lease Agreement for Building No. 3 of the Nokia Dallas Buildings, filed herewith |
| 10.85 | Amendment to Lease Agreement for Building No. 3 of the Nokia Dallas Buildings, filed herewith |
| 10.86 | Agreement of Sale for the KeyBank Parsippany Building, filed herewith |
| 10.87 | Lease Agreement with KeyBank U.S.A., N.A. for a portion of the KeyBank Parsippany Building, filed herewith |
| 10.88 | Lease Agreement with Gemini Technology Services for a portion of the KeyBank Parsippany Building, filed herewith |
| 10.89 | Amendment to Lease Agreement with Gemini Technology Services for a portion of the KeyBank Parsippany Building, filed herewith |
| 23.1 | Consent of Holland & Knight LLP (included in exhibits 5.1 and 8.1) |
| 23.2 | Consent of Arthur Andersen LLP (previously filed in and incorporated by reference to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on April 8, 2002) |
| 23.3 | Consent of Ernst & Young LLP, filed herewith |
| 23.4 | Consent of Ernst & Young LLP, filed herewith |
| 24.1 | Power of Attorney, filed herewith |
| 24.2 | Power of Attorney of Michael R. Buchanan, filed herewith |

**EXHIBIT 10.79**

**PURCHASE AND SALE AGREEMENT**
**FOR THE NOKIA DALLAS BUILDINGS**

**PURCHASE AND SALE AGREEMENT**
**Nokia Buildings in Dallas, TX**

**ARTICLE 1: PROPERTY/PURCHASE PRICE**

1.1 *Certain Basic Terms.*

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| (a) *Purchaser and Notice Address:* | Wells Operating Partnership, L.P.,<br>a Delaware limited partnership<br>Attn: Joseph H. Pangburn<br>6200 The Corners Parkway, Suite 250<br>Atlanta, GA 30092<br>Telephone: 770-243-8228<br>Facsimile: 770-243-8510<br>E-mail: *JoeP@wellsref.com* |
| With a copy to: | Alston & Bird LLP<br>Attn: William L. O'Callaghan, Jr.<br>One Atlantic Center<br>1201 West Peachtree Street<br>Atlanta, Georgia 30309-3424<br>Telephone: 404/881-7818<br>Facsimile: 404/881-7777<br>E-mail: *wocallaghan@alston.com* |
| (b) *Seller and Notice Address:* | CARRAMERICA REALTY, L.P.,<br>a Delaware limited partnership<br>Attn: Thomas R. Levy<br>1850 K Street, N.W., Suite 500<br>Washington, D.C. 20006<br>Telephone: 202-729-7525<br>Facsimile: 202-729-1060<br>E-mail: *tlevy@carramerica.com* |
| With a copy to: | Mayer, Brown, Rowe & Maw<br>Attn: George Ruhlen<br>141 East Palace Avenue<br>Santa Fe, New Mexico 87501<br>Telephone: 505/820-8185<br>Facsimile: 505/820-7334<br>E-mail: *gruhlen@mayerbrownrowe.com* |
| (c) *Effective Date:* | July 18, 2002 |
| (d) *Purchase Price:* | $119,550,000. |

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| (e) *Earnest Money:* | $750,000, and any other deposits of earnest money made pursuant to the terms of this Agreement. The definition of "Earnest Money" includes any interest earned thereon. |
| (f) *Due Diligence Period:* | The period ending on 24 July 2002. |
| (g) *Closing Date:* | 15 August 2002. |
| (h) *Title Company and Escrow Agent:* | Chicago Title Insurance Company<br>Attn: Kay Starkey<br>2001 Bryan Street<br>Suite 1700<br>Dallas, Texas 75201<br>Telephone: 214/965-1686<br>Facsimile: 214/965-1622<br>*StarkeyK@ctt.com* |
| (i) *Broker:* | Holliday Fenoglio Fowler |

1.2 *Property.* Subject to the terms of this Purchase and Sale Agreement (the *"Agreement"*), Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following property (the *"Property"*):

(a) The real property described in *Exhibit A*, together with the buildings and improvements thereon (the *"Improvements"*), and all appurtenances of the above-described real property, including easements or rights-of-way relating thereto, and, without warranty, all right, title, and interest, if any, of Seller in and to the land lying within any street or roadway adjoining the real property described above or any vacated or hereafter vacated street or alley adjoining said real property.

(b) All of Seller's right, title and interest, in and to all fixtures, furniture, equipment, and other tangible personal property, if any, owned by Seller (the *"Personal Property"*) presently located on such property, but excluding any items of personal property owned by tenants and, if the Personal Property includes computer hardware, excluding any software installed therein.

(c) All of Seller's interest, as landlord, in the *"Leases"* described in *Exhibit B*.

(d) All of Seller's right, title and interest, if any, in and to all of the following items, to the extent assignable and without warranty (the *"Intangible Personal Property"*): (A) plans and specifications, licenses, permits and other similar rights relating to the ownership of and operation of the Property, (B) the right to use the name of the property (if any) in connection with the Property, but specifically excluding any trademarks, service marks and trade names of Seller or its affiliates, and (C) if still in effect, guaranties and warranties received by Seller from any contractor, manufacturer or other person in connection with the construction or operation of the Property.

1.3 *Earnest Money.* The Earnest Money, in immediately available federal funds, evidencing Purchaser's good faith to perform Purchaser's obligations under this Agreement, shall be deposited by Purchaser with the Escrow Agent not later than the second business day after the Effective Date. In the event that Purchaser fails to timely deposit the Earnest Money with the Escrow Agent, this Agreement shall be of no force and effect. At Closing, the Earnest Money shall be applied to the Purchase Price. Otherwise, the Earnest Money shall be delivered to the party entitled to receive the Earnest Money in

accordance with Article 9 of this Agreement**.** If Purchaser does not terminate this Agreement pursuant to Paragraph 2.4, then Purchaser shall deposit additional Earnest Money with the Escrow Agent in the amount of $750,000 prior to the expiration of the Due Diligence Period, bringing the total Earnest Money deposited to $1.5 million. The Earnest Money shall not be refundable to Purchaser except upon failure of any of the conditions precedent set forth in Paragraph 5.1.

**ARTICLE 2: INSPECTIONS**

2.1 *Property Information.* Seller shall make available to Purchaser within five days after the Effective Date the information listed on *Exhibit B* attached hereto (*"Property Information"*). Seller assumes no duty to furnish Purchaser with any other existing information, reports or updates of such materials. Purchaser hereby waives any and all claims against Seller arising out of the accuracy, completeness, conclusions or statements expressed in materials so furnished, and any and all claims arising out of any duty of Seller to acquire, seek or obtain such materials. The Property Information and all other information, other than matters of public record, furnished to, or obtained through inspection of the Property by, Purchaser, its affiliates, lenders, employees or agents relating to the Property, will be treated by Purchaser, its affiliates, lenders, employees and agents as confidential, and will not be disclosed to anyone other than on a need-to-know basis to Purchaser's consultants, including representatives of the broker-dealer community selling the products of Purchaser or its affiliates, who agree to maintain the confidentiality of such information, and will be returned to Seller by Purchaser if the Closing does not occur. Seller acknowledges that Purchaser may be required by the Securities and Exchange Commission to file audited financial statements for one to three years with regard to the Property. At no cost or liability to Seller, At any time before or after the Closing, Seller shall allow Purchaser's auditors access to the books and records of Seller and the working papers of Seller's independent auditors relating to the operation of the Property to enable Purchaser to comply with any financial reporting requirements applicable to Purchaser.

2.2 *Inspections.* Subject to the provisions of Paragraph 2.3 below, during the Due Diligence Period, Purchaser shall be permitted to make a complete review and inspection of the physical, legal, economic and environmental condition of the Property, including, without limitation, any leases and contracts affecting the Property, books and records maintained by Seller or its agents relating to the Property, pest control matters, soil condition, asbestos, PCB, hazardous waste, toxic substance or other environmental matters, compliance with building, health, safety, land use and zoning laws, regulations and orders, plans and specifications, structural, life safety, HVAC and other building system and engineering characteristics, traffic patterns, and all other information pertaining to the Property.

2.3 *Conduct of Inspections.*

(a) *Inspections in General.* During the Due Diligence Period, Purchaser and its agents shall have the right to enter upon the Property for the purpose of making non-invasive inspections at Purchaser's sole risk, cost and expense. Before any such entry, Purchaser shall provide Seller with a certificate of insurance naming Seller as an additional insured and with an insurer and insurance limits (minimum $5 million) and coverage reasonably satisfactory to Seller. All of such entries upon the Property shall be at reasonable times during normal business hours and after at least 24 hours prior notice to Seller or Seller's agent, and Seller or Seller's agent shall have the right to accompany Purchaser during any activities performed by Purchaser on the Property. Purchaser shall not disturb the tenants on the Property, and Purchaser's inspection shall be subject to the rights of tenants under their Leases and with respect to the Nokia buildings, subject to an inspection schedule approved by Nokia. Within five days after Seller's request, Purchaser shall provide Seller with a copy of the results of any tests and inspections made by or for Purchaser, excluding only market and economic feasibility studies (the *"Purchaser's*

*Reports"*). If any inspection or test disturbs the Property, Purchaser will restore the Property to the same condition as existed before the inspection or test. Purchaser shall indemnify, defend and hold harmless Seller and Seller's tenants, agents, contractors and employees and the Property from and against any and all losses, costs, damages, claims, or liabilities arising out of or in connection with any entry or inspections performed by Purchaser, its agents or representatives. This indemnity shall indemnify such indemnitees for their simple, but not gross, negligence. This indemnity shall survive the closing and any termination of this Agreement.

(b) *Environmental Inspections.* The inspections under *Paragraph 2.2* may include a non-invasive Phase I environmental inspection of the Property, but no Phase II environmental inspection or other invasive inspection or sampling of soil or materials, including without limitation construction materials, either as part of the Phase I inspection or any other inspection, shall be performed without the prior written consent of Seller, which may be withheld in its sole and absolute discretion, and if consented to by Seller, the proposed scope of work and the party who will perform the work shall be subject to Seller's review and approval. Purchaser shall deliver to Seller copies of any Phase II or other environmental report to which Seller consents as provided above.

(c) *Contact with Tenants and Governmental Authorities.* Except as provided below and without Seller's prior written consent, Purchaser shall not contact any tenant or governmental authority having jurisdiction over the Property. At Purchaser's request, Seller and Purchaser shall schedule tenant interviews at which a representative of Seller may be present. Seller's consent shall not be required with respect to a customary and reasonable Phase I environmental audit and code compliance review of the Property except for any face-to-face meetings, at which Seller shall be given at least two days prior notice and an opportunity to be present at any such meeting.

2.4 *Termination During Due Diligence Period.* If Purchaser determines, in its sole discretion, before the expiration of the Due Diligence Period that the Property is unacceptable for Purchaser's purposes, Purchaser shall have the right to terminate this Agreement by giving to Seller notice of termination before the expiration of the Due Diligence Period. In such event, Purchaser shall promptly return the Property Information to Seller and deliver to Seller the Purchaser's Reports, but the obligation to do so shall not be a condition to the return of the Earnest Money. Seller shall authorize the Escrow Agent to refund the Earnest Money to Purchaser, and neither party shall have any further rights or liabilities hereunder except for those provisions which survive the termination of this Agreement.

2.5 *Purchaser's Reliance on its Investigations.* **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR SELLER'S REPRESENTATIONS AND WARRANTIES IN *PARAGRAPH 8.1* AND THE WARRANTIES OF TITLE IN THE DEED AND ASSIGNMENT OF LEASES AND CONTRACTS AND BILL OF SALE DELIVERED AT THE CLOSING (*"SELLER'S WARRANTIES"*), THIS SALE IS MADE AND WILL BE MADE WITHOUT REPRESENTATION, COVENANT, OR WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED, OR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STATUTORY) BY SELLER. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, PURCHASER AGREES TO ACCEPT THE PROPERTY ON AN "AS IS" AND "WHERE IS" BASIS, WITH ALL FAULTS AND ANY AND ALL LATENT AND PATENT DEFECTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY, ALL OF WHICH SELLER HEREBY DISCLAIMS, EXCEPT FOR SELLER'S WARRANTIES. EXCEPT FOR SELLER'S WARRANTIES, NO WARRANTY OR REPRESENTATION IS MADE BY SELLER AS TO (A) FITNESS FOR ANY PARTICULAR PURPOSE, (B) MERCHANTABILITY, (C) DESIGN, (D) QUALITY, (E) CONDITION, (F) OPERATION OR INCOME, (G) COMPLIANCE WITH DRAWINGS OR SPECIFICATIONS, (H) ABSENCE OF DEFECTS, (I) ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, (J) ABSENCE OF FAULTS, (K) FLOODING, OR (L)**

**COMPLIANCE WITH LAWS AND REGULATIONS INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE ENVIRONMENT. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS ENTERED INTO THIS AGREEMENT WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE, AND LEGAL CONDITION OF THE PROPERTY AND THAT, EXCEPT FOR SELLER'S WARRANTIES, PURCHASER IS NOT NOW RELYING, AND WILL NOT LATER RELY, UPON ANY REPRESENTATIONS AND WARRANTIES MADE BY SELLER OR ANYONE ACTING OR CLAIMING TO ACT, BY, THROUGH OR UNDER OR ON SELLER'S BEHALF CONCERNING THE PROPERTY.**

**CONSISTENT WITH THE FOREGOING AND SUBJECT SOLELY TO THE SELLER'S WARRANTIES, EFFECTIVE AS OF THE CLOSING DATE, PURCHASER, FOR ITSELF AND ITS AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS, HEREBY RELEASES AND FOREVER DISCHARGES SELLER, ITS AGENTS, AFFILIATES, SUBSIDIARIES, SUCCESSORS AND ASSIGNS (COLLECTIVELY THE *"RELEASEES"*) FROM ANY AND ALL RIGHTS, CLAIMS AND DEMANDS AT LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THIS AGREEMENT, WHICH PURCHASER HAS OR MAY HAVE IN THE FUTURE, ARISING OUT OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC OR LEGAL CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS IN TORT OR CONTRACT AND ANY CLAIM FOR INDEMNIFICATION OR CONTRIBUTION ARISING UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (42 U.S.C. SECTION 9601, ET SEQ.) OR ANY SIMILAR FEDERAL, STATE OR LOCAL STATUTE, RULE OR REGULATION. EXCEPT FOR SELLER'S WARRANTIES, PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER AND ALL OTHER RELEASEES FROM AND AGAINST ANY AND ALL MATTERS AFFECTING THE PROPERTY.**

**THE FOREGOING RELEASE SHALL NOT OPERATE TO RELEASE ANY RELEASEE FROM ANY ACT OF FRAUD BY OR ON BEHALF OF SELLER AND IS SUBJECT TO THE RIGHT OF ANY RELEASOR TO IMPLEAD ANY RELEASEE WITH RESPECT TO ANY PERSONAL INJURY CLAIMS OF THIRD PARTIES UNRELATED TO ANY RELEASOR MADE WITHIN ONE YEAR AFTER THE CLOSING DATE WHERE THE INJURY OCCURRED OR IS ALLEGED TO HAVE OCCURRED DURING SELLER'S PERIOD OF OWNERSHIP.**

**THE PROVISIONS OF THIS *PARAGRAPH 2.5* SHALL SURVIVE INDEFINITELY ANY CLOSING OR TERMINATION OF THIS AGREEMENT AND SHALL NOT BE MERGED INTO THE CLOSING DOCUMENTS.**

## ARTICLE 3: TITLE AND SURVEY REVIEW

3.1 *Title Review.* Promptly after the execution hereof, to the extent such items have not been previously delivered, Seller shall (i) deliver to Purchaser a current as-built ALTA/ACSM for Urban Land title survey, including all items on Table A thereof, except items 5, 12 and 14 and (ii) cause the Title Company to deliver to Purchaser a current title commitment in form promulgated by the State of Texas for an Owner's Policy of Title Insurance (*"Title Report"*) representing the obligation of Title Company, subject to the requirements therein, to issue to Purchaser, upon the recording of the deed conveying title to the Property from Seller to Purchaser, the payment of the Purchase Price, and the satisfactions of the

requirements therein, an owner's policy of title insurance, in the amount of the Purchase Price, insuring good and indefeasible fee simple record title to the Property to be in Purchaser (*"Title Policy"*). The costs of the survey delivered by Seller pursuant hereto shall be borne entirely by Seller if the transaction closes and by Purchaser if the transaction does not close through no fault of Seller. During the Due Diligence Period, Purchaser shall review the Title Report; documents and information pertaining to the exceptions to title listed in the Title Report; and the As-built Survey with respect to the Property.

3.2 *Title Objections.* Purchaser may advise Seller in writing and in reasonable detail, not later than the expiration of the Due Diligence Period, what exceptions, if any, are not acceptable to Purchaser (the *"Title Objections*"). After receipt of Purchaser's Title Objections, Seller may give Purchaser notice that Seller will remove such Title Objections from title (or, if acceptable to Purchaser, in its reasonable judgment, afford the Title Company necessary information or certifications to permit it to insure over such exceptions) or that Seller elects not to cause such exceptions to be removed or insured over, provided that Seller covenants and agrees to satisfy or cause the Title Company to insure against any lien or claim thereof securing any monetary obligation voluntarily incurred by Seller that is not the obligation of any tenant or is assumed by Purchaser pursuant to this Agreement or is subject to the prorations and adjustments set forth herein (collectively, the *"Monetary Obligations*") If, for any reason, Seller fails to provide notice to Purchaser by the expiration of the Due Diligence Period that it elects to cure any Title Objection, such failure shall be deemed an election by Seller not to remove such Title Objection. If Seller so notifies or is deemed to have notified Purchaser that Seller will not remove or insure over any or all of the Title Objections, Purchaser shall have until the expiration of the Due Diligence Period to determine whether (i) to proceed with the purchase and take the Property subject to such exceptions or (ii) to terminate this Agreement. Purchaser's failure to timely give Seller notice of termination pursuant to Paragraph 2.4 shall be deemed to be an irrevocable election by Purchaser under clause (i). Except for the Title Objections that Seller elects in writing agrees to remove as provided above and any Monetary Obligations, the exceptions to title shown by the Title Report, the lien for non-delinquent real estate taxes and assessments, including assessments by private covenant, matters disclosed by the As-built Survey, and any encumbrance arising from the acts of Buyer or its agents are called the *"Permitted Exceptions"* in this Agreement. In no event shall Permitted Exceptions include matters arising subsequent to the effective date of the Title Report and As-built Survey which are not approved by Purchaser, which approval shall not be unreasonably withheld or delayed. During the Due Diligence Review Period, the Purchaser shall obtain from the Title Company all assurances required by Purchaser with respect to any express coverages or endorsements that the Purchaser may require with respect to this transaction and, except in the case of the Nokia ROFO as provided in Paragraph 3.3, inclusion of such express coverages or endorsements in the Title Policy to be issued at Closing is not a condition to Purchaser's obligation to close.

3.3 *Nokia ROFO.* The Leases of the Nokia Buildings contain a right of first offer or refusal (*"Nokia ROFO"*) in connection with any sale of such property. Seller will reasonably cooperate with Purchaser and the Title Company to determine whether the Title Company will issue express coverage over any exception to the Nokia ROFO with respect to this transaction, but without any obligation to incur any liability or expense or to retain any liability with respect thereto. As a condition to Purchaser's obligation to close, the Title Policy that the Title Company commits to issue at the Closing must include such coverage.

3.4 *Affidavits.* Seller will cooperate with the Title Company with respect to issuance of the Title Policy by executing at Closing, as a Closing delivery, a standard gap indemnity and an owner's affidavit in a form satisfactory to Seller; provided, however, other than with respect to the gap indemnity, Seller shall not be obligated to retain any liabilities or execute any indemnification agreement for the benefit of Buyer or the Title Company in connection therewith.

**ARTICLE 4: OPERATIONS AND RISK OF LOSS**

4.1 *Ongoing Operations.* During the pendency of this Agreement, Seller shall carry on its business and activities relating to the Property substantially in the same manner as it did before the Effective Date.

4.2 *Performance under Leases and Service Contracts.* During the pendency of this Agreement, Seller will perform its material obligations under the Leases and Service Contracts (as defined herein).

4.3 *New Contracts.* During the pendency of this Agreement, Seller will not enter into any contract that will be an obligation affecting the Property subsequent to the Closing, except contracts entered into in the ordinary course of business that are terminable without cause on 30-days' notice, without the prior consent of the Purchaser, which shall not be unreasonably withheld or delayed.

4.4 *Leasing Arrangements.* During the pendency of this Agreement, Seller shall obtain Purchaser's consent, which Purchaser shall not unreasonably withhold or delay, before entering into any other Lease, amendment, expansion, or renewal. Purchaser shall be deemed to have consented to any such Lease, amendment, expansion, or renewal if it has not notified Seller specifying with particularity the matters to which Purchaser reasonably objects, within five days after its receipt of Seller's written request for consent, together with a description of the pertinent business terms of the Lease, amendment, expansion, or renewal.

4.5 *Damage or Condemnation.* Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened before the Closing, and risk of loss to the Property due to fire, flood or any other cause before the Closing, shall remain with Seller. If before the Closing the Property shall be materially damaged, or if the Property or any material portion thereof shall be subjected to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation, then Purchaser may terminate this Agreement by written notice to Seller given within 10 days after Purchaser learns of the damage or taking, in which event the Earnest Money shall be returned to Purchaser. If the Closing Date is within the aforesaid 10-day period, then Closing shall be extended to the next business day following the end of said 10-day period. If no such election is made, and in any event if the damage is not material, this Agreement shall remain in full force and effect and the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected with no further adjustment, and upon the Closing of this purchase, Seller shall assign, transfer and set over to Purchaser all of the right, title and interest of Seller in and to any awards that have been or that may thereafter be made for such taking, and Seller shall assign, transfer and set over to Purchaser any insurance proceeds that may thereafter be made for such damage or destruction, and Seller shall pay to purchaser the amount of any deductible. For the purposes of this paragraph, the phrases *"material damage"* and *"materially damaged"* means damage, the cost to repair reasonably exceeding 5% of the Purchase Price.

4.6 *Punch List Items.* Seller is performing certain post-completion punch list and other similar work. Promptly upon the execution hereof, Seller will provide Purchaser with a detailed description of any such work that will be unfinished as of the Closing, a list of any contracts for such unfinished work, and an estimated cost to complete. During the Due Diligence Period, Seller and Purchaser will negotiate in good faith to reach final agreement on a form of escrow agreement (the *"Escrow Agreement"*) as to the work to be undertaken by Seller and the amount to be placed in escrow to pay for the cost to complete such work; provided that if the parties are unable to so agree on the form of Escrow Agreement or the amount to be placed in escrow, either party may terminate this Agreement upon written notice to the other party given on or before the last day of the Due Diligence Period. Pursuant to

the Escrow Agreement to be executed by Purchaser, Seller and the Title Company, at Closing, Seller will place in the escrow established thereunder the amount so agreed upon by the parties and shall thereafter cause such work to be completed. Subject to customary terms and conditions, the Escrow Agreement shall provide for release of the funds for progress payments and upon completion Any exception noted in the tenant's estoppel certificate delivered under Paragraph 5.1(d) with respect to uncompleted work that is covered by the agreement reached between Seller and Purchaser under this Paragraph 4.6 shall be deemed to be satisfied for purposes of such Paragraph 5.1(d).

**ARTICLE 5: CONDITIONS PRECEDENT**

5.1 *Purchaser's Conditions.* Notwithstanding anything in this Agreement to the contrary, Purchaser's obligation to purchase the Property shall be subject to and contingent upon the satisfaction or waiver of the following conditions precedent:

(a) *Inspection.* Purchaser's inspection and approval, in Purchaser's sole and absolute discretion, within the Due Diligence Period, of all physical, environmental, economic and legal matters relating to the Property, pursuant to *Paragraph 2.2* above. This condition shall be deemed to have been satisfied if Purchaser fails to exercise its termination right under *Paragraph 2.4*.

(b) *Title.* The willingness of Title Company to issue, upon the sole condition of the payment of its regularly scheduled premium, an owner's policy of title insurance (the *"Title Policy"*), insuring Purchaser in the amount of the Purchase Price that title to the Property is vested of record in Purchaser on the Closing Date subject only to the printed conditions and exceptions of such policy and the Permitted Exceptions and in accordance with Paragraph 3.3, express coverage over the Nokia ROFO.

(c) *Performance.* Seller's performance or tender of performance of all its material obligations under this Agreement and the material truth and accuracy of Seller's express representations and warranties in this Agreement as of the Closing Date, subject to *Paragraph 9.3(b)* below.

(d) *Tenant Estoppels.* Purchaser acknowledges that it has received estoppel certificates for all Leases consistent with the information in the rent roll delivered with the Property Information (the *"Rent Roll"*) and substantially in the form attached hereto as *Exhibit C*. It shall be a condition to Purchaser's obligation to close that by the Closing Date Purchaser has received the originals of each of the estoppel certificates previously delivered to Purchaser.

(e) *Casualty or Condemnation.* The Purchaser has not elected to terminate this Agreement pursuant to *Paragraph 4.5*.

(f) *Association/Governing Board Estoppels.* An estoppel signed by an authorized representative of any association, governing board, or other entity governing the Property addressed to Purchaser in form and substance reasonably satisfactory to Purchaser.

(g) *Escrow Agreement.* Seller and Purchaser agree in writing as to the form and substance of the Escrow Agreement in accordance with Section 4.6 on or before the last day of the Due Diligence Period.

(h) *Related Transaction.* Concurrently with the execution of this Agreement, Purchaser and Carr Development & Construction, L.P. have executed that Purchase and Sale Agreement of even date herewith covering the property known as the Harcourt Building located in Austin, Texas (the *"Related Agreement"*). It is a condition precedent to Purchaser's obligation to close that the Closing occur

simultaneously with the closing under the Related Agreement unless such failure is the result of Purchaser's default under this Agreement or the Related Agreement.

5.2 *Seller Conditions.* Notwithstanding anything in this Agreement to the contrary, Seller's obligation to sell the Property shall be subject to and contingent upon the satisfaction or waiver of the following conditions precedent:

(a) *Inspection.* The satisfaction of the condition set forth in *Paragraph 5.1(a)* above.

(b) *Performance.* Purchaser's performance or tender of performance of all its material obligations under this Agreement and the material truth and accuracy of Purchaser's express representations and warranties in this Agreement as of the Closing Date.

(c) *Escrow Agreement.* Seller and Purchaser agree in writing as to the form and substance of the Escrow Agreement in accordance with Section 4.6 on or before the last day of the Due Diligence Period.

(d) *Related Transaction.* It is a condition precedent to Seller's obligation to close that the Closing occur simultaneously with the closing under the Related Agreement unless such failure is the result of Seller's default under this Agreement or the Related Agreement.

5.3 *Failure or Waiver of Conditions Precedent.* In the event any of the conditions set forth in *Paragraphs 5.1* or *5.2* are not fulfilled or waived, the party benefited by such conditions may, by written notice to the other party, terminate this Agreement, whereupon all rights and obligations hereunder of each party shall be at an end except those that expressly survive any termination. Either party may, at its election, at any time or times on or before the date specified for the satisfaction of the condition, waive in writing the benefit of any of the conditions set forth in *Paragraphs 5.1* and *5.2* above. In the event this Agreement is terminated as a result of any condition set forth in *Paragraph 5.1*, Purchaser shall be entitled to a refund of the Earnest Money. In any event, Purchaser's consent to the close of escrow pursuant to this Agreement shall waive any remaining unfulfilled conditions, and any liability on the part of Seller for prior breaches of representations and warranties or other obligations of Seller hereunder.

## ARTICLE 6: CLOSING

6.1 *Closing.* The consummation of the transaction contemplated herein (*"Closing"*) shall occur on the Closing Date at the offices of the Escrow Agent through a standard deed and money escrow established with the Escrow Agent. The parties shall establish the closing escrow and shall complete their closing deliveries (excepting only Purchaser's delivery of the Purchase Price and the parties execution of the closing statement) no later than the business day immediately preceding the Closing Date. On the Closing Date, the Purchaser shall deliver into escrow the Purchase Price, and the parties shall instruct the Escrow Agent to close the transaction immediately upon receipt thereof and make disbursements according to the closing statements executed by the parties. Seller and Purchaser shall promptly execute and deliver to Escrow Agent any separate or additional escrow instructions requested by Escrow Agent which are consistent with the terms of this Agreement. Any separate or additional instructions shall not modify or amend the provisions of this Agreement unless otherwise expressly set forth by mutual consent of Purchaser and Seller.

6.2 *Seller's Deliveries in Escrow.* On or before the Closing Date (as the same may be extended as provided herein), Seller shall deliver in escrow to the Escrow Agent the following:

(a) *Deed.* A special warranty deed (warranting title only against grantor's acts) (the "Deed") in the form provided for under the law of the state where the Property is located, or otherwise in conformity with the custom in such jurisdiction and satisfactory to Seller, executed and acknowledged by Seller, sufficient to vest in Purchaser title as insured by the Title Policy, provided that this delivery obligation shall not impose any additional obligation on Seller to cure any exception or to retain any liability other than the Monetary Obligations.

(b) *Assignment of Leases and Contracts and Bill of Sale.* An Assignment of Leases and Service Contracts and Bill of Sale in the form of *Exhibit D* attached hereto, executed by Seller;

(c) *State Law Disclosures.* Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of real property;

(d) *FIRPTA.* A Foreign Investment in Real Property Tax Act affidavit executed by Seller;

(e) *Additional Documents.* Any additional documents or deliveries required to be executed or delivered by Seller hereunder or, subject to the limitation that Seller shall have no obligation to incur any expense or retain any liability except as expressly provided hereunder, that Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement;

(f) *Consulting Agreement.* A consulting agreement in the form of *Exhibit F* attached hereto, executed by Seller; and

(g) *Escrow Agreement.* The Escrow Agreement in the form agreed to pursuant hereto, executed by Seller, together with the deposit of the escrowed funds with the Escrow Agent.

6.3 *Purchaser's Deliveries in Escrow.* On or before the Closing Date, Purchaser shall deliver in escrow to the Escrow Agent the following:

(a) *Purchase Price.* The Purchase Price, less the Earnest Money that is applied to the Purchase Price, plus or minus applicable prorations, deposited by Purchaser with the Escrow Agent in immediate, same-day federal funds wired for credit into the Escrow Agent's escrow account;

(b) *Assignment of Leases and Contracts and Bill of Sale.* An Assignment of Leases and Contracts and Bill of Sale in form of *Exhibit D* attached hereto, executed by Purchaser;

(c) *State Law Disclosures.* Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of real property;

(d) *Additional Documents.* Any additional documents or deliveries required by Purchaser hereunder or that Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement;

(e) *Consulting Agreement and Consulting Fee.* The consulting agreement described in Paragraph 6.2(f), executed by Purchaser and the $450,000 consulting fee payable upon execution of the consulting agreement, deposited by Purchaser with the Escrow Agent by wire transfer of funds into the closing escrow; and

(f) *Escrow Agreement.* The Escrow Agreement in the form agreed to pursuant hereto, executed by Purchaser.

6.4 *Closing Statements.* At the Closing, Seller and Purchaser shall deposit with the Escrow Agent executed closing statements consistent with this Agreement in the form required by the Escrow Agent.

6.5 *Possession.* Seller shall deliver possession of the Property to Purchaser at the Closing.

6.6 *Post-Closing Deliveries.* Immediately after the Closing, Seller shall deliver to the offices of Purchaser's property manager, to the extent in Seller's possession: the original Leases; copies or originals of all contracts, receipts for deposits, and unpaid bills; all keys, if any, used in the operation of the Property; and, if in Seller's possession or control, any "as-built" plans and specifications of the Improvements.

6.7 *Notice to Tenants.* Seller and Purchaser shall execute at Closing, and deliver to each tenant immediately after the Closing, notices regarding the sale in substantially in the form of *Exhibit E* attached hereto, or such other form as may be required by applicable state law, and sufficient to relieve Seller from liability for the security deposits, and otherwise in compliance with the notice requirements of the respective Leases.

6.8 *Closing Costs.* At Closing, Purchaser shall pay the cost of extended title coverage (to the extent available in Texas) and any endorsements to the Title Policy, one-half of any escrow fees and all costs of recording, and any sales, gross receipts, compensating, documentary, excise, transfer, deed or similar taxes and fees imposed in connection with this transaction. At Closing, Seller shall pay the premium for the basic Title Policy (in Texas the basic policy does not include deletion of the standard survey exception, among other exceptions) and one-half of any escrow fees. Each party shall pay its own attorneys' fees.

6.9 *Close of Escrow.* Upon satisfaction or completion of the foregoing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the documents described above to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser.

**ARTICLE 7: PRORATIONS AND ADJUSTMENTS**

Prorations and adjustments with respect to the Property shall be made as of the Closing Date as set forth in this *Article 7*.

7.1 *Prorations.* If the Purchase Price is received by the Escrow Agent by noon, Washington, D.C. time, the day of Closing shall belong to Purchaser and all prorations hereinafter provided to be made as of the Closing shall each be made as of the end of the day before the Closing Date. If the cash portion of the Purchase Price is not so received by Escrow Agent by noon, Washington, D.C. time on the Closing Date, then the day of Closing shall belong to Seller and such proration shall be made as of the end of the day that is the Closing Date. Subject to the foregoing, in each such proration set forth below, the portion thereof applicable to periods beginning as of the Closing Date shall be credited to Purchaser or charged to Purchaser as applicable and the portion thereof applicable to periods ending as of the Closing Date shall be credited to Seller or charged to Seller as applicable.

(a) *Rent.* All accrued rent, including rent for the portion of the month in which the Closing Date falls and other accrued income (and any applicable state or local tax on rent) under Leases in effect on the Closing Date shall be prorated as of the Closing Date. Rent referenced under the Nokia Lease as "Additional Rent" for capital reserve expenditures, Landlord warranty service and other items, shall be

prorated as base rent in accordance with this *Paragraph 7.1(a)*. Any prepaid rents for the period following the Closing Date shall be paid over by Seller to Purchaser. Rent under this Paragraph 7.1(a) does not include reimbursement for operating expenses that are provided for in Paragraph 7.1(b).

(b) *Operating Costs.* Seller, as landlord under the Leases, is currently collecting from tenants under the Leases additional rent to cover taxes, insurance, utilities (to the extent not paid directly by tenants), common area maintenance and other operating costs and expenses (collectively, *"Operating Costs"*) in connection with the ownership, operation, maintenance and management of the Property. Seller and Purchaser shall each receive a debit or credit, as the case may be, for the difference between the aggregate tenants' current account balances for Operating Costs and amount of Operating Costs reimbursable to Seller [that is, Operating Costs that have been paid by Seller or for which Seller retains the obligation to pay]. Operating Costs for Seller's period of ownership shall be reasonably estimated by the parties if final bills are not available. Operating Costs that are not payable by tenants either directly or reimbursable under the Leases shall be prorated between Seller and Purchaser.

(c) *Taxes and Assessments.* Real estate taxes and assessments imposed by governmental authority and any assessments by private covenant (collectively, *"Taxes"*) that are not yet due and payable and that are not reimbursable by tenants under the Leases as Operating Costs shall be prorated as of the Closing Date based upon the most recent ascertainable assessed values and tax rates. Seller shall receive a credit for any taxes and assessments paid by Seller and applicable to any period after the Closing.

(d) *Operating Costs and Taxes Payable Directly by Tenants.* There shall be no proration for any Operating Costs or Taxes that under the Leases are paid directly by the Tenant to the applicable payee.

(e) *Final Adjustment After Closing.* If final prorations cannot be made at Closing for any item being prorated under this *Paragraph 7.1*, then Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as invoices or bills are available and applicable reconciliation with tenants have been completed, with final adjustment to be made as soon as reasonably possible after the Closing but no later than 180 days after the Closing, to the effect that income and expenses are received and paid by the parties on an accrual basis with respect to their period of ownership. Payments in connection with the final adjustment shall be due within 10 days of written notice. Seller and Purchaser shall have reasonable access to, and the right to inspect and audit, the other's books to confirm the final prorations.

7.2 *Leasing Commissions and Service Contracts.* Leasing commissions for renewals, extensions, or expansions under that certain lease commission agreement dated May 19, 1998 between Seller and Cushman & Wakefield of Texas, Inc. shall be the obligation of Purchaser, and at Closing, Purchaser shall assume such obligations in writing in accordance with such agreements or otherwise in writing satisfactory to Seller. Seller shall be responsible for any leasing commissions relating to the initial term of the Leases, all of which Seller represents have been paid in full. At Closing, Purchaser will assume in writing the obligations arising from and after the Closing Date under those Service Contracts that are not terminable as of the Closing Date without notice, expense, or liability to Seller.

7.3 *Tenant Deposits.* All tenant security deposits actually received by Seller (and interest thereon if required by law or contract to be earned thereon) and not theretofore applied to tenant obligations under the Leases shall be transferred or credited to Purchaser at Closing or placed in escrow if required by law. As of the Closing, Purchaser shall assume Seller's obligations related to tenant security deposits.

7.4 *Utility Deposits.* Purchaser shall be responsible for making any deposits required with utility companies.

7.5 *Sale Commissions.* Seller and Purchaser represent and warrant each to the other that they have not dealt with any real estate broker, sales person or finder in connection with this transaction other than the Brokers. If this transaction is closed, Seller shall pay the Brokers in accordance with their separate agreements. The Brokers are independent contractors and are not authorized to make any agreement or representation on behalf of either party. Except as expressly set forth above with respect to the Brokers, if any claim is made for broker's or finder's fees or commissions in connection with the negotiation, execution or consummation of this Agreement or the transactions contemplated hereby, each party shall defend, indemnify and hold harmless the other party from and against any such claim based upon any purported or actual statement, representation or agreement of such indemnifying party.

**ARTICLE 8: REPRESENTATIONS AND WARRANTIES**

8.1 *Seller's Representations and Warranties.* As a material inducement to Purchaser to execute this Agreement and consummate this transaction, each named Seller with respect to itself and the portion of the Property it owns, represents and warrants to Purchaser that:

(a) *Organization and Authority.* Seller has been duly organized and is validly existing as a Delaware limited partnership, in good standing in the State of Delaware and is qualified to do business in the state in which the Property is located. Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

(b) *Conflicts and Pending Action.* Subject only to the Nokia ROFO, to Seller's knowledge, there is no agreement binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller or the Property, including condemnation proceedings, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.

(c) *Leases.* With respect to those Leases, if any, for which no estoppel certificate is obtained in connection with this Agreement, the copies of such Leases provided or made available to Purchaser pursuant to *Paragraph 2.1* are true, correct and complete in all material respects; and the information set forth in the Rent Roll provided with the Property Information is accurate as of the date thereof in all material respects. Seller's representation in this *Paragraph 8.1(c)* shall be void and no claim shall be actionable or enforceable with respect to any Lease to the extent such matters are covered in the tenant estoppel certificates obtained pursuant to *Paragraph 5.1(d)*.

(d) *Service Contracts.* The list of service contracts affecting the Property (*"Service Contracts"*) delivered or made available to Purchaser as part of the Property Information is true, correct, and complete as of the date of its delivery in all material respects. Neither Seller nor, to Seller's knowledge, any other party is in material default under any Service Contract.

(e) *Compliance with Law, Licenses and Permits.* To Seller's knowledge, Seller is not in actual receipt of and has not received any written notice, addressed specifically to Seller and sent by any governmental authority or agency having jurisdiction over the Property, that the Property or its use is in

material violation of any law, ordinance, or regulation or in material non-compliance with any certificate of occupancy, license or permit.

(f) *Work Under Any Directive.* To Seller's knowledge, Seller is not in actual receipt of and has not received any written notice or request of any municipal department, insurance company or board of fire underwriters (or organization exercising functions similar thereto), or mortgagee directed to Seller and requesting the performance of any work or alteration to the Property which has not been complied with.

(g) *Bankruptcy.* Seller is "solvent as said term is defined by bankruptcy law" and has not made a general assignment for the benefit of creditors nor been adjudicated a bankrupt or insolvent, nor has a receiver, liquidator, or trustee for any of Seller's properties (including the Property) been appointed or a petition filed by or against Seller for bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Act or any similar Federal or state statute, or any proceeding instituted for the dissolution or liquidation of Seller.

(h) *Seller Not a Foreign Person.* Seller is not a "foreign person" which would subject Purchaser to the withholding tax provisions of Section 1445 of the Internal Revenue Code of 1986, as amended.

(i) *Hazardous Substances.* To Seller's knowledge, the environmental reports listed in or delivered with the Property Information are all of such reports that Seller has caused to be prepared on its behalf in connection with its acquisition and ownership of the Property, and to Seller's knowledge, Seller is not in actual receipt of and has not received any written notice or request addressed specifically to Seller and sent by any governmental authority or agency with respect to any investigation, administrative order, consent order and agreement, litigation, or settlement with respect to Hazardous Substances on the Property. *"Hazardous Substances"* means any substance, material, waste, pollutant or contaminant listed or defined as hazardous or toxic under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et. seq*., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et. seq*., any other so-called "super-fund" or "super-lien" laws, and the rules and regulations promulgated pursuant to these acts, and all state, regional, county, municipal and other local laws, regulations, ordinances, rules or orders that are equivalent or similar to the federal laws recited above.

Subject to the limitations set forth in Paragraph 9.3, Seller shall be liable to Purchaser for any actual, direct loss, cost, damage, liability or expense incurred or suffered by Purchaser due to or arising out of the breach of any representation or warranty contained in this Paragraph 8.1. "Seller's knowledge" as used in this Agreement means the current actual knowledge of Bill Vanderstraaten and Chris Hendricks, officers of CarrAmerica Realty Corporation, without any duty of inquiry or investigation. Seller represents and warrants that Messrs. Vanderstraaten and Hendricks are the persons having principal responsibility with Seller and CarrAmerica Realty Corporation for the development, management, operation, and leasing of the Property.

8.2 *Purchaser's Representations and Warranties.* As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that:

(a) *Organization and Authority.* Purchaser has been duly organized and is validly existing as a Georgia corporation, in good standing in the State of Georgia and will on or before the Closing Date be qualified to do business in the state in which the Property is located. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of

the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

(b) *Conflicts and Pending Action.* To Purchaser's knowledge, there is no agreement binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

(c) *ERISA.* Purchaser does not hold the assets of any employee benefit plan within the meaning of 29 CFR 2501.3-101(a)(2).

**ARTICLE 9: DEFAULT AND DAMAGES**

9.1 *Default by Purchaser.* If Purchaser shall default in its obligation to purchase the Property pursuant to this Agreement, Purchaser agrees that Seller shall have the right to have the Escrow Agent deliver the Earnest Money to Seller as liquidated damages to recompense Seller for time spent, labor and services performed, and the loss of its bargain. Purchaser and Seller agree that it would be impracticable or extremely difficult to affix damages if Purchaser so defaults and that the Earnest Money, together with the interest thereon, represents a reasonable estimate of Seller's damages. Seller agrees to accept the Earnest Money as Seller's total damages and relief hereunder if Purchaser defaults in its obligation to close hereunder. If Purchaser does so default, this Agreement shall be terminated and Purchaser shall have no further right, title, or interest in or to the Property.

9.2 *Default by Seller.* If Seller defaults in its obligation to sell and convey the Property to Purchaser pursuant to this Agreement, Purchaser shall be entitled to the return by the Escrow Agent to Purchaser of the Earnest Money, and Purchaser's sole remedy shall be to elect one of the following: (a) to terminate this Agreement, or (b) to bring a suit for specific performance provided that any suit for specific performance must be brought within 90 days of Seller's default, to the extent permitted by law, Purchaser waiving the right to bring suit at any later date. Purchaser hereby waives any other rights or remedies. This Agreement confers no present right, title or interest in the Property to Purchaser and Purchaser agrees not to file a lis pendens or other similar notice against the Property except in connection with, and after, the filing of a suit for specific performance. Notwithstanding the foregoing, should Seller cause a specific performance action to be ineffective by virtue of any further conveyance or encumbrance of the Property, or any portion thereof, Purchaser shall be entitled to bring a suit for its reasonable out-of-pocket damages in an amount not to exceed $95,000 in the aggregate.

9.3 *Limitations.*

(a) *Limitation Period.* Seller's covenants, indemnities, warranties and representations contained in this Agreement and in any document executed by Seller pursuant to this Agreement shall survive Purchaser's purchase of the Property only for a period commencing on the Closing Date and ending one year after the Closing Date (the *"Limitation Period"*). Seller's liability for breach of any such covenant, indemnity, representation or warranty with respect to the Property shall be limited to claims in excess of $18,000 (aggregate for all breaches), and Seller's aggregate liability for claims arising out of such covenants, indemnities, representations and warranties with respect to the Property shall not exceed $750,000 (aggregate for all breaches). Any claim by Purchaser of any alleged breach of such covenants, indemnities, warranties or representations must be asserted with reasonable specificity by written notice delivered to Seller before the expiration of the Limitation Period, and any obligation of Seller with respect to any breach of any such covenant, indemnity, representation or warranty shall automatically terminate

unless such notice is timely given, time being of the essence, within the Limitation Period. The Limitation Period and the termination of Seller's liability shall apply to known as well as unknown breaches of such covenants, indemnities, warranties or representations. Purchaser's waiver and release set forth in *Paragraph 2.5* shall apply fully to liabilities under such covenants, indemnitees, representations and warranties and is hereby incorporated by this reference. Purchaser specifically acknowledges that such limitation of liability represents a material element of the consideration to Seller. The limitation as to Seller's liability in this *Paragraph 9.3(a)* does not apply to Seller's liability with respect to prorations and adjustments under *Article 7* or to *Paragraph 7.5*.

(b) *Disclosure.* Notwithstanding any contrary provision of this Agreement, if Seller becomes aware during the pendency of this Agreement prior to Closing of any matters which make any of their representations or warranties untrue in any material respect, Seller shall promptly disclose such matters to Purchaser in writing. In the event that Seller so discloses any matters which make any of Seller's representations and warranties untrue in any material respect, or in the event that Purchaser otherwise becomes aware during the pendency of this Agreement prior to Closing of any matters which make any of Seller's representations or warranties untrue in any material respect, Seller shall bear no liability for such matters other than Monetary Obligations, but Purchaser shall have the right to elect in writing on or before the Closing Date, (i) to waive such matters and complete the purchase of the Property without reduction of the Purchase Price in accordance with the terms of this Agreement, or (ii) as to any such matters disclosed or of which Purchaser otherwise becomes aware following the expiration of the Due Diligence Period, to terminate this Agreement.

**ARTICLE 10: EARNEST MONEY PROVISIONS**

10.1 *Investment and Use of Funds.* The Escrow Agent shall invest the Earnest Money in government insured interest-bearing accounts satisfactory to Purchaser and Seller, shall not commingle the Earnest Money with any funds of the Escrow Agent or others, and shall promptly provide Purchaser and Seller with confirmation of the investments made. If the Closing under this Agreement occurs, the Escrow Agent shall apply the Earnest Money to the Purchase Price on the Closing Date.

10.2 *Termination.* Except as otherwise expressly provided herein, upon not less than five business days' prior written notice to the Escrow Agent and the other party, Escrow Agent shall deliver the Earnest Money to the party requesting the same; provided, however, that if the other party shall, within said five-business day period, deliver to the requesting party and the Escrow Agent a written notice that it disputes the claim to the Earnest Money, Escrow Agent shall retain the Earnest Money until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Earnest Money, or until ordered by final court order, decree or judgment, which is not subject to appeal, to deliver the Earnest Money to a particular party, in which event the Earnest Money shall be delivered in accordance with such notice, instruction, order, decree or judgment.

10.3 *Interpleader.* Seller and Purchaser mutually agree that in the event of any controversy regarding the Earnest Money, unless mutual written instructions are received by the Escrow Agent directing the Earnest Money's disposition, the Escrow Agent shall not take any action, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Escrow Agent's option, the Escrow Agent may interplead all parties and deposit the Earnest Money with a court of competent jurisdiction in which event the Escrow Agent may recover all of its court costs and reasonable attorneys' fees. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Escrow Agent, as well as the reasonable attorneys' fees of the prevailing party in accordance with the other provisions of this Agreement.

10.4 *Liability of Escrow Agent.* The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and that the Escrow Agent shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for its negligent acts and for any loss, cost or expense incurred by Seller or Purchaser resulting from the Escrow Agent's mistake of law respecting the Escrow Agent's scope or nature of its duties. Seller and Purchaser shall jointly and severally indemnify and hold the Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or made by the Escrow Agent in bad faith, in disregard of this Agreement or involving negligence on the part of the Escrow Agent.

**ARTICLE 11: MISCELLANEOUS**

11.1 *Parties Bound.* Except for an assignment pursuant to *Paragraph 11.14*, neither party may assign this Agreement without the prior written consent of the other, and any such prohibited assignment shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Notwithstanding the foregoing, Purchaser may assign its rights hereunder to Wells Operating Partnership, L.P., Wells Real Estate Fund XIII, L.P. or a joint venture which includes either of them, without the consent of Seller; provided that Purchaser shall not thereby be relieved of its obligations hereunder and the assignee shall assume in writing all of Purchaser's obligations hereunder.

11.2 *Press Release.* Until the Closing, neither Seller nor Purchaser will release or cause or permit to be released any press notices, or publicity (oral or written) or advertising promotion relating to, or otherwise announce or disclose or cause or permit to be announced or disclosed, in any manner whatsoever, the terms, conditions or substance of this Agreement without first obtaining the written consent of the other party. The foregoing shall not preclude either party from discussing the substance or any relevant details of such transactions with any of its attorneys, accountants, professional consultants, lenders, partners, investors, investor representatives, or any prospective lender, partner or investor, as the case may be, or prevent either party hereto, from complying with laws, rules, regulations and court orders, including without limitation, governmental regulatory, disclosure, tax and reporting requirements. In addition to any other remedies available to a party, each party shall have the right to seek equitable relief, including without limitation in junctive relief or specific performance, against the other party in order to enforce the provisions of this *Paragraph 11.2*.

11.3 *Headings.* The article and paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

11.4 *Invalidity and Waiver.* If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

11.5 *Governing Law.* This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the state in which the Property is located.

11.6 *No Third Party Beneficiary.* This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

11.7 *Entirety and Amendments.* This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property except for any confidentiality agreement binding on Purchaser, which shall not be superseded by this Agreement. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

11.8 *Time.* Time is of the essence in the performance of this Agreement.

11.9 *Attorneys' Fees.* Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith.

11.10 *Notices.* All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in *Paragraph 1.1*. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by facsimile, with written confirmation by overnight or first class mail, in which case notice shall be deemed delivered upon receipt of confirmation of transmission of such facsimile notice, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by facsimile or personal delivery and delivered after 5:00 p.m., Washington, D.C. time, shall be deemed received on the next business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

11.11 *Construction*. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction—to the effect that any ambiguities are to be resolved against the drafting party—shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

11.12 *Calculation of Time Periods.* Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m., Washington, D.C. time.

11.13 *Execution in Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

11.14 *Section 1031 Exchange.* Seller may consummate the sale of the Property as part of a so-called like kind exchange (the *"Exchange"*) pursuant to § 1031 of the Internal Revenue Code of 1986, as amended (the *"Code"*). Purchaser shall reasonably cooperate with Seller to effect such Exchange,

provided that (i) Seller shall effect the Exchange through an assignment of its rights under this Agreement to a qualified intermediary (to facilitate any Exchange, and solely for such purpose, Seller may so assign the rights and obligations under this Agreement); (ii) Purchaser shall not be required to take an assignment of the purchase agreement for the replacement property, be required to acquire or hold title to any real property for purposes of consummating the Exchange or be required to expend any additional costs or expenses to effect the Exchange; and (iii) Purchaser shall not by this agreement or acquiescence to the Exchange be responsible for compliance with or be deemed to have warranted to Seller that the Exchange in fact complies with § 1031 of the Code.

11.15 ***WAIVER OF JURY TRIAL.*** **TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

[Signature Page Follows]

**SIGNATURE PAGE TO**
**PURCHASE AND SALE AGREEMENT**
**BY AND BETWEEN CARRAMERICA REALTY, L.P.**
**AND**
**WELLS OPERATING PARTNERSHIP, L.P.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date.

CARRAMERICA REALTY, L.P.,
a Delaware limited partnership

By: CarrAmerica Realty GP Holdings, Inc.,
a Delaware corporation, its general partner

By: /S/ KAREN B. DORIGAN

Name: Karen B. Dorigan

Title: Executive Vice President

"Seller"

WELLS OPERATING PARTNERSHIP, L.P.,
a Delaware limited partnership

By: Wells Real Estate Investment Trust, Inc.,
Maryland corporation, its general partner

By: /S/ DOUGLAS P. WILLIAMS

Name: Douglas P. Williams

Title: Executive Vice President

"Purchaser"

**JOINDER OF ESCROW AGENT**

Escrow Agent has executed this Agreement in order to confirm that Escrow Agent has received and shall hold the Earnest Money in escrow, shall disburse the Earnest Money pursuant to the provisions of *Article 10* hereof, and will execute and act as escrowee under the Escrow Agreement as aforesaid.

CHICAGO TITLE INSURANCE COMPANY

By: /S/ KAY STARKEY

Name: Kay Starkey

Date: 7/22/02

Title: Commercial Escrow Officer

"Escrow Agent"

**EXHIBITS**

A — Legal Description
B — Property Information
C — Tenant Estoppel Form
D — Assignment of Leases and Contracts and Bill of Sale
E — Notice to Tenants
F — Consulting Agreement

**EXHIBIT A**

*LEGAL DESCRIPTION*

The real property described in Commitment for Title Insurance No. 44-903-80-000576708 issued by Chicago Title Insurance Company on June 3, 2002 and having an effective date of May 16, 2002.

**EXHIBIT B**

*PROPERTY INFORMATION*

Due Diligence Items—Nokia Building

1. Leases from Nokia, Inc. dated October 22, 1999, October 14, 1998 and July 17, 1998. First Amendment dated September 29, 2000
2. Guaranties from Nokia Corporation, dated October 22, 1999, October 14, 1998 and July 17, 1998
3. Property financial statements (Calendar years 1999, 2000, 2001 and 2002 through May 31)
4. Property general ledger statements (Calendar years 2000, 2001 and 2002 through May 31)
5. Aged Receivable Reports, dated December 31, 2002 and May 31, 2002
6. Property Budget Calendar Year 2002
7. Property Budget Variance Reports, dated January 31, 2002 and May 31, 2002
8. Certificate of Insurance for Nokia, Inc. provided by Marsh USA, valid date February 1, 2002
9. Zoning Ordinance, letter dated May 27, 1997
10. Property Tax Values and Rates, Irving, TX
11 Phase I Environmental Site Assessment, Mission Geoscience, Inc. July 18, 1997
12. Subsurface Exploration Report, Terracon Consultants, Inc. July 17, 1997
13. ADA Compliance Surveys, Accessibility Express, August 14, 2000, September 14, 2000 and June 20, 2001
14. As-built Plans, Good Fulton and Farrell (hard copy and CD_ROM)
15. Operating and Maintenance Manuals—HVAC equipment and controls, fire protection systems, elevator
16. Warranties—Core/shell, HVAC equipment, roofing, fire/safety, parking lot, contractor
17. Building permits and Inspection reports (including Fire Marshall inspections)
18. Certificates of Occupancy—Building and Tenant Space
19. Commission Agreements
20. Photo disk
21. Boundary sketch
22. Architect's verification of building measurements
23. Rent Rolls—May 31, 2002
24. Tenant Ledger(s)—May 31, 2002
25. Tenant Correspondence and History files
26. HVAC Submittals
27. General contractor specifications

**EXHIBIT 10.80**

# LEASE AGREEMENT
# FOR BUILDING NO. 1 OF THE NOKIA DALLAS BUILDINGS

**Lease**

# THE COMMONS OF LAS COLINAS
# BUILDING I
# IRVING, TEXAS

**Between**

## NOKIA INC.
## a Delaware corporation
**(Tenant)**

**and**

## CARRAMERICA REALTY, L.P.,
## a Delaware limited partnership
**(Landlord)**

**LEASE**

THIS LEASE (the *"Lease"*) is made as of this day of October, 1998 between **CarrAmerica Realty, L.P., a Delaware limited partnership** (the *"Landlord"*) and the Tenant as named in the Schedule below. The term *"Project"* means the three (3) building complex including Building I (the *"Building"*) known as "The Commons of Las Colinas" and the land (the *"Land"*) located along Connection Drive and S.H. 114, Irving, Texas described on Appendix A-1. *"Premises"* means that part of the Project leased to Tenant described in the Schedule and outlined on Appendix A.

The following schedule (the *"Schedule"*) is an integral part of this Lease. Terms defined in this Schedule shall have the same meaning throughout the Lease.

**SCHEDULE**

1. **Tenant**: NOKIA INC.

2. **Premises**: Covering all nine (9) stories in the Building, as more particularly shown on the Plans

3. **Rentable Square Feet of the Premises**: 228,196, subject to final verification upon completion of the Building

4. **Tenant's Proportionate Share**: 41.49% based upon a total of 550,000 rentable square feet in the Project, subject to verification upon completion of the Building by each of Tenant's and Landlord's architect pursuant to Paragraph 15 of the Work Agreement attached hereto as Appendix C).

5. **Security Deposit**: None.

6. **Tenant's Real Estate Broker for this Lease**: Cushman & Wakefield of Texas, Inc.

7. **Landlord's Real Estate Broker for this Lease**: None.

8. **Tenant Improvements, if any**: See the Work Agreement attached hereto as Appendix C.

9. **Commencement Date**: For Floors 3 and 4: May 1, 1999; for Floors 5 and 6: May 14, 1999; for Floor 7: May 25, 1999; for Floors 1 and 2: July 6, 1999; for Floor 8: June 15, 1999; and for Floor 9: July 1, 1999 but if the Premises are subject to new construction pursuant to Appendix C, the earlier to occur of (i) the date Tenant occupies the applicable portion of the Premises, or (ii) the Completion Date, as defined therein, if it is later; Landlord and Tenant shall execute a Commencement Date Confirmation substantially in the form of Appendix E promptly following the Commencement Date which shall, among other matters, conclusively establish the square footage of the Premises and the Building.

10. **Termination Date/Term**: Ten (10) years after the Commencement Date, or if the Commencement Date is not the first day of a month, then on the last day of the month in which the tenth (10th) anniversary of the Commencement Date occurred.

11. **Guarantor**: Nokia Corporation.

12. **Expense Stop**: $6.00/rentable square feet.

13. **Base Rent**: *

| Period | Annual Base Rent | Monthly Base Rent |
|---|---|---|
| Years 1-5 | $ 23.65/square foot | $ 449,736 |
| Years 6-10 | $ 25.35/square foot | $ 482,064 |

* subject to increase pursuant to the terms of the Work Agreement (Appendix C).

**1.** ***LEASE AGREEMENT***. On the terms stated in this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, for the Term beginning on the

Commencement Date and ending on the Termination Date unless extended or sooner terminated pursuant to this Lease.

**2. *RENT.***

A. *Types of Rent*. Tenant shall pay the following Rent in the form of a check to Landlord at the following address (if the address or wire transfer information is not available at the time of execution of this Lease, Landlord shall subsequently provide them to Tenant by notice sent in accordance with this Lease):

**CarrAmerica Realty, L.P.**
t/a Commons of Las Colinas
P.O. Box
Atlanta, GA 30384-

or by wire transfer as follows:

NationsBank, N.A. (South)
ABA Number 061-000-052
Account Number

or in such other manner as Landlord may notify Tenant reasonably in advance of the applicable payment due date:

(1) *Base Rent* in monthly installments in advance, the first monthly installment payable upon the Commencement Date and thereafter on or before the first day of each month of the Term in the amount set forth on the Schedule. It is understood that Base Rent for the first year of the Term shall be calculated and paid to reflect the fact that the Premises will become available for occupancy in increments and that there will be a different Commencement Date for each increment of the Premises.

(2) *Operating Cost Share Rent* in an amount equal to the Tenant's Proportionate Share of the excess of Operating Costs for the applicable fiscal year of the Lease (the *"Excess Operating Costs"*) over the product of the Expense Stop times the Rentable Square Feet of the Premises (the *"Base Operating Costs"*), paid monthly in advance in an estimated amount. Definitions of Operating Costs and Tenant's Proportionate Share, and the method for billing and payment of Operating Cost Share Rent are set forth in Sections 2B, 2C and 2D.

The Controllable Operating Cost Share Rent (defined below) applicable to the second fiscal year of the Lease shall be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs during the second fiscal year, or (ii) the sum of Tenant's Proportionate Share of Controllable Operating Costs for the first fiscal year, plus 4% (such sum is the *"Cap Amount"*).

The Controllable Operating Cost Share Rent applicable to each fiscal year thereafter shall be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs during the applicable fiscal year, or (ii) the sum of the Cap Amount for the immediately preceding fiscal year, plus 4%.

*"Controllable Operating Cost Share Rent"* shall be an amount equal to Tenant's Proportionate Share of Controllable Operating Costs. *"Controllable Operating Costs"* means all Operating Costs other than costs related to Taxes (as defined below) insurance, collectively bargained union wages, electricity and other utilities (herein, *"Non-Controllable Operating Costs"*). There shall be no cap on Non-Controllable Operating Costs.

Assume, for example, Controllable Operating Cost Share Rent for the first fiscal year of $100.00. In the second fiscal year, Controllable Operating Cost Share Rent would

be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs for the second fiscal year, or (ii) $104.00 ($100.00 plus 4%, which would be the Cap Amount). In the third year, Controllable Operating Cost Share Rent would be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs for the third fiscal year, or (ii) $108.16 ($104.00 plus 4%, which becomes the Cap Amount for the following year).

(3) *Electrical Cost Share Rent* in an amount equal to the sum of (a) all electricity used by the Premises; plus (b) Tenant's Proportionate Share of all electricity used by the Project (*"Electrical Costs"*). Electrical Costs exclude any electricity charges attributable to any tenantable areas (i.e., those areas either leased or being held for lease by Landlord) and any charges paid directly by Tenant to the electric utility company pursuant to a contract between such parties. Such amount shall be payable monthly in advance in an estimated amount. The method of billing and payment of Electrical Cost Share Rent is set forth in Sections 2B and 2D.

(4) *Additional Rent* in the amount of all costs, expenses, liabilities, and amounts which Tenant is required to pay under this Lease, excluding Base Rent, Operating Cost Share Rent and Electrical Cost Share Rent, but including any interest for late payment of any item of Rent.

(5) *Rent* as used in this Lease means Base Rent, Operating Cost Share Rent, Electrical Cost Share Rent and Additional Rent. Tenant's agreement to pay Rent is an independent covenant, with no right of setoff, deduction or counterclaim of any kind.

B. *Payment of Operating Cost Share Rent and Electrical Cost Share Rent.*

(1) *Payment of Estimated Operating Cost Share Rent and Electrical Cost Share Rent*. Landlord shall estimate the Operating Costs and Electrical Costs (please see clause A.(4) above for limits on definition of Electrical Costs and clause B.(4) below for "true-up" provisions) of the Project by April 1 of each fiscal year, or as soon as reasonably possible thereafter. Landlord may revise these estimates whenever it obtains more accurate information, such as the final real estate tax assessment or tax rate for the Project.

Within thirty (30) days after receiving the original or revised estimate from Landlord setting forth (a) an estimate of Operating Costs for a particular fiscal year, (b) the Base Operating Costs, and (c) the resulting estimate of Excess Operating Costs for such fiscal year, Tenant shall pay Landlord one-twelfth (1/12th) of Tenant's Proportionate Share of the estimated Excess Operating Costs, multiplied by the number of months that have elapsed in the applicable fiscal year to the date of such payment including the current month, minus payments previously made by Tenant for the months elapsed. On the first day of each month thereafter, Tenant shall pay Landlord one-twelfth (1/12th) of Tenant's Proportionate Share of this estimate, until a new estimate becomes applicable.

Within thirty (30) days after receiving the original or revised estimate setting forth an estimate of Tenant's Proportionate Share of Electrical Costs for a particular fiscal year, Tenant shall pay Landlord one-twelfth (1/12th) of the estimated Tenant's Proportionate Share of Electrical Costs, multiplied by the number of months that have elapsed in the applicable fiscal year to the date of payment, including the current month, minus payments previously made by Tenant for the months elapsed. On the first day of each month thereafter, Tenant shall pay Landlord one-twelfth (1/12th) of Tenant's Proportionate Share of such estimate, until a new estimate becomes available.

(2) *Correction of Operating Cost Share Rent*. Landlord shall deliver to Tenant a report for the previous fiscal year (the *"Operating Cost Report"*) by May 15 of each year, or as soon as reasonably possible thereafter, setting forth (a) the actual Operating Costs incurred, (b) the Base Operating Costs, (c) the amount of Operating Cost Share Rent due from Tenant, and (d) the amount of Operating Cost Share Rent paid by Tenant. Within thirty (30) days after such delivery, Tenant shall pay to Landlord the amount due

minus the amount paid. If the amount paid exceeds the amount due, Landlord shall apply the excess to Tenant's payments of Operating Cost Share Rent next coming due and, if such excess has not been fully applied within six (6) months, then against other Rent, next becoming due. Notwithstanding the foregoing, all sums owed by Landlord to Tenant pursuant to the preceding sentence shall be fully applied or paid prior to the end of the calendar year in which such overpayment occurs. If this Lease has been terminated prior to such determination, such excess will be promptly paid to Tenant.

(3) *Correction of Electrical Cost Share Rent*. Landlord shall deliver to Tenant a report for the previous fiscal year (the *"Electrical Cost Report"*) by May 15 of each year, or as soon as reasonably possible thereafter, setting forth (a) the actual Electrical Costs, (b) the amount of Electrical Cost Share Rent due from Tenant, and (c) the amount of Electrical Cost Share Rent paid by Tenant. Within thirty (30) days after such delivery, Tenant shall pay to Landlord the amount due from Tenant minus the amount paid by Tenant. If the amount paid exceeds the amount due, Landlord shall apply any excess as a credit against Tenant's payments of Electrical Cost Share Rent next coming due and, if such excess has not been fully applied within six (6) months, then against other Rent next coming due. Notwithstanding the foregoing, all sums owed by Landlord to Tenant pursuant to the preceding sentence shall be fully applied or paid prior to the end of the calendar year in which such overpayment occurs. If this Lease has been terminated prior to such determination, such excess will be promptly paid to Tenant.

C. *Definitions*.

(1) *Included Operating Costs*. *"Operating Costs"* means any expenses, costs and disbursements of any kind other than Electrical Costs, paid or incurred by Landlord in connection with the management, maintenance, operation, insurance, repair and other related activities in connection with any part of the Project and of the personal property, fixtures, machinery, equipment, systems and apparatus used in connection therewith, including the cost of providing those services required to be furnished by Landlord under this Lease and Taxes (as defined below). Operating Costs shall also include an annual capital reserve equal to the product of $0.15 times the Rentable Square Feet of the Premises (the *"Capital Reserve Amount"*).

If the Project is not fully occupied during any portion of any fiscal year, Landlord may adjust in a manner equitable to Tenant and the other tenants in the Project (an *"Equitable Adjustment"*) Operating Costs to equal what would have been incurred by Landlord had the Project been fully occupied. This Equitable Adjustment shall apply only to Operating Costs which are variable and therefore increase as occupancy of the Project increases. Landlord may incorporate the Equitable Adjustment in its estimates of Operating Costs.

(2) *Excluded Operating Costs*. Operating Costs shall not include:

(a) costs of alterations of tenant premises;

(b) costs of capital improvements other than the Capital Reserve Amount;

(c) interest and principal payments on mortgages or any other debt costs, or rental payments on any ground lease of the Project;

(d) real estate brokers' leasing commissions;

(e) legal fees, space planner fees and advertising expenses incurred with regard to leasing the Project or portions thereof;

(f) any cost or expenditure for which Landlord is reimbursed, by insurance proceeds or otherwise, except by Operating Cost Share Rent;

(g) the cost of any service furnished to any office tenant of the Project which Landlord does not make available to Tenant;

(h) depreciation;

(i) franchise or income taxes imposed upon Landlord, except to the extent imposed in lieu of all or any part of Taxes;

(j) costs of correcting defects in construction of the Project(as opposed to the cost of normal repair, maintenance and replacement expected with the construction materials and equipment installed in the Project in light of their specifications);

(k) legal and auditing fees which are for the benefit of Landlord such as collecting delinquent rents, preparing tax returns and other financial statements;

(l) the wages of any employee for services not related directly to the management, maintenance, operation and repair of the Project;

(m) fines, penalties and interest;

(n) any ground lease rental;

(o) depreciation, amortization and interest payments (except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party) where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with GAAP, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life;

(p) costs incurred by Landlord due to the violation by Landlord or any tenant of the terms and conditions of any lease of space in the Project;

(q) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in the Project to the extent same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(r) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord or in the parking garage of the Project and/or all fees paid to any parking facility operator (on or off site) (provided, however, if Landlord provides such parking free of charge to Tenant, these expenses may be included as Operating Costs);

(s) advertising and promotional expenditures;

(t) electric power costs for which any tenant directly contracts with the local public service company;

(u) tax penalties to the extent incurred as a result of Landlord's negligence, inability or unwillingness to make payments and/or to file any income tax or informational returns when due;

(v) costs arising from the presence of asbestos in or about the Project; and

(w) costs arising from Landlord's charitable or political contributions.

(x) any expense associated with the initial construction or maintenance of other portions of the Project, until such other portions of the Project are occupied by tenants paying rent and operating expenses to Landlord.

(3) *Taxes*. *"Taxes"* means any and all taxes, assessments and charges of any kind, general or special (except as set forth below), ordinary or extraordinary, levied against the Project, which Landlord shall pay or become obligated to pay in connection with the ownership, leasing, renting, management, use, occupancy, control or operation of the Project or of the personal property, fixtures, machinery, equipment, systems and apparatus used in connection therewith. Taxes shall include real estate taxes, personal property taxes, sewer rents, water rents, special or general assessments (other than special assessments made by taxing authorities for roads, sewers or similar improvements related to a "business park"), transit taxes, ad valorem taxes, and any tax which may in the future be levied on the rents hereunder or on the interest of Landlord under this Lease (the *"Rent Tax"*). Taxes shall also include all reasonable fees and other reasonable costs and expenses paid by Landlord in reviewing any tax and in seeking a refund or reduction of any Taxes, whether or not the Landlord is ultimately successful. Landlord agrees to use all commercially reasonable efforts to insure that Taxes do not exceed the amount per rentable square foot of comparable buildings within The Commons of Las Colinas area. If Landlord elects not to protest Taxes, Tenant may deliver written notice to Landlord requesting that Landlord protest Taxes. If Landlord fails to file such protest within thirty (30) days following Landlord's receipt of Tenant's notice then Tenant may, at Tenant's cost, file such protest on Landlord's behalf and with Landlord's cooperation, but such cooperation will not obligate Landlord to incur any tax protest costs. If Tenant files such protest and Taxes are increased from that proposed prior to such protest, Tenant must promptly pay to Landlord an amount equal to the increased Taxes for the current and all future years, all as calculated in a manner reasonably acceptable to Landlord.

For any year, the amount to be included in Taxes (a) from taxes or assessments payable in installments, shall be the amount of the installments (with any interest) due and payable during such year, and (b) from all other Taxes, shall at Landlord's election be the amount accrued, assessed, or otherwise imposed for such year or the amount due and payable in such year. Any refund or other adjustment to any Taxes by the taxing authority, shall apply during the year in which the adjustment is made.

Taxes shall exclude any net income (except Rent Tax), capital, stock, succession, transfer, franchise, gift, estate or inheritance tax, except to the extent that such tax shall be imposed in lieu of any portion of Taxes. Taxes shall also exclude any governmental or business park special assessments (such as for roads and sewers).

(4) *Lease Year*. *"Lease Year"* means each consecutive twelve-month period beginning with the Commencement Date, except that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall be the period from the Commencement Date through the final day of the twelve months after the first day of the following month, and each subsequent Lease Year shall be the twelve months following the prior Lease Year.

(5) *Fiscal Year*. *"Fiscal Year"* means the calendar year, except that the first fiscal year and the last fiscal year of the Term may be a partial calendar year.

D. *Computation of Base Rent and Rent Adjustments*.

(1) *Prorations*. If this Lease begins on a day other than the first day of a month, the Base Rent, Operating Cost Share Rent, Electrical Cost Share Rent, shall be prorated for such partial month based on the actual number of days in such month. If this Lease begins on a day other than the first day, or ends on a day other than the last day, of

the fiscal year, Operating Cost Share Rent and Electrical Cost Share Rent, shall be prorated for the applicable fiscal year.

(2) *Default Interest*. Any sum due from Tenant to Landlord not paid when due shall bear interest from the date due until paid at the lesser of the maximum rate permitted by applicable law or the then Prime Rate (as hereinafter defined) plus five percent (5%) per annum.

(3) *Rent Adjustments*. The square footage of the Premises and the Building set forth in the Commencement Date Confirmation, when executed will be conclusively deemed to be the actual square footage thereof, without regard to any subsequent remeasurement of the Premises or the Building. If any Operating Cost paid in one fiscal year relates to more than one fiscal year, Landlord may proportionately allocate such Operating Cost among the related fiscal years.

(4) *Books and Records*. Landlord shall maintain books and records reflecting the Operating Costs, Taxes and Electrical Cost in accordance with sound accounting and management practices. Tenant and its certified public accountant shall have the right to inspect Landlord's records at Landlord's office upon at least seventy-two (72) hours' prior notice during normal business hours during (a) the eighteen (18) months following the respective delivery of the Operating Cost Report or the Electrical Cost Report relating to the first two (2) Lease Years or (b) six (6) months following the respective delivery of the Operating Cost Report or the Electrical Cost Report relating to subsequent Lease Years. Tenant's facilities management consultant may join Tenant's certified public accountant in Tenant's inspection of Landlord's records. The results of any such inspection shall be kept strictly confidential by Tenant and its agents, and Tenant and its certified public accountant must agree, in their contract for such services, to such confidentiality restrictions and shall specifically agree that the results shall not be made available to any other tenant of the Building. Unless Tenant sends to Landlord any written exception to either such report within the said eighteen (18) months or six (6) months period (as the case may be), such report shall be deemed final and accepted by Tenant. Tenant shall pay the amount shown on both reports in the manner prescribed in this Lease, whether or not Tenant takes any such written exception, without any prejudice to such exception. If Tenant makes a timely exception, Landlord shall select and cause an independent certified public accountant, reasonably acceptable to Tenant, with at least ten (10) years of experience in auditing the books and records of commercial office projects to issue a final and conclusive resolution of Tenant's exception. The cost of such certification shall be borne equally by Tenant and Landlord.

(5) *Miscellaneous*. So long as Tenant is in default of any monetary obligation under this Lease after the expiration of any applicable cure period, Tenant shall not be entitled to any refund of any amount from Landlord but when such default is cured Tenant will receive such refund. If this Lease is terminated for any reason prior to the annual determination of Operating Cost Share Rent or Electrical Cost Rent, either party shall pay the full amount due to the other within thirty (30) days after Landlord's notice to Tenant of the amount when it is determined. Landlord may commingle any payments made with respect to Operating Cost Share Rent or Electrical Cost Rent, without payment of interest.

**3. *PREPARATION AND CONDITION OF PREMISES; POSSESSION AND SURRENDER OF PREMISES.***

A. *Condition of Premises*. Landlord shall, at Landlord's expense, cause the Premises to be completed in a good and workman-like manner in accordance with the terms and provisions of the Work Agreement attached as Appendix C.

B. *Tenant's Possession*. Tenant's taking possession of any portion of the Premises shall be conclusive evidence that the Premises was in good order, repair and condition, except for punch list items, if any, identified by Tenant to Landlord by written notice delivered to Landlord

no later than 30 days following substantial completion of the Initial Improvements and, for a period of two (2) years following the Commencement Date or the period any applicable warranty is in effect, whichever is later, any latent defects in the Premises. If Landlord authorizes Tenant to take possession of any part of the Premises prior to the Commencement Date for purposes of doing business, all terms of this Lease shall apply to such pre-Term possession, including Base Rent at the rate set forth for the First Lease Year in the Schedule prorated for any partial month.

C. *Maintenance.* Throughout the Term, Tenant shall maintain the Premises in their condition as of the Completion Date, loss or damage caused by the elements, ordinary wear, and fire and other casualty excepted, and at the termination of this Lease, or Tenant's right to possession, Tenant shall return the Premises to Landlord in broom-clean condition. To the extent Tenant fails to perform either obligation, Landlord may, but need not, restore the Premises to such condition and Tenant shall pay the cost thereof.

D. *Landlord Certification*. Landlord hereby certifies to Tenant that as of the Commencement Date the Base Building Work will have been designed and built to (1) comply with then applicable Governmental Requirements and then current customary interpretations of any applicable disability access laws (assuming customary office use and not any particular use of Tenant). Landlord shall be responsible for any corrective work arising from the Texas statutory requirement to have an inspection of the Premises and Building one (1) year after completion of construction, pursuant to Texas Civil Statutes, Article 9102 et. seq., with respect to the Base Building Work and the Leasehold Work resulting from Landlord's failure to perform same pursuant to the plans and specifications for the Leasehold Work. Tenant shall be responsible for preparing the plans and specifications for the Leasehold Work in compliance with applicable Governmental Requirements. In the event the Leasehold Work does not comply with applicable Governmental Requirements as a result of such plans and specifications not being in such compliance, then Tenant shall bear the cost of any such corrective work. If during the Term of this Lease, any change in Governmental Requirements requires retrofit work in the Premises to maintain compliance, Tenant shall bear the cost of such work.

Landlord hereby further certifies to Tenant that the Premises will be free of any latent defects for a period of two (2) years following the Commencement Date or the period any applicable warranty is in effect, whichever is later.

**4. *PROJECT SERVICES.***

Landlord shall, at Landlord's cost and expense (subject to Paragraph 2 hereof), furnish services as follows:

A. *Heating and Air Conditioning*. During the normal business hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday, Landlord shall furnish (i) air conditioning (by way of the primary heating, ventilating and air conditioning systems of the Building) within the limits and ranges set forth on the Plans and the work letter, and (ii) heat within the limits and ranges set forth on the Plans and the work letter. Landlord's obligations hereunder shall be diminished to the extent that Tenant adversely affects the temperature maintained by the heating and air conditioning system by operating its equipment and to the extent that Landlord's efforts to fulfill its obligations are hindered by the failure or inadequacy of the secondary heating, ventilating and air conditioning systems for which Tenant hereby assumes, at Tenant's sole cost, the maintenance obligations therefor. If Tenant installs such equipment, Landlord may install supplementary air conditioning units in the Premises, and Tenant shall pay to Landlord upon demand as Additional Rent the cost of installation, operation and maintenance thereof.

Landlord shall furnish heating and air conditioning after business hours if Tenant provides Landlord reasonable prior notice, and pays Landlord all then current charges for such additional heating or air conditioning. Such charges shall be calculated based on the additional depreciation cost related to operating the heating and air conditioning systems beyond the standard hours required to be operated under this Section 4.A.

B. *Elevators*. Landlord shall provide passenger elevator service to Tenant. Landlord shall, at no cost to Tenant, provide freight access at such times as Tenant shall reasonably require, and subject to such restrictions, as Landlord may reasonably require.

C. *Electricity*. Landlord shall provide sufficient electricity to accommodate Tenant 's requirements for the Premises as indicated by the Leasehold Engineers pursuant to Paragraph 2 of the Work Agreement. The Building has been designed with the electrical capacity set forth in the Plans, which shall provide up to 8 watts per rentable square foot of demand load at the electrical panel in each floor of the Premises (exclusive of power required for heating, air conditioning and lighting). Tenant shall not install or operate in the Premises any electrically operated equipment or other machinery which would exceed the electrical capacity provided in the Base Building Work without obtaining the prior written consent of Landlord. Tenant shall pay the Electrical Cost Share Rent set forth in Section 2A(3) above.

Tenant shall have the right, at Tenant's expense, at any time during the term of this Lease to contract directly with the local electric utility company or to install emergency power equipment. Tenant shall be responsible for the repair of any damage to the Premises caused by the installation or maintenance of such equipment. The cost of furnishing electricity to the Building, to the extent not represented by Tenant's directly contracting with such local utility company, shall be included within the Electrical Costs as defined in Section 2 above.

D. *Water*. Landlord shall furnish hot and cold tap water for drinking and toilet purposes. Tenant shall pay Landlord for water furnished for any other purpose as Additional Rent at rates fixed by Landlord. Tenant shall not permit water to be wasted.

E. *Janitorial Service*. Landlord shall furnish janitorial service in accordance with the standards set forth on Appendix H. In the event Tenant determines that such janitorial service is unsatisfactory, in Tenant's reasonable judgment, Tenant shall deliver written notice to Landlord specifying in detail the manner in which such service is deemed deficient. If the deficiencies are not, in Tenant's reasonable judgment, substantially corrected during the next succeeding sixty (60) days, then Tenant may deliver a further notice directing Landlord to terminate the contract for the applicable contractor providing such service to the Premises, subject to and in accordance with the termination provisions of such contract. Landlord shall cause such janitorial service contract that Tenant has the right to cause the termination of pursuant hereto to be terminable on not more than sixty (60) days prior notice. If Tenant delivers such notice of termination, Landlord shall terminate such contract. Promptly thereafter, Landlord shall enter into a new contract for the janitorial service with a contractor mutually agreeable to Landlord and Tenant.

The foregoing, notwithstanding Tenant shall have the right, upon no less than ninety (90) days prior written notice to Landlord, to elect not to receive the janitorial services provided by Landlord and to provide such services itself with respect to the Premises. If Tenant elects to provide such cleaning services to the Premises (i) such change shall be implemented upon expiration of Landlord's then current cleaning contract for the Premises, such cleaning contract to have a term not in excess of one (1) year, (ii) Tenant shall comply with reasonable procedures established by Landlord with respect to Tenant's cleaning activities, including security procedures, (iii) Tenant shall perform such cleaning services with personnel employed by Tenant or its affiliates, and not an unrelated third party contractor, and (iv) the costs of the nighttime cleaning contract shall no longer be an Operating Cost, such adjustment to be applied from and after the date on which Tenant assumes such responsibility for cleaning the Premises (such adjustment to be pro-rated for the year in which Tenant assumes such responsibility).

F. *Security Service*. Tenant shall provide security service for the Building in a manner and to the extent deemed appropriate by Tenant.

G. *Parking*. Landlord shall grant and provide certain parking rights to Tenant as described below:

The construction documents for the Building contemplate a total of approximately 869 parking spaces, with 380 surface spaces and 489 spaces located in the parking structure. Tenant shall have the right to use such spaces subject to the reservation of 105 spaces for the tenant(s) of Building II upon its completion. The parking spaces allocated to Building I will be 304 surface spaces and 484 spaces located in the parking structure. Tenant acknowledges that the entrances for both the parking structure and the surface parking shall serve both the Building and Building II upon completion of the latter.

H. *Access*. Tenant shall have access to the Premises at all times during the Term of this Lease.

I. *Interruption of Services*. If any of the Building equipment or machinery (other than such Building equipment or machinery for which Tenant has assumed the responsibility to maintain) ceases to function properly for any cause Landlord shall use reasonable diligence to repair the same promptly. Landlord's inability to furnish, to any extent, the Project services set forth in this Section 4, or any cessation thereof resulting from any causes, including any entry for repairs pursuant to this Lease, and any renovation, redecoration or rehabilitation of any area of the Building shall not render Landlord liable for damages, except for Landlord's gross negligence or willful misconduct, to either person or property or for interruption or loss to Tenant's business, nor be construed as an eviction of Tenant, nor work an abatement of any portion of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. However, in the event that an interruption of the Project services set forth in this Section 4 (other than those services which Tenant has assumed the responsibility to maintain) causes the Premises to be untenantable for a period of at least ten (10) consecutive days (or, as to air conditioning service during the months of June to August, five (5) consecutive days), monthly Rent shall be thereafter abated proportionately. Landlord shall use reasonable efforts to minimize any interference with Tenant's business operations in performing any repairs, renovations, redecoration or rehabilitation pursuant to this Lease.

J. *Contractors*. Tenant shall have the right at any time and from time to time to request that Landlord use certain contractors to furnish and perform the following services: janitorial, exterior landscaping, pest control, elevator maintenance, waste disposal, fire protection, security and window cleaning. Landlord shall use the contractors requested by Tenant unless the cost thereof is materially higher than that charged by competitors or the quality of the services performed is materially inferior, in the good faith judgment of Landlord. Landlord will cooperate with Tenant to provide acceptable levels of such services for which Landlord is responsible to provide hereunder.

**5. *ALTERATIONS AND REPAIRS.***

A. *Landlord's Consent and Conditions.*

Tenant shall not make any improvements or alterations to the Premises (the *"Work"*) without in each instance submitting plans and specifications for the Work to Landlord and obtaining Landlord's prior written consent (such consent not to be unreasonably withheld) unless (a) the cost thereof is less than $25,000, (b) such Work does not impact the base structural components or, in Landlord's reasonable opinion, adversely affects the mechanical, electrical or plumbing systems of the Building, (c) such Work will not materially adversely impact any other tenant's premises, and (d) such Work does not involve changes to the exterior appearance of the Premises. Tenant shall, except as to the Initial Improvements, pay Landlord's reasonable out-of-pocket costs incurred for review of the plans and all other items submitted by Tenant. Landlord will be deemed to be acting reasonably in withholding its consent for any Work which (a) materially impacts the base structural components or, in Landlord's reasonable opinion, adversely affects systems of the Building, (b) materially adversely impacts any other tenant's premises, or (c) involves material changes to the exterior appearance of the Premises. The Work does not include merely decorative alterations such as painting, carpeting, floor covering, furniture movement, cabling and computer and telephone installation to the extent same do not impact base structural systems or, in Landlord's reasonable opinion, adversely affect the systems of the Building.

Tenant, shall except as to the Initial Improvements, reimburse Landlord for reasonable out-of-pocket costs incurred for review of the plans and all other items submitted by Tenant. Tenant shall pay for the cost of all Work. All Work shall become the property of Landlord upon its installation, except for Tenant's Trade Fixtures and for items which Landlord requires Tenant to remove at Tenant's cost at the termination of the Lease pursuant to Section 3E. As used herein, *"Trade Fixtures"* shall mean any equipment or furnishings customarily considered in a technology—based business office or in the telecommunications industry generally to be the property of the tenant, including in particular any built-in computer equipment, video conferencing facilities, audiovisual facilities, any other built-in communications equipment, and antenna or satellite equipment installed on the roof or elsewhere, and any special climate control equipment installed to protect file servers (except to the extent removal of same would adversely affect the Building systems) or other telecommunications equipment, but excluding any millwork or hardware not heretofore specified.

The following requirements shall apply to all Work:

(1) Prior to commencement, Tenant shall furnish to Landlord building permits, and certificates of insurance reasonably satisfactory to Landlord.

(2) Tenant shall perform all Work so as to maintain cooperation among other contractors serving the Project and shall take all reasonable measures so as to avoid interference with other work to be performed or services to be rendered in the Project.

(3) The Work shall be performed in a good and workmanlike manner, meeting the standard for construction and quality of materials in the Building, and shall comply with all insurance requirements and all applicable governmental laws, ordinances and regulations (*"Governmental Requirements"*).

(4) Tenant shall perform all Work so as to minimize or prevent disruption to other tenants, and Tenant shall comply with all reasonable requests of Landlord in response to complaints from other tenants.

(5) Tenant shall perform all Work in compliance with Landlord's *"Policies, Rules and Procedures for Construction Projects"* in effect at the time the Work is performed (a copy of which is attached hereto as Appendix J and made a part hereof).

(6) Tenant shall permit Landlord to supervise all Work. Landlord may charge a supervisory fee not to exceed five percent (5%) of labor, material, and all other costs of the Work, if Landlord's employees or contractors perform the Work. The foregoing does not apply to Work which does not require Landlord's prior consent nor to the Initial Improvements.

(7) Upon completion, Tenant shall furnish Landlord with contractor's affidavits and full and final statutory waivers of liens, as-built plans and specifications, and receipted bills covering all labor and materials, and all other close-out documentation required in Landlord's *"Policies, Rules and Procedures for Construction Projects"*.

B. *Damage to Systems.* If any part of the mechanical, electrical or other systems in the Premises shall be damaged, Tenant shall promptly notify Landlord, and Landlord shall repair such damage. Landlord may also at any reasonable time make any repairs or alterations which Landlord deems necessary for the safety or protection of the Project, or which Landlord is required to make by any court or pursuant to any Governmental Requirement and, if Landlord fails to do so, Tenant may pursue its self-help and offset rights under Section 22 below. Tenant shall at its expense make all other repairs necessary to keep the Premises, and Tenant's fixtures and personal property, in good order, condition and repair; to the extent Tenant fails to do so (after expiration of all applicable notice and cure periods), Landlord may make such repairs itself. The cost of any repairs made by Landlord on account of Tenant's default, or on account of the

mis-use or neglect by Tenant or its invitees, contractors or agents anywhere in the Project, shall become Additional Rent payable by Tenant on demand.

C. *No Liens.* Tenant has no authority to cause or permit any lien or encumbrance of any kind to affect Landlord's interest in the Project; any such lien or encumbrance shall attach to Tenant's interest only. If any mechanic's lien shall be filed or claim of lien made for work or materials furnished to Tenant, then Tenant shall at its expense within thirty (30) days thereafter either discharge or contest the lien or claim. If Tenant contests the lien or claim, then Tenant shall (i) within such thirty (30) day period, provide Landlord adequate security for the lien or claim, (ii) contest the lien or claim using reasonable efforts by appropriate proceedings that operate to stay its enforcement, and (iii) pay promptly any final adverse judgment entered in any such proceeding. If Tenant does not comply with these requirements (after expiration of all applicable notice and cure periods), Landlord may discharge the lien or claim, and the amount paid, as well as reasonable attorney's fees and other expenses incurred by Landlord, shall become Additional Rent payable by Tenant on demand.

D. *Ownership of Improvements.* All Work as defined in this Section 5, partitions, hardware, equipment, machinery and all other improvements and all fixtures except Trade Fixtures, constructed in the Premises by either Landlord or Tenant, (i) shall, except as set forth in Section 5E below, become Landlord's property upon installation without compensation to Tenant, unless Landlord consents otherwise in writing, and (ii) shall, except as set forth in Subsection 5E below, be surrendered to Landlord with the Premises at the termination of the Lease or of Tenant's right to possession.

E. *Removal at Termination*. Upon the termination of this Lease or Tenant's right of possession Tenant shall remove (and repair any damage caused by such removal) from the Project, its Trade Fixtures, telecommunications and computer equipment, furniture, moveable equipment and other personal property, together with any other non-standard office installations designated by Landlord at the time of Tenant's installation (e.g., stairwells, safes, etc.). Any standard office installations (i.e., walls, attached bookcases, attached credenzas, built-in reception desks, etc.) attached to the Premises must remain in the Premises. Tenant shall not be required to remove any cabling or wiring located within the risers and raceways used for such telecommunications and computer equipment. If Tenant does not timely remove such property, then Tenant shall be conclusively presumed to have, at Landlord's election (i) conveyed such property to Landlord without compensation or (ii) abandoned such property, and Landlord may dispose of or store any part thereof in any manner at Tenant's sole cost, without waiving Landlord's right to claim from Tenant all expenses arising out of Tenant's failure to remove the property, and without liability to Tenant or any other person. Landlord shall have no duty to be a bailee of any such personal property. If Landlord elects abandonment, Tenant shall pay to Landlord, upon demand, any expenses incurred for disposition.

F. *Rooftop Communications Systems*. Tenant may at its sole cost install, maintain, and from time to time replace a communications systems (a *"RCS*") on the roof of the Building, provided that Tenant shall obtain Landlord's, and (to the extent required by applicable restrictive covenants affecting the Building) The Las Colinas Association's, prior reasonable approval of the proposed size, weight and location of the RCS and method for installing the RCS on the roof, and that Tenant will at its sole cost comply with all Governmental Requirements and the conditions of any bond or warranty maintained by Landlord on the roof. Landlord may supervise any roof penetration. Tenant shall repair any damage to the Building caused by Tenant's installation, maintenance, replacement, use or removal of the RCS. The RCS shall remain the property of Tenant, and Tenant may remove the RCS at its cost at any time during the Term. Tenant shall remove the RCS at its cost upon expiration or termination of the Lease. Tenant shall protect, defend, indemnify and hold harmless Landlord from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the RCS. Tenant shall have the right to install and maintain other equipment on the roof of the Building, subject to Landlord's aesthetic and structural guidelines.

G. *Conduits.* Except as set forth herein, Tenant has the right to use existing or construct, at Tenant's cost, new conduits into and through the Building and the right, at its cost, to install cables, equipment and other related telecommunications facilities required for Tenant's network into and through the Building, subject to Landlord's approval, not to be unreasonably withheld. Landlord shall construct as part of the Base Building Work set forth in the Work Agreement an underground conduit connecting the Building and Building III having dimensions specified by Tenant [provided, however, that Tenant shall reimburse Landlord for the cost of such conduit in excess of Thirty Thousand Dollars ($30,000.00)].

H. *Additional Tenant Obligations.* Notwithstanding anything in the Lease to the contrary, Landlord shall not be responsible for providing any service that Tenant has undertaken, or subsequently undertakes, to furnish in lieu of Landlord and Tenant shall be responsible, at Tenant's sole cost, for the maintenance of any equipment and/or systems used to furnish such services. In particular, Tenant shall be responsible, at Tenant's sole cost, for the maintenance and level of service of the emergency generator, the secondary heating, ventilating and air conditioning distribution system, and the Building and parking garage security systems.

**6. *USE OF PREMISES.*** Tenant shall use the Premises only for general office purposes and any other office-related uses typical or ancillary to technology-based businesses, as long as such uses are permitted by applicable zoning regulations. Tenant shall not allow any hazardous use of the Premises which will increase the cost of coverage of Landlord's insurance on the Project. The Project is currently zoned to permit office use and Landlord agrees not to change the zoning to prohibit such use. Tenant shall not allow any inflammable or explosive liquids or materials to be kept on the Premises (other than commonly used janitorial supplies and supplies customarily used in the operation of business offices). Tenant shall not allow any use of the Premises which would cause the value or utility of any part of the Premises to diminish or would interfere with any other Tenant or with the operation of the Project by Landlord. Tenant shall not permit any nuisance or waste upon the Premises, or allow any offensive noise or odor in or around the Premises.

**7. *GOVERNMENTAL REQUIREMENTS AND BUILDING RULES.*** Tenant shall comply with all Governmental Requirements applying to its use of the Premises. Tenant shall also comply with all reasonable rules established for the Project from time to time by Landlord. The present rules and regulations are contained in Appendix B. Failure by another tenant to comply with the rules or failure by Landlord to enforce them shall not relieve Tenant of its obligation to comply with the rules or make Landlord responsible to Tenant in any way. Landlord shall use reasonable efforts to apply the rules and regulations uniformly and in a non-discriminatory manner with respect to Tenant and tenants in the Building under leases containing rules and regulations similar to this Lease. In the event of alterations and repairs performed by Tenant, Tenant shall comply with the provisions of Section 5 of this Lease and such other rules as Landlord may reasonably require. In the event of any conflict, inconsistency or ambiguity between the terms of this Lease and the terms of Appendix B, the terms of this Lease shall govern and control.

Landlord shall construct and operate the Project in accordance with environmentally sound management principles, including the principles of the International Chamber of Commerce Business Charter on Sustainable Development.

**8. *WAIVER OF CLAIMS; INDEMNIFICATION; INSURANCE.***

A. *Waiver of Claims.* To the extent permitted by law, Tenant waives any claims it may have against Landlord or its officers, directors, employees or agents for business interruption or damage to property sustained by Tenant as the result of any act or omission of Landlord to the extent covered by insurance or to the extent same could have been covered by insurance to the extent such party failed to maintain the insurance described below.

To the extent permitted by law, Landlord waives any claims it may have against Tenant or its officers, directors, employees or agents for loss of rents (other than Rent) or damage to property sustained by Landlord as the result of any act or omission of Tenant to the extent

covered by insurance or to the extent same could have been covered by insurance to the extent such party failed to maintain the insurance described below.

Landlord and Tenant mutually waive all rights of subrogation.

The terms and provisions of this Section 8A shall survive the termination of this Lease.

B. *Indemnification.* Tenant shall indemnify, defend and hold harmless Landlord and its officers, directors, employees and agents against any claim by any third party for injury to any person or damage to or loss of any property occurring in the Project and arising from the use of the Premises or from any other act or omission or negligence of Tenant or any of Tenant's employees or agents. Tenant's obligations under this section shall survive the termination of this Lease.

Landlord shall indemnify, defend and hold harmless Tenant and its officers, directors, employees and agents against any claim by any third party for damage to person or Premises or from any other act or omission or negligence of Landlord or any of Landlord's employees or agents. Landlord's obligations under this section shall survive the termination of this Lease.

C. *Tenant's Insurance.* Tenant shall maintain insurance as follows, with such other terms, coverages and insurers, as Landlord shall reasonably require from time to time:

(1) Commercial General Liability Insurance, with (a) Contractual Liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Five Million Dollars ($5,000,000).

(2) Property Insurance against "All Risks" of physical loss covering the replacement cost of all improvements, fixtures and personal property. Tenant waives all rights of subrogation, and Tenant's property insurance shall include a waiver of subrogation in favor of Landlord.

(3) (Unless Tenant elects to self-insure this risk or otherwise comply with applicable law in this subject matter), Workers' compensation or similar insurance in form and amounts required by law, and Employer's Liability with not less than the following limits:

| | |
|---|---|
| Each Accident | $500,000 |
| Disease—Policy Limit | $500,000 |
| Disease—Each Employee | $500,000 |

Such insurance shall contain a waiver of subrogation provision in favor of Landlord and its agents and may be under a blanket policy as long as the Premises and Landlord are specifically listed therein in a manner reasonably acceptable to Landlord.

Landlord, and if any, Landlord's building manager or agent and ground lessor shall be named as additional insureds as respects to insurance required of the Tenant in Section 8C(1). The company or companies writing any insurance which Tenant is required to maintain under this Lease, as well as the form of such insurance, shall at all times be subject to Landlord's approval, and any such company shall be licensed to do business in the state in which the Building is located. Such insurance companies shall have a A.M. Best rating of A VI or better.

Tenant shall cause any contractor of Tenant performing work on the Premises to maintain insurance as follows, with such other terms, coverages and insurers, as Landlord shall reasonably require from time to time:

(1) Commercial General Liability Insurance, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement, and contractor's protective liability coverage, to afford protection with limits, for each occurrence, of not less than One Million Dollars ($1,000,000) with respect to personal injury, death or property damage.

(2) Workers' compensation or similar insurance in form and amounts required by law, and Employer's Liability with not less than the following limits:

| | |
|---|---|
| Each Accident | $500,000 |
| Disease—Policy Limit | $500,000 |
| Disease—Each Employee | $500,000 |

Such insurance shall contain a waiver of subrogation provision in favor of Landlord and its agents.

Tenant's contractor's insurance shall be primary and not contributory to that carried by Tenant, Landlord, their agents or mortgagees. Tenant and Landlord, and if any, Landlord's building manager or agent, mortgagee or ground lessor shall be named as additional insured on Tenant's contractor's insurance policies.

D. *Insurance Certificates.* Tenant shall deliver to Landlord certificates evidencing all required insurance no later than five (5) days prior to the Commencement Date and each renewal date. Each certificate will provide for thirty (30) days prior written notice of cancellation to Landlord and Tenant.

E. *Landlord's Insurance.* Landlord shall maintain "All-Risk" property insurance at replacement cost, including loss of rents, on the Building, and Commercial General Liability insurance policies covering the common areas of the Building, each with such terms, coverages and conditions as are normally carried by reasonably prudent owners of properties similar to the Project. With respect to property insurance, Landlord and Tenant mutually waive all rights of subrogation, and the respective "All-Risk" coverage property insurance policies carried by Landlord and Tenant shall contain enforceable waiver of subrogation endorsements.

**9. *FIRE AND OTHER CASUALTY.***

A. *Termination*. If a fire or other casualty causes substantial damage to the Building or the Premises, Landlord shall engage a registered architect qualified, competent and experienced in performing this function, to certify within one (1) month of the casualty to both Landlord and Tenant the amount of time needed to restore the Building and the Premises to tenantability, using standard working methods. If the time needed exceeds twelve (12) months from the beginning of the restoration, or two (2) months therefrom if the restoration would begin during the last twelve (12) months of the Lease, then in the case of the Premises, either Landlord or Tenant may terminate this Lease, and in the case of the Building, Landlord may terminate this Lease, by notice to the other party within ten (10) days after the notifying party's receipt of the architect's certificate. The termination shall be effective thirty (30) days from the date of the notice and Rent shall be paid by Tenant to that date, with an abatement for any portion of the space which has been untenantable after the casualty.

B. *Restoration.* If a casualty causes damage to the Building or the Premises but this Lease is not terminated for any reason, then Landlord shall obtain the applicable insurance proceeds and diligently restore the Building and the Premises subject to current Governmental Requirements. Tenant shall replace its damaged improvements, personal property and fixtures. Rent shall be abated on a per diem basis during the restoration for any portion of the Premises which is untenantable. Any subordination, non-disturbance and attornment agreement subsequently entered into with Tenant shall require the application of insurance proceeds to restoration of the Premises and the Building.

**10.** ***EMINENT DOMAIN.*** If a part of the Project is taken by eminent domain or deed in lieu thereof which is so substantial that the Premises cannot reasonably be used by Tenant for the operation of its business, then either party may terminate this Lease effective as of the date of the taking. If any substantial portion of the Project is taken without affecting the Premises, then Landlord may terminate this Lease as of the date of such taking. As used herein, "substantial portion" shall mean a taking of more than forty percent (40%) of the Land or more than thirty percent (30%) of the rentable area of the remainder of the Project. Rent shall abate from the date of the taking in proportion to any part of the Premises taken. The entire award for a taking of any kind shall be paid to Landlord. Tenant may pursue a separate award for its trade fixtures and moving expenses in connection with the taking, but only if such recovery does not reduce the award payable to Landlord. Notwithstanding the foregoing, if applicable law prohibits Tenant from pursuing such separate award, then Tenant may make a claim for its Trade Fixtures and moving expenses in conjunction with Landlord's claim so long as Landlord and Tenant can readily identify and separate their respective portions of the award granted under such combined claim. All obligations accrued to the date of the taking shall be performed by each party.

**11.** ***RIGHTS RESERVED TO LANDLORD.***

Landlord may exercise at any time any of the following rights respecting the operation of the Project without liability to the Tenant of any kind:

A. *Signs*. To install and maintain any signs on the exterior and in the interior of the Building, and to approve, at its sole discretion, prior to installation, any of Tenant's signs in the Premises visible from the common areas or the exterior of the Building; provided, however, that as long as Tenant occupies the entire Building, Landlord's approval of signs in the Premises shall not be required, and further provided, that as long as Tenant occupies at least 100,000 square feet in the Building, Tenant will have the exclusive right to place its name and corporate logo on the Building at a mutually agreeable location. Notwithstanding the foregoing, if Landlord commences construction of the Expansion Building and Landlord and Tenant have not entered into a lease agreement whereby Tenant will lease all of the rentable square feet in the Expansion Building, Landlord shall have the right to require Tenant to alter its exterior signage to comply with Landlord's then signage criteria for the Project. The Plans will include specifications for the location and design of Tenant's signage. Landlord agrees to diligently pursue, at Tenant's cost, all reasonable avenues to obtain maximum signage rights from all applicable governmental authorities.

B. *Window Treatments*. To approve, at its discretion (except as otherwise set forth in Paragraph 7), prior to installation, any shades, blinds, ventilators or window treatments of any kind, as well as any lighting within the Premises that may be visible from the exterior of the Building or any interior common area.

C. *Keys*. Subject to subparagraph D below, to retain and use at any time passkeys to enter the Premises or any door within the Premises. Subject to subparagraph D below, Tenant shall not alter or add any lock or bolt.

D. *Access*. To have access to inspect the Premises (subject to 24 hours advance authorization except in cases of emergency), and to perform its obligations, or make repairs, alterations, additions or improvements, as permitted by this Lease upon reasonable prior notice to Tenant, during normal business hours and with minimal interference with Tenant's business operations. A representative of Tenant may, at Tenant's option, be present during any such access. If Tenant complies with all of the requirements set forth in this Section, Tenant may provide its own locks to an area or areas within the Premises (the *"Secured Areas"*). At least ten (10) days prior to the creation of any Secured Area, Tenant shall notify Landlord of the exact location of such Secured Area and the name of the representative of Tenant to be contacted and the manner of contact to avoid a forcible entry. Tenant need not furnish Landlord with keys to the Secured Areas. Upon the termination of this Lease, Tenant shall surrender all keys to Landlord. Landlord shall have no obligation to provide janitorial service to the Secured Areas. If Landlord determines in its reasonable discretion that a suspected fire or flood or other emergency in the Building requires Landlord to gain access to any Secured Area, Landlord may

forcibly enter. Landlord shall make a reasonable effort to contact Tenant to secure access, but Landlord shall not be obligated to contact Tenant.

E. *Preparation for Reoccupancy*. To decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time following Tenant's default (after the expiration of any applicable notice and cure period and Landlord's exercise of its right to terminate this Lease or Tenant's possession), without relieving Tenant of any obligation to pay Rent.

F. *Heavy Articles*. To approve the weight, size, placement and time and manner of movement within the Building of any safe, central filing system or other heavy article of Tenant's property. Tenant shall move its property entirely at its own risk. The Building has been designed with the floor load capacity referred to on the Plans.

G. *Show Premises*. To show the Premises to prospective purchasers, tenants (only during the last 6 months of the Term), brokers, lenders, investors, rating agencies or others at any reasonable time, provided that Landlord gives prior notice to Tenant and does not unreasonably interfere with Tenant's use of the Premises. Tenant may, at Tenant's option, have a representative present during any such showing.

H. *Relocation of Tenant*. [Intentionally Deleted].

I. *Use of Lockbox.* To designate a lockbox collection agent for collections of amounts due Landlord. The date of payment of Rent or other sums shall be the date Rent is deposited in such lockbox. However, if Tenant is in default and this Lease has been terminated Landlord may reject any payment for all purposes as of the date of receipt or actual collection by mailing to Tenant within 21 days after such receipt or collection a check equal to the amount sent by Tenant.

J. *Repairs and Alterations.* To make repairs or alterations to the Project and in doing so transport any required material through the Premises, to close entrances, doors, corridors, elevators and other facilities in the Project, to open any ceiling in the Premises, or to temporarily suspend services or use of common areas in the Building provided that any such repairs do not unreasonably interfere with Tenant's use of the Premises. Landlord may perform any such repairs or alterations during ordinary business hours, except that Tenant may require any Work in the Premises to be done after business hours if Tenant pays Landlord for overtime and any other expenses incurred. Landlord may do or permit any work on any nearby building, land, street, alley or way. Landlord shall use reasonable efforts to minimize interference with Tenant's business operations in the course of performing such work.

K. *Landlord's Agents.* If Tenant is in default under this Lease, possession of Tenant's funds or negotiation of Tenant's negotiable instrument by any of Landlord's agents shall not waive any breach by Tenant or any remedies of Landlord under this Lease.

L. *Building Services.* To install, use and maintain through the Premises, pipes, conduits, wires and ducts serving the Building, provided that such installation, use and maintenance does not unreasonably interfere with Tenant's use of the Premises.

M. *Other Actions.* To take any other action which Landlord deems reasonable in connection with the operation, maintenance or preservation of the Building.

**12. *TENANT'S DEFAULT.***

Any of the following shall constitute a default by Tenant:

A. *Rent Default.* Tenant fails to pay any Rent when due, and such failure continues for five (5) days following the date of Landlord's written notice to Tenant;

B. *Other Performance Default.* Tenant fails to perform any other obligation to Landlord under this Lease, and such failure continues for thirty (30) days after written notice

from Landlord, except that if Tenant begins to cure its failure within the thirty (30) day period but cannot reasonably complete its cure within such period, then, so long as Tenant continues to diligently attempt to cure its failure, the thirty (30) day period shall be extended to one hundred twenty (120) days, or such lesser period as is reasonably necessary to complete the cure;

C. *Credit Default.* One of the following credit defaults occurs:

(1) Tenant commences any proceeding under any law relating to bankruptcy, insolvency, reorganization or relief of debts, or seeks appointment of a receiver, trustee, custodian or other similar official for the Tenant or for any substantial part of its property, or any such proceeding is commenced against Tenant and either remains undismissed for a period of thirty days or results in the entry of an order for relief against Tenant which is not fully stayed within ninety (90) days after entry;

(2) Tenant becomes insolvent or bankrupt, does not generally pay its debts as they become due, or admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors;

(3) Any third party obtains a levy or attachment under process of law against Tenant's leasehold interest and Tenant fails to have same removed within ninety (90) days.

**13.** ***LANDLORD REMEDIES.***

A. *Termination of Lease or Possession.* If Tenant defaults, Landlord may elect by notice to Tenant either to terminate this Lease or to terminate Tenant's possession of the Premises without terminating this Lease. In either case, Tenant shall immediately vacate the Premises and deliver possession to Landlord, and Landlord may repossess the Premises and may, at Tenant's sole cost, remove any of Tenant's signs and any of its other property, without relinquishing its right to receive Rent or any other right against Tenant. If Landlord desires to terminate this Lease as to any non-monetary default, Landlord agrees that notice of termination as to any non-monetary default will only be effective if Tenant fails to cure same within three (3) days following the date of Landlord's notice.

B. *Lease Termination Damages.* If Landlord terminates the Lease, Tenant shall pay to Landlord all Rent due on or before the date of termination, plus the aggregate Rent that would have been payable from the date of termination through the Termination Date, reduced by the rental value of the Premises calculated as of the date of termination for the same period, taking into account reletting expenses and market concessions, both discounted to present value at the prime rate per annum then published as such in *The Wall Street Journal* or, if not in existence, such other newspaper having a national circulation (the *"Prime Rate*").

C. *Possession Termination Damages.* If Landlord terminates Tenant's right to possession without terminating the Lease and Landlord takes possession of the Premises itself, Landlord may relet any part of the Premises for such Rent, for such time, and upon such terms as Landlord in its sole discretion shall determine, without any obligation to do so prior to renting other vacant areas in the Building. Any proceeds from reletting the Premises shall first be applied to the expenses of reletting, including redecoration, repair, alteration, advertising, brokerage, legal, and other reasonably necessary expenses. If the reletting proceeds after payment of expenses are insufficient to pay the full amount of Rent under this Lease, Tenant shall pay such deficiency to Landlord monthly upon demand as it becomes due. Any excess proceeds shall be retained by Landlord.

D. Intentionally Deleted.

E. *Landlord's Remedies Cumulative.* All of Landlord's remedies under this Lease shall be in addition to all other remedies Landlord may have at law or in equity. Waiver by Landlord of any breach of any obligation by Tenant shall be effective only if it is in writing, and shall not be deemed a waiver of any other breach, or any subsequent breach of the

same obligation. Landlord's acceptance of payment by Tenant shall not constitute a waiver of any breach by Tenant, and if the acceptance occurs after Landlord's notice to Tenant, or termination of the Lease or of Tenant's right to possession, the acceptance shall not affect such notice or termination. Acceptance of payment by Landlord after commencement of a legal proceeding or final judgment shall not affect such proceeding or judgment. Landlord may advance such monies and take such other actions for Tenant's account as reasonably may be required to cure or mitigate any default by Tenant. Tenant shall immediately reimburse Landlord for any such advance, and such sums shall bear interest at the default interest rate until paid.

**F.** ***WAIVER OF TRIAL BY JURY.*** **EACH PARTY WAIVES TRIAL BY JURY IN THE EVENT OF ANY LEGAL PROCEEDING BROUGHT BY THE OTHER IN CONNECTION WITH THIS LEASE. EACH PARTY SHALL BRING ANY ACTION AGAINST THE OTHER IN CONNECTION WITH THIS LEASE IN A FEDERAL OR STATE COURT LOCATED IN DALLAS COUNTY, TEXAS, CONSENTS TO THE JURISDICTION OF SUCH COURTS, AND WAIVES ANY RIGHT TO HAVE ANY PROCEEDING TRANSFERRED FROM SUCH COURTS ON THE GROUND OF IMPROPER VENUE OR INCONVENIENT FORUM.**

G. *Litigation Costs.* Tenant shall pay Landlord's reasonable attorneys' fees and other costs in enforcing this Lease, whether or not suit is filed. In the event of any litigation concerning this Lease, the non-prevailing party will reimburse the prevailing party's reasonable attorneys' fees, reasonable disbursements and court costs.

H. *Reletting*. Tenant acknowledges that Landlord has entered into this Lease in reliance upon, among other matters, Tenant's agreement and continuing obligation to pay all Rent due throughout the Term. As a result, Tenant hereby knowingly and voluntarily waives, after advice of competent counsel, any duty of Landlord (and any affirmative defense based upon such duty) following any default to relet the Premises or otherwise mitigate Landlord's damages arising from such default. If such waiver is not effective under then applicable law or Landlord otherwise elects, at Landlord's sole option, to attempt to relet all or any part of the Premises, Tenant agrees that Landlord has no obligation to: (i) relet the Premises prior to leasing any other space within the Building; (ii) relet the Premises (A) at a rental rate or otherwise on terms below market, as then determined by Landlord in its sole discretion; (B) to any entity not satisfying Landlord's then standard financial credit risk criteria; (C) for a use (1) not consistent with Tenant's use prior to default; (2) which would violate then applicable law or any restrictive covenant or other lease affecting the Building; (3) which would impose a greater burden upon the Building's parking, HVAC or other facilities; and/or (4) which would involve any use of Hazardous Substances; (iii) divide the Premises, install new demising walls or otherwise reconfigure the Premises to make same more marketable; (iv) pay any leasing or other commissions arising from such reletting, unless Tenant unconditionally delivers Landlord, in good and sufficient funds, the full amount thereof in advance; (v) pay, and/or grant any allowance for, tenant finish or other costs associated with any new lease, even though same may be amortized over the applicable lease term, unless Tenant unconditionally delivers Landlord, in good and sufficient funds, the full amount thereof in advance; and/or (vi) relet the Premises, if to do so, Landlord would be required to alter other portions of the Building, make ADA-type modifications or otherwise install or replace any sprinkler, security, safety, HVAC or other Building operating systems. Tenant further acknowledges that if Tenant, notwithstanding Tenant's waiver above, raises Landlord's mitigation as an affirmative defense to a claim made by Landlord prior to any actual reentry of the Premises by Landlord then, in such event, Tenant will be deemed to have automatically waived, and released and discharged Landlord from and against, any and all other claims and defenses to the payment of Rent.

**14.** ***SURRENDER.*** Upon termination of this Lease or Tenant's right to possession, Tenant shall return the Premises to Landlord in good order and condition, ordinary wear and casualty damage excepted. If Landlord requires Tenant to remove any alterations, then Tenant shall remove the alterations in a good and workmanlike manner and restore the Premises to its condition prior to their installation. In the event that Tenant does not exercise its option to renew the Term of this Lease as set forth in Appendix F, then Tenant shall restore the first floor lobby of the Premises to the original design thereof prepared by Landlord, if and to the extent Tenant

has modified the lobby from such original design. Such restoration shall be made at Tenant's cost and expense.

**15. *HOLDOVER*.** If Tenant retains possession of any part of the Premises after the Term, Tenant shall become a month-to-month tenant for the entire Premises upon all of the terms of this Lease as might be applicable to such month-to-month tenancy, except that Tenant shall pay all of Base Rent, Operating Cost Share Rent and Tax Share Rent at one hundred thirty-five percent (135%) of the rate in effect immediately prior to such holdover, computed on a monthly basis for each full or partial month Tenant remains in possession, as liquidated damages for Tenant's holdover. No acceptance of Rent or other payments by Landlord under these holdover provisions shall operate as a waiver of Landlord's right to regain possession or any other of Landlord's remedies.

**16. *SUBORDINATION TO GROUND LEASES AND MORTGAGES.***

A. *Subordination.* This Lease shall be subordinate to any future ground lease or mortgage respecting the Project, and any amendments to such ground lease or mortgage, at the election of the ground lessor or mortgagee as the case may be, effected by notice to Tenant in the manner provided in this Lease. The subordination shall be effective upon such notice, but at the request of Landlord or ground lessor or mortgagee, Tenant shall within ten (10) days of the request, execute and deliver to the requesting party any reasonable documents provided to evidence the subordination. Any mortgagee has the right, at its option, to subordinate its mortgage to the terms of this Lease, without notice to, nor the consent of, Tenant. There are no existing mortgages or ground leases affecting the Project. As a condition to Tenant's agreement to subordinate Tenant's interest in this Lease to any future mortgage or ground lease, the mortgagee or ground lessor, as applicable, must deliver to Tenant a non-disturbance agreement reasonably acceptable to Tenant, providing that so long as Tenant is not in default under this Lease after the expiration of any applicable notice and cure periods, Tenant may remain in possession of the Premises under the terms of this Lease, even if the ground lessor should terminate the ground lease or if the mortgagee or its successor should acquire Landlord's title to the Project.

B. *Termination of Ground Lease or Foreclosure of Mortgage.* If any ground lease is terminated or mortgage foreclosed or deed in lieu of foreclosure given and the ground lessor, mortgagee, or purchaser at a foreclosure sale shall thereby become the owner of the Project, Tenant shall attorn to such ground lessor or mortgagee or purchaser without any deduction or setoff by Tenant, and this Lease shall continue in effect as a direct lease between Tenant and such ground lessor, mortgagee or purchaser. The ground lessor or mortgagee or purchaser shall be liable as Landlord only during the time such ground lessor or mortgagee or purchaser is the owner of the Project. At the request of Landlord, ground lessor or mortgagee, Tenant shall execute and deliver within ten (10) days of the request any document furnished by the requesting party to evidence Tenant's agreement to attorn.

C. *Security Deposit.* Any ground lessor or mortgagee shall be responsible for the return of any security deposit by Tenant, if any, only to the extent the security deposit is received by such ground lessor or mortgagee.

D. *Notice and Right to Cure*. The Project is subject to any ground lease and mortgage identified with name and address of ground lessor or mortgagee in Appendix D to this Lease (as the same may be amended from time to time by written notice to Tenant). Tenant agrees to send by registered or certified mail to any ground lessor or mortgagee identified either in such Appendix or in any later notice from Landlord to Tenant a copy of any notice of default sent by Tenant to Landlord. If Landlord fails to cure such default within the required time period under this Lease, but ground lessor or mortgagee begins to cure within ten (10) days after such period and proceeds diligently to complete such cure, then ground lessor or mortgagee shall have such additional time as is necessary to complete such cure, including any time necessary to obtain possession if possession is necessary to cure, and Tenant shall not begin to enforce its remedies so long as the cure is being diligently pursued.

E. *Definitions.* As used in this Section 16, "mortgage" shall include "deed of trust" and/or "trust deed" and "mortgagee" shall include "beneficiary" and/or "trustee", "mortgagee" shall include the mortgagee of any ground lessee, and "ground lessor", "mortgagee", and "purchaser at a foreclosure sale" shall include, in each case, all of its successors and assigns, however remote.

**17. *ASSIGNMENT AND SUBLEASE.***

A. *In General.* Tenant shall not, without the prior consent of Landlord in each case, (i) make or allow any assignment or transfer, by operation of law or otherwise, of any part of Tenant's interest in this Lease, (ii) grant or allow any lien or encumbrance, by operation of law or otherwise, upon any part of Tenant's interest in this Lease, (iii) sublet any part of the Premises, or (iv) permit anyone other than Tenant and its employees to occupy any part of the Premises. Tenant shall remain primarily liable for all of its obligations under this Lease, notwithstanding any assignment, subletting or transfer under this Section 17 or otherwise. No consent granted by Landlord shall be deemed to be a consent to any subsequent assignment or transfer, lien or encumbrance, sublease or occupancy. Tenant shall pay all of Landlord's attorneys' fees and other expenses incurred in connection with any consent requested by Tenant or in reviewing any proposed assignment or subletting. Any assignment or transfer, grant of lien or encumbrance, or sublease or occupancy without Landlord's prior written consent shall be void. Except in the case of an assignment permitted under Section 17F below, if Tenant shall assign this Lease or sublet the Premises in its entirety any rights of Tenant to renew this Lease, extend the Term or to lease additional space in the Project shall be extinguished thereby and will not be transferred to the assignee or subtenant, all such rights being personal to the Tenant named herein.

B. *Landlord's Consent.* Landlord will not unreasonably withhold or delay its consent to any proposed assignment or subletting. It shall be reasonable for Landlord to withhold its consent to any assignment or sublease if (i) Tenant is in monetary default or material non-monetary default under this Lease after the expiration of all applicable cure periods, (ii) the proposed assignee or sublessee is a tenant in the Project or an affiliate of such a tenant or a party that Landlord is then actively involved in negotiations as a prospective tenant in the Project, (iii) the financial responsibility, nature of business, and character of the proposed assignee or subtenant are not all reasonably satisfactory to Landlord, (iv) in the reasonable judgment of Landlord the purpose for which the assignee or subtenant intends to use the Premises (or a portion thereof) is not in keeping with Landlord's standards for the Building or are in violation of the terms of this Lease or any other leases in the Project, or (v) the proposed assignee or subtenant is a government entity. The foregoing shall not exclude any other reasonable basis for Landlord to withhold its consent.

C. *Procedure.* Tenant shall notify Landlord of any proposed assignment or sublease at least ten (10) business days prior to its proposed effective date. The notice shall include the name and address of the proposed assignee or subtenant, its corporate affiliates in the case of a corporation and its partners in a case of a partnership, an execution copy of the proposed assignment or sublease, and sufficient information to permit Landlord to determine the financial responsibility and character of the proposed assignee or subtenant. As a condition to any effective assignment of this Lease, the assignee shall execute and deliver in form reasonably satisfactory to Landlord at least five (5) business days prior to the effective date of the assignment, an assumption of all of the obligations of Tenant under this Lease. As a condition to any effective sublease, subtenant shall execute and deliver in form reasonably satisfactory to Landlord at least five (5) business days prior to the effective date of the sublease, an agreement to comply with all of Tenant's obligations under this Lease, and at Landlord's option, an agreement (except for the economic obligations which subtenant will undertake directly to Tenant) to attorn to Landlord (and if Landlord requests such attornment, Landlord must recognize such subtenant) under the terms of the sublease in the event this Lease terminates before the sublease expires.

D. *Change of Management or Ownership.* Any direct or indirect change in 50% or more of the ownership interest in Tenant shall constitute an assignment of this Lease.

E. *Excess Payments.* If Tenant shall assign this Lease or sublet any part of the Premises, except under Clause F. below, for consideration in excess of the pro-rata portion of Rent applicable to the space subject to the assignment or sublet, less any actual out-of-pocket costs incurred by Tenant, and payable to non-affiliated third parties, in connection therewith (i.e., brokerage commissions, tenant finish costs, legal fees, advertising costs, work allowances, free rent and marketing expenses, all of which must be amortized over the applicable lease term), then Tenant shall pay to Landlord as Additional Rent seventy percent (70%) of any such excess immediately upon receipt.

F. *Related Entity.* If Landlord has not elected to terminate this Lease or Tenant's right to possession in accordance with Section 13 of this Lease following a default by Tenant, Tenant may assign this Lease to (i) an entity into which Tenant is merged or consolidated or to an entity to which substantially all of Tenant's assets are transferred through a public offering on a recognized exchange, or (ii) any entity controlling, controlled by or under common control with a Tenant, without first obtaining Landlord's written consent, if Tenant notifies Landlord at least ten (10) business days prior to the proposed transaction, providing information reasonably satisfactory to Landlord in order to determine the relationship with Tenant. Nokia, Inc. or, if applicable, its successor by merger, consolidation, public offering or otherwise, will at all times remain primarily liable under this Lease, as amended from time to time, following any such transfer.

**18.** ***CONVEYANCE BY LANDLORD.*** If Landlord shall at any time transfer its interest in the Project or this Lease, Landlord shall be released of any obligations occurring after such transfer (as long as Landlord's successor assumes such liability), except the obligation to return to Tenant any security deposit not delivered to its transferee, and Tenant shall look solely to Landlord's successors for performance of such obligations. This Lease shall not be affected by any such transfer.

**19.** ***ESTOPPEL CERTIFICATE***. Each party shall, as soon as reasonably practical but in no event beyond twenty (20) days of receiving a request from the other party accompanied by the form of certificate requested together with all proposed exhibits or schedules attached, execute, acknowledge in recordable form, and deliver to the other party or its designee a certificate stating, subject to a specific statement of any applicable exceptions, that the Lease as amended to date is in full force and effect, that the Tenant is paying Rent and other charges on a current basis, and that to the best of the knowledge of the certifying party, the other party has committed no uncured defaults and has no offsets or claims. The certifying party may also be required to state the date of commencement of payment of Rent, the Commencement Date, the Termination Date, the Base Rent, the current Operating Cost Share Rent, Tax Share Rent and Electrical Cost Share Rent estimates, the status of any improvements required to be completed by Landlord, the amount of any security deposit, and such other matters as may be reasonably requested.

**20.** ***SECURITY DEPOSIT.*** [Intentionally Deleted.]

**21.** ***FORCE MAJEURE.*** Neither party shall be in default under this Lease to the extent such party is unable to perform any of its obligations on account of any strike or labor problem, energy shortage, governmental pre-emption or prescription, national emergency, or any other cause of any kind beyond the reasonable control of such party (*"Force Majeure*"). This paragraph does not, however, apply to any monetary obligations under this Lease, including Tenant's obligation to pay Rent and insure the Premises or Landlord's obligations under Section 8E of this Lease.

**22.** ***LANDLORD'S DEFAULT.*** If Landlord fails to perform its obligations under this Lease and such failure continues for a period of thirty (30) days following the date of Tenant's written notice to Landlord specifying such default (or such longer period as may be reasonably necessary to cure such default, as long as Landlord continues to exercise reasonable efforts to cure same) then in such event Tenant may perform same. In such event Landlord will reimburse Tenant for all third party costs actually incurred by Tenant to cure such default and, if Landlord fails to pay same within thirty (30) days following the date of Tenant's notice

specifying such costs and including copies of all relevant invoices therefor, then Tenant may offset same against Rent next becoming due thereafter, but in no event will the amount of any offset in any month exceed ten percent (10%) of the amount otherwise due to Landlord for such month. In no event, however, will Tenant have any right to terminate this Lease for any default by Landlord. Tenant may act sooner in the event of an emergency involving imminent risk of death, personal injury and property damage as long as Tenant has first taken reasonable measures to notify Landlord, and, once the emergency has come under control, permits Landlord to control any remaining corrective measures.

**23.** ***NOTICES.*** All notices, consents, approvals and similar communications to be given by one party to the other under this Lease, shall be given in writing, mailed or personally delivered or sent by legible facsimile (with answer back confirmation) as follows:

A. *Landlord.* To Landlord as follows:

CarrAmerica Realty, L.P.
c/o CarrAmerica Realty Corporation
14901 Quorum Drive, Suite 100
Dallas, Texas 75240
Attn: William H. Vanderstraaten
Facsimile: (972) 404-2201

with a copy to:

CarrAmerica Realty Corporation
1850 K Street, N.W., Suite 500
Washington, D.C. 20006
Attn: Lease Administration
Facsimile: (202) 729-1120

or to such other person at such other address as Landlord may designate by notice to Tenant.

B. *Tenant.* To Tenant as follows:

Nokia Inc.
6000 Connection Drive
Irving, Texas 75039
Attn: Facility Manager
Facsimile: (972) 894-5019

with a copy to:

Nokia Inc.
6000 Connection Drive
Irving, Texas 75039
Attn: Chief Legal Officer
Facsimile: (972) 894-5811

or to such other person at such other address as Tenant may designate by notice to Landlord.

Mailed notices shall be sent by United States certified mail, or by a reputable national overnight courier service, postage prepaid. Mailed notices shall be deemed to have been given on the date of first attempted delivery. Notices sent by facsimile shall be deemed given on the date of transmission with confirmed answer back.

**24.** ***QUIET POSSESSION.*** Tenant shall enjoy peaceful and quiet possession of the Premises against any party claiming through Landlord.

**25. *REAL ESTATE BROKER.*** Each party represents to the other that such party has not dealt with any real estate broker with respect to this Lease except for any broker(s) listed in the Schedule, and no other broker is in any way entitled to any broker's fee or other payment in connection with this Lease. Landlord agrees to pay any commissions owed to the brokers identified in such Schedule pursuant to a separate written agreement with such brokers. Each party shall indemnify and defend the other against any claims by any other broker or third party for any payment of any kind in connection with this Lease attributable to the acts of such party.

**26. *MISCELLANEOUS.***

A. *Successors and Assigns.* Subject to the limits on Tenant's assignment contained in Section 17, the provisions of this Lease shall be binding upon and inure to the benefit of all successors and assigns of Landlord and Tenant.

B. *Date Payments Are Due.* Except for Base Rent, estimated payments of Additional Rent and other payments to be made by Tenant under this Lease which are due upon demand, Tenant shall pay to Landlord any amount for which Landlord renders a statement of account within thirty (30) days of Tenant's receipt of Landlord's statement.

C. *Meaning of "Landlord", "Re-Entry, "including" and "Affiliate".* The term "Landlord" means only the owner of the Project and the lessor's interest in this Lease from time to time. The words "re-entry" and "re-enter" are not restricted to their technical legal meaning. The words "including" and similar words shall mean "without limitation." The word "affiliate" shall mean a person or entity controlling, controlled by or under common control with the applicable entity. "Control" shall mean the power directly or indirectly, by contract or otherwise, to direct the management and policies of the applicable entity.

D. *Time of the Essence.* Time is of the essence of each provision of this Lease.

E. *No Option.* This document shall not be effective for any purpose until it has been executed and delivered by both parties; execution and delivery by one party shall not create any option or other right in the other party.

F. *Severability.* The unenforceability of any provision of this Lease shall not affect any other provision.

G. *Governing Law.* This Lease shall be governed in all respects by the laws of the state in which the Project is located, without regard to the principles of conflicts of laws.

H. *Lease Modification.* Tenant agrees to modify this Lease in any way reasonably requested by a mortgagee which does not cause increased expense or obligation to Tenant or otherwise adversely affect Tenant's interests under this Lease.

I. *No Oral Modification.* No modification of this Lease shall be effective unless it is a written modification signed by both parties.

J. *Landlord's Right to Cure.* If Landlord breaches any of its obligations under this Lease, Tenant shall notify Landlord in writing and shall take no action respecting such breach so long as Landlord immediately begins to cure the breach and diligently pursues such cure to its completion. Landlord may cure any default by Tenant; any expenses incurred shall become Additional Rent due from Tenant on demand by Landlord.

K. *Captions.* The captions used in this Lease shall have no effect on the construction of this Lease.

L. *Authority.* Landlord and Tenant each represents to the other that it has full power and authority to execute and perform this Lease.

M. *Landlord's Enforcement of Remedies.* Landlord may enforce any of its remedies under this Lease either in its own name or through an agent.

N. *Entire Agreement.* This Lease, together with all Appendices, constitutes the entire agreement between the parties. No representations or agreements of any kind have been made by either party which are not contained in this Lease.

O. *Landlord's Title.* Landlord's title shall always be paramount to the interest of the Tenant, and nothing in this Lease shall empower Tenant to do anything which might in any way impair Landlord's title.

P. *Light and Air Rights.* Landlord does not grant in this Lease any rights to light and air in connection with Project. Landlord reserves to itself, the Land, the Building below the improved floor of each floor of the Premises, the Building above the ceiling of each floor of the Premises, the exterior of the Premises and the areas on the same floor outside the Premises, along with the areas within the Premises required for the installation and repair of utility lines and other items required to serve other tenants of the Building.

Q. *Singular and Plural.* Wherever appropriate in this Lease, a singular term shall be construed to mean the plural where necessary, and a plural term the singular. For example, if at any time two parties shall constitute Landlord or Tenant, then the relevant term shall refer to both parties together.

R. *Recording by Tenant.* Neither party shall record this Lease or any portion thereof in any public records. However, Tenant shall have the right to record a memorandum of this Lease in a form approved by Landlord in the appropriate public records of Dallas County, Texas.

S. *Exclusivity.* Landlord does not grant to Tenant in this Lease any exclusive right except the right to occupy its Premises.

T. *No Construction Against Drafting Party.* The rule of construction that ambiguities are resolved against the drafting party shall not apply to this Lease.

U. *Survival*. All obligations of Landlord and Tenant under this Lease which the terms of this Lease contemplate the performance of same following the termination hereof shall survive the termination of this Lease.

V. *Rent Not Based on Income.* No rent or other payment in respect of the Premises shall be based in any way upon net income or profits from the Premises. Tenant may not enter into or permit any sublease or license or other agreement in connection with the Premises which provides for a rental or other payment based on net income or profit.

W. *Building Manager and Service Providers.* Landlord may perform any of its obligations under this Lease through its employees or third parties hired by the Landlord.

X. *Late Charge and Interest on Late Payments.* Without limiting the provisions of Section 12A, if Tenant fails to pay any installment of Rent or other charge to be paid by Tenant pursuant to this Lease when same becomes due and payable, then Tenant shall pay a late charge equal to two percent (2%) of the amount due if not paid by the due date, or, if not paid within five (5) business days following written notice, then five percent (5%) of the amount due. In addition, interest shall be paid by Tenant to Landlord on any late payments of Rent made after five (5) business days from the date due at the rate provided in Section 2D(2) from the date due until paid. Such late charge and interest shall constitute additional Rent due and payable by Tenant to Landlord upon the date of payment of the delinquent payment referenced above.

**27. *UNRELATED BUSINESS INCOME.*** If Landlord is advised by its counsel at any time that any part of the payments by Tenant to Landlord under this Lease may be characterized as unrelated business income under the United States Internal Revenue Code and its regulations, then Tenant shall enter into any amendment proposed by Landlord to avoid such

income, so long as the amendment does not require Tenant to make more payments or accept fewer services from Landlord, than this Lease provides and is otherwise in form reasonably acceptable to Tenant.

**28.** ***HAZARDOUS SUBSTANCES.*** Landlord certifies to Tenant that, to Landlord's current actual knowledge, there are no Hazardous Substances located at the Project, except as disclosed in that certain environmental report dated July 18, 1997 prepared by Mission GeoSciences, Inc. (a copy of which has heretofore been delivered to Tenant) or Hazardous Substances customarily used in the operation of comparable office buildings (e.g., janitorial supplies). Landlord will remove or cause to be removed any Hazardous Substances which are found on the Premises, the Project or the Land. Tenant shall not be responsible for the cost of such removal unless Tenant caused such Hazardous Substances to be present on the Premises, the Project or the Land, as the case may be. Landlord will indemnify and hold Tenant harmless from and against any damages or expenses incurred by Tenant as a result of the presence of such Hazardous Substances not caused by Tenant. Landlord shall take all measures, consistent with those taken by the owners of other office buildings similar and within proximity to the Project, to prohibit other tenants from disposing of Hazardous Substances. Tenant shall not cause or permit any Hazardous Substances to be brought upon, produced, stored, used, discharged or disposed of in or near the Project unless Landlord has consented to such storage or use in its sole discretion. Tenant has no responsibility for any Hazardous Substances brought upon, produced, stored, used, discharged or disposed of in or near the Project, except by Tenant or its employees, agents and affiliates. *"Hazardous Substances"* include those hazardous substances described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any other applicable federal, state or local law, and the regulations adopted under these laws. If any governmental agency shall require testing for Hazardous Substances in the Premises or if any lender shall do so based upon verifiable evidence of Hazardous Substance contamination caused by Tenant, Tenant shall pay for such testing.

**29.** ***EXCULPATION.*** Landlord shall have no personal liability under this Lease; its liability shall be limited to its interest in the Project and shall not extend to any other property or assets of the Landlord. In no event shall any officer, director, employee, agent, shareholder, partner, member or beneficiary of Landlord be personally liable for any of Landlord's obligations hereunder.

**30.** ***WAIVER OF CONSUMER RIGHTS.*** EACH PARTY ACKNOWLEDGES THAT IT IS A "BUSINESS CONSUMER" FOR PURPOSES OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT, BUT SHOULD SUCH DETERMINATION BE HELD OTHERWISE BY A FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION THE FOLLOWING SHALL APPLY: EACH PARTY WAIVES ALL OF ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES—CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF EACH PARTY'S OWN SELECTION, SUCH PARTY VOLUNTARILY CONSENTS TO THE FOREGOING WAIVER.

**31.** ***MUNICIPAL INCENTIVES.*** Landlord shall reasonably cooperate with Tenant in connection with any renegotiation or transfer of any tax or other forms of concessions which have been granted to Tenant by the City of Irving, Texas. Tenant shall reimburse Landlord for any out-of-pocket costs and expenses incurred by Landlord in connection therewith, including Landlord's reasonable attorney's fees.

**32.** ***SECURITY SYSTEMS.*** Subject to Landlord's reasonable approval of the plans and specifications therefor, Tenant shall install within the Building and parking garage a card key or similar system, card readers, camera surveillance, security desk, garage entrance gates and related components and accessories. Landlord's share of the cost of installing such systems shall not exceed Seventy-Five Thousand and No/100 Dollars ($75,000.00) (the *"Security Allowance"*). The portion of the cost in excess of the Security Allowance, if any, shall be borne by Tenant.

**33.** ***LANDSCAPE PLAN.*** Landlord shall install and maintain landscaping around the Building pursuant to a landscape plan to be agreed upon by Landlord and Tenant, which shall have a Base Building Cost component of $275,000.

**34.** ***SIGNAGE.*** Landlord shall provide the maximum amount of exterior signage on the Building and monument signage on State Highway 114, State Highway 161, Royal Lane and Connection Drive permitted by applicable law. Tenant's name shall be exclusively shown on all such signage except for the signs at the Royal Lane entrance to The Commons of Las Colinas and the signs identifying Building II thereof. Landlord's share of the cost of providing such signage shall not exceed Seventy Five Thousand and No/100 Dollars ($75,000.00) (the *"Sign Allowance"*). The portion of the cost in excess of the Sign Allowance, if any, shall be borne by Tenant. In the event that Tenant fully leases all of the Buildings in the Project, Landlord shall negotiate in good faith with Tenant with respect to the installation, location and content of a monument sign for the Project.

**35.** ***AMENITIES.*** Tenant shall also have the exclusive right to install amenities such as a cafeteria or delicatessen, a fitness facility, a sauna suite and conference center as part of Tenant's improvements. Landlord shall provide the standard base building components for such amenities (except for the sauna and conference room) stubbed to the kitchen and fitness facility areas of the Premises.

**36.** ***ADDRESS OF BUILDING.*** Landlord will use reasonable efforts to cause the address of the Building to be designated as being on Connection Drive. Tenant shall reasonably cooperate with Landlord in such efforts. If Tenant exercises its expansion option as set forth in Appendix G hereto, Landlord shall also cause the names of Building I and Building III to be changed to Nokia House 4 and Nokia House 2, respectively or a roman numbering system shall be used alternatively, at Tenant's election.

**37.** ***LEASEHOLD TITLE POLICY.*** Tenant shall have the right to obtain, at Tenant's cost, a policy of title insurance insuring Tenant's leasehold interest in the Premises. Landlord shall reasonably cooperate with Tenant in obtaining such policy, provided, however, that Landlord shall not be obligated to incur any expense in connection therewith.

**38.** ***CONFIDENTIALITY.*** Landlord and Tenant each agree that prior to disclosing any information contained in this Lease or publicizing it in any way (except for disclosures to attorney's, accountants, architects, brokers, consultants, construction lenders, investors and the like on a "need to know" basis), it will secure the prior written consent of the other party (which consent will not be unreasonably withheld or delayed).

**39.** ***NO CONSEQUENTIAL DAMAGES.*** Neither party shall have the right to seek consequential damages against the other with respect to any breach of such party's obligations under this Lease.

**40.** ***NAME OF PROJECT.*** Landlord agrees that during the Term of this Lease, Landlord shall not change the name of the Project to a name which includes the name of any of the following companies: Alcatel, Ericsson, Motorola, Nextel, Nortel, Philips, Qualcomm, Samsung, Siemens, and Sony.

**41.** ***SEPARATE TAX PARCELS.*** Landlord shall use reasonable efforts to cause the land and improvements associated with each of the three (3) buildings comprising the Project to be designated as separate tax parcels by the pertinent taxing authorities.

**42.** ***MAINTENANCE OF PROJECT.*** Landlord shall have no obligation to fund the entire Capital Reserve Amount by any date during the Term. However, Landlord agrees that the Project shall be operated and maintained in a first-class manner and condition during the Term and shall expend portions of the Capital Reserve Amount from time to time during the Term in order to comply with such obligations.

**43.** ***GUARANTY.***

Upon execution of this Lease, Tenant agrees to furnish to Landlord a guaranty of this Lease executed by Nokia Corporation, in the form, and containing the provisions, set forth on Appendix J, as security for Tenant's obligations hereunder. In the event that Tenant is unable to furnish such guaranty upon execution of this Lease, Tenant shall either (i) furnish a letter of credit in the form of Appendix K to that certain Lease Agreement between Landlord and Tenant covering Building III (Nokia House 2) (the "Original Lease") or (ii) amend such letter of credit issued for the Original Lease in a manner satisfactory to Landlord to additionally secure Tenant's obligations under this Lease which shall remain in effect until such time as Tenant furnishes the guaranty described herein, which shall in no event be later than December 1, 1998.

**44.** ***STORAGE AREA*****.** Tenant shall have the right to use certain areas of the roof of the Building for storage purposes, subject to Landlord's prior written consent and Tenant's indemnity of Landlord for any loss, cost, damage, claim or expense resulting from such storage activity.

**45.** ***ADA*****.** Landlord acknowledges that the Building must comply with certain provisions of the Americans with Disabilities Act of 1990 and certain regulations and guidelines issued by authorized agencies with respect thereto, all as amended from time to time (the "ADA") and the Texas accessibility standards and all regulations and guidelines issued by authorized agencies with respect thereto, all as amended from time to time ("TAS") [the ADA and TAS being collectively, the "ADA/TAS"], Landlord agrees that the responsibility for compliance with the ADA/TAS shall be borne by Landlord (including any corrective work arising from the Texas statutory requirement to have an inspection of the Building and Premises one (1) year after completion of the construction with respect to the Base Building Work and Landlord's failure to perform the Leasehold Work pursuant to the plans and specifications therefor. Tenant shall be responsible for preparing the plans and specifications for the Leasehold Work in compliance with ADA/TAS and performing any corrective work required thereby as a result of such non-compliance. The allocation of responsibility for ADA/TAS compliance between Landlord and Tenant, and the obligations of Landlord and Tenant established by such allocations shall supersede any other provisions of the Lease that may contradict or otherwise differ from the requirements of this Section 45.

**46.** ***LEGAL DESCRIPTION.*** Landlord and Tenant agree to amend the legal description of the Project set forth in Appendix A-1 from time to time as necessary to correct any inaccuracies contained therein or to reflect any changes resulting from re-platting or other causes.

IN WITNESS WHEREOF, the parties hereto have executed this Lease.

LANDLORD:

CARRAMERICA REALTY, L.P.,
a Delaware limited partnership

By: CarrAmerica Realty GP Holdings, Inc.,
its general partner

By: /s/ BRIAN K. FIELDS

**Print Name: Brian K. Fields**
**Print Title: Chief Financial Officer**

TENANT:

NOKIA, INC.,
a Delaware corporation

By: /s/ [ILLEGIBLE]

**Print Name: [ILLEGIBLE]**
**Print Title: Senior Vice President**

**EXHIBIT 10.81**

**AMENDMENT TO LEASE AGREEMENT**
**FOR BUILDING NO. 1 OF THE NOKIA DALLAS BUILDINGS**

Re: The Commons of Las Colinas
Building I
Irving, Texas

**FIRST AMENDMENT TO LEASE**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | |
| | § | KNOW ALL MEN BY THESE PRESENTS: |
| COUNTY OF DALLAS | § | |

THIS FIRST AMENDMENT TO LEASE (this "Amendment") has been executed as of the 29th day of September, 2000, by CARRAMERICA REALTY L.P., a Delaware limited partnership (*"Landlord"*), and NOKIA INC., a Delaware corporation (*"Tenant"*).

**RECITALS:**

A. Landlord and Tenant have heretofore entered into that certain Lease, dated as of October 14, 1998 (the *"Lease"*), pursuant to which Tenant leased from Landlord approximately 228,678 square feet (the *"Premises"*) in that certain building located in Irving, Texas, known as The Commons of Las Colinas, Building I and more particularly described in the Lease (the *"Building"*).

B. Landlord and Tenant desire to execute this Amendment in order to evidence their agreement to amend the Lease, all as more particularly set forth in this Amendment.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

**Article I**

CERTAIN AMENDMENTS

SECTION 1.01. A. *Rentable Square Feet of the Premises.* SCHEDULE, Section 3, Rentable Square Feet of the Premises, is hereby amended to read as follows:

228,678, which Landlord and Tenant acknowledge and agree has been verified as accurate upon final measurement and not subject to revision.

B. *Tenant's Proportionate Share.* SCHEDULE, Section 4, Tenant's Proportionate Share, is hereby amended to read as follows:

37.85% based upon a total of 604,234 rentable square feet of the Project, subject to verification upon completion of Building II by each of Tenant's and Landlord's architect pursuant to Section 15 of the Work Agreement attached hereto as Appendix C.

C. *Termination Date/Term.* Section 10, Termination Date/Term, is hereby amended to read as follows:

10. Termination Date/Term: July 31, 2009.

D. *Expense Stop.* Effective as of July 1, 2000, SCHEDULE, Section 12, Expense Stop, is hereby deleted in its entirety.

E. *Base Rent.* Effective as of July 1, 2000, SCHEDULE, Section 13, Base Rent, is hereby amended by deleting the current provisions and replacing them with the following:

| Period | Annual Base Rent | Monthly Base Rent |
|---|---|---|
| 7/1/00-7/31/04 | $4,207,675.20 ($18.40 PSF) | $350,639.60 |
| 8/1/04-7/31/09 | $4,596,427.80 ($20.10 PSF) | $383,035.65 |

SECTION 1.02. *Rent.* Effective as of July 1, 2000, Section 2 of the Lease is hereby amended to read as follows:

A. *Types of Rent.* Tenant shall pay the following Rent in the form of a check to Landlord at the following address (if the address or wire transfer information is not available at the time of execution of that certain First Amendment to Lease, Landlord shall subsequently provide them to Tenant by notice sent in accordance with this Lease):

CarrAmerica Realty, L.P.
t/a Commons of Las Colinas
P.O. Box 281937
Atlanta, GA 30384-1937

or by wire transfer as follows:

NationsBank, N.A. (South)
ABA Number 061-000-052
Account Number 326-303-8202

or in such other manner as Landlord may notify Tenant reasonably in advance of the applicable payment due date:

(1) *Base Rent* in monthly installments in advance, the first monthly installment payable upon the Commencement Date and thereafter on or before the first day of each month of the Term in the amount set forth on the Schedule.

(2) *Additional Rent* in the amount of all costs, expenses, liabilities, and amounts which Tenant is required to pay under this Lease, excluding Base Rent, but including any interest for late payment of any item of Rent.

(3) *Rent* as used in this Lease means Base Rent and Additional Rent. Tenant's agreement to pay Rent is an independent covenant, with no right of setoff, deduction or counterclaim of any kind, except as otherwise expressly set forth in this Lease.

B. *Computation of Base Rent and Rent Adjustments.*

(1) *Prorations.* If this Lease begins on a day other than the first day of a month, the Base Rent shall be prorated for such partial month based on the actual number of days in such month.

(2) *Default Interest.* Any sum due from Tenant to Landlord not paid when due shall bear interest from the date due until paid at the lesser of the maximum rate permitted by applicable law or the then Prime Rate (as hereinafter defined) plus five percent (5%) per annum.

(3) *Rent Adjustments.* The square footage of the Premises and the Building set forth in the Commencement Date Confirmation, when executed will be conclusively deemed to be the actual square footage thereof, without regard to any subsequent remeasurement of the Premises or the Building.

SECTION 1.03. *Project Services.* Sections 4.A. through 4.F. of the Lease are hereby deleted in their entirety

SECTION 1.04. *Parking.* Section 4.G. of the Lease is hereby amended to read as follows: Landlord shall grant and provide certain parking rights to Tenant as described below:

The construction documents for the Project contemplate a total of approximately 2,159 parking spaces, with 648 surface spaces and 1,511 spaces located in the parking structure. Tenant shall have the right to use all such spaces. Tenant acknowledges that the entrances for both the parking structure and the surface parking shall serve the Building, Building II and Building III.

SECTION 1.05. *Interruption of Service.* Section 4.I. of the Lease is hereby amended to read as follows:

Except as otherwise provided herein, Landlord's inability to furnish, to any extent, the Project services set forth in this Section 4, or any cessation thereof resulting from any causes, including any entry for repairs pursuant to this Lease, and any renovation, redecoration or rehabilitation of any area of the Building shall not render Landlord liable for damages, except for Landlord's gross negligence or willful misconduct, to either person or property or for interruption or loss to Tenant's business, nor be construed as an eviction of Tenant, nor work an abatement of any portion of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. Notwithstanding the foregoing, in the event that either (i) there is an interruption in any utility service to the Building which is not caused in whole or in part by Tenant, or (ii) an interruption in services resulting from any Capital Repair for which Landlord is responsible pursuant to Section 4.K. below which is not caused by Tenant's failure to maintain the Building and the Building Systems in accordance with the requirements outlined in Section 4.K. below or Tenant's negligence or intentional misconduct, and in either case such interruption causes the Premises to be untenantable for a period of at least ten (10) consecutive days (or, as to air conditioning service during the months of May to September, five (5) consecutive days), monthly Rent shall be thereafter abated proportionately. Landlord shall use reasonable efforts to minimize any interference with Tenant's business operations in performing any repairs, renovations, redecoration or rehabilitation pursuant to this Lease.

SECTION 1.06. The following is hereby added as Section 4.K. to the Lease:

4. *Project Services.*

K. (1) *Tenant Services.* Except to the extent provided herein to the contrary, Tenant shall, at its sole cost and expense, furnish and perform the services necessary for operations of the Project in a manner substantially similar to comparable office buildings in the vicinity of the Project, including without limitation, janitorial, HVAC operation and maintenance, exterior landscaping and maintenance, pest control, elevator maintenance, waste disposal, fire protection, security, and window cleaning. Tenant shall be responsible, at Tenant's sole cost, for the maintenance of all aspects of the Building, including without limitation any equipment and/or systems used to furnish such services, all in accordance with the original design thereof and all applicable manufacturers' specifications. In performing such maintenance, Tenant shall engage only persons duly licensed and qualified to perform the work involved. Landlord shall have the right, at reasonable times after reasonable prior notice, to inspect (either by Landlord's employees or inspectors hired by Landlord) the Premises, the Building and the Building equipment and Tenant's maintenance records with respect thereto. If Landlord notifies Tenant following any such inspection of any failure to so maintain and Tenant fails to cure such matter within thirty (30) days thereafter, or a reasonable longer period in the event such maintenance cannot reasonably be performed within thirty (30) days (provided Tenant promptly commences the repair and diligently prosecutes the same to completion) or such shorter time if the repair is of an emergency nature, Landlord shall have the right to cure same and Tenant shall reimburse Landlord for the cost to do so within thirty (30) days after receipt of written demand from Landlord. In the event Landlord and Tenant disagree with respect to the performance of Tenant's maintenance obligations hereunder, they shall submit such dispute to a neutral third party mutually agreed upon by Landlord and Tenant for resolution.

(2) *Taxes.* Tenant shall pay to the taxing authority, all Taxes as are set forth in said assessment. Tenant shall furnish to Landlord not less than fifteen (15) days prior to delinquency, reasonable evidence of the payment of such Taxes,

including receipted tax bills from the appropriate taxing authority, when available. Landlord shall be reimbursed by Tenant for a pro rata portion of the Taxes in the final year of the Lease based upon the portion of such year which falls within the Term hereof. Tenant shall have the right to protest Taxes, provided Tenant agrees to indemnify and hold Landlord harmless from and against any loss, cost or expense relating to such protest, and further provided that upon the final resolution of any such protest, Tenant shall provide Landlord with evidence of payment thereof. Landlord agrees to reasonably cooperate with Tenant in connection with any protest of the Taxes (subject to reimbursement by Tenant for Landlord's actual costs and expenses).

(3) *Landlord Services.* Except as otherwise provided in Sections 9 and 10 of this Lease and except with respect to Capital Repairs (as defined below), Tenant shall be responsible for maintenance and replacement of (i) the Building's roof, foundation, structural members and operating systems (including without limitation, HVAC, fire protection and elevators), and (ii) the landscaping, parking structures, surface parking and other common areas of the Building. Notwithstanding the foregoing, in the event that any of the repair or replacement costs described in the preceding sentence are capital in nature as determined under generally accepted accounting principles consistently applied (*"Capital Repairs"*), then Landlord shall perform such Capital Repairs pursuant to plans and specifications for such work to be approved in writing by Tenant, which approval shall not be unreasonably withheld or delayed. Tenant agrees to promptly notify Landlord in writing of the need for any Capital Repairs (a *"Capital Repair Notice"*) and Landlord agrees to commence such Capital Repairs as soon as reasonably practicable following receipt of such Capital Repair Notice (but in any event within thirty (30) days) and to diligently prosecute such repairs to completion. The failure of Landlord to object to any proposed Capital Repair in writing to Tenant within ten (10) days following receipt of the Capital Repair Notice shall be deemed Landlord's acceptance and approval of the proposed Capital Repair. If any dispute arises between the parties under this Section 4.K.(3) or under Section 4.I. above (the *"Dispute"*), then the parties agree to submit the

Dispute to binding arbitration in accordance with the applicable arbitration statute, the then existing rules of the American Arbitration Association and the provisions of this Section. Either party may initiate the arbitration procedure by delivering a written notice of demand for arbitration to the other party (an *"Arbitration Notice"*). Within ten (10) days after the receipt by the other party of the Arbitration Notice, the parties will attempt to agree upon a single arbitrator. If the parties are not able to agree upon a single arbitrator within such 10-day period, then within the immediately following ten (10) days, each of the parties shall provide written notice (the *"Designation Notice"*) to the other party as to the names and addresses of at least three (3) prospective arbitrators having at least ten (10) years experience in the management of Class A office buildings in Dallas County, Texas, and having never been employed by or in business with either Landlord or Tenant or their respective affiliated companies. Upon each party's receipt of the list of prospective arbitrators from the other party, such receiving party shall select one of the three prospects to serve as an arbitrator. If one party timely delivers a Designation Notice and the other party does not timely deliver a Designation Notice, the party who provided the Designation Notice shall select from its list the single arbitrator who shall render the decision in the arbitration proceeding. If both parties timely deliver a Designation Notice, the two (2) arbitrators selected shall be instructed and obligated to jointly select a third (3rd) arbitrator prior to the expiration of forty-five (45) days after the Arbitration Notice. If the two (2) arbitrators selected are unable to timely agree upon a third arbitrator, then upon application of any party, a court of competent jurisdiction shall complete the appointment of the arbitration panel. The hearing and presentation of evidence in connection with the arbitration proceeding shall be conducted in Dallas County, Texas, not later than twenty (20) days after (i) designation of the single arbitrator in the event that only one (1) arbitrator is timely appointed, or (ii) designation of the third (3rd) arbitrator in the event each of the parties hereto timely deliver a Designation Notice to the other party. Neither party shall be entitled to defer or postpone the hearing without the written consent of the other

party. The arbitrator(s) will be instructed to render a decision within fifteen (15) days after the date of the hearing. The decision of the arbitrator(s) shall be final and binding upon the parties hereto. This agreement to arbitrate Disputes shall be specifically enforceable under the prevailing arbitration law. The fees and expenses of the arbitrator(s) shall be paid in the manner allocated by the arbitrator(s). In addition, if the arbitrator(s) make a written determination that one of the parties was the prevailing party in the arbitration proceeding, such prevailing party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorney's fees incurred in connection with the arbitration proceedings (and, if applicable, court costs).

Notwithstanding anything to the contrary set forth above, in the event of an emergency requiring Capital Repairs which would reasonably be expected to materially interfere with the use and occupancy of the Premises, and provided that Tenant uses commercially reasonable efforts to deliver oral or written notice thereof to Landlord as soon as practicable under the circumstances, Tenant shall have the right to make such Capital Repairs which cost less than $20,000.00 in the aggregate on a non-cumulative basis in any Lease Year, and Landlord, subject to its right to dispute such Capital Repairs set forth above, shall reimburse Tenant for the reasonable cost of such Capital Repairs within thirty (30) days following the delivery to Landlord of written invoices evidencing such costs. If Landlord fails to timely reimburse Tenant for any costs for which Landlord is responsible pursuant to the preceding sentence, then, in addition to any other remedies available at law or in equity, Tenant may exercise its offset rights under Section 22 below. Tenant agrees to promptly cooperate with Landlord in providing Landlord all information regarding the nature of any such Capital Repairs.

SECTION 1.07. *Damage to Systems/Additional Tenant Obligations.* The first sentence of Section 5.B. of the Lease is hereby deleted.

In addition, Section 5.H. is hereby amended to read as follows:

Notwithstanding anything in the Lease to the contrary, but subject to Section 4.K.(3) of this Lease, Landlord shall not be responsible for providing any security services or any service that Tenant has undertaken, or subsequently undertakes, to furnish in lieu of Landlord, and Tenant shall be responsible, at Tenant's sole cost, for the maintenance of any equipment and/or systems used to furnish such services.

SECTION 1.08. *Landlord's Insurance.* Section 8.E. of the Lease is hereby amended by adding the following at the end thereof:

Tenant shall reimburse Landlord for the cost of the insurance described in this subparagraph E within thirty (30) days following receipt of written demand therefor from Landlord. In the event Landlord is required to restore casualty damage to the Building pursuant to Section 9.B. of this Lease, Tenant shall be responsible for the cost of such repairs up to the amount of any commercially reasonable deductible maintained by Landlord under its *"All Risk"* policy. All policies of insurance maintained by Landlord hereunder shall name Tenant as an additional insured. Copies of Landlord's insurance policies or duly executed certificates of insurance (confirming the amount of any deductible) shall be promptly delivered to Tenant and renewals thereof as required shall be delivered to Tenant at least thirty (30) days prior to the expiration of the respective policy term. All policies or certificates of insurance delivered to Tenant must confirm that the insurer will give Tenant at least thirty (30) days' prior written notice of any cancellation, lapse or modification of such insurance.

SECTION 1.09. *Keys.* Section 11.C. of the Lease is hereby deleted in its entirety for all purposes.

SECTION 1.10. *Notices.* The facsimile number for Tenant's Facility Manager, as set forth in Section 23.B., is hereby replaced by the following:

(972) 894-4731

Landlord's address for notices under the Lease in Section 23.A. is hereby amended to be as follows:

CarrAmerica Realty L.P.
15950 North Dallas Parkway
Suite 300
Dallas, Texas 75248

SECTION 1.11. *Address of Building.* Section 36 of the Lease is hereby amended to read as follows:

Landlord shall cause the names of Building II and Building III to be changed to Nokia House 2 and Nokia House 3, respectively, and this Building shall be named Nokia House 1. Tenant shall have the right to re-name each of the Buildings from time to time during the term of the Lease with respect to same.

SECTION 1.12. *First Offer on Sale.* The following section is hereby added into the Lease as Section 47:

47. *First Offer on Sale.*

A. If at any time during the Term, Landlord desires to sell all or any portion of the Project, Landlord shall notify Tenant in writing (the *"Sale Notice"*) with a copy to Jack Fraker, Cushman & Wakefield of Texas, Inc., 5430 LBJ Freeway, Suite 1400, Dallas, Texas 75240, of the terms upon which Landlord is willing to sell such portion of the Project. Tenant shall thereupon have the prior right and option to purchase such portion of the Project (*"ROFO"*) at the price and on the terms and conditions stated in the Sale Notice. Nothing contained herein shall prohibit Landlord from having discussions with other prospective purchasers of such portion of the Project. Tenant may exercise the ROFO by giving Landlord written notice thereof (the *"Exercise Notice"*) within thirty (30) calendar days after the date of receipt by Tenant of the Sale Notice.

B. In the event Tenant effectively exercises its ROFO under Section 47.A. hereof, Tenant and Landlord shall, within twenty-one (21) days following Landlord's delivery to Tenant of an initial draft of a contract of sale (or such extended period as the parties may mutually agree upon), execute a contract of sale (the *"Tenant Contract"*) at the same price and upon the same terms and conditions as stated in the Sale Notice. Landlord and Tenant shall use diligent, good faith efforts to enter into the Tenant Contract (or such other contract of sale containing such other terms and provisions as the parties may mutually agree upon).

C. Should Tenant fail to deliver the Exercise Notice pursuant to Section 47.A. hereof, Tenant's ROFO shall be deemed waived (except as provided below), and Landlord shall thereafter be entitled to sell such portion of the Project to any third party upon the ROFO Terms (hereinafter defined). *"ROFO Terms"* shall mean terms no less favorable to Landlord than the terms and conditions contained in the Sale Notice, however, the purchase price may be up to five percent (5%) less than that set forth in the Sale Notice. If Landlord fails to sell such portion of the Project to a third party upon the ROFO Terms within eighteen (18) months following the deadline for giving the Exercise Notice, then Tenant's ROFO shall be reinstated.

D. Notwithstanding any other provision of this Section 47, Tenant's ROFO shall not apply to any of the following transactions: (i) any sale or transfer of all or any portion of the Project or any interest therein to any affiliate of the Landlord; (ii) any sale or transfer in connection with permanent or interim financing for the Project, including any sale/leaseback, joint venture or other similar arrangement; and (iii) the granting of any mortgage or other lien, or any conveyance with respect thereto by foreclosure, deed in lieu of foreclosure or the like. Any of the above mentioned transactions shall not terminate Tenant's ROFO, but such ROFO shall thereafter continue to bind the transferee.

E. Except as provided in subparagraph C. of this Section 47, Tenant's ROFO is not continuing in nature, and Landlord shall have no obligation to re-offer to Tenant.

F. Tenant's ROFO is expressly conditioned upon Tenant not being in default under this Lease or the leases for Buildings I and II beyond any applicable cure periods.

SECTION 1.13. *Maintenance of Project/Additional Rent.* Section 42 of the Lease is hereby deleted in its entirety and replaced with the following:

42. *MAINTENANCE OF THE PROJECT.* Landlord shall have no obligation to fund the entire Capital Reserve Amount by any date during the Term and any unused portion is non-refundable to Tenant. However, Landlord agrees that the Project shall be operated and

maintained in a first-class manner and condition during the Term and Landlord shall expend portions of the Capital Reserve Amount from time to time during the Term in order to comply with such obligations.

Section 48 of the Lease is hereby added and shall read as follows:

48. *ADDITIONAL RENT.* Commencing July 1, 2000, Tenant shall pay to Landlord as Additional Rent: (a) an annual sum equal to the product of $0.75 times the rentable square feet in the Premises for items such as warranty coordination, inspections, property management, salary reimbursement and the like, with one-twelfth (1/12th) of such amount to be payable monthly concurrent with the payment of Base Rent and (b) an annual sum equal to the product of $0.15 times the rentable square feet in the Premises (the *"Capital Reserve Amount"*) for Capital Repairs (as defined in Section 4.K.(3) of this Lease), with one-twelfth (1/12th) of such amount to be payable monthly concurrent with the payment of Base Rent. Notwithstanding anything in the Lease to the contrary, Landlord shall not be required to maintain any reserve accounts for such items.

SECTION 1.14. *"True-Up".* Landlord and Tenant hereby agree that Landlord shall pay to Tenant $228,678 in full settlement of the reconciliation of the Operating Costs under the Lease for the period of January 1, 2000, through June 30, 2000. The parties acknowledge that all prior disputes regarding Operating Costs have been previously settled. Landlord and Tenant waive any right to further adjust Operating Costs for all periods prior to July 1, 2000. On or before November 30, 2000, Landlord and Tenant agree to make appropriate adjustments in the amounts owed to one another attributable to the period of July 1, 2000, through the date of this Amendment resulting from the amendments to the provisions of the Lease set forth in this Amendment. The parties agree that management fees, warranty coordination, administrative allocations and salaries shall be deemed to be $.75 per rentable square foot per annum for the period of July 1, 2000, through the date of this Amendment. Landlord and Tenant acknowledge that Landlord has entered into certain contracts for services to the Building which are not terminable until after the date hereof and agree that the costs associated therewith from and after the date hereof shall be borne by Tenant.

SECTION 1.15. *Certain Defined Terms.* All references contained in this Lease to "Operating Cost Share Rent," "Cap Amount," "Excess Operating Costs," "Base Operating Costs," "Controllable Operating Costs," "Non-Controllable Operating

Costs," "Electrical Cost Share Rent," "Operating Cost Report," "Operating Costs," and "Equitable Adjustment" shall be null and void and have no force or effect as of July 1, 2000.

SECTION 1.16. *Expansion Option.* Appendix G—Expansion Option attached to the Lease is hereby deleted for all purposes.

SECTION 1.17. *Further Amendments.* The Lease shall be and hereby is further amended wherever necessary, even though not specifically referred to herein, in order to give effect to the terms of this Amendment. If no effective date is specified in any particular section above, such section shall be deemed effective as of the date this Amendment is signed by both parties and delivered to the other.

**Article II**
**MISCELLANEOUS**

SECTION 2.01. *Ratification.* The Lease, as amended hereby, is hereby ratified, confirmed and deemed in full force and effect in accordance with its terms. Each party represents to the other that such party (a) is currently unaware of any default by the other party under the Lease; and (b) has full power and authority to execute and deliver this Amendment, and this Amendment represents a valid and binding obligation of such party enforceable in accordance with its terms.

SECTION 2.02. *Governing Law.* This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

SECTION 2.03. *Counterparts.* This Amendment may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Amendment may be executed by facsimile, and each party has the right to rely upon a facsimile counterpart of this Amendment signed by the other party to the same extent as if such party had received an original counterpart.

SECTION 2.04. *Governing Document.* In the event the terms of the Lease conflict or are inconsistent with those of the Amendment, the terms of this Amendment shall govern and control.

**[SEE FOLLOWING PAGE FOR SIGNATURES]**

IN WITNESS WHEREOF, this Amendment has been executed as of (but not necessarily on) the date and year first above written.

LANDLORD:

CARRAMERICA REALTY L.P.,
a Delaware limited partnership

By: CARRAMERICA REALTY GP HOLDINGS, INC., its general partner

By: /S/ WILLIAM H. VANDERSTRAATEN

Name: William H. Vanderstraaten

Title: Managing Director, Dallas

TENANT:

NOKIA INC., a Delaware corporation

By: /S/ PENNY PARKER

Name: Penny Parker

Title: Secretary

**EXHIBIT 10.82**

# LEASE AGREEMENT
# FOR BUILDING NO. 2 OF THE NOKIA DALLAS BUILDINGS

**Lease**

# THE COMMONS OF LAS COLINAS
# BUILDING II
# IRVING, TEXAS

**Between**

## NOKIA INC.
## a Delaware corporation
**(Tenant)**

**and**

## CARRAMERICA REALTY, L.P.,
## a Delaware limited partnership
**(Landlord)**

**LEASE**

THIS LEASE (the *"Lease"*) is made as of this 22nd day of October, 1999 between **CarrAmerica Realty, L.P., a Delaware limited partnership** (the *"Landlord"*) and the Tenant as named in the Schedule below. The term *"Project"* means the three (3) building complex including Building II (the *"Building"*) known as "The Commons of Las Colinas" and the land (the *"Land"*) located along Connection Drive and S.H. 114, Irving, Texas described on Appendix A-1. *"Premises"* means that part of the Project leased to Tenant described in the Schedule and outlined on Appendix A.

The following schedule (the *"Schedule"*) is an integral part of this Lease. Terms defined in this Schedule shall have the same meaning throughout the Lease.

**SCHEDULE**

1. **Tenant**: NOKIA INC., a Delaware corporation

2. **Premises**: Covering all seven (7) stories in the Building, as more particularly shown on the Plans

3. **Rentable Square Feet of the Premises**: 225,000, subject to final verification upon completion of the Building

4. **Tenant's Proportionate Share**: 37.24% based upon a total of 604,178 rentable square feet in the Project, subject to verification upon completion of the Building by each of Tenant's and Landlord's architect pursuant to Paragraph 15 of the Work Agreement attached hereto as Appendix C).

5. **Security Deposit**: None.

6. **Tenant's Real Estate Broker for this Lease**: Cushman & Wakefield of Texas, Inc.

7. **Landlord's Real Estate Broker for this Lease**: None.

8. **Tenant Improvements, if any**: See the Work Agreement attached hereto as Appendix C.

9. **Commencement Date**: As to (a) the first floor lobby and floors 3-7 of the Premises and (b) the second floor and the remainder of the first floor (it being understood that the Premises shall be completed in increments), on the date set forth in Paragraph 10 of the Work Agreement for each such increment; Landlord and Tenant shall execute a Commencement Date Confirmation substantially in the form of Appendix E promptly following the Commencement Date which shall, among other matters, conclusively establish the square footage of the Premises and the Building.

10. **Termination Date/Term**: Ten (10) years after the date of Substantial Completion [as such term is defined in Paragraph 10 of the Work Agreement (Appendix C)] of the second floor and the remainder of the first floor of the Premises, or if such date is not the first day of a month, then on the last day of the month in which the tenth (10th) anniversary of such date occurred.

11. **Guarantor**: Nokia Corporation.

12. **Expense Stop**: $6.00/rentable square feet.

13. **Base Rent**: *

| Period | Annual Base Rent | Monthly Base Rent |
|---|---|---|
| Years 1-5 | $ 24.45/square foot | $ 458,438 |
| Years 6-10 | $ 26.00/square foot | $ 487,500 |

* subject to increase pursuant to the terms of the Work Agreement (Appendix C) and subject to decrease pursuant to the terms of Section 47 hereof.

**1.** ***LEASE AGREEMENT***. On the terms stated in this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, for the Term beginning on the Commencement Date and ending on the Termination Date unless extended or sooner terminated pursuant to this Lease.

**2.** ***RENT.***

A. *Types of Rent*. Tenant shall pay the following Rent in the form of a check to Landlord at the following address (if the address or wire transfer information is not available at the time of execution of this Lease, Landlord shall subsequently provide them to Tenant by notice sent in accordance with this Lease):

**CarrAmerica Realty, L.P.**
t/a Commons of Las Colinas
P.O. Box 281937
Atlanta, GA 30384-1937

or by wire transfer as follows:

NationsBank, N.A. (South)
ABA Number 061-000-052
Account Number 3263038202

or in such other manner as Landlord may notify Tenant reasonably in advance of the applicable payment due date:

(1) *Base Rent* in monthly installments in advance, the first monthly installment payable upon the Commencement Date and thereafter on or before the first day of each month of the Term in the amount set forth on the Schedule. If the Premises are completed in increments, then the Base Rent for each completed portion shall be payable on the Commencement Date for such portion, as such term is defined in Paragraph 10 of Appendix C.

(2) *Operating Cost Share Rent* in an amount equal to the Tenant's Proportionate Share of the excess of Operating Costs for the applicable fiscal year of the Lease (the "*Excess Operating Costs*") over the product of the Expense Stop times the Rentable Square Feet of the Premises (the "*Base Operating Costs*"), paid monthly in advance in an estimated amount. Definitions of Operating Costs and Tenant's Proportionate Share, and the method for billing and payment of Operating Cost Share Rent are set forth in Sections 2B, 2C and 2D.

The Controllable Operating Cost Share Rent (defined below) applicable to the second fiscal year of the Lease shall be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs during the second fiscal year, or (ii) the sum of Tenant's Proportionate Share of Controllable Operating Costs for the first fiscal year, plus 4% (such sum is the "*Cap Amount*").

The Controllable Operating Cost Share Rent applicable to each fiscal year thereafter shall be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs during the applicable fiscal year, or (ii) the sum of the Cap Amount for the immediately preceding fiscal year, plus 4%.

*"Controllable Operating Cost Share Rent*" shall be an amount equal to Tenant's Proportionate Share of Controllable Operating Costs. "*Controllable Operating Costs*" means all Operating Costs other than costs related to Taxes (as defined below) insurance, collectively bargained union wages, electricity and other utilities (herein, "*Non-Controllable Operating Costs*"). There shall be no cap on Non-Controllable Operating Costs.

Assume, for example, Controllable Operating Cost Share Rent for the first fiscal year of $100.00. In the second fiscal year, Controllable Operating Cost Share Rent would be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs for the second fiscal year, or (ii) $104.00 ($100.00 plus 4%, which would be the Cap Amount). In the third year, Controllable Operating Cost Share Rent would be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs for the third fiscal year, or (ii) $108.16 ($104.00 plus 4%, which becomes the Cap Amount for the following year).

(3) *Electrical Cost Share Rent* in an amount equal to the sum of (a) all electricity used by the Premises; plus (b) Tenant's Proportionate Share of all electricity used by the Project (*"Electrical Costs"*). Electrical Costs exclude any electricity charges attributable to any tenantable areas (i.e., those areas either leased or being held for lease by Landlord) and any charges paid directly by Tenant to the electric utility company pursuant to a contract between such parties. Such amount shall be payable monthly in advance in an estimated amount. The method of billing and payment of Electrical Cost Share Rent is set forth in Sections 2B and 2D.

(4) *Additional Rent* in the amount of all costs, expenses, liabilities, and amounts which Tenant is required to pay under this Lease, excluding Base Rent, Operating Cost Share Rent and Electrical Cost Share Rent, but including any interest for late payment of any item of Rent.

(5) *Rent* as used in this Lease means Base Rent, Operating Cost Share Rent, Electrical Cost Share Rent and Additional Rent. Tenant's agreement to pay Rent is an independent covenant, with no right of setoff, deduction or counterclaim of any kind.

B. *Payment of Operating Cost Share Rent and Electrical Cost Share Rent*.

(1) *Payment of Estimated Operating Cost Share Rent and Electrical Cost Share Rent*. Landlord shall estimate the Operating Costs and Electrical Costs (please see clause A.(4) above for limits on definition of Electrical Costs and clause B.(4) below for "true-up" provisions) of the Project by April 1 of each fiscal year, or as soon as reasonably possible thereafter. Landlord may revise these estimates whenever it obtains more accurate information, such as the final real estate tax assessment or tax rate for the Project.

Within thirty (30) days after receiving the original or revised estimate from Landlord setting forth (a) an estimate of Operating Costs for a particular fiscal year, (b) the Base Operating Costs, and (c) the resulting estimate of Excess Operating Costs for such fiscal year, Tenant shall pay Landlord one-twelfth ($^1/_{12}$th) of Tenant's Proportionate Share of the estimated Excess Operating Costs, multiplied by the number of months that have elapsed in the applicable fiscal year to the date of such payment including the current month, minus payments previously made by Tenant for the months elapsed. On the first day of each month thereafter, Tenant shall pay Landlord one-twelfth ($^1/_{12}$th) of Tenant's Proportionate Share of this estimate, until a new estimate becomes applicable.

Within thirty (30) days after receiving the original or revised estimate setting forth an estimate of Tenant's Proportionate Share of Electrical Costs for a particular fiscal year, Tenant shall pay Landlord one-twelfth ($^1/_{12}$th) of the estimated Tenant's Proportionate Share of Electrical Costs, multiplied by the number of months that have elapsed in the applicable fiscal year to the date of payment, including the current month, minus payments previously made by Tenant for the months elapsed. On the first day of each month thereafter, Tenant shall pay Landlord one-twelfth ($^1/_{12}$th) of Tenant's Proportionate Share of such estimate, until a new estimate becomes available.

(2) *Correction of Operating Cost Share Rent*. Landlord shall deliver to Tenant a report for the previous fiscal year (the "*Operating Cost Report*") by May 15 of each year, or as soon as reasonably possible thereafter, setting forth (a) the actual Operating Costs incurred, (b) the Base Operating Costs, (c) the amount of Operating Cost Share

Rent due from Tenant, and (d) the amount of Operating Cost Share Rent paid by Tenant. Within thirty (30) days after such delivery, Tenant shall pay to Landlord the amount due minus the amount paid. If the amount paid exceeds the amount due, Landlord shall apply the excess to Tenant's payments of Operating Cost Share Rent next coming due and, if such excess has not been fully applied within six (6) months, then against other Rent next becoming due. Notwithstanding the foregoing, all sums owed by Landlord to Tenant pursuant to the preceding sentence shall be fully applied or paid prior to the end of the calendar year in which such overpayment occurs. If this Lease has been terminated prior to such determination, such excess will be promptly paid to Tenant.

(3) *Correction of Electrical Cost Share Rent*. Landlord shall deliver to Tenant a report for the previous fiscal year (the *"Electrical Cost Report"*) by May 15 of each year, or as soon as reasonably possible thereafter, setting forth (a) the actual Electrical Costs, (b) the amount of Electrical Cost Share Rent due from Tenant, and (c) the amount of Electrical Cost Share Rent paid by Tenant. Within thirty (30) days after such delivery, Tenant shall pay to Landlord the amount due from Tenant minus the amount paid by Tenant. If the amount paid exceeds the amount due, Landlord shall apply any excess as a credit against Tenant's payments of Electrical Cost Share Rent next coming due and, if such excess has not been fully applied within six (6) months, then against other Rent next coming due. Notwithstanding the foregoing, all sums owed by Landlord to Tenant pursuant to the preceding sentence shall be fully applied or paid prior to the end of the calendar year in which such overpayment occurs. If this Lease has been terminated prior to such determination, such excess will be promptly paid to Tenant.

C. *Definitions.*

(1) *Included Operating Costs*. *"Operating Costs"* means any expenses, costs and disbursements of any kind other than Electrical Costs, paid or incurred by Landlord in connection with the management, maintenance, operation, insurance, repair and other related activities in connection with any part of the Project and of the personal property, fixtures, machinery, equipment, systems and apparatus used in connection therewith, including the cost of providing those services required to be furnished by Landlord under this Lease and Taxes (as defined below). Operating Costs shall also include an annual capital reserve equal to the product of $0.15 times the Rentable Square Feet of the Premises (the *"Capital Reserve Amount"*).

If the Project is not fully occupied during any portion of any fiscal year, Landlord may adjust in a manner equitable to Tenant and the other tenants in the Project (an *"Equitable Adjustment"*) Operating Costs to equal what would have been incurred by Landlord had the Project been fully occupied. This Equitable Adjustment shall apply only to Operating Costs which are variable and therefore increase as occupancy of the Project increases. Landlord may incorporate the Equitable Adjustment in its estimates of Operating Costs.

(2) *Excluded Operating Costs*. Operating Costs shall not include:

(a) costs of alterations of tenant premises;

(b) costs of capital improvements other than the Capital Reserve Amount;

(c) interest and principal payments on mortgages or any other debt costs, or rental payments on any ground lease of the Project;

(d) real estate brokers' leasing commissions;

(e) legal fees, space planner fees and advertising expenses incurred with regard to leasing the Project or portions thereof;

(f) any cost or expenditure for which Landlord is reimbursed, by insurance proceeds or otherwise, except by Operating Cost Share Rent;

(g) the cost of any service furnished to any office tenant of the Project which Landlord does not make available to Tenant;

(h) depreciation;

(i) franchise or income taxes imposed upon Landlord, except to the extent imposed in lieu of all or any part of Taxes;

(j) costs of correcting defects in construction of the Project(as opposed to the cost of normal repair, maintenance and replacement expected with the construction materials and equipment installed in the Project in light of their specifications);

(k) legal and auditing fees which are for the benefit of Landlord such as collecting delinquent rents, preparing tax returns and other financial statements;

(l) the wages of any employee for services not related directly to the management, maintenance, operation and repair of the Project;

(m) fines, penalties and interest;

(n) any ground lease rental;

(o) depreciation, amortization and interest payments (except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party) where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with GAAP, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life;

(p) costs incurred by Landlord due to the violation by Landlord or any tenant of the terms and conditions of any lease of space in the Project;

(q) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in the Project to the extent same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(r) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord or in the parking garage of the Project and/or all fees paid to any parking facility operator (on or off site) (provided, however, if Landlord provides such parking free of charge to Tenant, these expenses may be included as Operating Costs);

(s) advertising and promotional expenditures;

(t) electric power costs for which any tenant directly contracts with the local public service company;

(u) tax penalties to the extent incurred as a result of Landlord's negligence, inability or unwillingness to make payments and/or to file any income tax or informational returns when due;

(v) costs arising from the presence of asbestos in or about the Project; and

(w) costs arising from Landlord's charitable or political contributions.

(x) any expense associated with the initial construction or maintenance of other portions of the Project, until such other portions of the Project are occupied by tenants paying rent and operating expenses to Landlord.

(3) *Taxes.* *"Taxes"* means any and all taxes, assessments and charges of any kind, general or special (except as set forth below), ordinary or extraordinary, levied against the Project, which Landlord shall pay or become obligated to pay in connection with the ownership, leasing, renting, management, use, occupancy, control or operation of the Project or of the personal property, fixtures, machinery, equipment, systems and apparatus used in connection therewith. Taxes shall include real estate taxes, personal property taxes, sewer rents, water rents, special or general assessments (other than special assessments made by taxing authorities for roads, sewers or similar improvements related to a "business park"), transit taxes, ad valorem taxes, and any tax which may in the future be levied on the rents hereunder or on the interest of Landlord under this Lease (the *"Rent Tax"*). Taxes shall also include all reasonable fees and other reasonable costs and expenses paid by Landlord in reviewing any tax and in seeking a refund or reduction of any Taxes, whether or not the Landlord is ultimately successful. Landlord agrees to use all commercially reasonable efforts to insure that Taxes do not exceed the amount per rentable square foot of comparable buildings within The Commons of Las Colinas area. If Landlord elects not to protest Taxes, Tenant may deliver written notice to Landlord requesting that Landlord protest Taxes. If Landlord fails to file such protest within thirty (30) days following Landlord's receipt of Tenant's notice then Tenant may, at Tenant's cost, file such protest on Landlord's behalf and with Landlord's cooperation, but such cooperation will not obligate Landlord to incur any tax protest costs. If Tenant files such protest and Taxes are increased from that proposed prior to such protest, Tenant must promptly pay to Landlord an amount equal to the increased Taxes for the current and all future years, all as calculated in a manner reasonably acceptable to Landlord.

For any year, the amount to be included in Taxes (a) from taxes or assessments payable in installments, shall be the amount of the installments (with any interest) due and payable during such year, and (b) from all other Taxes, shall at Landlord's election be the amount accrued, assessed, or otherwise imposed for such year or the amount due and payable in such year. Any refund or other adjustment to any Taxes by the taxing authority, shall apply during the year in which the adjustment is made.

Taxes shall exclude any net income (except Rent Tax), capital, stock, succession, transfer, franchise, gift, estate or inheritance tax, except to the extent that such tax shall be imposed in lieu of any portion of Taxes. Taxes shall also exclude any governmental or business park special assessments (such as for roads and sewers).

(4) *Lease Year.* *"Lease Year"* means each consecutive twelve-month period beginning with the Commencement Date, except that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall be the period from the Commencement Date through the final day of the twelve months after the first day of the following month, and each subsequent Lease Year shall be the twelve months following the prior Lease Year.

(5) *Fiscal Year.* *"Fiscal Year"* means the calendar year, except that the first fiscal year and the last fiscal year of the Term may be a partial calendar year.

D. *Computation of Base Rent and Rent Adjustments.*

(1) *Prorations.* If this Lease begins on a day other than the first day of a month, the Base Rent, Operating Cost Share Rent and Electrical Cost Share Rent shall be

prorated for such partial month based on the actual number of days in such month. If this Lease begins on a day other than the first day, or ends on a day other than the last day, of the fiscal year, Operating Cost Share Rent and Electrical Cost Share Rent shall be prorated for the applicable fiscal year.

(2) *Default Interest.* Any sum due from Tenant to Landlord not paid when due shall bear interest from the date due until paid at the lesser of the maximum rate permitted by applicable law or the then Prime Rate (as hereinafter defined) plus five percent (5%) per annum.

(3) *Rent Adjustments.* The square footage of the Premises and the Building set forth in the Commencement Date Confirmation, when executed will be conclusively deemed to be the actual square footage thereof, without regard to any subsequent remeasurement of the Premises or the Building. If any Operating Cost paid in one fiscal year relates to more than one fiscal year, Landlord may proportionately allocate such Operating Cost among the related fiscal years.

(4) *Books and Records.* Landlord shall maintain books and records reflecting the Operating Costs, Taxes and Electrical Cost in accordance with sound accounting and management practices. Tenant and its certified public accountant shall have the right to inspect Landlord's records at Landlord's office upon at least seventy-two (72) hours' prior notice during normal business hours during (a) the eighteen (18) months following the respective delivery of the Operating Cost Report or the Electrical Cost Report relating to the first two (2) Lease Years or (b) six (6) months following the respective delivery of the Operating Cost Report or the Electrical Cost Report relating to subsequent Lease Years. Tenant's facilities management consultant may join Tenant's certified public accountant in Tenant's inspection of Landlord's records. The results of any such inspection shall be kept strictly confidential by Tenant and its agents, and Tenant and its certified public accountant must agree, in their contract for such services, to such confidentiality restrictions and shall specifically agree that the results shall not be made available to any other tenant of the Building. Unless Tenant sends to Landlord any written exception to either such report within the said eighteen (18) months or six (6) months period (as the case may be), such report shall be deemed final and accepted by Tenant. Tenant shall pay the amount shown on both reports in the manner prescribed in this Lease, whether or not Tenant takes any such written exception, without any prejudice to such exception. If Tenant makes a timely exception, Landlord shall select and cause an independent certified public accountant, reasonably acceptable to Tenant, with at least ten (10) years of experience in auditing the books and records of commercial office projects to issue a final and conclusive resolution of Tenant's exception. The cost of such certification shall be borne equally by Tenant and Landlord.

(5) *Miscellaneous.* So long as Tenant is in default of any monetary obligation under this Lease after the expiration of any applicable cure period, Tenant shall not be entitled to any refund of any amount from Landlord but when such default is cured Tenant will receive such refund. If this Lease is terminated for any reason prior to the annual determination of Operating Cost Share Rent or Electrical Cost Rent, either party shall pay the full amount due to the other within thirty (30) days after Landlord's notice to Tenant of the amount when it is determined. Landlord may commingle any payments made with respect to Operating Cost Share Rent or Electrical Cost Rent, without payment of interest.

**3. *PREPARATION AND CONDITION OF PREMISES; POSSESSION AND SURRENDER OF PREMISES.***

A. *Condition of Premises.* Landlord shall, at Landlord's expense, cause the Premises to be completed in a good and workman-like manner in accordance with the terms and provisions of the Work Agreement attached as Appendix C.

B. *Tenant's Possession.* Tenant's taking possession of any portion of the Premises shall be conclusive evidence that the Premises was in good order, repair and condition, except for punch list items, if any, identified by Tenant to Landlord by written notice delivered to Landlord no later than 30 days following substantial completion of the Initial Improvements and, for a period of two (2) years following the Commencement Date or the period any applicable warranty is in effect, whichever is later, any latent defects in the Premises. If Landlord authorizes Tenant to take possession of any part of the Premises prior to the Commencement Date for purposes of doing business, all terms of this Lease shall apply to such pre-Term possession, including Base Rent at the rate set forth for the First Lease Year in the Schedule prorated for any partial month.

C. *Maintenance.* Throughout the Term, Tenant shall maintain the Premises in their condition as of the Completion Date, loss or damage caused by the elements, ordinary wear, and fire and other casualty excepted, and at the termination of this Lease, or Tenant's right to possession, Tenant shall return the Premises to Landlord in broom-clean condition. To the extent Tenant fails to perform either obligation, Landlord may, but need not, restore the Premises to such condition and Tenant shall pay the cost thereof.

D. *Landlord Certification*. Landlord hereby certifies to Tenant that as of the Commencement Date the Base Building Work will have been designed and built to (1) comply with then applicable Governmental Requirements and then current customary interpretations of any applicable disability access laws (assuming customary office use and not any particular use of Tenant). Landlord shall be responsible for any corrective work arising from the Texas statutory requirement to have an inspection of the Premises and Building one (1) year after completion of construction, pursuant to Texas Civil Statutes, Article 9102 et. seq., with respect to the Base Building Work and the Leasehold Work resulting from Landlord's failure to perform same pursuant to the plans and specifications for the Leasehold Work. Tenant shall be responsible for preparing the plans and specifications for the Leasehold Work in compliance with applicable Governmental Requirements. In the event the Leasehold Work does not comply with applicable Governmental Requirements as a result of such plans and specifications not being in such compliance, then Tenant shall bear the cost of any such corrective work. If during the Term of this Lease, any change in Governmental Requirements requires retrofit work in the Premises to maintain compliance, Tenant shall bear the cost of such work.

Landlord hereby further certifies to Tenant that the Premises will be free of any latent defects for a period of two (2) years following the Commencement Date or the period any applicable warranty is in effect, whichever is later.

**4. *PROJECT SERVICES.***

Landlord shall, at Landlord's cost and expense (subject to Paragraph 2 hereof), furnish services as follows:

A. *Heating and Air Conditioning*. During the normal business hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday, Landlord shall furnish (i) air conditioning (by way of the primary heating, ventilating and air conditioning systems of the Building) within the limits and ranges set forth on the Plans and the work letter, and (ii) heat within the limits and ranges set forth on the Plans and the work letter. Landlord's obligations hereunder shall be diminished to the extent that Tenant adversely affects the temperature maintained by the heating and air conditioning system by operating its equipment and to the extent that Landlord's efforts to fulfill its obligations are hindered by the failure or inadequacy of the secondary heating, ventilating and air conditioning systems for which Tenant hereby assumes, at Tenant's sole cost, the maintenance obligations therefor. If Tenant installs such equipment, Landlord may install supplementary air conditioning units in the Premises, and Tenant shall pay to Landlord upon demand as Additional Rent the cost of installation, operation and maintenance thereof.

Landlord shall furnish heating and air conditioning after business hours if Tenant provides Landlord reasonable prior notice.

B. *Elevators*. Landlord shall provide passenger elevator service to Tenant. Landlord shall, at no cost to Tenant, provide freight access at such times as Tenant shall reasonably require, and subject to such restrictions, as Landlord may reasonably require.

C. *Electricity*. Landlord shall provide sufficient electricity to accommodate Tenant's requirements for the Premises as indicated by the Leasehold Engineers pursuant to Paragraph 2 of the Work Agreement. The Building has been designed with the electrical capacity set forth in the Plans, which shall provide up to 8 watts per rentable square foot of demand load at the electrical panel in each floor of the Premises (exclusive of power required for heating, air conditioning and lighting). Tenant shall not install or operate in the Premises any electrically operated equipment or other machinery which would exceed the electrical capacity provided in the Base Building Work without obtaining the prior written consent of Landlord. Tenant shall pay the Electrical Cost Share Rent set forth in Section 2A(3) above.

Tenant shall have the right, at Tenant's expense, at any time during the term of this Lease to contract directly with the local electric utility company or to install emergency power equipment. Tenant shall be responsible for the repair of any damage to the Premises caused by the installation or maintenance of such equipment. The cost of furnishing electricity to the Building, to the extent not represented by Tenant's directly contracting with such local utility company, shall be included within the Electrical Costs as defined in Section 2 above.

D. *Water*. Landlord shall furnish hot and cold tap water for drinking and toilet purposes. Tenant shall pay Landlord for water furnished for any other purpose as Additional Rent at rates fixed by Landlord. Tenant shall not permit water to be wasted.

E. *Janitorial Service*. Landlord shall furnish janitorial service in accordance with the standards set forth on Appendix H. In the event Tenant determines that such janitorial service is unsatisfactory, in Tenant's reasonable judgment, Tenant shall deliver written notice to Landlord specifying in detail the manner in which such service is deemed deficient. If the deficiencies are not, in Tenant's reasonable judgment, substantially corrected during the next succeeding sixty (60) days, then Tenant may deliver a further notice directing Landlord to terminate the contract for the applicable contractor providing such service to the Premises, subject to and in accordance with the termination provisions of such contract. Landlord shall cause such janitorial service contract that Tenant has the right to cause the termination of pursuant hereto to be terminable on not more than sixty (60) days prior notice. If Tenant delivers such notice of termination, Landlord shall terminate such contract. Promptly thereafter, Landlord shall enter into a new contract for the janitorial service with a contractor mutually agreeable to Landlord and Tenant.

The foregoing, notwithstanding Tenant shall have the right, upon no less than ninety (90) days prior written notice to Landlord, to elect not to receive the janitorial services provided by Landlord and to provide such services itself with respect to the Premises. If Tenant elects to provide such cleaning services to the Premises (i) such change shall be implemented upon expiration of Landlord's then current cleaning contract for the Premises, such cleaning contract to have a term not in excess of one (1) year, (ii) Tenant shall comply with reasonable procedures established by Landlord with respect to Tenant's cleaning activities, including security procedures, (iii) Tenant shall perform such cleaning services with personnel employed by Tenant or its affiliates, and not an unrelated third party contractor, and (iv) the costs of the nighttime cleaning contract shall no longer be an Operating Cost, such adjustment to be applied from and after the date on which Tenant assumes such responsibility for cleaning the Premises (such adjustment to be pro-rated for the year in which Tenant assumes such responsibility).

F. *Security Service*. Tenant shall provide security service for the Building in a manner and to the extent deemed appropriate by Tenant.

G. *Parking*. Landlord shall grant and provide certain parking rights to Tenant as described below:

The construction documents for the Project contemplate a total of approximately 2,159 parking spaces, with 648 surface spaces and 1,511 spaces located in the parking structure. Tenant shall have the right to use all such spaces. The parking spaces allocated to Building II will be 238 surface spaces and 551 spaces located in the parking structure. Tenant acknowledges that the entrances for both the parking structure and the surface parking shall serve the Building, Building I and Building III.

H. *Access*. Tenant shall have access to the Premises at all times during the Term of this Lease.

I. *Interruption of Services*. If any of the Building equipment or machinery (other than such Building equipment or machinery for which Tenant has assumed the responsibility to maintain) ceases to function properly for any cause Landlord shall use reasonable diligence to repair the same promptly. Landlord's inability to furnish, to any extent, the Project services set forth in this Section 4, or any cessation thereof resulting from any causes, including any entry for repairs pursuant to this Lease, and any renovation, redecoration or rehabilitation of any area of the Building shall not render Landlord liable for damages, except for Landlord's gross negligence or willful misconduct, to either person or property or for interruption or loss to Tenant's business, nor be construed as an eviction of Tenant, nor work an abatement of any portion of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. However, in the event that an interruption of the Project services set forth in this Section 4 (other than those services which Tenant has assumed the responsibility to maintain) causes the Premises to be untenantable for a period of at least ten (10) consecutive days (or, as to air conditioning service during the months of May to September, five (5) consecutive days), monthly Rent shall be thereafter abated proportionately. Landlord shall use reasonable efforts to minimize any interference with Tenant's business operations in performing any repairs, renovations, redecoration or rehabilitation pursuant to this Lease.

J. *Contractors*. Tenant shall have the right at any time and from time to time to request that Landlord use certain contractors to furnish and perform the following services: janitorial, exterior landscaping, pest control, elevator maintenance, waste disposal, fire protection, security and window cleaning. Landlord shall use the contractors requested by Tenant unless the cost thereof is materially higher than that charged by competitors or the quality of the services performed is materially inferior, in the good faith judgment of Landlord. Landlord will cooperate with Tenant to provide acceptable levels of such services for which Landlord is responsible to provide hereunder.

**5. *ALTERATIONS AND REPAIRS.***

A. *Landlord's Consent and Conditions.*

Tenant shall not make any improvements or alterations to the Premises (the *"Work"*) without in each instance submitting plans and specifications for the Work to Landlord and obtaining Landlord's prior written consent (such consent not to be unreasonably withheld) unless (a) the cost thereof is less than $25,000, (b) such Work does not impact the base structural components or, in Landlord's reasonable opinion, adversely affects the mechanical, electrical or plumbing systems of the Building, (c) such Work will not materially adversely impact any other tenant's premises, and (d) such Work does not involve changes to the exterior appearance of the Premises. Tenant shall, except as to the Initial Improvements, pay Landlord's reasonable out-of-pocket costs incurred for review of the plans and all other items submitted by Tenant. Landlord will be deemed to be acting reasonably in withholding its consent for any Work which (a) materially impacts the base structural components or, in Landlord's reasonable opinion, adversely affects systems of the Building, (b) materially adversely impacts any other tenant's premises, or (c) involves material changes to the exterior appearance of the Premises. The Work does not include merely decorative alterations such as painting, carpeting, floor covering, furniture movement, cabling and computer and telephone installation to the extent same do not impact base structural systems or, in Landlord's reasonable opinion, adversely affect the systems of the Building.

Tenant, shall except as to the Initial Improvements, reimburse Landlord for reasonable out-of-pocket costs incurred for review of the plans and all other items submitted by Tenant. Tenant shall pay for the cost of all Work. All Work shall become the property of Landlord upon its installation, except for Tenant's Trade Fixtures and for items which Landlord requires Tenant to remove at Tenant's cost at the termination of the Lease pursuant to Section 3E. As used herein, "Trade Fixtures" shall mean any equipment or furnishings customarily considered in a technology—based business office or in the telecommunications industry generally to be the property of the tenant, including in particular any built-in computer equipment, video conferencing facilities, audiovisual facilities, any other built-in communications equipment, and antenna or satellite equipment installed on the roof or elsewhere, and any special climate control equipment installed to protect file servers (except to the extent removal of same would adversely affect the Building systems) or other telecommunications equipment, but excluding any millwork or hardware not heretofore specified.

The following requirements shall apply to all Work:

(1) Prior to commencement, Tenant shall furnish to Landlord building permits, and certificates of insurance reasonably satisfactory to Landlord.

(2) Tenant shall perform all Work so as to maintain cooperation among other contractors serving the Project and shall take all reasonable measures so as to avoid interference with other work to be performed or services to be rendered in the Project.

(3) The Work shall be performed in a good and workmanlike manner, meeting the standard for construction and quality of materials in the Building, and shall comply with all insurance requirements and all applicable governmental laws, ordinances and regulations (*"Governmental Requirements"*).

(4) Tenant shall perform all Work so as to minimize or prevent disruption to other tenants, and Tenant shall comply with all reasonable requests of Landlord in response to complaints from other tenants.

(5) Tenant shall perform all Work in compliance with Landlord's "Policies, Rules and Procedures for Construction Projects" in effect at the time the Work is performed (a copy of which is attached hereto as Appendix J and made a part hereof).

(6) Tenant shall permit Landlord to supervise all Work. Landlord may charge a supervisory fee not to exceed five percent (5%) of labor, material, and all other costs of the Work, if Landlord's employees or contractors perform the Work. The foregoing does not apply to Work which does not require Landlord's prior consent nor to the Initial Improvements.

(7) Upon completion, Tenant shall furnish Landlord with contractor's affidavits and full and final statutory waivers of liens, as-built plans and specifications, and receipted bills covering all labor and materials, and all other close-out documentation required in Landlord's "Policies, Rules and Procedures for Construction Projects".

B. *Damage to Systems.* If any part of the mechanical, electrical or other systems in the Premises shall be damaged, Tenant shall promptly notify Landlord, and Landlord shall repair such damage. Landlord may also at any reasonable time make any repairs or alterations which Landlord deems necessary for the safety or protection of the Project, or which Landlord is required to make by any court or pursuant to any Governmental Requirement and, if Landlord fails to do so, Tenant may pursue its self-help and offset rights under Section 22 below. Tenant shall at its expense make all other repairs necessary to keep the Premises, and Tenant's fixtures and personal property, in good order, condition and repair; to the extent Tenant fails to do so (after expiration of all applicable notice and cure periods), Landlord may make such repairs itself. The cost of any repairs made by Landlord on account of Tenant's default, or on account of the mis-use or neglect by Tenant or its invitees, contractors or agents anywhere in the Project, shall become Additional Rent payable by Tenant on demand.

C. *No Liens.* Tenant has no authority to cause or permit any lien or encumbrance of any kind to affect Landlord's interest in the Project; any such lien or encumbrance shall attach to Tenant's interest only. If any mechanic's lien shall be filed or claim of lien made for work or materials furnished to Tenant, then Tenant shall at its expense within thirty (30) days thereafter either discharge or contest the lien or claim. If Tenant contests the lien or claim, then Tenant shall (i) within such thirty (30) day period, provide Landlord adequate security for the lien or claim, (ii) contest the lien or claim using reasonable efforts by appropriate proceedings that operate to stay its enforcement, and (iii) pay promptly any final adverse judgment entered in any such proceeding. If Tenant does not comply with these requirements (after expiration of all applicable notice and cure periods), Landlord may discharge the lien or claim, and the amount paid, as well as reasonable attorney's fees and other expenses incurred by Landlord, shall become Additional Rent payable by Tenant on demand.

D. *Ownership of Improvements.* All Work as defined in this Section 5, partitions, hardware, equipment, machinery and all other improvements and all fixtures except Trade Fixtures, constructed in the Premises by either Landlord or Tenant, (i) shall, except as set forth in Section 5E below, become Landlord's property upon installation without compensation to Tenant, unless Landlord consents otherwise in writing, and (ii) shall, except as set forth in Subsection 5E below, be surrendered to Landlord with the Premises at the termination of the Lease or of Tenant's right to possession.

E. *Removal at Termination.* Upon the termination of this Lease or Tenant's right of possession Tenant shall remove (and repair any damage caused by such removal) from the Project, its Trade Fixtures, telecommunications and computer equipment, furniture, moveable equipment and other personal property, together with any other non-standard office installations designated by Landlord at the time of Tenant's installation (e.g., stairwells, safes, etc.). Any standard office installations (i.e., walls, attached bookcases, attached credenzas, built-in reception desks, etc.) attached to the Premises must remain in the Premises. Tenant shall not be required to remove any cabling or wiring located within the risers and raceways used for such telecommunications and computer equipment. If Tenant does not timely remove such property, then Tenant shall be conclusively presumed to have, at Landlord's election (i) conveyed such property to Landlord without compensation or (ii) abandoned such property, and Landlord may dispose of or store any part thereof in any manner at Tenant's sole cost, without waiving Landlord's right to claim from Tenant all expenses arising out of Tenant's failure to remove the property, and without liability to Tenant or any other person. Landlord shall have no duty to be a bailee of any such personal property. If Landlord elects abandonment, Tenant shall pay to Landlord, upon demand, any expenses incurred for disposition.

F. *Rooftop Communications Systems.* Tenant may at its sole cost install, maintain, and from time to time replace a communications systems (a *"RCS"*) on the roof of the Building, provided that Tenant shall obtain Landlord's, and (to the extent required by applicable restrictive covenants affecting the Building) The Las Colinas Association's, prior reasonable approval of the proposed size, weight and location of the RCS and method for installing the RCS on the roof, and that Tenant will at its sole cost comply with all Governmental Requirements and the conditions of any bond or warranty maintained by Landlord on the roof. Landlord may supervise any roof penetration. Tenant shall repair any damage to the Building caused by Tenant's installation, maintenance, replacement, use or removal of the RCS. The RCS shall remain the property of Tenant, and Tenant may remove the RCS at its cost at any time during the Term. Tenant shall remove the RCS at its cost upon expiration or termination of the Lease. Tenant shall protect, defend, indemnify and hold harmless Landlord from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the RCS. Tenant shall have the right to install and maintain other equipment on the roof of the Building, subject to Landlord's aesthetic and structural guidelines.

G. *Conduits.* Except as set forth herein, Tenant has the right to use existing or construct, at Tenant's cost, new conduits into and through the Building and the right, at its cost, to install cables, equipment and other related telecommunications facilities required for Tenant's

network into and through the Building, subject to Landlord's approval, not to be unreasonably withheld. Landlord shall construct as part of the Base Building Work set forth in the Work Agreement an underground conduit connecting the Building, Building I and Building III having dimensions specified by Tenant [provided, however, that Tenant shall reimburse Landlord for the cost of such conduit in excess of Thirty Thousand Dollars ($30,000.00)].

H. *Additional Tenant Obligations*. Notwithstanding anything in the Lease to the contrary, Landlord shall not be responsible for providing any service that Tenant has undertaken, or subsequently undertakes, to furnish in lieu of Landlord and Tenant shall be responsible, at Tenant's sole cost, for the maintenance of any equipment and/or systems used to furnish such services. In particular, Tenant shall be responsible, at Tenant's sole cost, for the maintenance and level of service of the emergency generator, the secondary heating, ventilating and air conditioning distribution system, and the Building and parking garage security systems.

**6. *USE OF PREMISES.*** Tenant shall use the Premises only for general office purposes and any other office-related uses typical or ancillary to technology-based businesses, as long as such uses are permitted by applicable zoning regulations. Tenant shall not allow any hazardous use of the Premises which will increase the cost of coverage of Landlord's insurance on the Project. The Project is currently zoned to permit office use and Landlord agrees not to change the zoning to prohibit such use. Tenant shall not allow any inflammable or explosive liquids or materials to be kept on the Premises (other than commonly used janitorial supplies and supplies customarily used in the operation of business offices). Tenant shall not allow any use of the Premises which would cause the value or utility of any part of the Premises to diminish or would interfere with any other Tenant or with the operation of the Project by Landlord. Tenant shall not permit any nuisance or waste upon the Premises, or allow any offensive noise or odor in or around the Premises.

**7. *GOVERNMENTAL REQUIREMENTS AND BUILDING RULES.*** Tenant shall comply with all Governmental Requirements applying to its use of the Premises. Tenant shall also comply with all reasonable rules established for the Project from time to time by Landlord. The present rules and regulations are contained in Appendix B. Failure by another tenant to comply with the rules or failure by Landlord to enforce them shall not relieve Tenant of its obligation to comply with the rules or make Landlord responsible to Tenant in any way. Landlord shall use reasonable efforts to apply the rules and regulations uniformly and in a non-discriminatory manner with respect to Tenant and tenants in the Building under leases containing rules and regulations similar to this Lease. In the event of alterations and repairs performed by Tenant, Tenant shall comply with the provisions of Section 5 of this Lease and such other rules as Landlord may reasonably require. In the event of any conflict, inconsistency or ambiguity between the terms of this Lease and the terms of Appendix B, the terms of this Lease shall govern and control.

Landlord shall construct and operate the Project in accordance with environmentally sound management principles, including the principles of the International Chamber of Commerce Business Charter on Sustainable Development.

**8. *WAIVER OF CLAIMS; INDEMNIFICATION; INSURANCE.***

A. *Waiver of Claims.* To the extent permitted by law, Tenant waives any claims it may have against Landlord or its officers, directors, employees or agents for business interruption or damage to property sustained by Tenant as the result of any act or omission of Landlord to the extent covered by insurance or to the extent same could have been covered by insurance to the extent such party failed to maintain the insurance described below.

To the extent permitted by law, Landlord waives any claims it may have against Tenant or its officers, directors, employees or agents for loss of rents (other than Rent) or damage to property sustained by Landlord as the result of any act or omission of Tenant to the extent covered by insurance or to the extent same could have been covered by insurance to the extent such party failed to maintain the insurance described below.

Landlord and Tenant mutually waive all rights of subrogation.

The terms and provisions of this Section 8A shall survive the termination of this Lease.

B. *Indemnification*. Tenant shall indemnify, defend and hold harmless Landlord and its officers, directors, employees and agents against any claim by any third party for injury to any person or damage to or loss of any property occurring in the Project and arising from the use of the Premises or from any other act or omission or negligence of Tenant or any of Tenant's employees or agents. Tenant's obligations under this section shall survive the termination of this Lease.

Landlord shall indemnify, defend and hold harmless Tenant and its officers, directors, employees and agents against any claim by any third party for damage to person or Premises or from any other act or omission or negligence of Landlord or any of Landlord's employees or agents. Landlord's obligations under this section shall survive the termination of this Lease.

C. *Tenant's Insurance*. Tenant shall maintain insurance as follows, with such other terms, coverages and insurers, as Landlord shall reasonably require from time to time:

(1) Commercial General Liability Insurance, with (a) Contractual Liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Five Million Dollars ($5,000,000).

(2) Property Insurance against "All Risks" of physical loss covering the replacement cost of all improvements, fixtures and personal property. Tenant waives all rights of subrogation, and Tenant's property insurance shall include a waiver of subrogation in favor of Landlord.

(3) (Unless Tenant elects to self-insure this risk or otherwise comply with applicable law in this subject matter), Workers' compensation or similar insurance in form and amounts required by law, and Employer's Liability with not less than the following limits:

| | | |
|---|---|---|
| Each Accident | $ | 500,000 |
| Disease—Policy Limit | $ | 500,000 |
| Disease—Each Employee | $ | 500,000 |

Such insurance shall contain a waiver of subrogation provision in favor of Landlord and its agents and may be under a blanket policy as long as the Premises and Landlord are specifically listed therein in a manner reasonably acceptable to Landlord.

Landlord, and if any, Landlord's building manager or agent and ground lessor shall be named as additional insureds as respects to insurance required of the Tenant in Section 8C(1). The company or companies writing any insurance which Tenant is required to maintain under this Lease, as well as the form of such insurance, shall at all times be subject to Landlord's approval, and any such company shall be licensed to do business in the state in which the Building is located. Such insurance companies shall have a A.M. Best rating of A VI or better.

Tenant shall cause any contractor of Tenant performing work on the Premises to maintain insurance as follows, with such other terms, coverages and insurers, as Landlord shall reasonably require from time to time:

(1) Commercial General Liability Insurance, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement, and contractor's protective liability coverage, to afford

protection with limits, for each occurrence, of not less than One Million Dollars ($1,000,000) with respect to personal injury, death or property damage.

(2) Workers' compensation or similar insurance in form and amounts required by law, and Employer's Liability with not less than the following limits:

| | | |
|---|---|---|
| Each Accident | $ | 500,000 |
| Disease—Policy Limit | $ | 500,000 |
| Disease—Each Employee | $ | 500,000 |

Such insurance shall contain a waiver of subrogation provision in favor of Landlord and its agents.

Tenant's contractor's insurance shall be primary and not contributory to that carried by Tenant, Landlord, their agents or mortgagees. Tenant and Landlord, and if any, Landlord's building manager or agent, mortgagee or ground lessor shall be named as additional insured on Tenant's contractor's insurance policies.

D. *Insurance Certificates*. Tenant shall deliver to Landlord certificates evidencing all required insurance no later than five (5) days prior to the Commencement Date and each renewal date. Each certificate will provide for thirty (30) days prior written notice of cancellation to Landlord and Tenant.

E. *Landlord's Insurance*. Landlord shall maintain "All-Risk" property insurance at replacement cost, including loss of rents, on the Building, and Commercial General Liability insurance policies covering the common areas of the Building, each with such terms, coverages and conditions as are normally carried by reasonably prudent owners of properties similar to the Project. With respect to property insurance, Landlord and Tenant mutually waive all rights of subrogation, and the respective "All-Risk" coverage property insurance policies carried by Landlord and Tenant shall contain enforceable waiver of subrogation endorsements.

**9. *FIRE AND OTHER CASUALTY.***

A. *Termination*. If a fire or other casualty causes substantial damage to the Building or the Premises, Landlord shall engage a registered architect qualified, competent and experienced in performing this function, to certify within one (1) month of the casualty to both Landlord and Tenant the amount of time needed to restore the Building and the Premises to tenantability, using standard working methods. If the time needed exceeds twelve (12) months from the beginning of the restoration, or two (2) months therefrom if the restoration would begin during the last twelve (12) months of the Lease, then in the case of the Premises, either Landlord or Tenant may terminate this Lease, and in the case of the Building, Landlord may terminate this Lease, by notice to the other party within ten (10) days after the notifying party's receipt of the architect's certificate. The termination shall be effective thirty (30) days from the date of the notice and Rent shall be paid by Tenant to that date, with an abatement for any portion of the space which has been untenantable after the casualty.

B. *Restoration*. If a casualty causes damage to the Building or the Premises but this Lease is not terminated for any reason, then Landlord shall obtain the applicable insurance proceeds and diligently restore the Building and the Premises subject to current Governmental Requirements. Tenant shall replace its damaged improvements, personal property and fixtures. Rent shall be abated on a per diem basis during the restoration for any portion of the Premises which is untenantable. Any subordination, non-disturbance and attornment agreement subsequently entered into with Tenant shall require the application of insurance proceeds to restoration of the Premises and the Building.

**10. *EMINENT DOMAIN***. If a part of the Project is taken by eminent domain or deed in lieu thereof which is so substantial that the Premises cannot reasonably be used by Tenant for the operation of its business, then either party may terminate this Lease effective as of the date of the taking. If any substantial portion of the Project is taken without affecting the

Premises, then Landlord may terminate this Lease as of the date of such taking. As used herein, "substantial portion" shall mean a taking of more than forty percent (40%) of the Land or more than thirty percent (30%) of the rentable area of the remainder of the Project. Rent shall abate from the date of the taking in proportion to any part of the Premises taken. The entire award for a taking of any kind shall be paid to Landlord. Tenant may pursue a separate award for its trade fixtures and moving expenses in connection with the taking, but only if such recovery does not reduce the award payable to Landlord. Notwithstanding the foregoing, if applicable law prohibits Tenant from pursuing such separate award, then Tenant may make a claim for its Trade Fixtures and moving expenses in conjunction with Landlord's claim so long as Landlord and Tenant can readily identify and separate their respective portions of the award granted under such combined claim. All obligations accrued to the date of the taking shall be performed by each party.

**11.** ***RIGHTS RESERVED TO LANDLORD.***

Landlord may exercise at any time any of the following rights respecting the operation of the Project without liability to the Tenant of any kind:

A. *Signs*. To install and maintain any signs on the exterior and in the interior of the Building (but only during such time as Tenant occupies less than 100,000 square feet in the Building), and to approve, at its reasonable discretion, prior to installation, any of Tenant's signs in the Premises visible from the common areas or the exterior of the Building; provided, however, that as long as Tenant occupies the entire Building, Landlord's approval of signs in the Premises shall not be required, and further provided, that as long as Tenant occupies at least 100,000 square feet in the Building, Tenant will have the exclusive right to place its name and corporate logo on the Building at a mutually agreeable location. The Plans will include specifications for the location and design of Tenant's signage. Landlord agrees to diligently pursue, at Tenant's cost, all reasonable avenues to obtain maximum signage rights from all applicable governmental authorities.

B. *Window Treatments*. To approve, at its discretion (except as otherwise set forth in Paragraph 7), prior to installation, any shades, blinds, ventilators or window treatments of any kind, as well as any lighting within the Premises that may be visible from the exterior of the Building or any interior common area.

C. *Keys*. Intentionally Deleted.

D. *Access*. To have access to inspect the Premises (subject to 24 hours advance authorization except in cases of emergency), and to perform its obligations, or make repairs, alterations, additions or improvements, as permitted by this Lease upon reasonable prior notice to Tenant, during normal business hours and with minimal interference with Tenant's business operations. A representative of Tenant may, at Tenant's option, be present during any such access. If Tenant complies with all of the requirements set forth in this Section, Tenant may provide its own locks to an area or areas within the Premises (the *"Secured Areas"*). At least ten (10) days prior to the creation of any Secured Area, Tenant shall notify Landlord of the exact location of such Secured Area and the name of the representative of Tenant to be contacted and the manner of contact to avoid a forcible entry. Tenant need not furnish Landlord with keys to the Secured Areas. Upon the termination of this Lease, Tenant shall surrender all keys to Landlord. Landlord shall have no obligation to provide janitorial service to the Secured Areas. If Landlord determines in its reasonable discretion that a suspected fire or flood or other emergency in the Building requires Landlord to gain access to any Secured Area, Landlord may forcibly enter. Landlord shall make a reasonable effort to contact Tenant to secure access, but Landlord shall not be obligated to contact Tenant.

E. *Preparation for Reoccupancy*. To decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time following Tenant's default (after the expiration of any applicable notice and cure period and Landlord's exercise of its right to terminate this Lease or Tenant's possession), without relieving Tenant of any obligation to pay Rent.

F. *Heavy Articles*. To approve the weight, size, placement and time and manner of movement within the Building of any safe, central filing system or other heavy article of Tenant's property. Tenant shall move its property entirely at its own risk. The Building has been designed with the floor load capacity referred to on the Plans.

G. *Show Premises*. To show the Premises to prospective purchasers, tenants (only during the last 6 months of the Term), brokers, lenders, investors, rating agencies or others at any reasonable time, provided that Landlord gives prior notice to Tenant and does not unreasonably interfere with Tenant's use of the Premises. Tenant may, at Tenant's option, have a representative present during any such showing.

H. *Relocation of Tenant*. [Intentionally Deleted].

I. *Use of Lockbox*. To designate a lockbox collection agent for collections of amounts due Landlord. The date of payment of Rent or other sums shall be the date Rent is deposited in such lockbox. However, if Tenant is in default and this Lease has been terminated Landlord may reject any payment for all purposes as of the date of receipt or actual collection by mailing to Tenant within 21 days after such receipt or collection a check equal to the amount sent by Tenant.

J. *Repairs and Alterations*. To make repairs or alterations to the Project and in doing so transport any required material through the Premises, to close entrances, doors, corridors, elevators and other facilities in the Project, to open any ceiling in the Premises, or to temporarily suspend services or use of common areas in the Building provided that any such repairs do not unreasonably interfere with Tenant's use of the Premises. Landlord may perform any such repairs or alterations during ordinary business hours, except that Tenant may require any Work in the Premises to be done after business hours if Tenant pays Landlord for overtime and any other expenses incurred. Landlord may do or permit any work on any nearby building, land, street, alley or way. Landlord shall use reasonable efforts to minimize interference with Tenant's business operations in the course of performing such work.

K. *Landlord's Agents*. If Tenant is in default under this Lease, possession of Tenant's funds or negotiation of Tenant's negotiable instrument by any of Landlord's agents shall not waive any breach by Tenant or any remedies of Landlord under this Lease.

L. *Building Services*. To install, use and maintain through the Premises, pipes, conduits, wires and ducts serving the Building, provided that such installation, use and maintenance does not unreasonably interfere with Tenant's use of the Premises.

M. *Other Actions*. To take any other action which Landlord deems reasonable in connection with the operation, maintenance or preservation of the Building.

**12. *TENANT'S DEFAULT.***

Any of the following shall constitute a default by Tenant:

A. *Rent Default*. Tenant fails to pay any Rent when due, and such failure continues for five (5) days following the date of Landlord's written notice to Tenant;

B. *Other Performance Default*. Tenant fails to perform any other obligation to Landlord under this Lease, and such failure continues for thirty (30) days after written notice from Landlord, except that if Tenant begins to cure its failure within the thirty (30) day period but cannot reasonably complete its cure within such period, then, so long as Tenant continues to diligently attempt to cure its failure, the thirty (30) day period shall be extended to one hundred twenty (120) days, or such lesser period as is reasonably necessary to complete the cure;

C. *Credit Default*. One of the following credit defaults occurs:

(1) Tenant commences any proceeding under any law relating to bankruptcy, insolvency, reorganization or relief of debts, or seeks appointment of a receiver, trustee, custodian or other similar official for the Tenant or for any substantial part of its property, or any such proceeding is commenced against Tenant and either remains undismissed for a period of thirty days or results in the entry of an order for relief against Tenant which is not fully stayed within ninety (90) days after entry;

(2) Tenant becomes insolvent or bankrupt, does not generally pay its debts as they become due, or admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors;

(3) Any third party obtains a levy or attachment under process of law against Tenant's leasehold interest and Tenant fails to have same removed within ninety (90) days.

**13. *LANDLORD REMEDIES.***

A. *Termination of Lease or Possession*. If Tenant defaults, Landlord may elect by notice to Tenant either to terminate this Lease or to terminate Tenant's possession of the Premises without terminating this Lease. In either case, Tenant shall immediately vacate the Premises and deliver possession to Landlord, and Landlord may repossess the Premises and may, at Tenant's sole cost, remove any of Tenant's signs and any of its other property, without relinquishing its right to receive Rent or any other right against Tenant. If Landlord desires to terminate this Lease as to any non-monetary default, Landlord agrees that notice of termination as to any non-monetary default will only be effective if Tenant fails to cure same within three (3) days following the date of Landlord's notice.

B. *Lease Termination Damages*. If Landlord terminates the Lease, Tenant shall pay to Landlord all Rent due on or before the date of termination, plus the aggregate Rent that would have been payable from the date of termination through the Termination Date, reduced by the rental value of the Premises calculated as of the date of termination for the same period, taking into account reletting expenses and market concessions, both discounted to present value at the prime rate per annum then published as such in *The Wall Street Journal* or, if not in existence, such other newspaper having a national circulation (the "Prime Rate").

C. *Possession Termination Damages*. If Landlord terminates Tenant's right to possession without terminating the Lease and Landlord takes possession of the Premises itself, Landlord may relet any part of the Premises for such Rent, for such time, and upon such terms as Landlord in its sole discretion shall determine, without any obligation to do so prior to renting other vacant areas in the Building. Any proceeds from reletting the Premises shall first be applied to the expenses of reletting, including redecoration, repair, alteration, advertising, brokerage, legal, and other reasonably necessary expenses. If the reletting proceeds after payment of expenses are insufficient to pay the full amount of Rent under this Lease, Tenant shall pay such deficiency to Landlord monthly upon demand as it becomes due. Any excess proceeds shall be retained by Landlord.

D. Intentionally Deleted.

E. *Landlord's Remedies Cumulative*. All of Landlord's remedies under this Lease shall be in addition to all other remedies Landlord may have at law or in equity. Waiver by Landlord of any breach of any obligation by Tenant shall be effective only if it is in writing, and shall not be deemed a waiver of any other breach, or any subsequent breach of the same obligation. Landlord's acceptance of payment by Tenant shall not constitute a waiver of any breach by Tenant, and if the acceptance occurs after Landlord's notice to Tenant, or termination of the Lease or of Tenant's right to possession, the acceptance shall not affect such notice or termination. Acceptance of payment by Landlord after commencement of a legal proceeding or

final judgment shall not affect such proceeding or judgment. Landlord may advance such monies and take such other actions for Tenant's account as reasonably may be required to cure or mitigate any default by Tenant. Tenant shall immediately reimburse Landlord for any such advance, and such sums shall bear interest at the default interest rate until paid.

**F. *WAIVER OF TRIAL BY JURY.* EACH PARTY WAIVES TRIAL BY JURY IN THE EVENT OF ANY LEGAL PROCEEDING BROUGHT BY THE OTHER IN CONNECTION WITH THIS LEASE. EACH PARTY SHALL BRING ANY ACTION AGAINST THE OTHER IN CONNECTION WITH THIS LEASE IN A FEDERAL OR STATE COURT LOCATED IN DALLAS COUNTY, TEXAS, CONSENTS TO THE JURISDICTION OF SUCH COURTS, AND WAIVES ANY RIGHT TO HAVE ANY PROCEEDING TRANSFERRED FROM SUCH COURTS ON THE GROUND OF IMPROPER VENUE OR INCONVENIENT FORUM.**

G. *Litigation Costs*. Tenant shall pay Landlord's reasonable attorneys' fees and other costs in enforcing this Lease, whether or not suit is filed. In the event of any litigation concerning this Lease, the non-prevailing party will reimburse the prevailing party's reasonable attorneys' fees, reasonable disbursements and court costs.

H. *Reletting*. Tenant acknowledges that Landlord has entered into this Lease in reliance upon, among other matters, Tenant's agreement and continuing obligation to pay all Rent due throughout the Term. As a result, Tenant hereby knowingly and voluntarily waives, after advice of competent counsel, any duty of Landlord (and any affirmative defense based upon such duty) following any default to relet the Premises or otherwise mitigate Landlord's damages arising from such default. If such waiver is not effective under then applicable law or Landlord otherwise elects, at Landlord's sole option, to attempt to relet all or any part of the Premises, Tenant agrees that Landlord has no obligation to: (i) relet the Premises prior to leasing any other space within the Building; (ii) relet the Premises (A) at a rental rate or otherwise on terms below market, as then determined by Landlord in its sole discretion; (B) to any entity not satisfying Landlord's then standard financial credit risk criteria; (C) for a use (1) not consistent with Tenant's use prior to default; (2) which would violate then applicable law or any restrictive covenant or other lease affecting the Building; (3) which would impose a greater burden upon the Building's parking, HVAC or other facilities; and/or (4) which would involve any use of Hazardous Substances; (iii) divide the Premises, install new demising walls or otherwise reconfigure the Premises to make same more marketable; (iv) pay any leasing or other commissions arising from such reletting, unless Tenant unconditionally delivers Landlord, in good and sufficient funds, the full amount thereof in advance; (v) pay, and/or grant any allowance for, tenant finish or other costs associated with any new lease, even though same may be amortized over the applicable lease term, unless Tenant unconditionally delivers Landlord, in good and sufficient funds, the full amount thereof in advance; and/or (vi) relet the Premises, if to do so, Landlord would be required to alter other portions of the Building, make ADA-type modifications or otherwise install or replace any sprinkler, security, safety, HVAC or other Building operating systems. Tenant further acknowledges that if Tenant, notwithstanding Tenant's waiver above, raises Landlord's mitigation as an affirmative defense to a claim made by Landlord prior to any actual reentry of the Premises by Landlord then, in such event, Tenant will be deemed to have automatically waived, and released and discharged Landlord from and against, any and all other claims and defenses to the payment of Rent.

**14. *SURRENDER***. Upon termination of this Lease or Tenant's right to possession, Tenant shall return the Premises to Landlord in good order and condition, ordinary wear and casualty damage excepted. If Landlord requires Tenant to remove any alterations, then Tenant shall remove the alterations in a good and workmanlike manner and restore the Premises to its condition prior to their installation. In the event that Tenant does not exercise its option to renew the Term of this Lease as set forth in Appendix F, then Tenant shall restore the first floor lobby of the Premises to the original design thereof prepared by Landlord, if and to the extent Tenant has modified the lobby from such original design. Such restoration shall be made at Tenant's cost and expense.

**15.** ***HOLDOVER***. If Tenant retains possession of any part of the Premises after the Term, Tenant shall become a month-to-month tenant for the entire Premises upon all of the terms of this Lease as might be applicable to such month-to-month tenancy, except that Tenant shall pay all of Base Rent, Operating Cost Share Rent and Tax Share Rent at one hundred thirty-five percent (135%) of the rate in effect immediately prior to such holdover, computed on a monthly basis for each full or partial month Tenant remains in possession, as liquidated damages for Tenant's holdover. No acceptance of Rent or other payments by Landlord under these holdover provisions shall operate as a waiver of Landlord's right to regain possession or any other of Landlord's remedies.

**16.** ***SUBORDINATION TO GROUND LEASES AND MORTGAGES.***

A. *Subordination*. This Lease shall be subordinate to any future ground lease or mortgage respecting the Project, and any amendments to such ground lease or mortgage, at the election of the ground lessor or mortgagee as the case may be, effected by notice to Tenant in the manner provided in this Lease. The subordination shall be effective upon such notice, but at the request of Landlord or ground lessor or mortgagee, Tenant shall within ten (10) days of the request, execute and deliver to the requesting party any reasonable documents provided to evidence the subordination. Any mortgagee has the right, at its option, to subordinate its mortgage to the terms of this Lease, without notice to, nor the consent of, Tenant. There are no existing mortgages or ground leases affecting the Project. As a condition to Tenant's agreement to subordinate Tenant's interest in this Lease to any future mortgage or ground lease, the mortgagee or ground lessor, as applicable, must deliver to Tenant a non-disturbance agreement reasonably acceptable to Tenant, providing that so long as Tenant is not in default under this Lease after the expiration of any applicable notice and cure periods, Tenant may remain in possession of the Premises under the terms of this Lease, even if the ground lessor should terminate the ground lease or if the mortgagee or its successor should acquire Landlord's title to the Project.

B. *Termination of Ground Lease or Foreclosure of Mortgage*. If any ground lease is terminated or mortgage foreclosed or deed in lieu of foreclosure given and the ground lessor, mortgagee, or purchaser at a foreclosure sale shall thereby become the owner of the Project, Tenant shall attorn to such ground lessor or mortgagee or purchaser without any deduction or setoff by Tenant, and this Lease shall continue in effect as a direct lease between Tenant and such ground lessor, mortgagee or purchaser. The ground lessor or mortgagee or purchaser shall be liable as Landlord only during the time such ground lessor or mortgagee or purchaser is the owner of the Project. At the request of Landlord, ground lessor or mortgagee, Tenant shall execute and deliver within ten (10) days of the request any document furnished by the requesting party to evidence Tenant's agreement to attorn.

C. *Security Deposit*. Any ground lessor or mortgagee shall be responsible for the return of any security deposit by Tenant, if any, only to the extent the security deposit is received by such ground lessor or mortgagee.

D. *Notice and Right to Cure*. The Project is subject to any ground lease and mortgage identified with name and address of ground lessor or mortgagee in Appendix D to this Lease (as the same may be amended from time to time by written notice to Tenant). Tenant agrees to send by registered or certified mail to any ground lessor or mortgagee identified either in such Appendix or in any later notice from Landlord to Tenant a copy of any notice of default sent by Tenant to Landlord. If Landlord fails to cure such default within the required time period under this Lease, but ground lessor or mortgagee begins to cure within ten (10) days after such period and proceeds diligently to complete such cure, then ground lessor or mortgagee shall have such additional time as is necessary to complete such cure, including any time necessary to obtain possession if possession is necessary to cure, and Tenant shall not begin to enforce its remedies so long as the cure is being diligently pursued.

E. *Definitions*. As used in this Section 16, "mortgage" shall include "deed of trust" and/or "trust deed" and "mortgagee" shall include "beneficiary" and/or "trustee", "mortgagee" shall include the mortgagee of any ground lessee, and "ground lessor", "mortgagee", and

"purchaser at a foreclosure sale" shall include, in each case, all of its successors and assigns, however remote.

**17. *ASSIGNMENT AND SUBLEASE*.**

A. *In General*. Tenant shall not, without the prior consent of Landlord in each case, (i) make or allow any assignment or transfer, by operation of law or otherwise, of any part of Tenant's interest in this Lease, (ii) grant or allow any lien or encumbrance, by operation of law or otherwise, upon any part of Tenant's interest in this Lease, (iii) sublet any part of the Premises, or (iv) permit anyone other than Tenant and its employees to occupy any part of the Premises. Tenant shall remain primarily liable for all of its obligations under this Lease, notwithstanding any assignment, subletting or transfer under this Section 17 or otherwise. No consent granted by Landlord shall be deemed to be a consent to any subsequent assignment or transfer, lien or encumbrance, sublease or occupancy. Tenant shall pay all of Landlord's attorneys' fees and other expenses incurred in connection with any consent requested by Tenant or in reviewing any proposed assignment or subletting. Any assignment or transfer, grant of lien or encumbrance, or sublease or occupancy without Landlord's prior written consent shall be void. Except in the case of an assignment permitted under Section 17F below, if Tenant shall assign this Lease or sublet the Premises in its entirety any rights of Tenant to renew this Lease, extend the Term or to lease additional space in the Project shall be extinguished thereby and will not be transferred to the assignee or subtenant, all such rights being personal to the Tenant named herein.

B. *Landlord's Consent*. Landlord will not unreasonably withhold or delay its consent to any proposed assignment or subletting. It shall be reasonable for Landlord to withhold its consent to any assignment or sublease if (i) Tenant is in monetary default or material non-monetary default under this Lease after the expiration of all applicable cure periods, (ii) the proposed assignee or sublessee is a tenant in the Project or an affiliate of such a tenant or a party that Landlord is then actively involved in negotiations as a prospective tenant in the Project, (iii) the financial responsibility, nature of business, and character of the proposed assignee or subtenant are not all reasonably satisfactory to Landlord, (iv) in the reasonable judgment of Landlord the purpose for which the assignee or subtenant intends to use the Premises (or a portion thereof) is not in keeping with Landlord's standards for the Building or are in violation of the terms of this Lease or any other leases in the Project, or (v) the proposed assignee or subtenant is a government entity. The foregoing shall not exclude any other reasonable basis for Landlord to withhold its consent.

C. *Procedure*. Tenant shall notify Landlord of any proposed assignment or sublease at least ten (10) business days prior to its proposed effective date. The notice shall include the name and address of the proposed assignee or subtenant, its corporate affiliates in the case of a corporation and its partners in a case of a partnership, an execution copy of the proposed assignment or sublease, and sufficient information to permit Landlord to determine the financial responsibility and character of the proposed assignee or subtenant. As a condition to any effective assignment of this Lease, the assignee shall execute and deliver in form reasonably satisfactory to Landlord at least five (5) business days prior to the effective date of the assignment, an assumption of all of the obligations of Tenant under this Lease. As a condition to any effective sublease, subtenant shall execute and deliver in form reasonably satisfactory to Landlord at least five (5) business days prior to the effective date of the sublease, an agreement to comply with all of Tenant's obligations under this Lease, and at Landlord's option, an agreement (except for the economic obligations which subtenant will undertake directly to Tenant) to attorn to Landlord (and if Landlord requests such attornment, Landlord must recognize such subtenant) under the terms of the sublease in the event this Lease terminates before the sublease expires.

D. *Change of Management or Ownership*. Any direct or indirect change in 50% or more of the ownership interest in Tenant shall constitute an assignment of this Lease.

E. *Excess Payments*. If Tenant shall assign this Lease or sublet any part of the Premises, except under Clause F. below, for consideration in excess of the pro-rata portion of Rent applicable to the space subject to the assignment or sublet, less any actual out-of-pocket costs incurred by Tenant, and payable to non-affiliated third parties, in connection therewith (i.e.,

brokerage commissions, tenant finish costs, legal fees, advertising costs, work allowances, free rent and marketing expenses, all of which must be amortized over the applicable lease term), then Tenant shall pay to Landlord as Additional Rent seventy percent (70%) of any such excess immediately upon receipt.

F. *Related Entity*. If Landlord has not elected to terminate this Lease or Tenant's right to possession in accordance with Section 13 of this Lease following a default by Tenant, Tenant may assign this Lease to (i) an entity into which Tenant is merged or consolidated or to an entity to which substantially all of Tenant's assets are transferred through a public offering on a recognized exchange, or (ii) any entity controlling, controlled by or under common control with a Tenant, without first obtaining Landlord's written consent, if Tenant notifies Landlord at least ten (10) business days prior to the proposed transaction, providing information reasonably satisfactory to Landlord in order to determine the relationship with Tenant. Nokia, Inc. or, if applicable, its successor by merger, consolidation, public offering or otherwise, will at all times remain primarily liable under this Lease, as amended from time to time, following any such transfer.

**18.** ***CONVEYANCE BY LANDLORD***. If Landlord shall at any time transfer its interest in the Project or this Lease, Landlord shall be released of any obligations occurring after such transfer (as long as Landlord's successor assumes such liability), except the obligation to return to Tenant any security deposit not delivered to its transferee, and Tenant shall look solely to Landlord's successors for performance of such obligations. This Lease shall not be affected by any such transfer.

**19.** ***ESTOPPEL CERTIFICATE***. Each party shall, as soon as reasonably practical but in no event beyond twenty (20) days of receiving a request from the other party accompanied by the form of certificate requested together with all proposed exhibits or schedules attached, execute, acknowledge in recordable form, and deliver to the other party or its designee a certificate stating, subject to a specific statement of any applicable exceptions, that the Lease as amended to date is in full force and effect, that the Tenant is paying Rent and other charges on a current basis, and that to the best of the knowledge of the certifying party, the other party has committed no uncured defaults and has no offsets or claims. The certifying party may also be required to state the date of commencement of payment of Rent, the Commencement Date, the Termination Date, the Base Rent, the current Operating Cost Share Rent, Tax Share Rent and Electrical Cost Share Rent estimates, the status of any improvements required to be completed by Landlord, the amount of any security deposit, and such other matters as may be reasonably requested.

**20.** ***SECURITY DEPOSIT***. [Intentionally Deleted.]

**21.** ***FORCE MAJEURE***. Neither party shall be in default under this Lease to the extent such party is unable to perform any of its obligations on account of any strike or labor problem, energy shortage, governmental pre-emption or prescription, national emergency, or any other cause of any kind beyond the reasonable control of such party ("*Force Majeure*"). This paragraph does not, however, apply to any monetary obligations under this Lease, including Tenant's obligation to pay Rent and insure the Premises or Landlord's obligations under Section 8E of this Lease.

**22.** ***LANDLORD'S DEFAULT***. If Landlord fails to perform its obligations under this Lease and such failure continues for a period of thirty (30) days following the date of Tenant's written notice to Landlord specifying such default (or such longer period as may be reasonably necessary to cure such default, as long as Landlord continues to exercise reasonable efforts to cure same) then in such event Tenant may perform same. In such event Landlord will reimburse Tenant for all third party costs actually incurred by Tenant to cure such default and, if Landlord fails to pay same within thirty (30) days following the date of Tenant's notice specifying such costs and including copies of all relevant invoices therefor, then Tenant may offset same against Rent next becoming due thereafter, but in no event will the amount of any offset in any month exceed ten percent (10%) of the amount otherwise due to Landlord for such month. In no event, however, will Tenant have any right to terminate this Lease for any default

by Landlord. Tenant may act sooner in the event of an emergency involving imminent risk of death, personal injury and property damage as long as Tenant has first taken reasonable measures to notify Landlord, and, once the emergency has come under control, permits Landlord to control any remaining corrective measures.

**23.** ***NOTICES***. All notices, consents, approvals and similar communications to be given by one party to the other under this Lease, shall be given in writing, mailed or personally delivered or sent by legible facsimile (with answer back confirmation) as follows:

A. *Landlord*. To Landlord as follows:

CarrAmerica Realty, L.P.
c/o CarrAmerica Realty Corporation
15950 North Dallas Parkway, Suite 300
Dallas, Texas 75248
Attn: William H. Vanderstraaten
Facsimile: (972) 404-2201

with a copy to:

CarrAmerica Realty Corporation
1850 K Street, N.W., Suite 500
Washington, D.C. 20006
Attn: Lease Administration
Facsimile: (202) 729-1120

or to such other person at such other address as Landlord may designate by notice to Tenant.

B. *Tenant*. To Tenant as follows:

Nokia Inc.
6000 Connection Drive
Irving, Texas 75039
Attn: Facility Manager
Facsimile: (972) 894-4731

with a copy to:

Nokia Inc.
6000 Connection Drive
Irving, Texas 75039
Attn: Chief Legal Officer
Facsimile: (972) 894-5811

or to such other person at such other address as Tenant may designate by notice to Landlord.

Mailed notices shall be sent by United States certified mail, or by a reputable national overnight courier service, postage prepaid. Mailed notices shall be deemed to have been given on the date of first attempted delivery. Notices sent by facsimile shall be deemed given on the date of transmission with confirmed answer back.

**24.** ***QUIET POSSESSION***. Tenant shall enjoy peaceful and quiet possession of the Premises against any party claiming through Landlord.

**25.** ***REAL ESTATE BROKER***. Each party represents to the other that such party has not dealt with any real estate broker with respect to this Lease except for any broker(s) listed in the Schedule, and no other broker is in any way entitled to any broker's fee or other payment in connection with this Lease. Landlord agrees to pay any commissions owed to the brokers identified in such Schedule pursuant to a separate written agreement with such brokers. Each

party shall indemnify and defend the other against any claims by any other broker or third party for any payment of any kind in connection with this Lease attributable to the acts of such party.

**26. *MISCELLANEOUS.***

A. *Successors and Assigns*. Subject to the limits on Tenant's assignment contained in Section 17, the provisions of this Lease shall be binding upon and inure to the benefit of all successors and assigns of Landlord and Tenant.

B. *Date Payments Are Due*. Except for Base Rent, estimated payments of Additional Rent and other payments to be made by Tenant under this Lease which are due upon demand, Tenant shall pay to Landlord any amount for which Landlord renders a statement of account within thirty (30) days of Tenant's receipt of Landlord's statement.

C. *Meaning of "Landlord", "Re-Entry, "including" and "Affiliate"*. The term "Landlord" means only the owner of the Project and the lessor's interest in this Lease from time to time. The words "re-entry" and "re-enter" are not restricted to their technical legal meaning. The words "including" and similar words shall mean "without limitation." The word "affiliate" shall mean a person or entity controlling, controlled by or under common control with the applicable entity. "Control" shall mean the power directly or indirectly, by contract or otherwise, to direct the management and policies of the applicable entity.

D. *Time of the Essence*. Time is of the essence of each provision of this Lease.

E. *No Option*. This document shall not be effective for any purpose until it has been executed and delivered by both parties; execution and delivery by one party shall not create any option or other right in the other party.

F. *Severability*. The unenforceability of any provision of this Lease shall not affect any other provision.

G. *Governing Law*. This Lease shall be governed in all respects by the laws of the state in which the Project is located, without regard to the principles of conflicts of laws.

H. *Lease Modification*. Tenant agrees to modify this Lease in any way reasonably requested by a mortgagee which does not cause increased expense or obligation to Tenant or otherwise adversely affect Tenant's interests under this Lease.

I. *No Oral Modification*. No modification of this Lease shall be effective unless it is a written modification signed by both parties.

J. *Landlord's Right to Cure*. If Landlord breaches any of its obligations under this Lease, Tenant shall notify Landlord in writing and shall take no action respecting such breach so long as Landlord immediately begins to cure the breach and diligently pursues such cure to its completion. Landlord may cure any default by Tenant; any expenses incurred shall become Additional Rent due from Tenant on demand by Landlord.

K. *Captions*. The captions used in this Lease shall have no effect on the construction of this Lease.

L. *Authority*. Landlord and Tenant each represents to the other that it has full power and authority to execute and perform this Lease.

M. *Landlord's Enforcement of Remedies*. Landlord may enforce any of its remedies under this Lease either in its own name or through an agent.

N. *Entire Agreement.* This Lease, together with all Appendices, constitutes the entire agreement between the parties. No representations or agreements of any kind have been made by either party which are not contained in this Lease.

O. *Landlord's Title*. Landlord's title shall always be paramount to the interest of the Tenant, and nothing in this Lease shall empower Tenant to do anything which might in any way impair Landlord's title.

P. *Light and Air Rights*. Landlord does not grant in this Lease any rights to light and air in connection with Project. Landlord reserves to itself, the Land, the Building below the improved floor of each floor of the Premises, the Building above the ceiling of each floor of the Premises, the exterior of the Premises and the areas on the same floor outside the Premises, along with the areas within the Premises required for the installation and repair of utility lines and other items required to serve other tenants of the Building.

Q. *Singular and Plural*. Wherever appropriate in this Lease, a singular term shall be construed to mean the plural where necessary, and a plural term the singular. For example, if at any time two parties shall constitute Landlord or Tenant, then the relevant term shall refer to both parties together.

R. *Recording by Tenant*. Neither party shall record this Lease or any portion thereof in any public records. However, Tenant shall have the right to record a memorandum of this Lease in a form approved by Landlord in the appropriate public records of Dallas County, Texas.

S. *Exclusivity*. Landlord does not grant to Tenant in this Lease any exclusive right except the right to occupy its Premises.

T. *No Construction Against Drafting Party*. The rule of construction that ambiguities are resolved against the drafting party shall not apply to this Lease.

U. *Survival*. All obligations of Landlord and Tenant under this Lease which the terms of this Lease contemplate the performance of same following the termination hereof shall survive the termination of this Lease.

V. *Rent Not Based on Income*. No rent or other payment in respect of the Premises shall be based in any way upon net income or profits from the Premises. Tenant may not enter into or permit any sublease or license or other agreement in connection with the Premises which provides for a rental or other payment based on net income or profit.

W. *Building Manager and Service Providers*. Landlord may perform any of its obligations under this Lease through its employees or third parties hired by the Landlord.

X. *Late Charge and Interest on Late Payments*. Without limiting the provisions of Section 12A, if Tenant fails to pay any installment of Rent or other charge to be paid by Tenant pursuant to this Lease when same becomes due and payable, then Tenant shall pay a late charge equal to two percent (2%) of the amount due if not paid by the due date, or, if not paid within five (5) business days following written notice, then five percent (5%) of the amount due. In addition, interest shall be paid by Tenant to Landlord on any late payments of Rent made after five (5) business days from the date due at the rate provided in Section 2D(2) from the date due until paid. Such late charge and interest shall constitute additional Rent due and payable by Tenant to Landlord upon the date of payment of the delinquent payment referenced above.

**27.** ***UNRELATED BUSINESS INCOME***. If Landlord is advised by its counsel at any time that any part of the payments by Tenant to Landlord under this Lease may be characterized as unrelated business income under the United States Internal Revenue Code and its regulations, then Tenant shall enter into any amendment proposed by Landlord to avoid such income, so long as the amendment does not require Tenant to make more payments or accept fewer services from Landlord, than this Lease provides and is otherwise in form reasonably acceptable to Tenant.

**28.** ***HAZARDOUS SUBSTANCES***. Landlord certifies to Tenant that, to Landlord's current actual knowledge, there are no Hazardous Substances located at the Project, except as

disclosed in that certain environmental report dated July 18, 1997 prepared by Mission GeoSciences, Inc. (a copy of which has heretofore been delivered to Tenant) or Hazardous Substances customarily used in the operation of comparable office buildings (e.g., janitorial supplies). Landlord will remove or cause to be removed any Hazardous Substances which are found on the Premises, the Project or the Land. Tenant shall not be responsible for the cost of such removal unless Tenant caused such Hazardous Substances to be present on the Premises, the Project or the Land, as the case may be. Landlord will indemnify and hold Tenant harmless from and against any damages or expenses incurred by Tenant as a result of the presence of such Hazardous Substances not caused by Tenant. Landlord shall take all measures, consistent with those taken by the owners of other office buildings similar and within proximity to the Project, to prohibit other tenants from disposing of Hazardous Substances. Tenant shall not cause or permit any Hazardous Substances to be brought upon, produced, stored, used, discharged or disposed of in or near the Project unless Landlord has consented to such storage or use in its sole discretion. Tenant has no responsibility for any Hazardous Substances brought upon, produced, stored, used, discharged or disposed of in or near the Project, except by Tenant or its employees, agents and affiliates. *"Hazardous Substances"* include those hazardous substances described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any other applicable federal, state or local law, and the regulations adopted under these laws. If any governmental agency shall require testing for Hazardous Substances in the Premises or if any lender shall do so based upon verifiable evidence of Hazardous Substance contamination caused by Tenant, Tenant shall pay for such testing.

**29.** ***EXCULPATION***. Landlord shall have no personal liability under this Lease; its liability shall be limited to its interest in the Project and shall not extend to any other property or assets of the Landlord. In no event shall any officer, director, employee, agent, shareholder, partner, member or beneficiary of Landlord be personally liable for any of Landlord's obligations hereunder.

**30.** ***WAIVER OF CONSUMER RIGHTS***. EACH PARTY ACKNOWLEDGES THAT IT IS A "BUSINESS CONSUMER" FOR PURPOSES OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT, BUT SHOULD SUCH DETERMINATION BE HELD OTHERWISE BY A FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION THE FOLLOWING SHALL APPLY: EACH PARTY WAIVES ALL OF ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES—CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF EACH PARTY'S OWN SELECTION, SUCH PARTY VOLUNTARILY CONSENTS TO THE FOREGOING WAIVER.

**31.** ***MUNICIPAL INCENTIVES***. Landlord shall reasonably cooperate with Tenant (i) in connection with any renegotiation or transfer of any tax or other forms of concessions which have been granted to Tenant by the City of Irving, Texas, and (ii) in further discussions with the City of Irving, Texas to install traffic signs at the intersection of Royal Lane and Connection Drive, and the pedestrian cross-walk at Connection Drive. Tenant shall reimburse Landlord for any out-of-pocket costs and expenses incurred by Landlord in connection therewith, including Landlord's reasonable attorney's fees.

**32.** ***SECURITY SYSTEMS***. Subject to Landlord's reasonable approval of the plans and specifications therefor, Tenant shall install within the Building and parking garage a card key or similar system, card readers, camera surveillance, security desk, garage entrance gates and related components and accessories. Landlord's share of the cost of installing such systems shall not exceed Seventy-Five Thousand and No/100 Dollars ($75,000.00) (the *"Security Allowance"*). The portion of the cost in excess of the Security Allowance, if any, shall be borne by Tenant.

**33.** ***LANDSCAPE PLAN***. Landlord shall install and maintain landscaping around the Building pursuant to a landscape plan to be agreed upon by Landlord and Tenant. Landlord's share of the cost of such landscaping above Landlord's Base Building Cost Component shall not exceed One Hundred Thousand and No/100 Dollars ($100,000.00).

**34.** ***SIGNAGE***. Landlord shall provide the maximum amount of interior and exterior signage in and on the Building and monument signage on State Highway 114, State Highway 161, Royal Lane and Connection Drive permitted by applicable law. Tenant's name shall be exclusively shown on all such signage except for the signs at the Royal Lane entrance to The Commons of Las Colinas. Landlord's share of the cost of providing such signage shall not exceed Eighty-Five Thousand and No/100 Dollars ($85,000.00) (the *"Sign Allowance*"). The portion of the cost in excess of the Sign Allowance, if any, shall be borne by Tenant. Landlord shall negotiate in good faith with Tenant with respect to the installation, location and content of a monument sign for the Project.

**35.** ***AMENITIES.*** Tenant shall also have the exclusive right to install amenities such as a cafeteria or delicatessen, a fitness facility, a sauna suite and conference center as part of Tenant's improvements. Landlord shall provide the standard base building components for such amenities (except for the sauna and conference room) stubbed to the kitchen and fitness facility areas of the Premises.

**36.** ***ADDRESS OF BUILDING.*** Landlord will use reasonable efforts to cause the address of the Building to be designated as being on Connection Drive. Tenant shall reasonably cooperate with Landlord in such efforts. Landlord shall also cause the names of Building I and Building III to be changed to Nokia House 1 and Nokia House 3, respectively, and this Building shall be named Nokia House 2. Tenant shall have the right to re-name each of the Buildings from time to time during the term of the Lease with respect to same.

**37.** ***LEASEHOLD TITLE POLICY***. Tenant shall have the right to obtain, at Tenant's cost, a policy of title insurance insuring Tenant's leasehold interest in the Premises. Landlord shall reasonably cooperate with Tenant in obtaining such policy, provided, however, that Landlord shall not be obligated to incur any expense in connection therewith.

**38.** ***CONFIDENTIALITY***. Landlord and Tenant each agree that prior to disclosing any information contained in this Lease or publicizing it in any way (except for disclosures to attorney's, accountants, architects, brokers, consultants, construction lenders, investors and the like on a "need to know" basis), it will secure the prior written consent of the other party (which consent will not be unreasonably withheld or delayed).

**39.** ***NO CONSEQUENTIAL DAMAGES***. Neither party shall have the right to seek consequential damages against the other with respect to any breach of such party's obligations under this Lease.

**40.** ***NAME OF PROJECT***. Landlord agrees that during the Term of this Lease, Landlord shall not change the name of the Project to a name which includes the name of any of the following companies: Alcatel, Ericsson, Motorola, Nextel, Nortel, Philips, Qualcomm, Samsung, Siemens, and Sony.

**41.** ***SEPARATE TAX PARCELS***. Landlord shall use reasonable efforts to cause the land and improvements associated with each of the three (3) buildings comprising the Project to be designated as separate tax parcels by the pertinent taxing authorities.

**42.** ***MAINTENANCE OF PROJECT***. Landlord shall have no obligation to fund the entire Capital Reserve Amount by any date during the Term. However, Landlord agrees that the Project shall be operated and maintained in a first-class manner and condition during the Term and shall expend portions of the Capital Reserve Amount from time to time during the Term in order to comply with such obligations.

**43.** ***GUARANTY***.

Within three (3) months following the execution of this Lease, but in no event later than December 31, 1999, Tenant agrees to furnish to Landlord a guaranty of this Lease

executed by Nokia Corporation, in the form, and containing the provisions, set forth on Appendix I, as security for Tenant's obligations hereunder. In the event that Tenant is unable to furnish such guaranty by such date, Tenant shall either (i) furnish a letter of credit in the form of Appendix K to that certain Lease Agreement between Landlord and Tenant covering Building III (Nokia House 2) (the "Original Lease") or (ii) amend such letter of credit issued for the Original Lease in a manner satisfactory to Landlord to additionally secure Tenant's obligations under this Lease which shall remain in effect until such time as Tenant furnishes the guaranty described herein, which shall in no event be later than December 31, 1999.

**44.** ***STORAGE AREA***. Tenant shall have the right to use certain areas of the roof of the Building for storage purposes, subject to Landlord's prior written consent and Tenant's indemnity of Landlord for any loss, cost, damage, claim or expense resulting from such storage activity.

**45.** ***ADA*****.** Landlord acknowledges that the Building must comply with certain provisions of the Americans with Disabilities Act of 1990 and certain regulations and guidelines issued by authorized agencies with respect thereto, all as amended from time to time (the "ADA") and the Texas accessibility standards and all regulations and guidelines issued by authorized agencies with respect thereto, all as amended from time to time ("TAS") [the ADA and TAS being collectively, the "ADA/TAS"], Landlord agrees that the responsibility for compliance with the ADA/TAS shall be borne by Landlord (including any corrective work arising from the Texas statutory requirement to have an inspection of the Building and Premises one (1) year after completion of the construction with respect to the Base Building Work and Landlord's failure to perform the Leasehold Work pursuant to the plans and specifications therefor. Tenant shall be responsible for preparing the plans and specifications for the Leasehold Work in compliance with ADA/TAS and performing any corrective work required thereby as a result of such non-compliance. The allocation of responsibility for ADA/TAS compliance between Landlord and Tenant, and the obligations of Landlord and Tenant established by such allocations shall supersede any other provisions of the Lease that may contradict or otherwise differ from the requirements of this Section 45.

**46.** ***LEGAL DESCRIPTION.*** Landlord and Tenant agree to amend the legal description of the Project set forth in Appendix A-1 from time to time as necessary to correct any inaccuracies contained therein or to reflect any changes resulting from re-platting or other causes.

**47.** ***OPTION TO EXTEND EXISTING LEASES' TERMS.*** Tenant shall have the option to extend the terms of both of its leases with Landlord covering Building I and Building III of the Project, respectively, to render them co-terminous with the Term of this Lease. In order to exercise the option, Tenant must notify Landlord in writing of its exercise on or before the expiration of the last day of the fifth (5th) month following the date of full execution of this Lease. Tenant's default under this Lease and/or its failure to timely notify Landlord of such exercise shall render such option null and void. Such exercise shall apply to both such leases in order to be valid. In the event of the exercise of such option, the Base Rental rate for each of the leases for Building I and Building III shall be increased by the product of $0.25 times the Rentable Square Feet of the Premises for each such Lease effective as of the beginning of the eleventh and twelfth Lease years. Upon execution of this Lease, Landlord and Tenant shall enter in to an amendment for the Building I and Building III leases reflecting the pertinent terms and provisions of this Section 47.

**48.** ***FIRST OFFER ON SALE***.

(a) If at any time during the Term, Landlord desires to sell all or any portion of the Project, Landlord shall notify Tenant in writing (the *"Sale Notice*") of the terms upon which Landlord is willing to sell such portion of the Project. Tenant shall thereupon have the prior right and option to purchase such portion of the Project (*"ROFO*") at the price and on the terms and conditions stated in the Sale Notice. Nothing contained herein shall prohibit Landlord from having discussions with other prospective purchasers of such portion of the Project. Tenant may exercise the ROFO by giving Landlord written notice thereof (the *"Exercise Notice*") within thirty (30) calendar days after the date of receipt by Tenant of the Sale Notice.

(b) In the event Tenant effectively exercises its ROFO under Section 48 (a) hereof, Tenant and Landlord shall, within twenty-one (21) days following Landlord's delivery to Tenant of an initial draft of a contract of sale (or such extended period as the parties may mutually agree upon), execute a contract of sale (the *"Tenant Contract*") at the same price and upon the same terms and conditions as stated in the Sale Notice (or such other contract of sale containing such other price, terms and provisions as the parties may mutually agree upon). Landlord and Tenant shall use diligent, good faith efforts to enter into the Tenant Contract (or such other contract of sale containing such other terms and provisions as the parties may mutually agree upon).

(c) Should Tenant fail to deliver the Exercise Notice pursuant to Section 48 (a) hereof, Tenant's ROFO shall be deemed waived (except as provided below), and Landlord shall thereafter be entitled to sell such portion of the Project to any third party upon the ROFO Terms (hereinafter defined). *"ROFO Terms*" shall mean terms no less favorable to Landlord than the terms and conditions contained in the Sale Notice, however, the purchase price may be up to five percent (5%) less than that set forth in the Sale Notice. If Landlord fails to sell such portion of the Project to a third party upon the ROFO Terms within eighteen (18) months following the deadline for giving the Exercise Notice, then Tenant's ROFO shall be reinstated.

(d) Notwithstanding any other provision of this Section 48, Tenant's ROFO shall not apply to any of the following transactions: (i) any sale or transfer of all or any portion of the Project or any interest therein to any affiliate of the Landlord; (ii) any sale or transfer in connection with permanent or interim financing for the Project, including any sale/leaseback, joint venture or other similar arrangement; and (iii) the granting of any mortgage or other lien, or any conveyance with respect thereto by foreclosure, deed in lieu of foreclosure or the like. Any of the above mentioned transactions shall not terminate Tenant's ROFO, but such ROFO shall thereafter continue to bind the transferee.

(e) Except as provided in subparagraph (c) of this Section 48, Tenant's ROFO is not continuing in nature, and Landlord shall have no obligation to re-offer to Tenant.

(f) Tenant's ROFO is expressly conditioned upon Tenant not being in default under this Lease or the leases for Buildings I and III beyond any applicable cure periods.

IN WITNESS WHEREOF, the parties hereto have executed this Lease.

LANDLORD:

CARRAMERICA REALTY, L.P.,
a Delaware limited partnership

By: CarrAmerica Realty GP Holdings, Inc.,
its general partner

By: /S/ PHILIP L. HAWKINS

Print Name: Philip L. Hawkins

Print Title: Executive Vice President

TENANT:

NOKIA INC.,
a Delaware corporation

By: /s/ KRIS [ILLEGIBLE]

Print Name: Kris [ILLEGIBLE]

Print Title: Senior Vice President, [ILLEGIBLE]

**EXHIBIT 10.83**

**AMENDMENT TO LEASE AGREEMENT**
**FOR BUILDING NO. 2 OF THE NOKIA DALLAS BUILDINGS**

Re: The Commons of Las Colinas
Building II
Irving, Texas

*FIRST AMENDMENT TO LEASE*

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

THIS FIRST AMENDMENT TO LEASE (this *"Amendment"*) has been executed as of the 29th day of September, 2000, by CARRAMERICA REALTY L.P., a Delaware limited partnership (*"Landlord"*), and NOKIA INC., a Delaware corporation (*"Tenant"*).

*R E C I T A L S :*

A. Landlord and Tenant have heretofore entered into that certain Lease, dated as of October 22, 1999 (the *"Lease"*), pursuant to which Tenant leased from Landlord approximately 223,470 square feet (the *"Premises"*) in that certain building located in Irving, Texas, known as The Commons of Las Colinas, Building II and more particularly described in the Lease (the *"Building"*).

B. Landlord and Tenant desire to execute this Amendment in order to evidence their agreement to amend the Lease, all as more particularly set forth in this Amendment.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

**ARTICLE I**
**CERTAIN AMENDMENTS**

SECTION 1.01. A. *Expense Stop*. SCHEDULE, Section 12, Expense Stop, is hereby deleted in its entirety.

B. *Base Rent*. SCHEDULE, Section 13, Base Rent, is hereby amended by deleting the current provisions and replacing them with the following:

| Period | Annual Base Rent |
|---|---|
| Lease Years 1-5 | $18.45 PSF |
| Lease Years 6-10 | $20.00 PSF |

SECTION 1.02. *Rent*. Section 2 of the Lease is hereby amended to read as follows:

A. *Types of Rent*. Tenant shall pay the following Rent in the form of a check to Landlord at the following address (if the address or wire transfer information is not available at the time of execution of that certain First Amendment to Lease, Landlord shall subsequently provide them to Tenant by notice sent in accordance with this Lease):

CarrAmerica Realty, L.P.
t/a Commons of Las Colinas
P.O. Box 281937
Atlanta, GA 30384-1937

or by wire transfer as follows:

NationsBank, N.A. (South)
ABA Number 061-000-052
Account Number 326-303-8202

or in such other manner as Landlord may notify Tenant reasonably in advance of the applicable payment due date:

(1) *Base Rent* in monthly installments in advance, the first monthly installment payable upon the Commencement Date and thereafter on or before the first day of each month of the Term in the amount set forth on the Schedule. If the Premises are completed in increments, then the Base Rent for each completed portion shall be payable on the Commencement Date for such portion, as such term is defined in Paragraph 10 of Appendix C.

(2) *Additional Rent* in the amount of all costs, expenses, liabilities, and amounts which Tenant is required to pay under this Lease, excluding Base Rent, but including any interest for late payment of any item of Rent.

(3) *Rent* as used in this Lease means Base Rent and Additional Rent. Tenant's agreement to pay Rent is an independent covenant, with no right of setoff, deduction or counterclaim of any kind, except as otherwise expressly set forth in this Lease.

B. *Computation of Base Rent and Rent Adjustments.*

(1) *Prorations.* If this Lease begins on a day other than the first day of a month, the Base Rent shall be prorated for such partial month based on the actual number of days in such month.

(2) *Default Interest.* Any sum due from Tenant to Landlord not paid when due shall bear interest from the date due until paid at the lesser of the maximum rate permitted by applicable law or the then Prime Rate (as hereinafter defined) plus five percent (5%) per annum.

(3) *Rent Adjustments.* The square footage of the Premises and the Building set forth in the Commencement Date Confirmation, when executed will be conclusively deemed to be the actual square footage thereof, without regard to any subsequent remeasurement of the Premises or the Building.

SECTION 1.03. *Project Services.* Sections 4.A. through 4.F. of the Lease are hereby deleted in their entirety

SECTION 1.04. *Interruption of Service.* Section 4.I. of the Lease is hereby amended to read as follows:

Except as otherwise provided herein, Landlord's inability to furnish, to any extent, the Project services set forth in this Section 4, or any cessation thereof resulting from any causes, including any entry for repairs pursuant to this Lease, and any renovation, redecoration or rehabilitation of any area of the Building shall not render Landlord liable for damages, except for Landlord's gross negligence or willful misconduct, to either person or property or for interruption or loss to Tenant's business, nor be construed as an eviction of Tenant, nor work an abatement of any portion of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. Notwithstanding the foregoing, in the event that either (i) there is an interruption in any utility service to the Building which is not caused in whole or in part by

Tenant, or (ii) an interruption in services resulting from any Capital Repair for which Landlord is responsible pursuant to Section 4.K. below which is not caused by Tenant's failure to maintain the Building and the Building Systems in accordance with the requirements outlined in Section 4.K. below or Tenant's negligence or intentional misconduct, and in either case such interruption causes the Premises to be untenantable for a period of at least ten (10) consecutive days (or, as to air conditioning service during the months of May to September, five (5) consecutive days), monthly Rent shall be thereafter abated proportionately. Landlord shall use reasonable efforts to minimize any interference with Tenant's business operations in performing any repairs, renovations, redecoration or rehabilitation pursuant to this Lease.

SECTION 1.05. The following is hereby added as Section 4.K. to the Lease:

4. *Project Services.*

K. (1) *Tenant Services*. Except to the extent provided herein to the contrary, Tenant shall, at its sole cost and expense, furnish and perform the services necessary for operations of the Project in a manner substantially similar to comparable office buildings in the vicinity of the Project, including without limitation, janitorial, HVAC operation and maintenance, exterior landscaping and maintenance, pest control, elevator maintenance, waste disposal, fire protection, security, and window cleaning. Tenant shall be responsible, at Tenant's sole cost, for the maintenance of all aspects of the Building, including without limitation any equipment and/or systems used to furnish such services, all in accordance with the original design thereof and all applicable manufacturers' specifications. In performing such maintenance, Tenant shall engage only persons duly licensed and qualified to perform the work involved. Landlord shall have the right, at reasonable times after reasonable prior notice, to inspect (either by Landlord's employees or inspectors hired by Landlord) the Premises, the Building and the Building equipment and Tenant's maintenance records with respect thereto. If Landlord notifies Tenant following any such inspection of any failure to so maintain and Tenant fails to cure such matter within thirty (30) days thereafter, or a reasonable longer

period in the event such maintenance cannot reasonably be performed within thirty (30) days (provided Tenant promptly commences the repair and diligently prosecutes the same to completion) or such shorter time if the repair is of an emergency nature, Landlord shall have the right to cure same and Tenant shall reimburse Landlord for the cost to do so within thirty (30) days after receipt of written demand from Landlord. In the event Landlord and Tenant disagree with respect to the performance of Tenant's maintenance obligations hereunder, they shall submit such dispute to a neutral third party mutually agreed upon by Landlord and Tenant for resolution.

(2) *Taxes*. Tenant shall pay to the taxing authority, all Taxes as are set forth in said assessment. Tenant shall furnish to Landlord not less than fifteen (15) days prior to delinquency, reasonable evidence of the payment of such Taxes, including receipted tax bills from the appropriate taxing authority, when available. Landlord shall be reimbursed by Tenant for a pro rata portion of the Taxes in the final year of the Lease based upon the portion of such year which falls within the Term hereof. Tenant shall have the right to protest Taxes, provided Tenant agrees to indemnify and hold Landlord harmless from and against any loss, cost or expense relating to such protest, and further provided that upon the final resolution of any such protest, Tenant shall provide Landlord with evidence of payment thereof. Landlord agrees to reasonably cooperate with Tenant in connection with any protest of the Taxes (subject to reimbursement by Tenant for Landlord's actual costs and expenses).

(3) *Landlord Services*. Except as otherwise provided in Sections 9 and 10 of this Lease and except with respect to Capital Repairs (as defined below), Tenant shall be responsible for maintenance and replacement of (i) the Building's roof, foundation, structural members and operating systems (including without limitation, HVAC, fire protection and elevators), and (ii) the landscaping, parking structures, surface parking and other common areas of the Building. Notwithstanding the foregoing, in the event that any of the repair or replacement costs described in the preceding sentence are capital in nature as determined under generally accepted accounting principles consistently applied (*"Capital*

*Repairs"*), then Landlord shall perform such Capital Repairs pursuant to plans and specifications for such work to be approved in writing by Tenant, which approval shall not be unreasonably withheld or delayed. Tenant agrees to promptly notify Landlord in writing of the need for any Capital Repairs (a *"Capital Repair Notice"*) and Landlord agrees to commence such Capital Repairs as soon as reasonably practicable following receipt of such Capital Repair Notice (but in any event within thirty (30) days) and to diligently prosecute such repairs to completion. The failure of Landlord to object to any proposed Capital Repair in writing to Tenant within ten (10) days following receipt of the Capital Repair Notice shall be deemed Landlord's acceptance and approval of the proposed Capital Repair. If any dispute arises between the parties under this Section 4.K.(3) or under Section 4.I. above (the *"Dispute"*), then the parties agree to submit the Dispute to binding arbitration in accordance with the applicable arbitration statute, the then existing rules of the American Arbitration Association and the provisions of this Section. Either party may initiate the arbitration procedure by delivering a written notice of demand for arbitration to the other party (an *"Arbitration Notice"*). Within ten (10) days after the receipt by the other party of the Arbitration Notice, the parties will attempt to agree upon a single arbitrator. If the parties are not able to agree upon a single arbitrator within such 10-day period, then within the immediately following ten (10) days, each of the parties shall provide written notice (the *"Designation Notice"*) to the other party as to the names and addresses of at least three (3) prospective arbitrators having at least ten (10) years experience in the management of Class A office buildings in Dallas County, Texas, and having never been employed by or in business with either Landlord or Tenant or their respective affiliated companies. Upon each party's receipt of the list of prospective arbitrators from the other party, such receiving party shall select one of the three prospects to serve as an arbitrator. If one party timely delivers a Designation Notice and the other party does not timely deliver a Designation Notice, the party who provided the Designation Notice shall select from its list the single arbitrator who shall render the decision in the arbitration proceeding. If both parties timely deliver a

Designation Notice, the two (2) arbitrators selected shall be instructed and obligated to jointly select a third (3rd) arbitrator prior to the expiration of forty-five (45) days after the Arbitration Notice. If the two (2) arbitrators selected are unable to timely agree upon a third arbitrator, then upon application of any party, a court of competent jurisdiction shall complete the appointment of the arbitration panel. The hearing and presentation of evidence in connection with the arbitration proceeding shall be conducted in Dallas County, Texas, not later than twenty (20) days after (i) designation of the single arbitrator in the event that only one (1) arbitrator is timely appointed, or (ii) designation of the third (3rd) arbitrator in the event each of the parties hereto timely deliver a Designation Notice to the other party. Neither party shall be entitled to defer or postpone the hearing without the written consent of the other party. The arbitrator(s) will be instructed to render a decision within fifteen (15) days after the date of the hearing. The decision of the arbitrator(s) shall be final and binding upon the parties hereto. This agreement to arbitrate Disputes shall be specifically enforceable under the prevailing arbitration law. The fees and expenses of the arbitrator(s) shall be paid in the manner allocated by the arbitrator(s). In addition, if the arbitrator(s) make a written determination that one of the parties was the prevailing party in the arbitration proceeding, such prevailing party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorney's fees incurred in connection with the arbitration proceedings (and, if applicable, court costs).

Notwithstanding anything to the contrary set forth above, in the event of an emergency requiring Capital Repairs which would reasonably be expected to materially interfere with the use and occupancy of the Premises, and provided that Tenant uses commercially reasonable efforts to deliver oral or written notice thereof to Landlord as soon as practicable under the circumstances, Tenant shall have the right to make such Capital Repairs which cost less than $20,000.00 in the aggregate on a non-cumulative basis in any Lease Year, and Landlord, subject to its right to dispute such Capital Repairs set forth above, shall reimburse Tenant for the reasonable cost of

such Capital Repairs within thirty (30) days following the delivery to Landlord of written invoices evidencing such costs. If Landlord fails to timely reimburse Tenant for any costs for which Landlord is responsible pursuant to the preceding sentence, then, in addition to any other remedies available at law or in equity, Tenant may exercise its offset rights under Section 22 below. Tenant agrees to promptly cooperate with Landlord in providing Landlord all information regarding the nature of any such Capital Repairs.

SECTION 1.06. *Damage to Systems/Additional Tenant Obligations*. The first sentence of Section 5.B. of the Lease is hereby deleted. In addition, Section 5.H. is hereby amended to read as follows:

Notwithstanding anything in the Lease to the contrary, but subject to Section 4.K.(3) of this Lease, Landlord shall not be responsible for providing any security services or any service that Tenant has undertaken, or subsequently undertakes, to furnish in lieu of Landlord, and Tenant shall be responsible, at Tenant's sole cost, for the maintenance of any equipment and/or systems used to furnish such services.

SECTION 1.07. *Landlord's Insurance*. Section 8.E. of the Lease is hereby amended by adding the following at the end thereof:

Tenant shall reimburse Landlord for the cost of the insurance described in this subparagraph E within thirty (30) days following receipt of written demand therefor from Landlord. In the event Landlord is required to restore casualty damage to the Building pursuant to Section 9.B. of this Lease, Tenant shall be responsible for the cost of such repairs up to the amount of any commercially reasonable deductible maintained by Landlord under its *"All Risk"* policy. All policies of insurance maintained by Landlord hereunder shall name Tenant as an additional insured. Copies of Landlord's insurance policies or duly executed certificates of insurance (confirming the amount of any deductible) shall be promptly delivered to Tenant and renewals thereof as required shall be delivered to Tenant at least thirty (30) days prior to the expiration of the respective policy term. All policies or certificates of insurance delivered to Tenant must confirm that the insurer will give Tenant at least thirty (30) days' prior written notice of any cancellation, lapse or modification of such insurance.

SECTION 1.08. *Keys*. Section 11.C. of the Lease is hereby deleted in its entirety for all purposes.

SECTION 1.09. *Notices*. The facsimile number for Tenant's Facility Manager, as set forth in Section 23.B., is hereby replaced by the following:

(972) 894-4731

Landlord's address for notices under the Lease in Section 23.A. is hereby amended to be as follows:

CarrAmerica Realty L.P.
15950 North Dallas Parkway
Suite 300
Dallas, Texas 75248

SECTION 1.10. *Address of Building*. Section 36 of the Lease is hereby amended to read as follows:

Landlord shall cause the names of Building I and Building III to be changed to Nokia House 1 and Nokia House 3, respectively, and this Building shall be named Nokia House 2. Tenant shall have the right to re-name each of the Buildings from time to time during the term of the Lease with respect to same.

SECTION 1.11. *First Offer on Sale*. Section 48 of the Lease is hereby deleted in its entirety for all purposes and replaced with the following:

48. *First Offer on Sale.*

A. If at any time during the Term, Landlord desires to sell all or any portion of the Project, Landlord shall notify Tenant in writing (the *"Sale Notice"*) with a copy to Jack Fraker, Cushman & Wakefield of Texas, Inc., 5430 LBJ Freeway, Suite 1400, Dallas, Texas 75240, of the terms upon which Landlord is willing to sell such portion of the Project. Tenant shall thereupon have the prior right and option to purchase such portion of the Project (*"ROFO"*) at the price and on the terms and conditions stated in the Sale Notice. Nothing contained herein shall prohibit Landlord from having discussions with other prospective purchasers of such portion of the Project. Tenant may exercise the ROFO by giving Landlord written notice thereof (the *"Exercise Notice"*) within thirty (30) calendar

days after the date of receipt by Tenant of the Sale Notice.

B. In the event Tenant effectively exercises its ROFO under Section 48.A. hereof, Tenant and Landlord shall, within twenty-one (21) days following Landlord's delivery to Tenant of an initial draft of a contract of sale (or such extended period as the parties may mutually agree upon), execute a contract of sale (the *"Tenant Contract"*) at the same price and upon the same terms and conditions as stated in the Sale Notice. Landlord and Tenant shall use diligent, good faith efforts to enter into the Tenant Contract (or such other contract of sale containing such other terms and provisions as the parties may mutually agree upon).

C. Should Tenant fail to deliver the Exercise Notice pursuant to Section 48.A. hereof, Tenant's ROFO shall be deemed waived (except as provided below), and Landlord shall thereafter be entitled to sell such portion of the Project to any third party upon the ROFO Terms (hereinafter defined). *"ROFO Terms"* shall mean terms no less favorable to Landlord than the terms andconditions contained in the Sale Notice, however, the purchase price may be up to five percent (5%) less than that set forth in the Sale Notice. If Landlord fails to sell such portion of the Project to a third party upon the ROFO Terms within eighteen (18) months following the deadline for giving the Exercise Notice, then Tenant's ROFO shall be reinstated.

D. Notwithstanding any other provision of this Section 48, Tenant's ROFO shall not apply to any of the following transactions: (i) any sale or transfer of all or any portion of the Project or any interest therein to any affiliate of the Landlord; (ii) any sale or transfer in connection with permanent or interim financing for the Project, including any sale/leaseback, joint venture or other similar arrangement; and (iii) the granting of any mortgage or other lien, or any conveyance with respect thereto by foreclosure, deed in lieu of foreclosure or the like. Any of the above mentioned transactions shall not terminate Tenant's ROFO, but such ROFO shall thereafter continue to bind the transferee.

E. Except as provided in subparagraph C. of this Section 48, Tenant's ROFO is not continuing in nature, and Landlord shall have no obligation to re-offer to Tenant.

F. Tenant's ROFO is expressly conditioned upon Tenant not being in default under this Lease or the leases for Buildings I and II beyond any applicable cure periods.

SECTION 1.12. *Maintenance of Project/Additional Rent*. Section 42 of the Lease is hereby deleted in its entirety and replaced with the following:

42. *MAINTENANCE OF THE PROJECT*. Landlord shall have no obligation to fund the entire Capital Reserve Amount by any date during the Term and any unused portion is non-refundable to Tenant. However, Landlord agrees that the Project shall be operated and maintained in a first-class manner and condition during the Term and Landlord shall expend portions of the Capital Reserve Amount from time to time during the Term in order to comply with such obligations.

Section 49 of the Lease is hereby added and shall read as follows:

49. *ADDITIONAL RENT*. Tenant shall pay to Landlord as Additional Rent: (a) an annual sum equal to the product of $0.75 times the rentable square feet in the Premises for items such as warranty coordination, inspections, property management, salary reimbursement and the like, with one-twelfth (1/12th) of such amount to be payable monthly concurrent with the payment of Base Rent and (b) an annual sum equal to the product of $0.15 times the rentable square feet in the Premises (the *"Capital Reserve Amount"*) for Capital Repairs (as defined in Section 4.I.(3) of this Lease), with one-twelfth (1/12th) of such amount to be payable monthly concurrent with the payment of Base Rent. Notwithstanding anything in the Lease to the contrary, Landlord shall not be required to maintain any reserve accounts for such items.

SECTION 1.13. *Certain Defined Terms*. All references contained in this Lease to "Operating Cost Share Rent," "Cap Amount," "Excess Operating Costs," "Base Operating Costs," "Controllable Operating Costs," "Non-Controllable Operating Costs," "Electrical Cost Share Rent," "Operating Cost Report," "Operating Costs," and "Equitable Adjustment" shall be null and void and have no force or effect.

SECTION 1.14. *Further Amendments*. The Lease shall be and hereby is further amended wherever necessary, even though not specifically referred to herein, in order to give effect to the terms of this Amendment. If no effective date is specified in any particular section above, such section shall be deemed effective as of the date this Amendment is signed by both parties and delivered to the other.

**ARTICLE II**
**MISCELLANEOUS**

SECTION 2.01. *Ratification*. The Lease, as amended hereby, is hereby ratified, confirmed and deemed in full force and effect in accordance with its terms. Each party represents to the other that such party (a) is currently unaware of any default by the other party under the Lease; and (b) has full power and authority to execute and deliver this Amendment, and this Amendment represents a valid and binding obligation of such party enforceable in accordance with its terms.

SECTION 2.02. *Governing Law*. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

SECTION 2.03. *Counterparts*. This Amendment may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Amendment may be executed by facsimile, and each party has the right to rely upon a facsimile counterpart of this Amendment signed by the other party to the same extent as if such party had received an original counterpart.

SECTION 2.04. *Governing Document*. In the event the terms of the Lease conflict or are inconsistent with those of the Amendment, the terms of this Amendment shall govern and control.

[SEE FOLLOWING PAGE FOR SIGNATURES]

IN WITNESS WHEREOF, this Amendment has been executed as of (but not necessarily on) the date and year first above written.

LANDLORD:

CARRAMERICA REALTY L.P.,
a Delaware limited partnership

By: CARRAMERICA REALTY GP HOLDINGS, INC.,
its general partner

By: /s/ WILLIAM H. VANDERSTRAATEN

Name: William H. Vanderstraaten

Title: Managing Director, Dallas

TENANT:

NOKIA INC.,
a Delaware corporation

By: /s/ PENNY PARKER

Name: Penny Parker

Title: Secretary

**EXHIBIT 10.84**

**LEASE AGREEMENT**
**FOR BUILDING NO. 3 OF THE NOKIA DALLAS BUILDINGS**

**Lease**

# THE COMMONS OF LAS COLINAS
# BUILDING III
# IRVING, TEXAS

**Between**

## NOKIA INC.
## a Delaware corporation
**(Tenant)**

**and**

## CARRAMERICA REALTY, L.P.,
## a Delaware limited partnership
**(Landlord)**

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| Landlord's Work | Work Agreement, Paragraph 7 |
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| Lease Year | Lease, Section 2C(4) |
| Leasehold Architect | Work Agreement, Paragraph 3 |
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| Leasehold Engineers | Work Agreement, Paragraph 3 |
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| Leasehold Subcontractors | Work Agreement, Paragraph 7 |
| Leasehold Work | Work Agreement, Paragraph 2 |
| Long Lead Item | Work Agreement, Paragraph 10C |
| Market Rate | Appendix F, Paragraph A |
| Non-Controllable Operating Costs | Lease, Section 2A(2) |
| Operating Costs | Lease, Section 2C(1) |
| Operating Cost Report | Lease, Section 2B(2) |
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| Renewal Term | Appendix F |
| Rent | Lease, Section 2A(5) |
| Rent Tax | Lease, Section 2C(3) |
| Rosewood Property | Lease, Section 33 |
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| Secured Areas | Lease, Section 11D |
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| Site Work | Work Agreement, Paragraph 2 |
| Site Work Plans | Work Agreement, Paragraph 3E |
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| Taxes | Lease, Section 2C(3) |
| Tenant | Lease, Schedule, No. 6, Page 1 |
| Tenant's Authorized Representative | Work Agreement, Paragraph 1 |
| Tenant's Leasehold Expenses | Work Agreement, Paragraph 7 |
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| Tenant's Proportionate Share | Lease, Schedule, No. 4, Page 1 |
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**LEASE**

THIS LEASE (the *"Lease"*) is made as of this 17th day of July, 1998 between **CarrAmerica Realty, L.P., a Delaware limited partnership** (the *"Landlord"*) and the Tenant as named in the Schedule below. The term *"Project"* means the three (3) building complex including Building III (the *"Building"*) known as "The Commons of Las Colinas" and the land (the *"Land"*) located along Connection Drive and S.H. 114, Irving, Texas described on Appendix A-1. *"Premises"* means that part of the Project leased to Tenant described in the Schedule and outlined on Appendix A.

The following schedule (the *"Schedule"*) is an integral part of this Lease. Terms defined in this Schedule shall have the same meaning throughout the Lease.

**SCHEDULE**

1. **Tenant:** NOKIA INC.

2. **Premises:** Shown on the Plans

3. **Rentable Square Feet of the Premises:** 150,982, subject to final verification upon completion of the Building

4. **Tenant's Proportionate Share:** 27.45% based upon a total of 550,000 rentable square feet in the Project, subject to verification upon completion of the Building by each of Tenant's and Landlord's architect pursuant to Paragraph 15 of the Work Agreement attached hereto as Appendix C).

5. **Security Deposit:** None.

6. **Tenant's Real Estate Broker for this Lease:** Cushman & Wakefield of Texas, Inc.

7. **Landlord's Real Estate Broker for this Lease:** None.

8. **Tenant Improvements, if any:** See the Work Agreement attached hereto as Appendix C.

9. **Commencement Date:** June 30, 1999, but if the Premises are subject to new construction pursuant to Appendix C, the Completion Date, as defined therein, if it is later; Landlord and Tenant shall execute a Commencement Date Confirmation substantially in the form of Appendix E promptly following the Commencement Date which shall, among other matters, conclusively establish the square footage of the Premises and the Building.

10. **Termination Date/Term:** Ten (10) years after the Commencement Date, or if the Commencement Date is not the first day of a month, then on the last day of the month in which the tenth (10th) anniversary of the Commencement Date occurred.

11. **Guarantor:** None

12. **Expense Stop:** $6.00/rentable square feet.

13. **Base Rent:** *

| Period | Annual Base Rent | Monthly Base Rent |
|---|---|---|
| Years 1-5 | $ 24.24/square foot | $ 304,984 |
| Years 6-10 | $ 25.74/square foot | $ 323,856 |

* subject to increase pursuant to the terms of the Work Agreement (Appendix C).

**1.** ***LEASE AGREEMENT.*** On the terms stated in this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, for the Term beginning on the Commencement Date and ending on the Termination Date unless extended or sooner terminated pursuant to this Lease.

**2. *RENT.***

A. *Types of Rent*. Tenant shall pay the following Rent in the form of a check to Landlord at the following address (if the address or wire transfer information is not available at the time of execution of this Lease, Landlord shall subsequently provide them to Tenant by notice sent in accordance with this Lease):

**CarrAmerica Realty, L.P.**
t/a Commons of Las Colinas
P.O. Box
Atlanta, GA 30384-

or by wire transfer as follows:

NationsBank, N.A. (South)
ABA Number 061-000-052
Account Number

or in such other manner as Landlord may notify Tenant reasonably in advance of the applicable payment due date:

(1) *Base Rent* in monthly installments in advance, the first monthly installment payable upon the Commencement Date and thereafter on or before the first day of each month of the Term in the amount set forth on the Schedule.

(2) *Operating Cost Share Rent* in an amount equal to the Tenant's Proportionate Share of the excess of Operating Costs for the applicable fiscal year of the Lease (the *"Excess Operating Costs"*) over the product of the Expense Stop times the Rentable Square Feet of the Premises (the *"Base Operating Costs"*), paid monthly in advance in an estimated amount. Definitions of Operating Costs and Tenant's Proportionate Share, and the method for billing and payment of Operating Cost Share Rent are set forth in Sections 2B, 2C and 2D.

The Controllable Operating Cost Share Rent (defined below) applicable to the second fiscal year of the Lease shall be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs during the second fiscal year, or (ii) the sum of Tenant's Proportionate Share of Controllable Operating Costs for the first fiscal year, plus 4% (such sum is the *"Cap Amount"*).

The Controllable Operating Cost Share Rent applicable to each fiscal year thereafter shall be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs during the applicable fiscal year, or (ii) the sum of the Cap Amount for the immediately preceding fiscal year, plus 4%.

*"Controllable Operating Cost Share Rent"* shall be an amount equal to Tenant's Proportionate Share of Controllable Operating Costs. *"Controllable Operating Costs"* means all Operating Costs other than costs related to Taxes (as defined below) insurance, collectively bargained union wages, electricity and other utilities (herein, *"Non-Controllable Operating Costs"*). There shall be no cap on Non-Controllable Operating Costs.

Assume, for example, Controllable Operating Cost Share Rent for the first fiscal year of $100.00. In the second fiscal year, Controllable Operating Cost Share Rent would be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs for the second fiscal year, or (ii) $104.00 ($100.00 plus 4%, which would be the Cap Amount). In the third year, Controllable Operating Cost Share Rent would be the lesser of (i) Tenant's Proportionate Share of Controllable Operating Costs for the third fiscal year, or (ii) $108.16 ($104.00 plus 4%, which becomes the Cap Amount for the following year).

(3) *Electrical Cost Share Rent* in an amount equal to the sum of (a) all electricity used by the Premises; plus (b) Tenant's Proportionate Share of all electricity used by the Project (*"Electrical Costs"*). Electrical Costs exclude any electricity charges attributable to any tenantable areas (i.e., those areas either leased or being held for lease by Landlord) and any charges paid directly by Tenant to the electric utility company pursuant to a contract between such parties. Such amount shall be payable monthly in advance in an estimated amount. The method of billing and payment of Electrical Cost Share Rent is set forth in Sections 2B and 2D.

(4) *Additional Rent* in the amount of all costs, expenses, liabilities, and amounts which Tenant is required to pay under this Lease, excluding Base Rent, Operating Cost Share Rent and Electrical Cost Share Rent, but including any interest for late payment of any item of Rent.

(5) *Rent* as used in this Lease means Base Rent, Operating Cost Share Rent, Electrical Cost Share Rent and Additional Rent. Tenant's agreement to pay Rent is an independent covenant, with no right of setoff, deduction or counterclaim of any kind.

B. *Payment of Operating Cost Share Rent and Electrical Cost Share Rent.*

(1) *Payment of Estimated Operating Cost Share Rent and Electrical Cost Share Rent*. Landlord shall estimate the Operating Costs and Electrical Costs (please see clause A.(4) above for limits on definition of Electrical Costs and clause B.(4) below for "true-up" provisions) of the Project by April 1 of each fiscal year, or as soon as reasonably possible thereafter. Landlord may revise these estimates whenever it obtains more accurate information, such as the final real estate tax assessment or tax rate for the Project.

Within thirty (30) days after receiving the original or revised estimate from Landlord setting forth (a) an estimate of Operating Costs for a particular fiscal year, (b) the Base Operating Costs, and (c) the resulting estimate of Excess Operating Costs for such fiscal year, Tenant shall pay Landlord one-twelfth (1/12th) of Tenant's Proportionate Share of the estimated Excess Operating Costs, multiplied by the number of months that have elapsed in the applicable fiscal year to the date of such payment including the current month, minus payments previously made by Tenant for the months elapsed. On the first day of each month thereafter, Tenant shall pay Landlord one-twelfth (1/12th) of Tenant's Proportionate Share of this estimate, until a new estimate becomes applicable.

Within thirty (30) days after receiving the original or revised estimate setting forth an estimate of Tenant's Proportionate Share of Electrical Costs for a particular fiscal year, Tenant shall pay Landlord one-twelfth (1/12th) of the estimated Tenant's Proportionate Share of Electrical Costs, multiplied by the number of months that have elapsed in the applicable fiscal year to the date of payment, including the current month, minus payments previously made by Tenant for the months elapsed. On the first day of each month thereafter, Tenant shall pay Landlord one-twelfth (1/12th) of Tenant's Proportionate Share of such estimate, until a new estimate becomes available.

(2) *Correction of Operating Cost Share Rent*. Landlord shall deliver to Tenant a report for the previous fiscal year (the *"Operating Cost Report"*) by May 15 of each year, or as soon as reasonably possible thereafter, setting forth (a) the actual Operating Costs incurred, (b) the Base Operating Costs, (c) the amount of Operating Cost Share Rent due from Tenant, and (d) the amount of Operating Cost Share Rent paid by Tenant. Within thirty (30) days after such delivery, Tenant shall pay to Landlord the amount due minus the amount paid. If the amount paid exceeds the amount due, Landlord shall apply the excess to Tenant's payments of Operating Cost Share Rent next coming due and, if such excess has not been fully applied within six (6) months, then against other Rent, next becoming due. Notwithstanding the foregoing, all sums owed by Landlord to Tenant pursuant to the preceding sentence shall be fully applied or paid prior to the end of the

calendar year in which such overpayment occurs. If this Lease has been terminated prior to such determination, such excess will be promptly paid to Tenant.

(3) *Correction of Electrical Cost Share Rent*. Landlord shall deliver to Tenant a report for the previous fiscal year (the *"Electrical Cost Report"*) by May 15 of each year, or as soon as reasonably possible thereafter, setting forth (a) the actual Electrical Costs, (b) the amount of Electrical Cost Share Rent due from Tenant, and (c) the amount of Electrical Cost Share Rent paid by Tenant. Within thirty (30) days after such delivery, Tenant shall pay to Landlord the amount due from Tenant minus the amount paid by Tenant. If the amount paid exceeds the amount due, Landlord shall apply any excess as a credit against Tenant's payments of Electrical Cost Share Rent next coming due and, if such excess has not been fully applied within six (6) months, then against other Rent next coming due. Notwithstanding the foregoing, all sums owed by Landlord to Tenant pursuant to the preceding sentence shall be fully applied or paid prior to the end of the calendar year in which such overpayment occurs. If this Lease has been terminated prior to such determination, such excess will be promptly paid to Tenant.

C. *Definitions.*

(1) *Included Operating Costs*. *"Operating Costs"* means any expenses, costs and disbursements of any kind other than Electrical Costs, paid or incurred by Landlord in connection with the management, maintenance, operation, insurance, repair and other related activities in connection with any part of the Project and of the personal property, fixtures, machinery, equipment, systems and apparatus used in connection therewith, including the cost of providing those services required to be furnished by Landlord under this Lease and Taxes (as defined below). Operating Costs shall also include an annual capital reserve equal to the product of $0.15 times the Rentable Square Feet of the Premises (the *"Capital Reserve Amount"*).

If the Project is not fully occupied during any portion of any fiscal year, Landlord may adjust in a manner equitable to Tenant and the other tenants in the Project (an *"Equitable Adjustment"*) Operating Costs to equal what would have been incurred by Landlord had the Project been fully occupied. This Equitable Adjustment shall apply only to Operating Costs which are variable and therefore increase as occupancy of the Project increases. Landlord may incorporate the Equitable Adjustment in its estimates of Operating Costs.

(2) *Excluded Operating Costs*. Operating Costs shall not include:

(a) costs of alterations of tenant premises;

(b) costs of capital improvements other than the Capital Reserve Amount;

(c) interest and principal payments on mortgages or any other debt costs, or rental payments on any ground lease of the Project;

(d) real estate brokers' leasing commissions;

(e) legal fees, space planner fees and advertising expenses incurred with regard to leasing the Project or portions thereof;

(f) any cost or expenditure for which Landlord is reimbursed, by insurance proceeds or otherwise, except by Operating Cost Share Rent;

(g) the cost of any service furnished to any office tenant of the Project which Landlord does not make available to Tenant;

(h) depreciation;

(i) franchise or income taxes imposed upon Landlord, except to the extent imposed in lieu of all or any part of Taxes;

(j) costs of correcting defects in construction of the Project(as opposed to the cost of normal repair, maintenance and replacement expected with the construction materials and equipment installed in the Project in light of their specifications);

(k) legal and auditing fees which are for the benefit of Landlord such as collecting delinquent rents, preparing tax returns and other financial statements;

(l) the wages of any employee for services not related directly to the management, maintenance, operation and repair of the Project;

(m) fines, penalties and interest;

(n) any ground lease rental;

(o) depreciation, amortization and interest payments (except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party) where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with GAAP, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life;

(p) costs incurred by Landlord due to the violation by Landlord or any tenant of the terms and conditions of any lease of space in the Project;

(q) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in the Project to the extent same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(r) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord or in the parking garage of the Project and/or all fees paid to any parking facility operator (on or off site) (provided, however, if Landlord provides such parking free of charge to Tenant, these expenses may be included as Operating Costs);

(s) advertising and promotional expenditures;

(t) electric power costs for which any tenant directly contracts with the local public service company;

(u) tax penalties to the extent incurred as a result of Landlord's negligence, inability or unwillingness to make payments and/or to file any income tax or informational returns when due;

(v) costs arising from the presence of asbestos in or about the Project; and

(w) costs arising from Landlord's charitable or political contributions.

(x) any expense associated with the initial construction or maintenance of other portions of the Project, until such other portions of the Project are occupied by tenants paying rent and operating expenses to Landlord.

(3) *Taxes*. *"Taxes"* means any and all taxes, assessments and charges of any kind, general or special, ordinary or extraordinary, levied against the Project, which Landlord shall pay or become obligated to pay in connection with the ownership, leasing, renting, management, use, occupancy, control or operation of the Project or of the personal property, fixtures, machinery, equipment, systems and apparatus used in connection therewith. Taxes shall include real estate taxes, personal property taxes, sewer rents, water rents, special or general assessments (other than special assessments made by taxing authorities for roads, sewers or similar improvements related to a "business park"), transit taxes, ad valorem taxes, and any tax which may in the future be levied on the rents hereunder or on the interest of Landlord under this Lease (the *"Rent Tax"*). Taxes shall also include all reasonable fees and other reasonable costs and expenses paid by Landlord in reviewing any tax and in seeking a refund or reduction of any Taxes, whether or not the Landlord is ultimately successful. Landlord agrees to use all commercially reasonable efforts to insure that Taxes do not exceed the amount per rentable square foot of comparable buildings within The Commons of Las Colinas area. If Landlord elects not to protest Taxes, Tenant may deliver written notice to Landlord requesting that Landlord protest Taxes. If Landlord fails to file such protest within thirty (30) days following Landlord's receipt of Tenant's notice then Tenant may, at Tenant's cost, file such protest on Landlord's behalf and with Landlord's cooperation, but such cooperation will not obligate Landlord to incur any tax protest costs. If Tenant files such protest and Taxes are increased from that proposed prior to such protest, Tenant must promptly pay to Landlord an amount equal to the increased Taxes for the current and all future years, all as calculated in a manner reasonably acceptable to Landlord.

For any year, the amount to be included in Taxes (a) from taxes or assessments payable in installments, shall be the amount of the installments (with any interest) due and payable during such year, and (b) from all other Taxes, shall at Landlord's election be the amount accrued, assessed, or otherwise imposed for such year or the amount due and payable in such year. Any refund or other adjustment to any Taxes by the taxing authority, shall apply during the year in which the adjustment is made.

Taxes shall exclude any net income (except Rent Tax), capital, stock, succession, transfer, franchise, gift, estate or inheritance tax, except to the extent that such tax shall be imposed in lieu of any portion of Taxes.

(4) *Lease Year*. *"Lease Year"* means each consecutive twelve-month period beginning with the Commencement Date, except that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall be the period from the Commencement Date through the final day of the twelve months after the first day of the following month, and each subsequent Lease Year shall be the twelve months following the prior Lease Year.

(5) *Fiscal Year*. *"Fiscal Year"* means the calendar year, except that the first fiscal year and the last fiscal year of the Term may be a partial calendar year.

D. *Computation of Base Rent and Rent Adjustments.*

(1) *Prorations*. If this Lease begins on a day other than the first day of a month, the Base Rent, Operating Cost Share Rent, Electrical Cost Share Rent, shall be prorated for such partial month based on the actual number of days in such month. If this Lease begins on a day other than the first day, or ends on a day other than the last day, of the fiscal year, Operating Cost Share Rent and Electrical Cost Share Rent, shall be prorated for the applicable fiscal year.

(2) *Default Interest*. Any sum due from Tenant to Landlord not paid when due shall bear interest from the date due until paid at the lesser of the maximum rate permitted by applicable law or the then Prime Rate (as hereinafter defined) plus five percent (5%) per annum.

(3) *Rent Adjustments.* The square footage of the Premises and the Building set forth in the Commencement Date Confirmation, when executed will be conclusively deemed to be the actual square footage thereof, without regard to any subsequent remeasurement of the Premises or the Building. If any Operating Cost paid in one fiscal year relates to more than one fiscal year, Landlord may proportionately allocate such Operating Cost among the related fiscal years.

(4) *Books and Records.* Landlord shall maintain books and records reflecting the Operating Costs, Taxes and Electrical Cost in accordance with sound accounting and management practices. Tenant and its certified public accountant shall have the right to inspect Landlord's records at Landlord's office upon at least seventy-two (72) hours' prior notice during normal business hours during (a) the eighteen (18) months following the respective delivery of the Operating Cost Report or the Electrical Cost Report relating to the first two (2) Lease Years or (b) six (6) months following the respective delivery of the Operating Cost Report or the Electrical Cost Report relating to subsequent Lease Years. The results of any such inspection shall be kept strictly confidential by Tenant and its agents, and Tenant and its certified public accountant must agree, in their contract for such services, to such confidentiality restrictions and shall specifically agree that the results shall not be made available to any other tenant of the Building. Unless Tenant sends to Landlord any written exception to either such report within the said eighteen (18) months or six (6) months period (as the case may be), such report shall be deemed final and accepted by Tenant. Tenant shall pay the amount shown on both reports in the manner prescribed in this Lease, whether or not Tenant takes any such written exception, without any prejudice to such exception. If Tenant makes a timely exception, Landlord shall select and cause an independent certified public accountant, reasonably acceptable to Tenant, with at least ten (10) years of experience in auditing the books and records of commercial office projects to issue a final and conclusive resolution of Tenant's exception. The cost of such certification shall be borne equally by Tenant and Landlord.

(5) *Miscellaneous.* So long as Tenant is in default of any monetary obligation under this Lease after the expiration of any applicable cure period, Tenant shall not be entitled to any refund of any amount from Landlord but when such default is cured Tenant will receive such refund. If this Lease is terminated for any reason prior to the annual determination of Operating Cost Share Rent or Electrical Cost Rent, either party shall pay the full amount due to the other within thirty (30) days after Landlord's notice to Tenant of the amount when it is determined. Landlord may commingle any payments made with respect to Operating Cost Share Rent or Electrical Cost Rent, without payment of interest.

**3. *PREPARATION AND CONDITION OF PREMISES; POSSESSION AND SURRENDER OF PREMISES.***

A. *Condition of Premises.* Landlord shall, at Landlord's expense, cause the Premises to be completed in a good and workman-like manner in accordance with the terms and provisions of the Work Agreement attached as Appendix C.

B. *Tenant's Possession.* Tenant's taking possession of any portion of the Premises shall be conclusive evidence that the Premises was in good order, repair and condition, except for punch list items, if any, identified by Tenant to Landlord by written notice delivered to Landlord no later than 30 days following substantial completion of the Initial Improvements and, for a period of two (2) years following the Commencement Date or the period any applicable warranty is in effect, whichever is later, any latent defects in the Premises. If Landlord authorizes Tenant to take possession of any part of the Premises prior to the Commencement Date for purposes of doing business, all terms of this Lease shall apply to such pre-Term possession, including Base Rent at the rate set forth for the First Lease Year in the Schedule prorated for any partial month.

C. *Maintenance.* Throughout the Term, Tenant shall maintain the Premises in their condition as of the Completion Date, loss or damage caused by the elements, ordinary wear, and

fire and other casualty excepted, and at the termination of this Lease, or Tenant's right to possession, Tenant shall return the Premises to Landlord in broom-clean condition. To the extent Tenant fails to perform either obligation, Landlord may, but need not, restore the Premises to such condition and Tenant shall pay the cost thereof.

D. *Landlord Certification*. Landlord hereby certifies to Tenant that as of the Commencement Date the Base Building Work will have been designed and built to (1) comply with then applicable Governmental Requirements and then current customary interpretations of any applicable disability access laws (assuming customary office use and not any particular use of Tenant). Landlord shall be responsible for any corrective work arising from the Texas statutory requirement to have an inspection of the Premises and Building one (1) year after completion of construction, pursuant to Texas Civil Statutes, Article 9102 et. seq., with respect to the Base Building Work and the Leasehold Work resulting from Landlord's failure to perform same pursuant to the plans and specifications for the Leasehold Work. Tenant shall be responsible for preparing the plans and specifications for the Leasehold Work in compliance with applicable Governmental Requirements. In the event the Leasehold Work does not comply with applicable Governmental Requirements as a result of such plans and specifications not being in such compliance, then Tenant shall bear the cost of any such corrective work. If during the Term of this Lease, any change in Governmental Requirements requires retrofit work in the Premises to maintain compliance, Tenant shall bear the cost of such work.

Landlord hereby further certifies to Tenant that the Premises will be free of any latent defects for a period of two (2) years following the Commencement Date or the period any applicable warranty is in effect, whichever is later.

**4. *PROJECT SERVICES.***

Landlord shall, at Landlord's cost and expense (subject to Paragraph 2 hereof), furnish services as follows:

A. *Heating and Air Conditioning*. During the normal business hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday, Landlord shall furnish (i) air conditioning within the limits and ranges set forth on the Plans and the work letter, and (ii) heat within the limits and ranges set forth on the Plans and the work letter. Landlord's obligations hereunder shall be diminished to the extent that Tenant adversely affects the temperature maintained by the heating and air conditioning system by operating its equipment. If Tenant installs such equipment, Landlord may install supplementary air conditioning units in the Premises, and Tenant shall pay to Landlord upon demand as Additional Rent the cost of installation, operation and maintenance thereof. See paragraph below for after hours HVAC provisions.

Landlord shall furnish heating and air conditioning after business hours if Tenant provides Landlord reasonable prior notice, and pays Landlord all then current charges for such additional heating or air conditioning. The charges for after hours HVAC service will be no greater than the actual cost per hour per floor charged to Landlord by the local utility company for such service.

B. *Elevators*. Landlord shall provide passenger elevator service during normal business hours to Tenant in common with Landlord and all other tenants. Landlord shall provide limited passenger service at other times, except in case of an emergency. Landlord shall, at no cost to Tenant, provide freight access at such times as Tenant shall reasonably require, and subject to such restrictions, as Landlord may reasonably require.

C. *Electricity*. Landlord shall provide sufficient electricity to accommodate Tenant 's requirements for the Premises as indicated by the Leasehold Engineers pursuant to Paragraph 2 of the Work Agreement. The Building has been designed with the electrical capacity set forth in the Plans, which shall provide up to 8 watts per rentable square foot of demand load at the electrical panel in each floor of the Premises (exclusive of power required for heating, air conditioning and lighting). Tenant shall not install or operate in the Premises any electrically operated equipment or other machinery which would exceed the electrical capacity provided in the Base Building

Work without obtaining the prior written consent of Landlord. Tenant shall pay the Electrical Cost Share Rent set forth in Section 2A(3) above.

Tenant shall have the right, at Tenant's expense, at any time during the term of this Lease to contract directly with the local electric utility company or to install emergency power equipment. Tenant shall be responsible for the repair of any damage to the Premises caused by the installation or maintenance of such equipment. The cost of furnishing electricity to the Building, to the extent not represented by Tenant's directly contracting with such local utility company, shall be included within the Electrical Costs as defined in Section 2 above.

D. *Water*. Landlord shall furnish hot and cold tap water for drinking and toilet purposes. Tenant shall pay Landlord for water furnished for any other purpose as Additional Rent at rates fixed by Landlord. Tenant shall not permit water to be wasted.

E. *Janitorial Service*. Landlord shall furnish janitorial service as generally provided to other tenants in the Building and in accordance with the standards set forth on Appendix H. In the event Tenant determines that such janitorial service is unsatisfactory, in Tenant's reasonable judgment, Tenant shall deliver written notice to Landlord specifying in detail the manner in which such service is deemed deficient. If the deficiencies are not, in Tenant's reasonable judgment, substantially corrected during the next succeeding sixty (60) days, then Tenant may deliver a further notice directing Landlord to terminate the contract for the applicable contractor providing such service to the Premises, subject to and in accordance with the termination provisions of such contract. Landlord shall cause such janitorial service contract that Tenant has the right to cause the termination of pursuant hereto to be terminable on not more than sixty (60) days prior notice. If Tenant delivers such notice of termination, Landlord shall terminate such contract. Promptly thereafter, Landlord shall enter into a new contract for the janitorial service with a contractor mutually agreeable to Landlord and Tenant.

The foregoing, notwithstanding Tenant shall have the right, upon no less than ninety (90) days prior written notice to Landlord, to elect not to receive the janitorial services provided by Landlord and to provide such services itself with respect to the Premises. If Tenant elects to provide such cleaning services to the Premises (i) such change shall be implemented upon expiration of Landlord's then current cleaning contract for the Premises, such cleaning contract to have a term not in excess of one (1) year, (ii) Tenant shall comply with reasonable procedures established by Landlord with respect to Tenant's cleaning activities, including security procedures, (iii) Tenant shall perform such cleaning services with personnel employed by Tenant or its affiliates, and not an unrelated third party contractor, and (iv) the costs of the nighttime cleaning contract shall no longer be an Operating Cost, such adjustment to be applied from and after the date on which Tenant assumes such responsibility for cleaning the Premises (such adjustment to be pro-rated for the year in which Tenant assumes such responsibility).

F. *Security Service*. Landlord shall provide security service for the Building consistent with that of comparable office buildings in the vicinity, with no warranty or liability, except for Landlord's gross negligence or willful misconduct, respecting the effectiveness of the service.

G. *Parking*. Landlord shall grant and provide certain parking rights to Tenant as described below:

Tenant shall have the right to use at no cost to Tenant up to four hundred (400) parking spaces in a decked parking structure to be built by Landlord having a facade and landscaping similar to the planned garage in the Project and one hundred four (104) surface parking spaces. The parking area allocated to Tenant in such structure shall be separated from the other parking areas at The Commons of Las Colinas project by a wall to be constructed by Landlord. Tenant's surface parking shall also be separated from the surface parking areas available to other tenants in the Project.

H. *Access*. Tenant shall have access to the Premises at all times during the Term of this Lease.

I. *Interruption of Services.* If any of the Building equipment or machinery ceases to function properly for any cause Landlord shall use reasonable diligence to repair the same promptly. Landlord's inability to furnish, to any extent, the Project services set forth in this Section 4, or any cessation thereof resulting from any causes, including any entry for repairs pursuant to this Lease, and any renovation, redecoration or rehabilitation of any area of the Building shall not render Landlord liable for damages, except for Landlord's gross negligence or willful misconduct, to either person or property or for interruption or loss to Tenant's business, nor be construed as an eviction of Tenant, nor work an abatement of any portion of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. However, in the event that an interruption of the Project services set forth in this Section 4 causes the Premises to be untenantable for a period of at least ten (10) consecutive days (or, as to air conditioning service during the months of June to August, five (5) consecutive days), monthly Rent shall be thereafter abated proportionately. Landlord shall use reasonable efforts to minimize any interference with Tenant's business operations in performing any repairs, renovations, redecoration or rehabilitation pursuant to this Lease.

**5.** ***ALTERATIONS AND REPAIRS.***

A. *Landlord's Consent and Conditions.*

Tenant shall not make any improvements or alterations to the Premises (the *"Work*") without in each instance submitting plans and specifications for the Work to Landlord and obtaining Landlord's prior written consent (such consent not to be unreasonably withheld) unless (a) the cost thereof is less than $25,000, (b) such Work does not impact the base structural components or, in Landlord's reasonable opinion, adversely affects the mechanical, electrical or plumbing systems of the Building, (c) such Work will not materially adversely impact any other tenant's premises, and (d) such Work does not involve changes to the exterior appearance of the Premises. Tenant shall, except as to the Initial Improvements, pay Landlord's reasonable out-of-pocket costs incurred for review of the plans and all other items submitted by Tenant. Landlord will be deemed to be acting reasonably in withholding its consent for any Work which (a) materially impacts the base structural components or, in Landlord's reasonable opinion, adversely affects systems of the Building, (b) materially adversely impacts any other tenant's premises, or (c) involves material changes to the exterior appearance of the Premises. The Work does not include merely decorative alterations such as painting, carpeting, floor covering, furniture movement, cabling and computer and telephone installation to the extent same do not impact base structural systems or, in Landlord's reasonable opinion, adversely affect the systems of the Building.

Tenant, shall except as to the Initial Improvements, reimburse Landlord for reasonable out-of-pocket costs incurred for review of the plans and all other items submitted by Tenant. Tenant shall pay for the cost of all Work. All Work shall become the property of Landlord upon its installation, except for Tenant's Trade Fixtures and for items which Landlord requires Tenant to remove at Tenant's cost at the termination of the Lease pursuant to Section 3E. As used herein, "Trade Fixtures" shall mean any equipment or furnishings customarily considered in a technology-based business office or in the telecommunications industry generally to be the property of the tenant, including in particular any built-in computer equipment, video conferencing facilities, audiovisual facilities, any other built-in communications equipment, and antenna or satellite equipment installed on the roof or elsewhere, and any special climate control equipment installed to protect file servers (except to the extent removal of same would adversely affect the Building systems) or other telecommunications equipment, but excluding any millwork or hardware not heretofore specified.

The following requirements shall apply to all Work:

(1) Prior to commencement, Tenant shall furnish to Landlord building permits, and certificates of insurance reasonably satisfactory to Landlord.

(2) Tenant shall perform all Work so as to maintain cooperation among other contractors serving the Project and shall take all reasonable measures so as to avoid interference with other work to be performed or services to be rendered in the Project.

(3) The Work shall be performed in a good and workmanlike manner, meeting the standard for construction and quality of materials in the Building, and shall comply with all insurance requirements and all applicable governmental laws, ordinances and regulations (*"Governmental Requirements"*).

(4) Tenant shall perform all Work so as to minimize or prevent disruption to other tenants, and Tenant shall comply with all reasonable requests of Landlord in response to complaints from other tenants.

(5) Tenant shall perform all Work in compliance with Landlord's "Policies, Rules and Procedures for Construction Projects" in effect at the time the Work is performed (a copy of which is attached hereto as Appendix J and made a part hereof).

(6) Tenant shall permit Landlord to supervise all Work. Landlord may charge a supervisory fee not to exceed five percent (5%) of labor, material, and all other costs of the Work, if Landlord's employees or contractors perform the Work. The foregoing does not apply to Work which does not require Landlord's prior consent nor to the Initial Improvements.

(7) Upon completion, Tenant shall furnish Landlord with contractor's affidavits and full and final statutory waivers of liens, as-built plans and specifications, and receipted bills covering all labor and materials, and all other close-out documentation required in Landlord's "Policies, Rules and Procedures for Construction Projects".

B. *Damage to Systems.* If any part of the mechanical, electrical or other systems in the Premises shall be damaged, Tenant shall promptly notify Landlord, and Landlord shall repair such damage. Landlord may also at any reasonable time make any repairs or alterations which Landlord deems necessary for the safety or protection of the Project, or which Landlord is required to make by any court or pursuant to any Governmental Requirement and, if Landlord fails to do so, Tenant may pursue its self-help and offset rights under Section 22 below. Tenant shall at its expense make all other repairs necessary to keep the Premises, and Tenant's fixtures and personal property, in good order, condition and repair; to the extent Tenant fails to do so (after expiration of all applicable notice and cure periods), Landlord may make such repairs itself. The cost of any repairs made by Landlord on account of Tenant's default, or on account of the mis-use or neglect by Tenant or its invitees, contractors or agents anywhere in the Project, shall become Additional Rent payable by Tenant on demand.

C. *No Liens.* Tenant has no authority to cause or permit any lien or encumbrance of any kind to affect Landlord's interest in the Project; any such lien or encumbrance shall attach to Tenant's interest only. If any mechanic's lien shall be filed or claim of lien made for work or materials furnished to Tenant, then Tenant shall at its expense within thirty (30) days thereafter either discharge or contest the lien or claim. If Tenant contests the lien or claim, then Tenant shall (i) within such thirty (30) day period, provide Landlord adequate security for the lien or claim, (ii) contest the lien or claim using reasonable efforts by appropriate proceedings that operate to stay its enforcement, and (iii) pay promptly any final adverse judgment entered in any such proceeding. If Tenant does not comply with these requirements (after expiration of all applicable notice and cure periods), Landlord may discharge the lien or claim, and the amount paid, as well as reasonable attorney's fees and other expenses incurred by Landlord, shall become Additional Rent payable by Tenant on demand.

D. *Ownership of Improvements.* All Work as defined in this Section 5, partitions, hardware, equipment, machinery and all other improvements and all fixtures except Trade Fixtures, constructed in the Premises by either Landlord or Tenant, (i) shall, except as set forth in Section 5E below, become Landlord's property upon installation without compensation to Tenant, unless Landlord consents otherwise in writing, and (ii) shall, except as set forth in Subsection 5E

below, be surrendered to Landlord with the Premises at the termination of the Lease or of Tenant's right to possession.

E. *Removal at Termination.* Upon the termination of this Lease or Tenant's right of possession Tenant shall remove (and repair any damage caused by such removal) from the Project, its Trade Fixtures, telecommunications and computer equipment, furniture, moveable equipment and other personal property, together with any other non-standard office installations designated by Landlord at the time of Tenant's installation (e.g., stairwells, safes, etc.). Any standard office installations (i.e., walls, attached bookcases, attached credenzas, built-in reception desks, etc.) attached to the Premises must remain in the Premises. Tenant shall not be required to remove any cabling or wiring located within the risers and raceways used for such telecommunications and computer equipment. If Tenant does not timely remove such property, then Tenant shall be conclusively presumed to have, at Landlord's election (i) conveyed such property to Landlord without compensation or (ii) abandoned such property, and Landlord may dispose of or store any part thereof in any manner at Tenant's sole cost, without waiving Landlord's right to claim from Tenant all expenses arising out of Tenant's failure to remove the property, and without liability to Tenant or any other person. Landlord shall have no duty to be a bailee of any such personal property. If Landlord elects abandonment, Tenant shall pay to Landlord, upon demand, any expenses incurred for disposition.

F. *Rooftop Communications Systems.* Tenant may at its sole cost install, maintain, and from time to time replace a communications systems (a *"RCS"*) on the roof of the Building, provided that Tenant shall obtain Landlord's prior reasonable approval of the proposed size, weight and location of the RCS and method for installing the RCS on the roof, and that Tenant will at its sole cost comply with all Governmental Requirements and the conditions of any bond or warranty maintained by Landlord on the roof. Landlord may supervise any roof penetration. Tenant shall repair any damage to the Building caused by Tenant's installation, maintenance, replacement, use or removal of the RCS. The RCS shall remain the property of Tenant, and Tenant may remove the RCS at its cost at any time during the Term. Tenant shall remove the RCS at its cost upon expiration or termination of the Lease. Tenant shall protect, defend, indemnify and hold harmless Landlord from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the RCS. Tenant shall have the right to install and maintain other equipment on the roof of the Building, subject to Landlord's aesthetic and structural guidelines.

G. *Conduits.* Except as set forth herein, Tenant has the right to use existing or construct, at Tenant's cost, new conduits into and through the Building and the right, at its cost, to install cables, equipment and other related telecommunications facilities required for Tenant's network into and through the Building, subject to Landlord's approval, not to be unreasonably withheld. Landlord shall construct as part of the Base Building Work set forth in the Work Agreement an underground conduit connecting the Project and the adjacent property commonly known as "Nokia House" having dimensions specified by Tenant [provided, however, that Tenant shall reimburse Landlord for the cost of such conduit in excess of Thirty Thousand Dollars ($30,000.00)].

**6. *USE OF PREMISES.*** Tenant shall use the Premises only for general office purposes and any other office-related uses typical or ancillary to technology-based businesses, as long as such uses are permitted by applicable zoning regulations. Tenant shall not allow any hazardous use of the Premises which will increase the cost of coverage of Landlord's insurance on the Project. The Project is currently zoned to permit office use and Landlord agrees not to change the zoning to prohibit such use. Tenant shall not allow any inflammable or explosive liquids or materials to be kept on the Premises (other than commonly used janitorial supplies and supplies customarily used in the operation of business offices). Tenant shall not allow any use of the Premises which would cause the value or utility of any part of the Premises to diminish or would interfere with any other Tenant or with the operation of the Project by Landlord. Tenant shall not permit any nuisance or waste upon the Premises, or allow any offensive noise or odor in or around the Premises.

**7. *GOVERNMENTAL REQUIREMENTS AND BUILDING RULES.*** Tenant shall comply with all Governmental Requirements applying to its use of the Premises. Tenant shall also comply with all reasonable rules established for the Project from time to time by Landlord. The present rules and regulations are contained in Appendix B. Failure by another tenant to comply with the rules or failure by Landlord to enforce them shall not relieve Tenant of its obligation to comply with the rules or make Landlord responsible to Tenant in any way. Landlord shall use reasonable efforts to apply the rules and regulations uniformly and in a non-discriminatory manner with respect to Tenant and tenants in the Building under leases containing rules and regulations similar to this Lease. In the event of alterations and repairs performed by Tenant, Tenant shall comply with the provisions of Section 5 of this Lease and such other rules as Landlord may reasonably require. In the event of any conflict, inconsistency or ambiguity between the terms of this Lease and the terms of Appendix B, the terms of this Lease shall govern and control.

Landlord shall construct and operate the Project in accordance with environmentally sound management principles, including the principles of the International Chamber of Commerce Business Charter on Sustainable Development.

**8. *WAIVER OF CLAIMS; INDEMNIFICATION; INSURANCE.***

A. *Waiver of Claims.* To the extent permitted by law, Tenant waives any claims it may have against Landlord or its officers, directors, employees or agents for business interruption or damage to property sustained by Tenant as the result of any act or omission of Landlord to the extent covered by insurance or to the extent same could have been covered by insurance to the extent such party failed to maintain the insurance described below.

To the extent permitted by law, Landlord waives any claims it may have against Tenant or its officers, directors, employees or agents for loss of rents (other than Rent) or damage to property sustained by Landlord as the result of any act or omission of Tenant to the extent covered by insurance or to the extent same could have been covered by insurance to the extent such party failed to maintain the insurance described below.

Landlord and Tenant mutually waive all rights of subrogation.

The terms and provisions of this Section 8A shall survive the termination of this Lease.

B. *Indemnification.* Tenant shall indemnify, defend and hold harmless Landlord and its officers, directors, employees and agents against any claim by any third party for injury to any person or damage to or loss of any property occurring in the Project and arising from the use of the Premises or from any other act or omission or negligence of Tenant or any of Tenant's employees or agents. Tenant's obligations under this section shall survive the termination of this Lease.

Landlord shall indemnify, defend and hold harmless Tenant and its officers, directors, employees and agents against any claim by any third party for damage to person or Premises or from any other act or omission or negligence of Landlord or any of Landlord's employees or agents. Landlord's obligations under this section shall survive the termination of this Lease.

C. *Tenant's Insurance.* Tenant shall maintain insurance as follows, with such other terms, coverages and insurers, as Landlord shall reasonably require from time to time:

(1) Commercial General Liability Insurance, with (a) Contractual Liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Five Million Dollars ($5,000,000).

(2) Property Insurance against "All Risks" of physical loss covering the replacement cost of all improvements, fixtures and personal property. Tenant waives all

rights of subrogation, and Tenant's property insurance shall include a waiver of subrogation in favor of Landlord.

(3) (Unless Tenant elects to self-insure this risk or otherwise comply with applicable law in this subject matter), Workers' compensation or similar insurance in form and amounts required by law, and Employer's Liability with not less than the following limits:

| | |
|---|---|
| Each Accident | $500,000 |
| Disease—Policy Limit | $500,000 |
| Disease—Each Employee | $500,000 |

Such insurance shall contain a waiver of subrogation provision in favor of Landlord and its agents and may be under a blanket policy as long as the Premises and Landlord are specifically listed therein in a manner reasonably acceptable to Landlord.

Landlord, and if any, Landlord's building manager or agent and ground lessor shall be named as additional insureds as respects to insurance required of the Tenant in Section 8C(1). The company or companies writing any insurance which Tenant is required to maintain under this Lease, as well as the form of such insurance, shall at all times be subject to Landlord's approval, and any such company shall be licensed to do business in the state in which the Building is located. Such insurance companies shall have a A.M. Best rating of A VI or better.

Tenant shall cause any contractor of Tenant performing work on the Premises to maintain insurance as follows, with such other terms, coverages and insurers, as Landlord shall reasonably require from time to time:

(1) Commercial General Liability Insurance, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement, and contractor's protective liability coverage, to afford protection with limits, for each occurrence, of not less than One Million Dollars ($1,000,000) with respect to personal injury, death or property damage.

(2) Workers' compensation or similar insurance in form and amounts required by law, and Employer's Liability with not less than the following limits:

| | |
|---|---|
| Each Accident | $500,000 |
| Disease—Policy Limit | $500,000 |
| Disease—Each Employee | $500,000 |

Such insurance shall contain a waiver of subrogation provision in favor of Landlord and its agents.

Tenant's contractor's insurance shall be primary and not contributory to that carried by Tenant, Landlord, their agents or mortgagees. Tenant and Landlord, and if any, Landlord's building manager or agent, mortgagee or ground lessor shall be named as additional insured on Tenant's contractor's insurance policies.

D. *Insurance Certificates.* Tenant shall deliver to Landlord certificates evidencing all required insurance no later than five (5) days prior to the Commencement Date and each renewal date. Each certificate will provide for thirty (30) days prior written notice of cancellation to Landlord and Tenant.

E. *Landlord's Insurance.* Landlord shall maintain "All-Risk" property insurance at replacement cost, including loss of rents, on the Building, and Commercial General Liability insurance policies covering the common areas of the Building, each with such terms, coverages and conditions as are normally carried by reasonably prudent owners of properties similar to the Project. With respect to property insurance, Landlord and Tenant mutually waive all rights of

subrogation, and the respective "All-Risk" coverage property insurance policies carried by Landlord and Tenant shall contain enforceable waiver of subrogation endorsements.

**9. *FIRE AND OTHER CASUALTY.***

A. *Termination*. If a fire or other casualty causes substantial damage to the Building or the Premises, Landlord shall engage a registered architect qualified, competent and experienced in performing this function, to certify within one (1) month of the casualty to both Landlord and Tenant the amount of time needed to restore the Building and the Premises to tenantability, using standard working methods. If the time needed exceeds twelve (12) months from the beginning of the restoration, or two (2) months therefrom if the restoration would begin during the last twelve (12) months of the Lease, then in the case of the Premises, either Landlord or Tenant may terminate this Lease, and in the case of the Building, Landlord may terminate this Lease, by notice to the other party within ten (10) days after the notifying party's receipt of the architect's certificate. The termination shall be effective thirty (30) days from the date of the notice and Rent shall be paid by Tenant to that date, with an abatement for any portion of the space which has been untenantable after the casualty.

B. *Restoration*. If a casualty causes damage to the Building or the Premises but this Lease is not terminated for any reason, then Landlord shall obtain the applicable insurance proceeds and diligently restore the Building and the Premises subject to current Governmental Requirements. Tenant shall replace its damaged improvements, personal property and fixtures. Rent shall be abated on a per diem basis during the restoration for any portion of the Premises which is untenantable. Any subordination, non-disturbance and attornment agreement subsequently entered into with Tenant shall require the application of insurance proceeds to restoration of the Premises and the Building.

**10. *EMINENT DOMAIN***. If a part of the Project is taken by eminent domain or deed in lieu thereof which is so substantial that the Premises cannot reasonably be used by Tenant for the operation of its business, then either party may terminate this Lease effective as of the date of the taking. If any substantial portion of the Project is taken without affecting the Premises, then Landlord may terminate this Lease as of the date of such taking. As used herein, "substantial portion" shall mean a taking of more than forty percent (40%) of the Land or more than thirty percent (30%) of the rentable area of the remainder of the Project. Rent shall abate from the date of the taking in proportion to any part of the Premises taken. The entire award for a taking of any kind shall be paid to Landlord. Tenant may pursue a separate award for its trade fixtures and moving expenses in connection with the taking, but only if such recovery does not reduce the award payable to Landlord. Notwithstanding the foregoing, if applicable law prohibits Tenant from pursuing such separate award, then Tenant may make a claim for its Trade Fixtures and moving expenses in conjunction with Landlord's claim so long as Landlord and Tenant can readily identify and separate their respective portions of the award granted under such combined claim. All obligations accrued to the date of the taking shall be performed by each party.

**11. *RIGHTS RESERVED TO LANDLORD.***

Landlord may exercise at any time any of the following rights respecting the operation of the Project without liability to the Tenant of any kind:

A. *Signs*. To install and maintain any signs on the exterior and in the interior of the Building, and to approve, at its sole discretion, prior to installation, any of Tenant's signs in the Premises visible from the common areas or the exterior of the Building; provided, however, as long as Tenant occupies at least 100,000 square feet in the Building, Tenant will have the exclusive right to place its name and corporate logo on the Building at a mutually agreeable location. The Plans will include specifications for the location and design of Tenant's signage. Landlord agrees to diligently pursue, at Tenant's cost, all reasonable avenues to obtain maximum signage rights from all applicable governmental authorities.

B. *Window Treatments*. To approve, at its discretion (except as otherwise set forth in Paragraph 7), prior to installation, any shades, blinds, ventilators or window treatments of any

kind, as well as any lighting within the Premises that may be visible from the exterior of the Building or any interior common area.

C. *Keys*. Subject to subparagraph D below, to retain and use at any time passkeys to enter the Premises or any door within the Premises. Subject to subparagraph D below, Tenant shall not alter or add any lock or bolt.

D. *Access*. To have access to inspect the Premises (subject to 24 hours advance authorization except in cases of emergency), and to perform its obligations, or make repairs, alterations, additions or improvements, as permitted by this Lease upon reasonable prior notice to Tenant, during normal business hours and with minimal interference with Tenant's business operations. A representative of Tenant may, at Tenant's option, be present during any such access. If Tenant complies with all of the requirements set forth in this Section, Tenant may provide its own locks to an area or areas within the Premises (the *"Secured Areas*"). At least ten (10) days prior to the creation of any Secured Area, Tenant shall notify Landlord of the exact location of such Secured Area and the name of the representative of Tenant to be contacted and the manner of contact to avoid a forcible entry. Tenant need not furnish Landlord with keys to the Secured Areas. Upon the termination of this Lease, Tenant shall surrender all keys to Landlord. Landlord shall have no obligation to provide janitorial service to the Secured Areas. If Landlord determines in its reasonable discretion that a suspected fire or flood or other emergency in the Building requires Landlord to gain access to any Secured Area, Landlord may forcibly enter. Landlord shall make a reasonable effort to contact Tenant to secure access, but Landlord shall not be obligated to contact Tenant.

E. *Preparation for Reoccupancy*. To decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time following Tenant's default (after the expiration of any applicable notice and cure period and Landlord's exercise of its right to terminate this Lease or Tenant's possession), without relieving Tenant of any obligation to pay Rent.

F. *Heavy Articles*. To approve the weight, size, placement and time and manner of movement within the Building of any safe, central filing system or other heavy article of Tenant's property. Tenant shall move its property entirely at its own risk. The Building has been designed with the floor load capacity referred to on the Plans.

G. *Show Premises*. To show the Premises to prospective purchasers, tenants (only during the last 6 months of the Term), brokers, lenders, investors, rating agencies or others at any reasonable time, provided that Landlord gives prior notice to Tenant and does not unreasonably interfere with Tenant's use of the Premises. Tenant may, at Tenant's option, have a representative present during any such showing.

H. *Relocation of Tenant*. [Intentionally Deleted].

I. *Use of Lockbox*. To designate a lockbox collection agent for collections of amounts due Landlord. The date of payment of Rent or other sums shall be the date Rent is deposited in such lockbox. However, if Tenant is in default and this Lease has been terminated Landlord may reject any payment for all purposes as of the date of receipt or actual collection by mailing to Tenant within 21 days after such receipt or collection a check equal to the amount sent by Tenant.

J. *Repairs and Alterations*. To make repairs or alterations to the Project and in doing so transport any required material through the Premises, to close entrances, doors, corridors, elevators and other facilities in the Project, to open any ceiling in the Premises, or to temporarily suspend services or use of common areas in the Building provided that any such repairs do not unreasonably interfere with Tenant's use of the Premises. Landlord may perform any such repairs or alterations during ordinary business hours, except that Tenant may require any Work in the Premises to be done after business hours if Tenant pays Landlord for overtime and any other expenses incurred. Landlord may do or permit any work on any nearby building, land, street, alley or way. Landlord shall use reasonable efforts to minimize interference with Tenant's business operations in the course of performing such work.

K. *Landlord's Agents*. If Tenant is in default under this Lease, possession of Tenant's funds or negotiation of Tenant's negotiable instrument by any of Landlord's agents shall not waive any breach by Tenant or any remedies of Landlord under this Lease.

L. *Building Services*. To install, use and maintain through the Premises, pipes, conduits, wires and ducts serving the Building, provided that such installation, use and maintenance does not unreasonably interfere with Tenant's use of the Premises.

M. *Other Actions*. To take any other action which Landlord deems reasonable in connection with the operation, maintenance or preservation of the Building.

**12. *TENANT'S DEFAULT.***

Any of the following shall constitute a default by Tenant:

A. *Rent Default*. Tenant fails to pay any Rent when due, and such failure continues for five (5) days following the date of Landlord's written notice to Tenant;

B. *Other Performance Default*. Tenant fails to perform any other obligation to Landlord under this Lease, and such failure continues for thirty (30) days after written notice from Landlord, except that if Tenant begins to cure its failure within the thirty (30) day period but cannot reasonably complete its cure within such period, then, so long as Tenant continues to diligently attempt to cure its failure, the thirty (30) day period shall be extended to one hundred twenty (120) days, or such lesser period as is reasonably necessary to complete the cure;

C. *Credit Default*. One of the following credit defaults occurs:

(1) Tenant commences any proceeding under any law relating to bankruptcy, insolvency, reorganization or relief of debts, or seeks appointment of a receiver, trustee, custodian or other similar official for the Tenant or for any substantial part of its property, or any such proceeding is commenced against Tenant and either remains undismissed for a period of thirty days or results in the entry of an order for relief against Tenant which is not fully stayed within ninety (90) days after entry;

(2) Tenant becomes insolvent or bankrupt, does not generally pay its debts as they become due, or admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors;

(3) Any third party obtains a levy or attachment under process of law against Tenant's leasehold interest and Tenant fails to have same removed within ninety (90) days.

**13. *LANDLORD REMEDIES.***

A. *Termination of Lease or Possession*. If Tenant defaults, Landlord may elect by notice to Tenant either to terminate this Lease or to terminate Tenant's possession of the Premises without terminating this Lease. In either case, Tenant shall immediately vacate the Premises and deliver possession to Landlord, and Landlord may repossess the Premises and may, at Tenant's sole cost, remove any of Tenant's signs and any of its other property, without relinquishing its right to receive Rent or any other right against Tenant. If Landlord desires to terminate this Lease as to any non-monetary default, Landlord agrees that notice of termination as to any non-monetary default will only be effective if Tenant fails to cure same within three (3) days following the date of Landlord's notice.

B. *Lease Termination Damages*. If Landlord terminates the Lease, Tenant shall pay to Landlord all Rent due on or before the date of termination, plus the aggregate Rent that would have been payable from the date of termination through the Termination Date, reduced by the rental value of the Premises calculated as of the date of termination for the same period, taking into account reletting expenses and market concessions, both discounted to present value at the

prime rate per annum then published as such in The Wall Street Journal or, if not in existence, such other newspaper having a national circulation (the "Prime Rate").

C. *Possession Termination Damages*. If Landlord terminates Tenant's right to possession without terminating the Lease and Landlord takes possession of the Premises itself, Landlord may relet any part of the Premises for such Rent, for such time, and upon such terms as Landlord in its sole discretion shall determine, without any obligation to do so prior to renting other vacant areas in the Building. Any proceeds from reletting the Premises shall first be applied to the expenses of reletting, including redecoration, repair, alteration, advertising, brokerage, legal, and other reasonably necessary expenses. If the reletting proceeds after payment of expenses are insufficient to pay the full amount of Rent under this Lease, Tenant shall pay such deficiency to Landlord monthly upon demand as it becomes due. Any excess proceeds shall be retained by Landlord.

D. Intentionally Deleted.

E. *Landlord's Remedies Cumulative*. All of Landlord's remedies under this Lease shall be in addition to all other remedies Landlord may have at law or in equity. Waiver by Landlord of any breach of any obligation by Tenant shall be effective only if it is in writing, and shall not be deemed a waiver of any other breach, or any subsequent breach of the same obligation. Landlord's acceptance of payment by Tenant shall not constitute a waiver of any breach by Tenant, and if the acceptance occurs after Landlord's notice to Tenant, or termination of the Lease or of Tenant's right to possession, the acceptance shall not affect such notice or termination. Acceptance of payment by Landlord after commencement of a legal proceeding or final judgment shall not affect such proceeding or judgment. Landlord may advance such monies and take such other actions for Tenant's account as reasonably may be required to cure or mitigate any default by Tenant. Tenant shall immediately reimburse Landlord for any such advance, and such sums shall bear interest at the default interest rate until paid.

**F. *WAIVER OF TRIAL BY JURY*. EACH PARTY WAIVES TRIAL BY JURY IN THE EVENT OF ANY LEGAL PROCEEDING BROUGHT BY THE OTHER IN CONNECTION WITH THIS LEASE. EACH PARTY SHALL BRING ANY ACTION AGAINST THE OTHER IN CONNECTION WITH THIS LEASE IN A FEDERAL OR STATE COURT LOCATED IN DALLAS COUNTY, TEXAS, CONSENTS TO THE JURISDICTION OF SUCH COURTS, AND WAIVES ANY RIGHT TO HAVE ANY PROCEEDING TRANSFERRED FROM SUCH COURTS ON THE GROUND OF IMPROPER VENUE OR INCONVENIENT FORUM.**

G. *Litigation Costs*. Tenant shall pay Landlord's reasonable attorneys' fees and other costs in enforcing this Lease, whether or not suit is filed. In the event of any litigation concerning this Lease, the non-prevailing party will reimburse the prevailing party's reasonable attorneys' fees, reasonable disbursements and court costs.

H. *Reletting*. Tenant acknowledges that Landlord has entered into this Lease in reliance upon, among other matters, Tenant's agreement and continuing obligation to pay all Rent due throughout the Term. As a result, Tenant hereby knowingly and voluntarily waives, after advice of competent counsel, any duty of Landlord (and any affirmative defense based upon such duty) following any default to relet the Premises or otherwise mitigate Landlord's damages arising from such default. If such waiver is not effective under then applicable law or Landlord otherwise elects, at Landlord's sole option, to attempt to relet all or any part of the Premises, Tenant agrees that Landlord has no obligation to: (i) relet the Premises prior to leasing any other space within the Building; (ii) relet the Premises (A) at a rental rate or otherwise on terms below market, as then determined by Landlord in its sole discretion; (B) to any entity not satisfying Landlord's then standard financial credit risk criteria; (C) for a use (1) not consistent with Tenant's use prior to default; (2) which would violate then applicable law or any restrictive covenant or other lease affecting the Building; (3) which would impose a greater burden upon the Building's parking, HVAC or other facilities; and/or (4) which would involve any use of Hazardous Substances; (iii) divide the Premises, install new demising walls or otherwise reconfigure the Premises to make same more marketable; (iv) pay any leasing or other commissions arising from such reletting,

unless Tenant unconditionally delivers Landlord, in good and sufficient funds, the full amount thereof in advance; (v) pay, and/or grant any allowance for, tenant finish or other costs associated with any new lease, even though same may be amortized over the applicable lease term, unless Tenant unconditionally delivers Landlord, in good and sufficient funds, the full amount thereof in advance; and/or (vi) relet the Premises, if to do so, Landlord would be required to alter other portions of the Building, make ADA-type modifications or otherwise install or replace any sprinkler, security, safety, HVAC or other Building operating systems. Tenant further acknowledges that if Tenant, notwithstanding Tenant's waiver above, raises Landlord's mitigation as an affirmative defense to a claim made by Landlord prior to any actual reentry of the Premises by Landlord then, in such event, Tenant will be deemed to have automatically waived, and released and discharged Landlord from and against, any and all other claims and defenses to the payment of Rent.

**14.** ***SURRENDER***. Upon termination of this Lease or Tenant's right to possession, Tenant shall return the Premises to Landlord in good order and condition, ordinary wear and casualty damage excepted. If Landlord requires Tenant to remove any alterations, then Tenant shall remove the alterations in a good and workmanlike manner and restore the Premises to its condition prior to their installation. In the event that Tenant does not exercise its option to renew the Term of this Lease as set forth in Appendix F, then Tenant shall restore the first floor lobby of the Premises to the original design thereof prepared by Landlord, if and to the extent Tenant has modified the lobby from such original design. Such restoration shall be made at Tenant's cost and expense.

**15.** ***HOLDOVER***. If Tenant retains possession of any part of the Premises after the Term, Tenant shall become a month-to-month tenant for the entire Premises upon all of the terms of this Lease as might be applicable to such month-to-month tenancy, except that Tenant shall pay all of Base Rent, Operating Cost Share Rent and Tax Share Rent at one hundred thirty-five percent (135%) of the rate in effect immediately prior to such holdover, computed on a monthly basis for each full or partial month Tenant remains in possession, as liquidated damages for Tenant's holdover. No acceptance of Rent or other payments by Landlord under these holdover provisions shall operate as a waiver of Landlord's right to regain possession or any other of Landlord's remedies.

**16.** ***SUBORDINATION TO GROUND LEASES AND MORTGAGES.***

A. *Subordination*. This Lease shall be subordinate to any future ground lease or mortgage respecting the Project, and any amendments to such ground lease or mortgage, at the election of the ground lessor or mortgagee as the case may be, effected by notice to Tenant in the manner provided in this Lease. The subordination shall be effective upon such notice, but at the request of Landlord or ground lessor or mortgagee, Tenant shall within ten (10) days of the request, execute and deliver to the requesting party any reasonable documents provided to evidence the subordination. Any mortgagee has the right, at its option, to subordinate its mortgage to the terms of this Lease, without notice to, nor the consent of, Tenant. There are no existing mortgages or ground leases affecting the Project. As a condition to Tenant's agreement to subordinate Tenant's interest in this Lease to any future mortgage or ground lease, the mortgagee or ground lessor, as applicable, must deliver to Tenant a non-disturbance agreement reasonably acceptable to Tenant, providing that so long as Tenant is not in default under this Lease after the expiration of any applicable notice and cure periods, Tenant may remain in possession of the Premises under the terms of this Lease, even if the ground lessor should terminate the ground lease or if the mortgagee or its successor should acquire Landlord's title to the Project.

B. *Termination of Ground Lease or Foreclosure of Mortgage*. If any ground lease is terminated or mortgage foreclosed or deed in lieu of foreclosure given and the ground lessor, mortgagee, or purchaser at a foreclosure sale shall thereby become the owner of the Project, Tenant shall attorn to such ground lessor or mortgagee or purchaser without any deduction or setoff by Tenant, and this Lease shall continue in effect as a direct lease between Tenant and such ground lessor, mortgagee or purchaser. The ground lessor or mortgagee or purchaser shall be liable as Landlord only during the time such ground lessor or mortgagee or purchaser is the owner

of the Project. At the request of Landlord, ground lessor or mortgagee, Tenant shall execute and deliver within ten (10) days of the request any document furnished by the requesting party to evidence Tenant's agreement to attorn.

C. *Security Deposit*. Any ground lessor or mortgagee shall be responsible for the return of any security deposit by Tenant, if any, only to the extent the security deposit is received by such ground lessor or mortgagee.

D. *Notice and Right to Cure*. The Project is subject to any ground lease and mortgage identified with name and address of ground lessor or mortgagee in Appendix D to this Lease (as the same may be amended from time to time by written notice to Tenant). Tenant agrees to send by registered or certified mail to any ground lessor or mortgagee identified either in such Appendix or in any later notice from Landlord to Tenant a copy of any notice of default sent by Tenant to Landlord. If Landlord fails to cure such default within the required time period under this Lease, but ground lessor or mortgagee begins to cure within ten (10) days after such period and proceeds diligently to complete such cure, then ground lessor or mortgagee shall have such additional time as is necessary to complete such cure, including any time necessary to obtain possession if possession is necessary to cure, and Tenant shall not begin to enforce its remedies so long as the cure is being diligently pursued.

E. *Definitions*. As used in this Section 16, "mortgage" shall include "deed of trust" and/or "trust deed" and "mortgagee" shall include "beneficiary" and/or "trustee", "mortgagee" shall include the mortgagee of any ground lessee, and "ground lessor", "mortgagee", and "purchaser at a foreclosure sale" shall include, in each case, all of its successors and assigns, however remote.

**17. *ASSIGNMENT AND SUBLEASE*.**

A. *In General*. Tenant shall not, without the prior consent of Landlord in each case, (i) make or allow any assignment or transfer, by operation of law or otherwise, of any part of Tenant's interest in this Lease, (ii) grant or allow any lien or encumbrance, by operation of law or otherwise, upon any part of Tenant's interest in this Lease, (iii) sublet any part of the Premises, or (iv) permit anyone other than Tenant and its employees to occupy any part of the Premises. Tenant shall remain primarily liable for all of its obligations under this Lease, notwithstanding any assignment, subletting or transfer under this Section 17 or otherwise. No consent granted by Landlord shall be deemed to be a consent to any subsequent assignment or transfer, lien or encumbrance, sublease or occupancy. Tenant shall pay all of Landlord's attorneys' fees and other expenses incurred in connection with any consent requested by Tenant or in reviewing any proposed assignment or subletting. Any assignment or transfer, grant of lien or encumbrance, or sublease or occupancy without Landlord's prior written consent shall be void. Except in the case of an assignment permitted under Section 17F below, if Tenant shall assign this Lease or sublet the Premises in its entirety any rights of Tenant to renew this Lease, extend the Term or to lease additional space in the Project shall be extinguished thereby and will not be transferred to the assignee or subtenant, all such rights being personal to the Tenant named herein.

B. *Landlord's Consent*. Landlord will not unreasonably withhold or delay its consent to any proposed assignment or subletting. It shall be reasonable for Landlord to withhold its consent to any assignment or sublease if (i) Tenant is in monetary default or material non-monetary default under this Lease after the expiration of all applicable cure periods, (ii) the proposed assignee or sublessee is a tenant in the Project or an affiliate of such a tenant or a party that Landlord is then actively involved in negotiations as a prospective tenant in the Project, (iii) the financial responsibility, nature of business, and character of the proposed assignee or subtenant are not all reasonably satisfactory to Landlord, (iv) in the reasonable judgment of Landlord the purpose for which the assignee or subtenant intends to use the Premises (or a portion thereof) is not in keeping with Landlord's standards for the Building or are in violation of the terms of this Lease or any other leases in the Project, or (v) the proposed assignee or subtenant is a government entity. The foregoing shall not exclude any other reasonable basis for Landlord to withhold its consent.

C. *Procedure.* Tenant shall notify Landlord of any proposed assignment or sublease at least ten (10) business days prior to its proposed effective date. The notice shall include the name and address of the proposed assignee or subtenant, its corporate affiliates in the case of a corporation and its partners in a case of a partnership, an execution copy of the proposed assignment or sublease, and sufficient information to permit Landlord to determine the financial responsibility and character of the proposed assignee or subtenant. As a condition to any effective assignment of this Lease, the assignee shall execute and deliver in form reasonably satisfactory to Landlord at least five (5) business days prior to the effective date of the assignment, an assumption of all of the obligations of Tenant under this Lease. As a condition to any effective sublease, subtenant shall execute and deliver in form reasonably satisfactory to Landlord at least five (5) business days prior to the effective date of the sublease, an agreement to comply with all of Tenant's obligations under this Lease, and at Landlord's option, an agreement (except for the economic obligations which subtenant will undertake directly to Tenant) to attorn to Landlord (and if Landlord requests such attornment, Landlord must recognize such subtenant) under the terms of the sublease in the event this Lease terminates before the sublease expires.

D. *Change of Management or Ownership.* Any direct or indirect change in 50% or more of the ownership interest in Tenant shall constitute an assignment of this Lease.

E. *Excess Payments.* If Tenant shall assign this Lease or sublet any part of the Premises, except under Clause F. below, for consideration in excess of the pro-rata portion of Rent applicable to the space subject to the assignment or sublet, less any actual out-of-pocket costs incurred by Tenant, and payable to non-affiliated third parties, in connection therewith (i.e., brokerage commissions, tenant finish costs, legal fees, advertising costs, work allowances, free rent and marketing expenses, all of which must be amortized over the applicable lease term), then Tenant shall pay to Landlord as Additional Rent seventy percent (70%) of any such excess immediately upon receipt.

F. *Related Entity.* If Landlord has not elected to terminate this Lease or Tenant's right to possession in accordance with Section 13 of this Lease following a default by Tenant, Tenant may assign this Lease to (i) an entity into which Tenant is merged or consolidated or to an entity to which substantially all of Tenant's assets are transferred through a public offering on a recognized exchange, or (ii) any entity controlling, controlled by or under common control with a Tenant, without first obtaining Landlord's written consent, if Tenant notifies Landlord at least ten (10) business days prior to the proposed transaction, providing information reasonably satisfactory to Landlord in order to determine the relationship with Tenant. Nokia, Inc. or, if applicable, its successor by merger, consolidation, public offering or otherwise, will at all times remain primarily liable under this Lease, as amended from time to time, following any such transfer.

**18.** ***CONVEYANCE BY LANDLORD.*** If Landlord shall at any time transfer its interest in the Project or this Lease, Landlord shall be released of any obligations occurring after such transfer (as long as Landlord's successor assumes such liability), except the obligation to return to Tenant any security deposit not delivered to its transferee, and Tenant shall look solely to Landlord's successors for performance of such obligations. This Lease shall not be affected by any such transfer.

**19.** ***ESTOPPEL CERTIFICATE*****.** Each party shall, as soon as reasonably practical but in no event beyond twenty (20) days of receiving a request from the other party accompanied by the form of certificate requested together with all proposed exhibits or schedules attached, execute, acknowledge in recordable form, and deliver to the other party or its designee a certificate stating, subject to a specific statement of any applicable exceptions, that the Lease as amended to date is in full force and effect, that the Tenant is paying Rent and other charges on a current basis, and that to the best of the knowledge of the certifying party, the other party has committed no uncured defaults and has no offsets or claims. The certifying party may also be required to state the date of commencement of payment of Rent, the Commencement Date, the Termination Date, the Base Rent, the current Operating Cost Share Rent, Tax Share Rent and Electrical Cost Share Rent estimates, the status of any improvements required to be completed by

Landlord, the amount of any security deposit, and such other matters as may be reasonably requested.

**20.** ***SECURITY DEPOSIT.*** [Intentionally Deleted.]

**21.** ***FORCE MAJEURE.*** Neither party shall be in default under this Lease to the extent such party is unable to perform any of its obligations on account of any strike or labor problem, energy shortage, governmental pre-emption or prescription, national emergency, or any other cause of any kind beyond the reasonable control of such party ("*Force Majeure*"). This paragraph does not, however, apply to any monetary obligations under this Lease, including Tenant's obligation to pay Rent and insure the Premises or Landlord's obligations under Section 8E of this Lease.

**22.** ***LANDLORD'S DEFAULT.*** If Landlord fails to perform its obligations under this Lease and such failure continues for a period of thirty (30) days following the date of Tenant's written notice to Landlord specifying such default (or such longer period as may be reasonably necessary to cure such default, as long as Landlord continues to exercise reasonable efforts to cure same) then in such event Tenant may perform same. In such event Landlord will reimburse Tenant for all third party costs actually incurred by Tenant to cure such default and, if Landlord fails to pay same within thirty (30) days following the date of Tenant's notice specifying such costs and including copies of all relevant invoices therefor, then Tenant may offset same against Rent next becoming due thereafter, but in no event will the amount of any offset in any month exceed ten percent (10%) of the amount otherwise due to Landlord for such month. In no event, however, will Tenant have any right to terminate this Lease for any default by Landlord. Tenant may act sooner in the event of an emergency involving imminent risk of death, personal injury and property damage as long as Tenant has first taken reasonable measures to notify Landlord, and, once the emergency has come under control, permits Landlord to control any remaining corrective measures.

**23.** ***NOTICES.*** All notices, consents, approvals and similar communications to be given by one party to the other under this Lease, shall be given in writing, mailed or personally delivered or sent by legible facsimile (with answer back confirmation) as follows:

A. *Landlord*. To Landlord as follows:

CarrAmerica Realty, L.P.
c/o CarrAmerica Realty Corporation
14901 Quorum Drive, Suite 100
Dallas, Texas 75240
Attn: William H. Vanderstraaten
Facsimile: (972) 404-2201

with a copy to:

CarrAmerica Realty Corporation
1850 K Street, N.W., Suite 500
Washington, D.C. 20006
Attn: Lease Administration
Facsimile: (202) 729-1120

or to such other person at such other address as Landlord may designate by notice to Tenant.

B. *Tenant.* To Tenant as follows:

Nokia Inc.
6000 Connection Drive
Irving, Texas 75039
Attn: Facility Manager
Facsimile: (972) 894-5005

with a copy to:

Nokia Inc.
6000 Connection Drive
Irving, Texas 75039
Attn: Chief Legal Officer
Facsimile: (972) 894-5811

or to such other person at such other address as Tenant may designate by notice to Landlord.

Mailed notices shall be sent by United States certified mail, or by a reputable national overnight courier service, postage prepaid. Mailed notices shall be deemed to have been given on the date of first attempted delivery. Notices sent by facsimile shall be deemed given on the date of transmission with confirmed answer back.

**24. *QUIET POSSESSION.*** Tenant shall enjoy peaceful and quiet possession of the Premises against any party claiming through Landlord.

**25. *REAL ESTATE BROKER.*** Each party represents to the other that such party has not dealt with any real estate broker with respect to this Lease except for any broker(s) listed in the Schedule, and no other broker is in any way entitled to any broker's fee or other payment in connection with this Lease. Landlord agrees to pay any commissions owed to the brokers identified in such Schedule pursuant to a separate written agreement with such brokers. Each party shall indemnify and defend the other against any claims by any other broker or third party for any payment of any kind in connection with this Lease attributable to the acts of such party.

**26. *MISCELLANEOUS.***

A. *Successors and Assigns.* Subject to the limits on Tenant's assignment contained in Section 17, the provisions of this Lease shall be binding upon and inure to the benefit of all successors and assigns of Landlord and Tenant.

B. *Date Payments Are Due.* Except for Base Rent, estimated payments of Additional Rent and other payments to be made by Tenant under this Lease which are due upon demand, Tenant shall pay to Landlord any amount for which Landlord renders a statement of account within thirty (30) days of Tenant's receipt of Landlord's statement.

C. *Meaning of "Landlord", "Re-Entry, "including" and "Affiliate".* The term "Landlord" means only the owner of the Project and the lessor's interest in this Lease from time to time. The words "re-entry" and "re-enter" are not restricted to their technical legal meaning. The words "including" and similar words shall mean "without limitation." The word "affiliate" shall mean a person or entity controlling, controlled by or under common control with the applicable entity. "Control" shall mean the power directly or indirectly, by contract or otherwise, to direct the management and policies of the applicable entity.

D. *Time of the Essence.* Time is of the essence of each provision of this Lease.

E. *No Option.* This document shall not be effective for any purpose until it has been executed and delivered by both parties; execution and delivery by one party shall not create any option or other right in the other party.

F. *Severability.* The unenforceability of any provision of this Lease shall not affect any other provision.

G. *Governing Law.* This Lease shall be governed in all respects by the laws of the state in which the Project is located, without regard to the principles of conflicts of laws.

H. *Lease Modification.* Tenant agrees to modify this Lease in any way reasonably requested by a mortgagee which does not cause increased expense or obligation to Tenant or otherwise adversely affect Tenant's interests under this Lease.

I. *No Oral Modification.* No modification of this Lease shall be effective unless it is a written modification signed by both parties.

J. *Landlord's Right to Cure.* If Landlord breaches any of its obligations under this Lease, Tenant shall notify Landlord in writing and shall take no action respecting such breach so long as Landlord immediately begins to cure the breach and diligently pursues such cure to its completion. Landlord may cure any default by Tenant; any expenses incurred shall become Additional Rent due from Tenant on demand by Landlord.

K. *Captions.* The captions used in this Lease shall have no effect on the construction of this Lease.

L. *Authority.* Landlord and Tenant each represents to the other that it has full power and authority to execute and perform this Lease.

M. *Landlord's Enforcement of Remedies.* Landlord may enforce any of its remedies under this Lease either in its own name or through an agent.

N. *Entire Agreement.* This Lease, together with all Appendices, constitutes the entire agreement between the parties. No representations or agreements of any kind have been made by either party which are not contained in this Lease.

O. *Landlord's Title.* Landlord's title shall always be paramount to the interest of the Tenant, and nothing in this Lease shall empower Tenant to do anything which might in any way impair Landlord's title.

P. *Light and Air Rights.* Landlord does not grant in this Lease any rights to light and air in connection with Project. Landlord reserves to itself, the Land, the Building below the improved floor of each floor of the Premises, the Building above the ceiling of each floor of the Premises, the exterior of the Premises and the areas on the same floor outside the Premises, along with the areas within the Premises required for the installation and repair of utility lines and other items required to serve other tenants of the Building.

Q. *Singular and Plural.* Wherever appropriate in this Lease, a singular term shall be construed to mean the plural where necessary, and a plural term the singular. For example, if at any time two parties shall constitute Landlord or Tenant, then the relevant term shall refer to both parties together.

R. *Recording by Tenant.* Neither party shall record this Lease or any portion thereof in any public records. However, Tenant shall have the right to record a memorandum of this Lease in a form approved by Landlord in the appropriate public records of Dallas County, Texas.

S. *Exclusivity.* Landlord does not grant to Tenant in this Lease any exclusive right except the right to occupy its Premises.

T. *No Construction Against Drafting Party.* The rule of construction that ambiguities are resolved against the drafting party shall not apply to this Lease.

U. *Survival.* All obligations of Landlord and Tenant under this Lease shall survive the termination of this Lease.

V. *Rent Not Based on Income.* No rent or other payment in respect of the Premises shall be based in any way upon net income or profits from the Premises. Tenant may not enter into or permit any sublease or license or other agreement in connection with the Premises which provides for a rental or other payment based on net income or profit.

W. *Building Manager and Service Providers.* Landlord may perform any of its obligations under this Lease through its employees or third parties hired by the Landlord.

X. *Late Charge and Interest on Late Payments.* Without limiting the provisions of Section 12A, if Tenant fails to pay any installment of Rent or other charge to be paid by Tenant pursuant to this Lease when same becomes due and payable, then Tenant shall pay a late charge equal to two percent (2%) of the amount due if not paid by the due date, or, if not paid within five (5) business days following written notice, then five percent (5%) of the amount due. In addition, interest shall be paid by Tenant to Landlord on any late payments of Rent made after five (5) business days from the date due at the rate provided in Section 2D(2) from the date due until paid. Such late charge and interest shall constitute additional Rent due and payable by Tenant to Landlord upon the date of payment of the delinquent payment referenced above.

**27. *UNRELATED BUSINESS INCOME.*** If Landlord is advised by its counsel at any time that any part of the payments by Tenant to Landlord under this Lease may be characterized as unrelated business income under the United States Internal Revenue Code and its regulations, then Tenant shall enter into any amendment proposed by Landlord to avoid such income, so long as the amendment does not require Tenant to make more payments or accept fewer services from Landlord, than this Lease provides and is otherwise in form reasonably acceptable to Tenant.

**28. *HAZARDOUS SUBSTANCES.*** Landlord certifies to Tenant that, to Landlord's current actual knowledge, there are no Hazardous Substances located at the Project, except as disclosed in that certain environmental report dated July 18, 1997 prepared by Mission GeoSciences, Inc. (a copy of which has heretofore been delivered to Tenant) or Hazardous Substances customarily used in the operation of comparable office buildings (e.g., janitorial supplies). Landlord will remove or cause to be removed any Hazardous Substances which are found on the Premises, the Project or the Land. Tenant shall not be responsible for the cost of such removal unless Tenant caused such Hazardous Substances to be present on the Premises, the Project or the Land, as the case may be. Landlord will indemnify and hold Tenant harmless from and against any damages or expenses incurred by Tenant as a result of the presence of such Hazardous Substances not caused by Tenant. Landlord shall take all measures, consistent with those taken by the owners of other office buildings similar and within proximity to the Project, to prohibit other tenants from disposing of Hazardous Substances. Tenant shall not cause or permit any Hazardous Substances to be brought upon, produced, stored, used, discharged or disposed of in or near the Project unless Landlord has consented to such storage or use in its sole discretion. Tenant has no responsibility for any Hazardous Substances brought upon, produced, stored, used, discharged or disposed of in or near the Project, except by Tenant or its employees, agents and affiliates. *"Hazardous Substances"* include those hazardous substances described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any other applicable federal, state or local law, and the regulations adopted under these laws. If any governmental agency shall require testing for Hazardous Substances in the Premises or if any lender shall do so based upon verifiable evidence of Hazardous Substance contamination caused by Tenant, Tenant shall pay for such testing.

**29. *EXCULPATION.*** Landlord shall have no personal liability under this Lease; its liability shall be limited to its interest in the Project and shall not extend to any other property or assets of the Landlord. In no event shall any officer, director, employee, agent, shareholder, partner, member or beneficiary of Landlord be personally liable for any of Landlord's obligations hereunder.

**30. *WAIVER OF CONSUMER RIGHTS.*** EACH PARTY ACKNOWLEDGES THAT IT IS A "BUSINESS CONSUMER" FOR PURPOSES OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT, BUT SHOULD SUCH DETERMINATION BE HELD OTHERWISE BY A FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION THE FOLLOWING SHALL APPLY: EACH PARTY WAIVES ALL OF ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES—CONSUMER PROTECTION ACT,

SECTION 17.41 ET SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF EACH PARTY'S OWN SELECTION, SUCH PARTY VOLUNTARILY CONSENTS TO THE FOREGOING WAIVER.

**31.** ***MUNICIPAL INCENTIVES.*** Landlord shall reasonably cooperate with Tenant in connection with any renegotiation or transfer of any tax or other forms of concessions which have been granted to Tenant by the City of Irving, Texas. Tenant shall reimburse Landlord for any out-of-pocket costs and expenses incurred by Landlord in connection therewith, including Landlord's reasonable attorney's fees.

**32.** ***SECURITY SYSTEMS.*** Landlord shall install two (2) card key or similar systems within the Project as part of the Base Building Work (one for the Building and one for the parking garage within the Project) which will permit Tenant's employees to have access to certain areas within Buildings I and II of The Commons of Las Colinas (including the fitness center and eating facilities to be constructed therein) all as shown on Appendix A attached hereto and made a part hereof, but which system will not permit other occupants of said Buildings I and II access to the Project. Landlord's share of the cost of installing such systems shall not exceed Fifty Thousand and No/100 Dollars ($50,000.00) (the *"Security Allowance"*). The portion of the cost in excess of the Security Allowance, if any, shall be borne by Tenant.

**33.** ***ACQUISITION OF ADJACENT PROPERTY.*** Upon receipt of written request therefor from Tenant, Landlord shall use commercially reasonable efforts to acquire or enter into an option (effective for the Term of this Lease) to acquire the property (the *"Rosewood Property"*) set forth on Appendix I attached hereto and made a part hereof. In the event that Landlord acquires the Rosewood Property, Landlord shall grant Tenant an exclusive option to acquire the Rosewood Property at any time during the Term of this Lease at a cost equal to the Residual Value (as defined below) together with any then-unamortized costs incurred by Landlord in acquiring the Rosewood Property. If Landlord is unable either to acquire the Rosewood Property or to enter into the aforesaid option to acquire same on or before the first anniversary of the Commencement Date through the use of commercially reasonable efforts, then Landlord shall have no further obligation to undertake any efforts with regard to acquisition of the Rosewood Property.

Commencing on the first anniversary of the date of Landlord's acquisition of the Rosewood Property and on each anniversary date thereafter, Tenant shall pay to Landlord the sum of (i) ten percent (10%) of the cost of acquiring the Rosewood Property (up to the product of $7.00 times the number of square feet contained therein), (ii) any amounts above the Residual Value amortized fully over a period of ten (10) years at an interest rate of eight percent (8%) and (iii) all expenses incurred by Landlord in connection with the ownership of the Rosewood Property (including, without limitation, title insurance premiums, property taxes and landscape maintenance costs).

**34.** ***SIGNAGE.*** Landlord shall provide the maximum amount of exterior signage on the Building and monument signage on State Highway 114 and Connection Drive permitted by applicable law. Tenant's name shall be exclusively shown on all such signage except for the signs at the Royal Lane entrance to The Commons of Las Colinas and the signs identifying Buildings I and II thereof. Landlord's share of the cost of providing such signage shall not exceed Seventy Five Thousand and No/100 Dollars ($75,000.00) (the *"Sign Allowance"*). The portion of the cost in excess of the Sign Allowance, if any, shall be borne by Tenant.

**35.** ***AMENITIES.*** Tenant shall have access to The Commons Cafe at no cost to Tenant. Tenant shall have access to the Fitness Center at a cost to be determined by Landlord which shall represent Tenant's proportionate share of the costs of operation without profit or markup. The Fitness Center shall be available only to employees of Tenant, other individuals doing business in the Premises who are either employed by Tenant elsewhere or are employees of Tenant's affiliates and the other tenants within The Commons of Las Colinas.

**36.** ***ADDRESS OF BUILDING***. Landlord will use reasonable efforts to cause the address of the Building to be designated as being on Connection Drive. Tenant shall reasonably cooperate with Landlord in such efforts.

**37.** ***LEASEHOLD TITLE POLICY***. Tenant shall have the right to obtain, at Tenant's cost, a policy of title insurance insuring Tenant's leasehold interest in the Premises. Landlord shall reasonably cooperate with Tenant in obtaining such policy, provided, however, that Landlord shall not be obligated to incur any expense in connection therewith.

**38.** ***CONFIDENTIALITY***. Landlord and Tenant each agree that prior to disclosing any information contained in this Lease or publicizing it in any way (except for disclosures to attorney's, accountants, architects, brokers, consultants, construction lenders, investors and the like on a "need to know" basis), it will secure the prior written consent of the other party (which consent will not be unreasonably withheld or delayed).

**39.** ***NO CONSEQUENTIAL DAMAGES***. Neither party shall have the right to seek consequential damages against the other with respect to any breach of such party's obligations under this Lease.

**40.** ***NAME OF PROJECT***. Landlord agrees that during the Term of this Lease, Landlord shall not change the name of the Project to a name which includes the name of any of the following companies: Alcatel, Ericsson, Motorola, Nextel, Nortel, Philips, Qualcomm, Samsung, Siemens, and Sony.

**41.** ***SEPARATE TAX PARCELS***. Landlord shall use reasonable efforts to cause the land and improvements associated with each of the three (3) buildings comprising the Project to be designated as separate tax parcels by the pertinent taxing authorities.

**42.** ***MAINTENANCE OF PROJECT***. Landlord shall have no obligation to fund the entire Capital Reserve Amount by any date during the Term. However, Landlord agrees that the Project shall be operated and maintained in a first-class manner and condition during the Term and shall expend portions of the Capital Reserve Amount from time to time during the Term in order to comply with such obligations.

**43.** ***RIGHT OF FIRST REFUSAL.***

If during the first one hundred twenty (120) days following the date of full execution of this Lease, Landlord receives telephone inquiry or a request for proposal (an *"Inquiry"*) to lease space in the Project from any third party, Landlord shall notify Tenant and Tenant's designated representatives at Cushman & Wakefield of Texas, Inc. by facsimile or courier (*"Landlord's Notice"*) of the material terms upon which Landlord is willing to lease such space to such third party including rental rate, term, finish work (or construction allowance). Tenant shall have a period of three (3) business days from the date of receipt of Landlord's Notice to notify Landlord in writing of Tenant's intent to lease or not to lease such space (*"Tenant's Notice"*). If the Inquiry from the third party is made in terms of leasing a range of rentable area, then Tenant shall be required to lease the maximum area expressed in such range (the *"ROFR-1 Space"*). If Landlord receives Tenant's Notice within such three (3) business day period of Tenant's election to lease the ROFR Space, it shall be leased to Tenant for the rental specified in Landlord's Notice with Landlord providing the finish work or paying the construction allowance, if any, as set forth in Landlord's Notice. If Landlord does not receive Tenant's Notice within such three (3) business-day period, of if Landlord receives Tenant's Notice and Tenant declines therein to lease the ROFR-1 Space, then Landlord shall be free to lease the ROFR-1 Space or any portion thereof to such third party.

If after the one hundred twentieth (120th) day following the date of full execution of this Lease, Landlord receives an Inquiry to lease space in the Project directly (or through a broker who has disclosed the identity of its client to Landlord) from any of the companies listed in Paragraph 40 hereof (the *"Competitors"*), Landlord shall deliver Landlord's Notice to Tenant. Tenant shall have a period of ten (10) days from the date of receipt of Landlord's Notice to

deliver Tenant's Notice. If the Inquiry from the Competitor is made in terms of a range of leasing a range of space, then Tenant shall be required to lease the maximum area expressed in such range (the *"ROFR-2 Space"*). If Landlord receives Tenant's Notice within such ten (10) day period of Tenant's election to lease the ROFR-2 Space, it shall be leased to Tenant for the rental specified in Landlord's Notice with Landlord providing the finish work or paying the construction allowance, if any, as set forth in Landlord's Notice. If Landlord does not receive Tenant's Notice within such ten (10) day period, or if Landlord receives Tenant's Notice and Tenant declines therein to lease the ROFR-2 Space, then Landlord shall be free to lease the ROFR-2 Space or any portion thereof to such Competitor, but if negotiations with such Competitor cease for more than four (4) consecutive months or if negotiations with such Competitor are terminated, this Right of First Refusal would revive, requiring a Landlord Notice to Tenant of any further Inquiry from a Competitor. Landlord shall not be obligated to offer any space to Tenant under this paragraph or be subject to the limitations herein contained if Tenant is in default of its obligations under this Lease. The rights granted to Tenant hereunder shall terminate if Tenant assigns its interest in this Lease or subleases any portion of the Premises. Such rights shall also terminate upon the first date on which at least eighty percent (80%) of the net rentable area of the Project is leased.

**44. *LETTER OF CREDIT.***

Upon execution of this Lease, Tenant agrees to furnish and maintain in effect during the Term an irrevocable standby letter of credit in the amount of $7,500,000 in the form, containing the provisions, and issued by the bank, set forth on Appendix K, as security for Tenant's obligations hereunder. The initial letter of credit will be for a period of 6-12 months. At least thirty (30) days before such letter of credit is scheduled to expire, Tenant shall use reasonable efforts to substitute a guaranty of this Lease made by Tenant's Finnish parent company in form mutually agreeable to Landlord and Tenant. In the event that such efforts are unsuccessful, Tenant shall replace such initial letter of credit with a new letter of credit on the same terms as the original letter of credit.

IN WITNESS WHEREOF, the parties hereto have executed this Lease.

LANDLORD:

CARRAMERICA REALTY, L.P.,
a Delaware limited partnership

By: CARRAMERICA REALTY GP HOLDINGS, INC.,
its general partner

By: /S/ PHILIP L. HAWKINS

Print Name: Philip L. Hawkins

Print Title: Managing Director

TENANT:

NOKIA INC.,
a Delaware corporation

By: /S/ JOE W. PITTS III

Print Name: Joe W. Pitts III

Print Title: V.P. & Chief Legal Officer

**EXHIBIT 10.85**

**AMENDMENT TO LEASE AGREEMENT**
**FOR BUILDING NO. 3 OF THE NOKIA DALLAS BUILDINGS**

Re: The Commons of Las Colinas
Building III
Irving, Texas

**FIRST AMENDMENT TO LEASE**

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

THIS FIRST AMENDMENT TO LEASE (this *"Amendment"*) has been executed as of the 29th day of September, 2000, by CARRAMERICA REALTY L.P., a Delaware limited partnership (*"Landlord"*), and NOKIA INC., a Delaware corporation (*"Tenant"*).

**R E C I T A L S:**

A. Landlord and Tenant have heretofore entered into that certain Lease, dated as of July 17, 1998 (the *"Lease"*), pursuant to which Tenant leased from Landlord approximately 152,086 square feet (the *"Premises"*) in that certain building located in Irving, Texas, known as The Commons of Las Colinas, Building III and more particularly described in the Lease (the *"Building"*).

B. Landlord and Tenant desire to execute this Amendment in order to evidence their agreement to amend the Lease, all as more particularly set forth in this Amendment.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

**ARTICLE I**
**CERTAIN AMENDMENTS**

SECTION 1.01. A. *Rentable Square Feet of the Premises.* SCHEDULE, Section 3, Rentable Square Feet of the Premises, is hereby amended to read as follows:

152,086, which Landlord and Tenant acknowledge and agree has been verified as accurate upon final measurement and not subject to revision.

B. *Tenant's Proportionate Share*. SCHEDULE, Section 4, Tenant's Proportionate Share, is hereby amended to read as follows:

25.17% based upon a total of 604,234 rentable square feet of the Project, subject to verification upon completion of Building II by each of Tenant's and Landlord's architect pursuant to Section 15 of the Work Agreement attached hereto as Appendix C.

C. *Termination Date/Term*. Section 10, Termination Date/Term, is hereby amended to read as follows:

10. *Termination Date/Term*: July 31, 2009.

D. *Expense Stop*. Effective as of July 1, 2000, SCHEDULE, Section 12, Expense Stop, is hereby deleted in its entirety.

E. *Base Rent*. Effective as of July 1, 2000, SCHEDULE, Section 13, Base Rent, is hereby amended by deleting the current provisions and replacing them with the following:

| Period | Annual Base Rent | Monthly Base Rent |
|---|---|---|
| 7/1/00-7/31/04 | $2,888,113.10 ($18.99 PSF) | $240,676.09 |
| 8/1/04-7/31/09 | $3,116,242.10 ($20.49 PSF) | $259,686.84 |

SECTION 1.02. *Rent*. Effective as of July 1, 2000, Section 2 of the Lease is hereby amended to read as follows:

A. *Types of Rent*. Tenant shall pay the following Rent in the form of a check to Landlord at the following address (if the address or wire transfer information is not available at the time of execution of that certain First Amendment to Lease, Landlord shall subsequently provide them to Tenant by notice sent in accordance with this Lease):

CarrAmerica Realty, L.P.
t/a Commons of Las Colinas
P.O. Box 281937
Atlanta, GA 30384-1937

or by wire transfer as follows:

NationsBank, N.A. (South)
ABA Number 061-000-052
Account Number 326-303-8202

or in such other manner as Landlord may notify Tenant reasonably in advance of the applicable payment due date:

(1) *Base Rent* in monthly installments in advance, the first monthly installment payable upon the Commencement Date and thereafter on or before the first day of each month of the Term in the amount set forth on the Schedule.

(2) *Additional Rent* in the amount of all costs, expenses, liabilities, and amounts which Tenant is required to pay under this Lease, excluding Base Rent, but including any interest for late payment of any item of Rent.

(3) *Rent* as used in this Lease means Base Rent and Additional Rent. Tenant's agreement to pay Rent is an independent covenant, with no right of setoff, deduction or counterclaim of any kind, except as otherwise expressly set forth in this Lease.

B. *Computation of Base Rent and Rent Adjustments.*

(1) *Prorations.* If this Lease begins on a day other than the first day of a month, the Base Rent shall be prorated for such partial month based on the actual number of days in such month.

(2) *Default Interest.* Any sum due from Tenant to Landlord not paid when due shall bear interest from the date due until paid at the lesser of the maximum rate permitted by applicable law or the then Prime Rate (as hereinafter defined) plus five percent (5%) per annum.

(3) *Rent Adjustments.* The square footage of the Premises and the Building set forth in the Commencement Date Confirmation, when executed will be conclusively deemed to be the actual square footage thereof, without regard to any subsequent remeasurement of the Premises or the Building.

SECTION 1.03. *Project Services.* Sections 4.A. through 4.F. of the Lease are hereby deleted in their entirety

SECTION 1.04. *Parking*. Section 4.G. of the Lease is hereby amended to read as follows: Landlord shall grant and provide certain parking rights to Tenant as described below:

The construction documents for the Project contemplate a total of approximately 2,159 parking spaces, with 648 surface spaces and 1,511 spaces located in the parking structure. Tenant shall have the right to use all such spaces. Tenant acknowledges that the entrances for both the parking structure and the surface parking shall serve the Building, Building I and Building II.

SECTION 1.05. *Interruption of Service*. Section 4.I. of the Lease is hereby amended to read as follows:

Except as otherwise provided herein, Landlord's inability to furnish, to any extent, the Project services set forth in this Section 4, or any cessation thereof resulting from any causes, including any entry for repairs pursuant to this Lease, and any renovation, redecoration or rehabilitation of any area of the Building shall not render Landlord liable for damages, except for Landlord's gross negligence or willful misconduct, to either person or property or for interruption or loss to Tenant's business, nor be construed as an eviction of Tenant, nor work an abatement of any portion of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. Notwithstanding the foregoing, in the event that either (i) there is an interruption in any utility service to the Building which is not caused in whole or in part by Tenant, or (ii) an interruption in services resulting from any Capital Repair for which Landlord is responsible pursuant to Section 4.K. below which is not caused by Tenant's failure to maintain the Building and the Building Systems in accordance with the requirements outlined in Section 4.K. below or Tenant's negligence or intentional misconduct, and in either case such interruption causes the Premises to be untenantable for a period of at least ten (10) consecutive days (or, as to air conditioning service during the months of May to September, five (5) consecutive days), monthly Rent shall be thereafter abated proportionately. Landlord shall use reasonable efforts to minimize any interference with Tenant's business operations in performing any repairs, renovations, redecoration or rehabilitation pursuant to this Lease.

SECTION 1.06. The following is hereby added as Section 4.K. to the Lease:

4. *Project Services.*

K.(1) *Tenant Services*. Except to the extent provided herein to the contrary, Tenant shall, at its sole cost and expense, furnish and perform the services necessary for operations of the Project in a manner substantially similar to comparable office buildings in the vicinity of the Project, including without limitation, janitorial, HVAC operation and maintenance, exterior landscaping and maintenance, pest control, elevator maintenance, waste disposal, fire protection, security, and window cleaning. Tenant shall be responsible, at Tenant's sole cost, for the maintenance of all aspects of the Building, including without limitation any equipment and/or systems used to furnish such services, all in accordance with the original design thereof and all applicable manufacturers' specifications. In performing such maintenance, Tenant shall engage only persons duly licensed and qualified to perform the work involved. Landlord shall have the right, at reasonable times after reasonable prior notice, to inspect (either by Landlord's employees or inspectors hired by Landlord) the Premises, the Building and the Building equipment and Tenant's maintenance records with respect thereto. If Landlord notifies Tenant following any such inspection of any failure to so maintain and Tenant fails to cure such matter within thirty (30) days thereafter, or a reasonable longer period in the event such maintenance cannot reasonably be performed within thirty (30) days (provided Tenant promptly commences the repair and diligently prosecutes the same to completion) or such shorter time if the repair is of an emergency nature, Landlord shall have the right to cure same and Tenant shall reimburse Landlord for the cost to do so within thirty (30) days after receipt of written demand from Landlord. In the event Landlord and Tenant disagree with respect to the performance of Tenant's maintenance obligations hereunder, they shall submit such dispute to a neutral third party mutually agreed upon by Landlord and Tenant for resolution.

(2) *Taxes*. Tenant shall pay to the taxing authority, all Taxes as are set forth in said assessment. Tenant shall furnish to Landlord not less than fifteen (15) days prior to delinquency, reasonable evidence of the payment of such Taxes,

including receipted tax bills from the appropriate taxing authority, when available. Landlord shall be reimbursed by Tenant for a pro rata portion of the Taxes in the final year of the Lease based upon the portion of such year which falls within the Term hereof. Tenant shall have the right to protest Taxes, provided Tenant agrees to indemnify and hold Landlord harmless from and against any loss, cost or expense relating to such protest, and further provided that upon the final resolution of any such protest, Tenant shall provide Landlord with evidence of payment thereof. Landlord agrees to reasonably cooperate with Tenant in connection with any protest of the Taxes (subject to reimbursement by Tenant for Landlord's actual costs and expenses).

(3) *Landlord Services*. Except as otherwise provided in Sections 9 and 10 of this Lease and except with respect to Capital Repairs (as defined below), Tenant shall be responsible for maintenance and replacement of (i) the Building's roof, foundation, structural members and operating systems (including without limitation, HVAC, fire protection and elevators), and (ii) the landscaping, parking structures, surface parking and other common areas of the Building. Notwithstanding the foregoing, in the event that any of the repair or replacement costs described in the preceding sentence are capital in nature as determined under generally accepted accounting principles consistently applied (*"Capital Repairs"*), then Landlord shall perform such Capital Repairs pursuant to plans and specifications for such work to be approved in writing by Tenant, which approval shall not be unreasonably withheld or delayed. Tenant agrees to promptly notify Landlord in writing of the need for any Capital Repairs (a *"Capital Repair Notice"*) and Landlord agrees to commence such Capital Repairs as soon as reasonably practicable following receipt of such Capital Repair Notice (but in any event within thirty (30) days) and to diligently prosecute such repairs to completion. The failure of Landlord to object to any proposed Capital Repair in writing to Tenant within ten (10) days following receipt of the Capital Repair Notice shall be deemed Landlord's acceptance and approval of the proposed Capital Repair. If any dispute arises between the parties under this Section 4.K.(3) or under Section 4.I. above (the *"Dispute"*), then the parties agree to submit the

Dispute to binding arbitration in accordance with the applicable arbitration statute, the then existing rules of the American Arbitration Association and the provisions of this Section. Either party may initiate the arbitration procedure by delivering a written notice of demand for arbitration to the other party (an *"Arbitration Notice"*). Within ten (10) days after the receipt by the other party of the Arbitration Notice, the parties will attempt to agree upon a single arbitrator. If the parties are not able to agree upon a single arbitrator within such 10-day period, then within the immediately following ten (10) days, each of the parties shall provide written notice (the *"Designation Notice"*) to the other party as to the names and addresses of at least three (3) prospective arbitrators having at least ten (10) years experience in the management of Class A office buildings in Dallas County, Texas, and having never been employed by or in business with either Landlord or Tenant or their respective affiliated companies. Upon each party's receipt of the list of prospective arbitrators from the other party, such receiving party shall select one of the three prospects to serve as an arbitrator. If one party timely delivers a Designation Notice and the other party does not timely deliver a Designation Notice, the party who provided the Designation Notice shall select from its list the single arbitrator who shall render the decision in the arbitration proceeding. If both parties timely deliver a Designation Notice, the two (2) arbitrators selected shall be instructed and obligated to jointly select a third (3rd) arbitrator prior to the expiration of forty-five (45) days after the Arbitration Notice. If the two (2) arbitrators selected are unable to timely agree upon a third arbitrator, then upon application of any party, a court of competent jurisdiction shall complete the appointment of the arbitration panel. The hearing and presentation of evidence in connection with the arbitration proceeding shall be conducted in Dallas County, Texas, not later than twenty (20) days after (i) designation of the single arbitrator in the event that only one (1) arbitrator is timely appointed, or (ii) designation of the third (3rd) arbitrator in the event each of the parties hereto timely deliver a Designation Notice to the other party. Neither party shall be entitled to defer or postpone the hearing without the written consent of the other

party. The arbitrator(s) will be instructed to render a decision within fifteen (15) days after the date of the hearing. The decision of the arbitrator(s) shall be final and binding upon the parties hereto. This agreement to arbitrate Disputes shall be specifically enforceable under the prevailing arbitration law. The fees and expenses of the arbitrator(s) shall be paid in the manner allocated by the arbitrator(s). In addition, if the arbitrator(s) make a written determination that one of the parties was the prevailing party in the arbitration proceeding, such prevailing party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorney's fees incurred in connection with the arbitration proceedings (and, if applicable, court costs).

Notwithstanding anything to the contrary set forth above, in the event of an emergency requiring Capital Repairs which would reasonably be expected to materially interfere with the use and occupancy of the Premises, and provided that Tenant uses commercially reasonable efforts to deliver oral or written notice thereof to Landlord as soon as practicable under the circumstances, Tenant shall have the right to make such Capital Repairs which cost less than $20,000.00 in the aggregate on a non-cumulative basis in any Lease Year, and Landlord, subject to its right to dispute such Capital Repairs set forth above, shall reimburse Tenant for the reasonable cost of such Capital Repairs within thirty (30) days following the delivery to Landlord of written invoices evidencing such costs. If Landlord fails to timely reimburse Tenant for any costs for which Landlord is responsible pursuant to the preceding sentence, then, in addition to any other remedies available at law or in equity, Tenant may exercise its offset rights under Section 22 below. Tenant agrees to promptly cooperate with Landlord in providing Landlord all information regarding the nature of any such Capital Repairs.

SECTION 1.07. *Damage to Systems/Additional Tenant Obligations*. The first sentence of Section 5.B. of the Lease is hereby deleted.

In addition, Section 5.H. is hereby amended to read as follows:

Notwithstanding anything in the Lease to the contrary, but subject to Section 4.K.(3) of this Lease, Landlord

shall not be responsible for providing any security services or any service that Tenant has undertaken, or subsequently undertakes, to furnish in lieu of Landlord, and Tenant shall be responsible, at Tenant's sole cost, for the maintenance of any equipment and/or systems used to furnish such services.

SECTION 1.08. *Landlord's Insurance*. Section 8.E. of the Lease is hereby amended by adding the following at the end thereof:

Tenant shall reimburse Landlord for the cost of the insurance described in this subparagraph E within thirty (30) days following receipt of written demand therefor from Landlord. In the event Landlord is required to restore casualty damage to the Building pursuant to Section 9.B. of this Lease, Tenant shall be responsible for the cost of such repairs up to the amount of any commercially reasonable deductible maintained by Landlord under its *"All Risk"* policy. All policies of insurance maintained by Landlord hereunder shall name Tenant as an additional insured. Copies of Landlord's insurance policies or duly executed certificates of insurance (confirming the amount of any deductible) shall be promptly delivered to Tenant and renewals thereof as required shall be delivered to Tenant at least thirty (30) days prior to the expiration of the respective policy term. All policies or certificates of insurance delivered to Tenant must confirm that the insurer will give Tenant at least thirty (30) days' prior written notice of any cancellation, lapse or modification of such insurance.

SECTION 1.09. *Keys*. Section 11.C. of the Lease is hereby deleted in its entirety for all purposes.

SECTION 1.10. *Notices*. The facsimile number for Tenant's Facility Manager, as set forth in Section 23.B., is hereby replaced by the following:

(972) 894-4731

Landlord's address for notices under the Lease in Section 23.A. is hereby amended to be as follows:

CarrAmerica Realty L.P.
15950 North Dallas Parkway
Suite 300
Dallas, Texas 75248

SECTION 1.11. *Address of Building*. Section 36 of the Lease is hereby amended to read as follows:

Landlord shall cause the names of Building I and Building II to be changed to Nokia House 1 and Nokia House 2, respectively, and this Building shall be named Nokia House 3. Tenant shall have the right to re-name each of the Buildings from time to time during the term of the Lease with respect to same.

SECTION 1.12. *Right of First Refusal*. Section 43 of the Lease is hereby deleted in its entirety for all purposes and replaced with the following:

43. *First Offer on Sale.*

A. If at any time during the Term, Landlord desires to sell all or any portion of the Project, Landlord shall notify Tenant in writing (the *"Sale Notice"*) with a copy to Jack Fraker, Cushman & Wakefield of Texas, Inc., 5430 LBJ Freeway, Suite 1400, Dallas, Texas 75240, of the terms upon which Landlord is willing to sell such portion of the Project. Tenant shall thereupon have the prior right and option to purchase such portion of the Project (*"ROFO"*) at the price and on the terms and conditions stated in the Sale Notice. Nothing contained herein shall prohibit Landlord from having discussions with other prospective purchasers of such portion of the Project. Tenant may exercise the ROFO by giving Landlord written notice thereof (the *"Exercise Notice"*) within thirty (30) calendar days after the date of receipt by Tenant of the Sale Notice.

B. In the event Tenant effectively exercises its ROFO under Section 43.A. hereof, Tenant and Landlord shall, within twenty-one (21) days following Landlord's delivery to Tenant of an initial draft of a contract of sale (or such extended period as the parties may mutually agree upon), execute a contract of sale (the *"Tenant Contract"*) at the same price and upon the same terms and conditions as stated in the Sale Notice. Landlord and Tenant shall use diligent, good faith efforts to enter into the Tenant Contract (or such other contract of sale containing such other terms and provisions as the parties may mutually agree upon).

C. Should Tenant fail to deliver the Exercise Notice pursuant to Section 43.A. hereof, Tenant's ROFO shall be deemed waived (except as provided below), and Landlord shall thereafter be entitled to sell such portion of the Project to any third party upon the ROFO Terms (hereinafter defined). *"ROFO Terms"* shall mean terms no less favorable to Landlord than the terms and conditions contained in the Sale Notice, however, the purchase price may be up to five percent (5%) less than that set forth in the Sale Notice. If Landlord fails to sell such portion of the Project to a third party upon the ROFO Terms within eighteen (18) months following the deadline for giving the Exercise Notice, then Tenant's ROFO shall be reinstated.

D. Notwithstanding any other provision of this Section 43, Tenant's ROFO shall not apply to any of the following transactions: (i) any sale or transfer of all or any portion of the Project or any interest therein to any affiliate of the Landlord; (ii) any sale or transfer in connection with permanent or interim financing for the Project, including any sale/leaseback, joint venture or other similar arrangement; and (iii) the granting of any mortgage or other lien, or any conveyance with respect thereto by foreclosure, deed in lieu of foreclosure or the like. Any of the above mentioned transactions shall not terminate Tenant's ROFO, but such ROFO shall thereafter continue to bind the transferee.

E. Except as provided in subparagraph C. of this Section 43, Tenant's ROFO is not continuing in nature, and Landlord shall have no obligation to re-offer to Tenant.

F. Tenant's ROFO is expressly conditioned upon Tenant not being in default under this Lease or the leases for Buildings I and II beyond any applicable cure periods.

SECTION 1.13. *Maintenance of Project/Additional Rent*. Section 42 of the Lease is hereby deleted in its entirety and replaced with the following:

42. *MAINTENANCE OF THE PROJECT*. Landlord shall have no obligation to fund the entire Capital Reserve Amount by any date during the Term and any unused portion is non-refundable to Tenant. However, Landlord agrees that the Project shall be operated and

maintained in a first-class manner and condition during the Term and Landlord shall expend portions of the Capital Reserve Amount from time to time during the Term in order to comply with such obligations.

Section 45 of the Lease is hereby added and shall read as follows:

45. *ADDITIONAL RENT*. Commencing July 1, 2000, Tenant shall pay to Landlord as Additional Rent: (a) an annual sum equal to the product of $0.75 times the rentable square feet in the Premises for items such as warranty coordination, inspections, property management, salary reimbursement and the like, with one-twelfth ($^{1}/_{12}$th) of such amount to be payable monthly concurrent with the payment of Base Rent and (b) an annual sum equal to the product of $0.15 times the rentable square feet in the Premises (the *"Capital Reserve Amount"*) for Capital Repairs (as defined in Section 4.K.(3) of this Lease), with one-twelfth ($^{1}/_{12}$th) of such amount to be payable monthly concurrent with the payment of Base Rent. Notwithstanding anything in the Lease to the contrary, Landlord shall not be required to maintain any reserve accounts for such items.

SECTION 1.14. *"True-Up"*. Landlord and Tenant hereby agree that Landlord shall pay to Tenant $152,086 in full settlement of the reconciliation of the Operating Costs under the Lease for the period of January 1, 2000, through June 30, 2000. The parties acknowledge that all prior disputes regarding Operating Costs have been previously settled. Landlord and Tenant waive any right to further adjust Operating Costs for all periods prior to July 1, 2000. On or before November 30, 2000, Landlord and Tenant agree to make appropriate adjustments in the amounts owed to one another attributable to the period of July 1, 2000, through the date of this Amendment resulting from the amendments to the provisions of the Lease set forth in this Amendment. The parties agree that management fees, warranty coordination, administrative allocations and salaries shall be deemed to be $.75 per rentable square foot per annum for the period of July 1, 2000, through the date of this Amendment. Landlord and Tenant acknowledge that Landlord has entered into certain contracts for services to the Building which are not terminable until after the date hereof and agree that the costs associated therewith from and after the date hereof shall be borne by Tenant.

SECTION 1.15. *Certain Defined Terms*. All references contained in this Lease to "Operating Cost Share Rent," "Cap Amount," "Excess Operating Costs," "Base Operating Costs," "Controllable Operating Costs," "Non-Controllable Operating

Costs," "Electrical Cost Share Rent," "Operating Cost Report," "Operating Costs," and "Equitable Adjustment" shall be null and void and have no force or effect as of July 1, 2000.

SECTION 1.16. *Expansion Option*. Appendix G—Expansion Option attached to the Lease is hereby deleted for all purposes.

SECTION 1.17. *Further Amendments*. The Lease shall be and hereby is further amended wherever necessary, even though not specifically referred to herein, in order to give effect to the terms of this Amendment. If no effective date is specified in any particular section above, such section shall be deemed effective as of the date this Amendment is signed by both parties and delivered to the other.

**ARTICLE II**
**MISCELLANEOUS**

Section 2.01. *Ratification*. The Lease, as amended hereby, is hereby ratified, confirmed and deemed in full force and effect in accordance with its terms. Each party represents to the other that such party (a) is currently unaware of any default by the other party under the Lease; and (b) has full power and authority to execute and deliver this Amendment, and this Amendment represents a valid and binding obligation of such party enforceable in accordance with its terms.

Section 2.02. *Governing Law*. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

Section 2.03. *Counterparts*. This Amendment may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Amendment may be executed by facsimile, and each party has the right to rely upon a facsimile counterpart of this Amendment signed by the other party to the same extent as if such party had received an original counterpart.

Section 2.04. *Governing Document*. In the event the terms of the Lease conflict or are inconsistent with those of the Amendment, the terms of this Amendment shall govern and control.

[SEE FOLLOWING PAGE FOR SIGNATURES]

IN WITNESS WHEREOF, this Amendment has been executed as of (but not necessarily on) the date and year first above written.

*LANDLORD:*

CARRAMERICA REALTY L.P.,
a Delaware limited partnership

By: CARRAMERICA REALTY GP HOLDINGS, INC.,
its general partner

By: /s/ WILLIAM H. VANDERSTRAATEN
Name: William H. Vanderstraaten
Title: Managing Director, Dallas

*Tenant:*

NOKIA INC.,
a Delaware corporation

By: /s/ PENNY PARKER
Name: Penny Parker
Title: Secretary

**EXHIBIT 10.86**

**AGREEMENT OF SALE FOR THE KEYBANK PARSIPPANY BUILDING**

**AGREEMENT OF SALE**

AGREEMENT OF SALE (this "Agreement"), dated as of August 30, 2002, between **TWO GATEHALL ASSOCIATES, LLC**, a Delaware limited liability company ("Seller") and **WELLS OPERATING PARTNERSHIP, L.P.**, a Delaware limited partnership ("Purchaser").

**Preliminary Statement**

Seller is the owner of (a) certain lands located in the Township of Parsippany-Troy Hills, County of Morris, State of New Jersey, described by metes and bounds on *Exhibit A* annexed hereto (the *"Land"*), (b) a building (the *"Building"*), fixtures and other improvements presently located on the Land (the Building, fixtures and other improvements being collectively called the *"Improvements"*), (c) the equipment, machinery, tools, spare parts and supplies on the Land and in the Improvements used in connection with the operation or maintenance of the Building and identified on *Exhibit B* annexed hereto (the *"Personal Property"*), (d) all rights of Seller, as landlord, under the Leases (as hereinafter defined), (e) all easements, rights and appurtenances relating to the Land and the Improvements (the *"Rights"*) and (f) if and to the extent assignable by Seller, all right, title and interest of Seller, if any, in and to any intangible personal property relating to the Land and the Improvements, including all licenses, permits, plans, specifications, operating manuals, guarantees and warranties relating to the Land and the Improvements (the *"Intangible Property"*).

Seller desires to sell, convey, transfer and assign to Purchaser, and Purchaser desires to acquire from Seller, subject to the terms and conditions of this Agreement, the Land, the Improvements, the Personal Property, Seller's rights as landlord under the Leases, the Rights, the Intangible Property and certain other property herein described (all such property intended to be sold, conveyed, transferred or assigned by Seller to Purchaser being herein called the *"Property"*).

NOW, THEREFORE, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and

intending to be legally bound, the parties hereto agree as follows:

**ARTICLE 1**
**Definitions; Construction**

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

*"Acceptable Estoppel Certificate"* has the meaning specified in *Section 7.2(a).*

*"Actual Knowledge"* means the actual knowledge of Christopher F. Sameth, Kaleem Hazer, Jeffrey Kraijcek and John Buza and does not include constructive knowledge or the obligation to make inquiry.

*"Broker"* means CB Richard Ellis, Inc.

*"Business Day"* means any day other than a Saturday, Sunday or any day on which banks in the State of New Jersey or the State of Georgia are required or are authorized by law to be closed.

*"Cafeteria Agreement"* means an unwritten agreement between Seller and Cafeteria Operator pursuant to which Seller permits Cafeteria Operator to operate cafeteria facilities in the Building.

*"Cafeteria Operator"* means Dartcor Management Services.

*"Closing Date"* has the meaning specified in *Section 9.1*.

*"Code"* has the meaning specified in Section *12.2(a).*

*"Commission Agreements"* means, collectively, (1) that certain Brokerage Commission Agreement dated June 13, 2000 between Seller and TC Northeast Metro, Inc. relating to the KeyBank Lease, and (2) that certain Brokerage Commission

Agreement dated July 11, 2000 between Seller and CB Richard Ellis, Inc. relating to the Gemini Lease.

*"Commitment"* has the meaning specified in *Section 3.1(b)*.

*"DEP"* means the Department of Environmental Protection of the State of New Jersey.

*"Deposit"* means the amounts actually paid by Purchaser to the Escrow Agent pursuant to clauses (a) and (b) of *Section 2.3*.

*"Due Diligence Period"* means a period commencing on the date of this Agreement and ending at 5:00 p.m. (Eastern time) on the fifteenth (15th) calendar day after the date of this Agreement or, if such fifteenth (15) calendar day is not a Business Day, on the first (1st) Business Day occurring thereafter.

*"Easement Agreement"* means that certain Easement and Maintenance Agreement dated May 8, 1986 between Michael S. Carver and The Aetna Casualty and Surety Company recorded in the Morris County Clerk's office in Deed Book 2858, Page 684 *et seq*., as amended by First Amendment to Easement and Maintenance Agreement dated September 19, 1996 recorded in the Morris County Clerk's office in Deed Book 4446, Page 52.

*"Escrow Agent"* means Stewart Title Guaranty Company, or any substitute escrow agent appointed hereunder.

*"Estimated Correction Costs"* defined in *Section 4.1*.

*"Final Apportionment Report"* has the meaning specified in *Section 10.5(a)*.

*"Gemini Lease"* means that certain Lease Agreement dated July 6, 2000 between Seller, as landlord, and Gemini Technology Services, Inc. (successor by assignment to the original tenant named therein, Exodus Communications, Inc.), as

tenant, relating to certain space in the Building, as clarified by that certain letter dated April 30, 2001 from Seller to Exodus Communications, Inc. relating to operation of generators, and as amended by that certain First Amendment to Lease Agreement dated January 17, 2002 between Seller, Exodus Communications, Inc. and Gemini Technology Services, Inc.

*"Hazardous Substance"* means any substance, chemical or waste that is listed as hazardous, toxic or dangerous under any applicable federal, state, county or local statute, rule, regulation, ordinance or order.

*"Improvements"* has the meaning specified in the Preliminary Statement.

*"Intangible Property"* has the meaning specified in the Preliminary Statement.

*"KeyBank Lease"* means that certain Agreement of Lease dated May, 2000 between Seller, as landlord, and KeyBank USA National Association, as tenant, relating to certain space in the Building, as amended by that that certain First Amendment of Lease dated February 20, 2001 by and between Seller and KeyBank USA National Association.

*"KeyBank Guaranty"* means that certain Guarantee of Lease dated May 26, 2000 between Seller, as lessor, and Keycorp, as guarantor, relating to the KeyBank Lease.

*"Land"* has the meaning specified in the Preliminary Statement.

*"Lease"* means the Gemini Lease or the KeyBank Lease, as the context of the applicable provision of this Agreement indicates.

*"Leases"* mean, collectively, the Gemini Lease and the KeyBank Lease.

*"Legal Requirements"* means all laws, statutes, codes, ordinances, orders, regulations and

requirements of all federal, state, county and municipal governments, departments, boards, authorities, agencies, officials and officers.

*"Material Abatement"* has the meaning specified in *Section 8.1*.

*"Material Environmental Defect"* means the existence of a Hazardous Substance on the Land or in the Improvements requiring remediation under applicable Legal Requirements which neither of the tenants is required to perform under the Leases.

*"Material Matter"* has the meaning specified in *Section 7.2(a)*.

*"Material Respect"* has the meaning specified in *Section 5.2(a)*.

*"Material Zoning Defect"* means any violation of a zoning ordinance relating to the Property which neither of the Tenants is required to correct under the Leases and which, in Purchaser's good faith determination, (i) could result in the discontinuation of the current use of all or any material part of the Property under applicable Legal Requirements, or (ii) could result in a requirement under applicable Legal Requirements that alterations or improvements be made to the Property.

*"Owner's Title Policy"* has the meaning specified in *Section 3.1(b)*.

*"Permitted Exceptions"* has the meaning specified in *Section 3.1(a)*.

*"Personal Property"* has the meaning specified in the Preliminary Statement.

*"Property"* has the meaning specified in the Preliminary Statement.

*"Property Documents"* has the meaning specified in *Section 4.4*.

*"Purchase Price"* has the meaning specified in *Section 2.2*.

*"Purchaser"* has the meaning specified in the introductory paragraph of this Agreement and includes any permitted assignee of the vendee's right, title and interest under this Agreement.

*"Purchaser's Statement"* has the meaning specified in *Section 3.3*.

*"Replacement Cafeteria Agreement"* has the meaning specified in *Section 7.3*.

*"Rights"* has the meaning specified in the Preliminary Statement.

*"Security Documents"* means any mortgages, deeds of trust, security interests, UCC-1 Financing Statements, assignments of leases or similar instruments or assignments given as security for indebtedness, in each case, created by the voluntary act of Seller and any mechanic's or materialman's liens arising out of any failure or alleged failure by Seller to pay any amounts due to a contractor or material supplier under a contract to which Seller is a party (not including any mechanic's or materialman's liens which arise out of acts of tenants).

*"Seller"* has the meaning specified in the introductory paragraph of this Agreement.

*"Seller's Response"* has the meaning specified in *Section 3.3*.

*"Seller Transferee"* has the meaning specified in *Section 12.2(a)*.

*"Service Contracts"* mean the contracts specified in *Exhibit D* annexed hereto.

*"SNDA"* has the meaning specified in *Section 7.2(e)*.

*"Taking"* means any proceedings or negotiations instituted which do or may result in a taking by

condemnation or eminent domain of the Property or any portion thereof.

*"Tenants"* mean, collectively, KeyBank USA National Association and Gemini Technology Services, Inc. and their respective successors and assigns.

*"Termination Notice"* defined in *Section 4.1*.

*"Title Insurance Commitment"* has the meaning specified in *Section 3.3*.

*"Title Insurer"* means Stewart Title Guaranty Company, through its agent Cobe Title Agency, LLC, having an address at 140 Mountain Avenue, Suite 101, Springfield, New Jersey 07081.

1.2 *Drafting Ambiguities; Interpretation*. In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Agreement, each party recognizing that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same. Unless otherwise specified (a) whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular, (b) the words "consent" or "approve" or words of similar import, shall mean the prior written consent or approval of Seller or Purchaser, (c) the words "include" and "including" or words of similar import, shall be deemed to be followed by the words "without limitation" and (d) the Exhibits to this Agreement are incorporated herein by reference.

## ARTICLE 2
## SALE OF PROPERTY; PURCHASE PRICE; PAYMENT TERMS

2.1 *Sale of Property*. Seller hereby agrees to sell, convey, transfer and assign to Purchaser, and Purchaser hereby agrees to purchase and acquire from Seller, the Property upon the terms and conditions herein contained.

2.2 *Purchase Price*. The aggregate purchase price for the Property is ONE HUNDRED-ONE MILLION THREE HUNDRED

FIFTY THOUSAND DOLLARS ($101,350,000.00) (the *"Purchase Price"*).

2.3 *Payment Terms.* The Purchase Price shall be payable as follows:

(a) within (2) Business Days after the date of this Agreement, the sum of $1,000,000.00 shall be paid by Purchaser by wire transfer to Escrow Agent;

(b) prior to the expiration of the Due Diligence Period, if Purchaser does not terminate this Agreement, an additional sum of $1,000,000.00 shall be paid by Purchaser by wire transfer to Escrow Agent; and

(c) upon closing of title, the balance of the Purchase Price, plus or minus any net closing adjustments, shall be paid by wire transfers of immediately available funds to Seller or its designees.

2.4 *Terms of Escrow.*

(a) The Deposit shall be held by Escrow Agent in escrow in an interest bearing account with Fleet National Bank. Any interest accrued on the Deposit shall be paid to whichever party is entitled to the Deposit in accordance with the provisions of this Agreement, except that if the closing of title occurs, interest on the Deposit shall be paid to Purchaser on the Closing Date. The Deposit shall be held and disbursed by Escrow Agent in the following manner:

(i) to Seller upon consummation of the closing; or

(ii) to Seller upon receipt of written demand therefor, stating that either (x) this Agreement has been terminated pursuant to a provision herein which states that Seller is entitled to the Deposit upon termination, and certifying the basis for such termination or (y) Purchaser has

defaulted in the performance of Purchaser's obligations under this Agreement and the facts and circumstances underlying such default; provided, however, that Escrow Agent shall not honor such demand until at least five (5) days after it has sent a copy of such demand to Purchaser, nor thereafter if Escrow Agent shall have received written notice of objection from Purchaser in accordance with the provisions of clause (b) of this *Section 2.4*; or

(iii) to Purchaser upon receipt of written demand therefor, stating that either (x) this Agreement has been terminated pursuant to a provision hereof which states that Purchaser is entitled to the Deposit upon termination, and certifying the basis for such termination, or (y) Seller has defaulted in performance of Seller's obligations under this Agreement and the facts and circumstances underlying such default; provided, however, that, Escrow Agent shall not honor such demand until at least five (5) days after it has sent a copy of such demand to Seller, nor thereafter if Escrow Agent shall have received written notice of objection from Seller in accordance with the provisions of clause (b) of this *Section 2.4*.

(b) Upon receipt of written demand for the Deposit by Purchaser or Seller pursuant to clauses (ii) or (iii) of *Section 2.4(a)*, Escrow Agent shall promptly send a copy thereof to the other party. The other party shall have the right to object to the delivery of the Deposit by sending written notice of such objection to Escrow Agent within the greater of five (5) days or three (3) Business Days after Escrow Agent delivers a copy of the written demand to the objecting party but not thereafter. Such notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of such notice, Escrow Agent shall promptly send a copy

thereof to the party who made the written demand.

(c) In the event of any dispute between the parties regarding the Deposit, Escrow Agent, at its option, may disregard all instructions received and either (i) hold the Deposit until the dispute is mutually resolved and Escrow Agent is advised of this fact in writing by both Seller and Purchaser, or Escrow Agent is otherwise instructed by a final unappealable judgment of a court of competent jurisdiction, or (ii) deposit the Deposit with a court of competent jurisdiction (whereupon Escrow Agent shall be released and relieved of any and all liability and obligations hereunder from and after the date of such deposit).

(d) In the event Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive conflicting instructions, claims or demands from the parties hereto, or instructions which conflict with any of the provisions of this Agreement, Escrow Agent shall be entitled (but not obligated) to refrain from taking any action other than to keep safely the Deposit until Escrow Agent shall be instructed otherwise in writing signed by both Seller and Purchaser, or by final judgment of a court of competent jurisdiction.

(e) Escrow Agent may rely upon, and shall be protected in acting or refraining from acting upon, any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties, provided that any modification of this Agreement shall be signed by Escrow Agent, Purchaser and Seller.

(f) Seller and Purchaser shall jointly and severally hold Escrow Agent harmless against any loss, damage, liability or expense incurred by Escrow Agent not caused by its willful misconduct or gross negligence arising out of or in connection with its entering into this Agreement and the carrying out of its duties

hereunder, including the reasonable costs and expenses of defending itself against any claim of liability or participating in any legal proceeding. Purchaser and Seller acknowledge that the amount of the Deposit to be deposited by Escrow Agent with Fleet National Bank exceeds the amount which is insured under applicable law. Purchaser and Seller shall hold Escrow Agent harmless from and against the loss of all or part of the Deposit by Fleet National Bank, provided such loss does not arise out of the gross negligence or willful misconduct of Escrow Agent.

(g) Escrow Agent may resign at will and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect; provided, however, that (i) prior to such resignation a substitute escrow agent is approved in writing by Seller and Purchaser, which approval shall not be unreasonably withheld or delayed, or (ii) Escrow Agent shall deposit the Deposit with a court of competent jurisdiction. After such resignation, Escrow Agent shall have no further duties or liability hereunder.

(h) Purchaser and Seller, jointly, shall have the right to terminate the appointment of Escrow Agent hereunder by giving to it notice of such termination, specifying the date upon which such termination shall take effect and designating a replacement Escrow Agent, who shall sign a counterpart of this Agreement. Upon demand of such successor Escrow Agent, the Deposit shall be turned over and delivered to such successor Escrow Agent, who shall thereupon be bound by all of the provisions hereof.

(i) Seller and Purchaser shall share equally the responsibility for reimbursement to Escrow Agent of all out of pocket expenses, disbursements and advances (including reasonable attorneys fees) incurred or made by Escrow Agent in connection with the carrying out of its duties hereunder.

(j) Escrow Agent's agreements and obligations hereunder shall terminate and Escrow Agent shall be discharged from further duties and obligations hereunder upon final payment of the Deposit in accordance with the terms of this Agreement.

The provisions of this *Section 2.4* shall survive the termination of this Agreement.

2.5 *Federal Tax Identification Number*. Purchaser represents that its federal tax identification number is 58-2368838. Purchaser acknowledges and agrees that Purchaser's tax identification number shall be used on the account into which the Deposit is placed. Upon request from Escrow Agent, Purchaser shall furnish Escrow Agent with an executed W-9 Form. The party that actually receives the interest on the Deposit shall pay any income taxes thereon.

## ARTICLE 3
## TITLE TO PROPERTY

3.1 *Title to Land and Improvements*. (a) Title to the Land and Improvements shall be insurable at regular rates by Title Insurer, subject to (a) the exceptions listed on *Exhibit C* annexed hereto, (b) those exceptions to which Purchaser does not object pursuant to *Section 3.3*, (c) all matters that arise out of actions of Purchaser or its agents, representatives or contractors, (d) the Title Insurer's standard coverage exclusions contained in the policy jacket of the insurance policy, and (e) liens for real estate taxes not due and payable (collectively the *"Permitted Exceptions"*).

(b) (i) At the closing of title, the Title Insurer shall issue to Purchaser, at Purchaser's sole cost and expense, either (x) an ALTA Owner's Form (1992 or later) title insurance policy (which may be a Proforma policy) in the amount of the Purchase Price, with reinsurance or coinsurance from companies and in amounts reasonably determined by Purchaser, and insuring that valid fee simple title in the Land and the Improvements is vested in Purchaser, subject only to the Permitted Exceptions (the *"Owner's Title Policy"*), or (y) an irrevocable written

commitment to issue the Owner's Title Policy (the "Commitment"). Purchaser shall pay the premium and other amounts due to the Title Insurer in connection with the Owner's Title Policy on or before the Closing Date. Purchaser shall be entitled to request that the Title Insurer provide, at Purchaser's sole cost and expense, such endorsements or amendments to the Owner's Title Policy as Purchaser may reasonably require, provided that (x) such endorsements or amendments shall be at no cost or additional liability to Seller, (y) Purchaser's obligations under this Agreement shall not be conditioned upon Purchaser's ability to obtain such endorsements or amendments and, if Purchaser is unable to obtain such endorsements or amendments, Purchaser shall nevertheless be obligated to close the transaction contemplated by this Agreement without any reduction of or set off against the Purchase Price, and (z) the Closing Date shall not be delayed as a result of Purchaser's request.

(ii) If, as of the Closing Date (as same may be extended pursuant to this *Section 3.1(b)*), the Title Insurer fails to issue the Owner's Title Policy or the Commitment in accordance with the provisions hereof, then Purchaser and Seller shall each have the right to terminate this Agreement at any time thereafter (but prior to the closing of title) by notice given to the other party whereupon the Deposit shall be returned to Purchaser and, except as expressly set forth herein, this Agreement and all rights and obligations of the respective parties hereunder shall be null and void; provided, however, Seller shall not have the right to terminate this Agreement pursuant to this *Section 3.1(b)* if Purchaser had previously irrevocably waived in writing receipt of the Owner's Title Policy or the Commitment as a condition to its obligation to close title hereunder. Notwithstanding the foregoing, if the Title Insurer's failure to issue the Owner's Title Policy or the Commitment on the Closing Date is the result of a default by either party of its obligations under this Agreement, then (x) the defaulting party shall not have the right to terminate this Agreement pursuant to this *Section 3.1(b)*, and (y) the non-defaulting party may exercise its rights and remedies under *Article 11* hereof.

(iii) If the Title Insurer fails to issue the Owner's Title Policy or the Commitment on the Closing Date in accordance with the provisions hereof, then Seller and Purchaser shall each have the right by notice given to the other party to adjourn the Closing Date one time for up

to two (2) Business Days, except that if the Title Insurer's failure to issue the Owner's Title Policy or the Commitment is a result of a default by either party of its obligations expressly set forth herein, then such defaulting party shall have no right to adjourn the Closing Date pursuant to this *Section 3.1(b)*.

3.2 *Title to Other Property*. Title to the Personal Property and all other property intended to be conveyed or assigned hereunder to Purchaser shall be good and valid, subject to no encumbrances or security interests, except Permitted Exceptions.

3.3 *Title Defects*. Purchaser shall furnish to Seller within the Due Diligence Period a copy of a title commitment with respect to the Property prepared by the Title Insurer (the *"Title Insurance Commitment"*), together with a statement specifying any objections to title which are not Permitted Exceptions (*"Purchaser's Statement"*), it being understood that Purchaser shall have no right to object to Permitted Exceptions. Seller shall have no obligation to remove any such objections except that on or before the Closing Date Seller shall cause to be removed any Security Documents. Seller shall notify Purchaser within three (3) Business Days after Seller's receipt of Purchaser's Statement whether Seller will remove on or before the Closing Date any such objections which are not Security Documents (*"Seller's Response"*). If Seller does not advise Purchaser that such defects will be removed, Purchaser's sole right shall be to either (a) waive the defect and close title without abatement or reduction of the Purchase Price or (b) terminate this Agreement, in either case upon notice to Seller given within three (3) Business Days after Purchaser receives Seller's Response indicating that such defects will not be removed. If Purchaser fails to elect to terminate this Agreement by notice given to Seller within said three (3) Business Day period, then Purchaser shall be conclusively deemed to have elected to waive the defects and close title in accordance with clause (a) of the preceding sentence. If Purchaser elects to terminate this Agreement by notice given to Seller within such three (3) Business Day period, the Deposit shall be returned to Purchaser, and upon such return, except as expressly provided herein, this Agreement and all rights and obligations of the respective parties hereunder shall be null and void.

3.4 *Right to Pay Off Monetary Encumbrances*. Seller shall have the right to pay off any monetary encumbrances against the Property on the Closing Date out of the cash then payable provided, in the case of encumbrances held by institutional lenders, Seller shall deliver a pay off letter at the closing and, based thereon, the Title Insurer agrees to remove such encumbrance from the title policy issued to Purchaser and, in the case of encumbrances held by non-institutional lenders, recordable instruments of release or discharge of such encumbrances in form and substance satisfactory to the Title Insurer are then delivered to Purchaser.

**ARTICLE 4**
**Termination Rights**

4.1 *Due Diligence Period Termination*. Purchaser acknowledges and agrees that prior to the date of this Agreement, Purchaser has been permitted access to the Land and Improvements and has performed all such inspections, investigations and analyses of the Property as Purchaser deems necessary, except that Purchaser has not yet completed its inspections of the environmental condition of the Property and has not yet completed its analyses of zoning requirements relating to the Property. Subject to the provisions of *Section 4.3*, Purchaser, its agents, employees and consultants, shall have the right, during the Due Diligence Period, to inspect the environmental condition of the Property and to examine zoning requirements as they relate to the Property. If Purchaser, in good faith, determines that there is a Material Environmental Defect or a Material Zoning Defect, then, subject to the provisions of this *Section 4.1*, Purchaser may terminate this Agreement on notice to Seller given within the Due Diligence Period accompanied by a detailed statement disclosing the basis upon which Purchaser determined that a Material Environmental Defect or a Material Zoning Defect exists (the *"Termination Notice"*). The Termination Notice shall also specify whether, in Purchaser's good faith determination, all Material Environmental Defects and Material Zoning Defects set forth in the Termination Notice can be corrected at a cost of less than $1,000,000.00 in the aggregate, and, if Purchaser concludes that they may be corrected at a cost of less than $1,000,000.00, the Termination Notice shall also specify Purchaser's good faith estimate of the aggregate reasonable

costs to correct the Material Environmental Defects and the Material Zoning Defects (the *"Estimated Correction Costs"*). If the Termination Notice specifies that all Material Environmental Defects and Material Zoning Defects cannot be corrected for a cost of less than $1,000,000.00, then this Agreement shall terminate as of the date of the giving of the Termination Notice. Upon such termination, the Deposit shall be returned to Purchaser, and, except as expressly provided herein, this Agreement and all rights and obligations of the respective parties hereunder shall be null and void. If the Termination Notice states that all Material Environmental Defects and Material Zoning Defects can be corrected for a cost of less than $1,000,000.00, Seller shall have the right, but not the obligation, by notice given to Purchaser within five (5) Business Days after receiving any such Termination Notice, to elect to allow a credit against the Purchase Price at the closing in an amount equal to the Estimated Correction Costs as set forth in the Termination Notice. If Seller gives such notice, then Purchaser's election to terminate this Agreement under this *Section 4.1* shall be deemed void, this Agreement shall remain in full force and effect and, on the Closing Date, Purchaser shall be entitled to a credit against the Purchase Price in an amount equal to the Estimated Correction Costs set forth in Purchaser's Termination Notice. If Seller fails to give any such notice electing to allow a credit against the Purchase Price within such five (5) Business Day Period, then Seller shall be deemed to have elected not to allow any credit against the Purchase Price and this Agreement shall automatically terminate on the sixth (6th) Business Day after Seller's receipt of the Termination Notice. Upon such termination, the Deposit shall be returned to Purchaser, and, except as expressly provided herein, this Agreement and all rights and obligations of the respective parties hereunder shall be null and void. If Purchaser does not elect to terminate this Agreement pursuant to this *Section 4.1* by notice given within the Due Diligence Period, Purchaser shall conclusively be deemed to have waived its right of termination under this *Section 4.1*.

4.2 *Hazardous Substances*. In the event that after the Due Diligence Period but prior to the Closing Date there occurs a spill, discharge, release, deposit or emplacement of any Hazardous Substance on the Property which results in contamination of the Property beyond permitted governmental tolerances for non-residential property, either party shall have the right to terminate this Agreement upon notice to the other; provided however, that Seller may not terminate this

Agreement and any purported termination by Seller shall be ineffective if Purchaser agrees to close title in accordance with the provisions of this Agreement (without any credit against or reduction of the Purchase Price), to pay all remediation costs and indemnify and hold Seller harmless in connection with remediation costs (but not claims asserted by third parties, unless such claims are asserted on the ground that Purchaser did not undertake or complete remediation in accordance with applicable Legal Requirements). In the event Purchaser, its agents, servants or contractors, causes the spill, discharge, release, deposit or emplacement of any Hazardous Substance on the Property, Purchaser shall not have the right to terminate this Agreement. In such event, Purchaser shall perform all remedial activity at its sole cost and expense, and there shall be no adjournment of the Closing Date. In the event this Agreement is terminated by either party pursuant to this *Section 4.2*, the Deposit shall be returned to Purchaser, whereupon, except as provided herein, this Agreement and all rights and obligations of the parties hereunder shall be null and void.

4.3 *Right of Entry*. Subject to the rights of Tenants under the Leases and to the provisions hereof, Purchaser and its agents, employees and consultants shall have access to the Land and Improvements from time to time, upon reasonable notice, prior to the expiration of the Due Diligence Period for the purpose of undertaking inspections, tests and studies with respect to the environmental condition thereof and for the purpose of examining zoning compliance issues relating to the Property, provided, however, Purchaser shall not conduct any intrusive testing without Seller's prior written consent, which consent will not be unreasonably withheld. After the expiration of the Due Diligence Period, Purchaser and its agents, employees and consultants shall continue to have access to the Property from time to time upon reasonable prior notice, subject to the rights of Tenants, for the limited purpose of visual inspections, it being understood that no testing or other investigations shall be conducted after the expiration of the Due Diligence Period. In connection with any entry by Purchaser or its agents, employees or consultants, Purchaser shall (a) promptly repair any damage to the Property caused by such entry, (b) not interfere with the rights of the Tenants and any subtenants, and (c) comply with all applicable Legal Requirements. Purchaser shall hold and save Seller harmless from and against any and all loss, cost, damage, injury or expense arising out of or in any way

related to the acts or omissions of Purchaser, its agents, employees and consultants, relating to any such entry, provided that Purchaser shall not be liable for the discovery of any preexisting condition. Prior to entering the Property, Purchaser shall furnish to Seller evidence that Purchaser has procured, or has caused to be procured, comprehensive general liability insurance from an insurer authorized to do business in the State of New Jersey, which is reasonably acceptable to Seller, insuring Seller against claims for bodily injury, death or damage to property in single limit amount of not less than $3,000,000, naming Seller as an additional insured. The indemnification provision contained in this *Section 4.3* shall survive the termination of this Agreement and the closing of title.

4.4 *Availability of Documents and Inquiries*. Prior to the date of this Agreement, Seller furnished Purchaser with a copy of all plans, specifications (including as built plans), engineering data, drawings, soils investigation reports, environmental reports and other consultant's reports relating to the Property (collectively, *"Property Documents"*) in Seller's possession, except for certain plans and specifications which Seller stores in the Building, which Purchaser has had access to prior to the date of this Agreement. Without limiting the provisions of *Section 5.3*, Purchaser acknowledges and agrees that Seller makes no representation or warranty as to the accuracy of any of the Property Documents.

4.5 *Purchaser Communications*. Purchaser shall not communicate with or contact any tenants of the Property or any local municipalities or governmental authorities regarding the Property unless accompanied by a representative of Seller. Seller agrees to make a representative of Seller available for such purpose upon reasonable prior notice of request therefor from Purchaser.

4.6 *Documents to be Delivered on Termination*. In the event this Agreement is terminated for any reason, except the default of Seller, Purchaser shall deliver to Seller, within ten (10) days after such termination, copies of all reports, studies, data, surveys, title reports, concept plans, site plans and specifications in Purchaser's possession or under its control with respect to the Property (excluding Purchaser's internal work product) and shall assign to Seller all of Purchaser's right, title and interest therein, without

warranty as to title or as to the accuracy or completeness thereof.

**ARTICLE 5**
**REPRESENTATIONS AND WARRANTIES OF SELLER**

5.1 *Representations and Warranties.* As an inducement to Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser that:

(a) Seller is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is in good standing, is qualified to conduct business in New Jersey, has the power and authority to enter into this Agreement and to consummate the transactions herein contemplated, and the execution and delivery hereof and the performance by Seller of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Seller is a party or by which Seller or the Property is bound;

(b) the execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby in the manner contemplated herein will not violate any provision of law, statute, rule or regulation to which Seller or the Property is subject or violate any judgment, order, writ, injunction or decree of any court applicable to Seller or the Property;

(c) all proceedings required to be taken by or on behalf of Seller to authorize it to make, deliver and carry out the terms of this Agreement have been or will be duly and properly taken and this Agreement is the legal, valid and binding obligation of Seller enforceable in accordance with its terms;

(d) no consent, authorization, license, permit, registration, approval or exemption is required to be obtained by Seller in connection with the execution and delivery of this Agreement or the

performance by Seller of its obligations hereunder;

(e) Seller has furnished to Purchaser true and complete copies of the Leases; the Leases are the only leases currently affecting or relating to the Land and the Improvements other than the Cafeteria Agreement; neither of the Tenants has prepaid any rent under the Leases more than one month in advance; all allowances or inducement payments payable by the landlord under the Leases with respect to the current term of each of the Leases have been paid; no guarantor of a Tenant's obligations under the Leases has been discharged of its obligations by Seller; the Leases have not been modified or amended by Seller, except as set forth in the documents listed as part of the definition of "Leases" herein; the Leases are in effect; and to the Actual Knowledge of Seller, (i) neither of the Tenants is in material default under the Leases, and (ii) neither of the Tenants has asserted in writing that Seller is in material default under the Leases;

(f) there are no brokerage commission agreements between Seller and any broker in connection with the Leases or the Property other than the Commission Agreements and an agreement with Broker relating to the sale of the Property; the commissions payable under the Commission Agreements with respect to the current term of each of the Leases have been paid in full;

(g) except for the Leases and the Cafeteria Agreement, Seller has not entered into any lease, license or other agreement giving any party the right to occupy the Property;

(h) there are no proceedings at law or in equity (including proceedings contesting any tax or assessment) before any court, grand jury, administrative agency or other investigative agency, bureau or instrumentality of any kind pending or, to the Actual Knowledge of Seller, threatened, against or affecting Seller or the

Property that (i) involve the validity or enforceability of this Agreement or any other instrument or document to be delivered by Seller pursuant hereto, (ii) enjoin or prevent or threaten to enjoin or prevent the performance of Seller's obligations hereunder or (iii) relate specifically to the Property or the title thereto;

(i) Seller is not a "foreign person" under the Foreign Investment in Real Property Tax Act of 1980 (*"FIRPTA"*) and upon consummation of the transaction contemplated hereby, Purchaser will not be required to withhold from the Purchase Price any withholding tax;

(j) the Service Contracts will not be binding on Purchaser or the Property after the closing of title;

(k) except as set forth in any of the Property Documents which Seller has delivered to Purchaser, Seller has not received written notice of a violation of any Legal Requirement relating to the Property which remains uncorrected;

(l) except as set forth in any of the Property Documents which Seller has delivered to Purchaser, (1) Seller has no Actual Knowledge that any portions of the Property contain Hazardous Substances requiring remediation under applicable Legal Requirements, and (2) Seller has no Actual Knowledge that any underground fuel storage tanks are, or were formerly, located at the Property.

(m) Seller has received no written notice of any condemnation or eminent domain proceeding against the Property or any part thereof;

(n) Seller has received no written notice from any insurance company specifying defects or inadequacies in the Property which must be corrected;

(o) no petition has been filed by, or to Seller's Actual Knowledge against, Seller or any managing member of Seller under the Federal Bankruptcy Code or any similar law or statute;

(p) the Property is not subject to any roll back taxes under the Farmland Assessment Act of 1964, *N.J.S.A.* 54:4-23.1 *et seq.*;

(q) the individuals listed within the definition of "Actual Knowledge" herein are the Seller representatives who are primarily responsible for the operation and management of the Property on Seller's behalf; and

(r) the term of the Cafeteria Agreement is month-to-month; the current fixed monthly rental paid by Cafeteria Operator under the Cafeteria Agreement is zero dollars ($0); Seller has no obligation to alter or improve any portion of the Building pursuant to the Cafeteria Agreement; and Seller has no obligation to pay any amounts to Cafeteria Operator under the Cafeteria Agreement.

5.2 *Changes in Representations and Warranties.* (a) If, before the closing, Purchaser acquires knowledge that any representation or warranty set forth in *Section 5.1* is inaccurate in any Material Respect, Purchaser shall within five (5) days after acquiring such knowledge (but in any event prior to the closing) give Seller notice of the inaccuracy, together with a description of the basis therefor. A representation or warranty made by Seller shall be deemed to be inaccurate in a *"Material Respect"* if, and only if, such inaccuracy, and/or facts and circumstances giving rise to such inaccuracy, together with any other inaccurate representation or warranty made by Seller hereunder and/or the facts and circumstances giving rise to such other inaccuracy, results in a diminution in the value of the Property that exceeds $25,000.00 in the aggregate or would otherwise materially and adversely affect the use or operation of the Property.

(b) Upon receiving notice from Purchaser under *Section 5.2(a)* that a representation or warranty is inaccurate in any Material Respect, or if Seller otherwise obtains Actual Knowledge that a representation or warranty

contained in *Section 5.1* is inaccurate in any Material Respect, Seller shall have the right to cure such condition before the closing, and, except as provided in this *Section 5.2(b)*, the existence of such condition shall not be a ground for Purchaser terminating this Agreement. Upon receiving any such notice from Purchaser under *Section 5.2(a)*, or if Seller otherwise obtains Actual Knowledge that a representation or warranty contained in *Section 5.1* is inaccurate in any Material Respect, Seller shall promptly notify Purchaser whether Seller will be able or is willing to cure such condition prior to the Closing Date (as same may be extended pursuant to the provisions of this *Section 5.2(b)*). If Seller notifies Purchaser that Seller will cure the condition, then, at Seller's election, the Closing Date may be extended for a period of time reasonably necessary for Seller, acting with due diligence, to cure the condition, but in no event shall the Closing Date be extended for more than thirty (30) days. If Seller is unable or unwilling to cure any such representation or warranty which is inaccurate in any Material Respect, Purchaser's exclusive remedy shall be to either (i) waive the representation and warranty to the extent that it is inaccurate and all rights and remedies relating thereto and close title without any abatement of Purchase Price, or (ii) terminate this Agreement. Purchaser shall give Seller notice of its election under clause (i) or clause (ii) of the preceding sentence within three (3) Business Days after Seller notifies Purchaser that Seller will be unable or is unwilling to cure the condition. If Purchaser fails to terminate this Agreement by notice given to Seller within such three (3) Business Day period, Purchaser shall be conclusively deemed to have elected to waive the representation and warranty to the extent that it is inaccurate and the rights and remedies relating thereto and to close title pursuant to clause (i) of the preceding sentence. In the event this Agreement is terminated pursuant to this *Section 5.2(b)*, the Deposit shall be refunded to Purchaser, whereupon, except as provided herein, this Agreement and all rights and obligations of the parties hereunder shall be null and void.

(c) (i) If any representation or warranty set forth in *Section 5.1* is inaccurate, but is not inaccurate in any Material Respect, Purchaser shall automatically be deemed to waive such representation and warranty to the extent that it is inaccurate and any and all rights and remedies relating thereto and shall be obligated to close title in accordance

with the provisions hereof without abatement of Purchase Price.

(ii) If Purchaser waives, or is deemed to have waived, any representation or warranty pursuant to this *Section 5.2*, then such representation or warranty, to the extent that it is inaccurate, shall automatically be deemed deleted from this Agreement and Seller shall have no liability, either prior to or after the closing, for the misrepresentation or breach of warranty.

5.3 *Limitation on Seller's Representations, Warranties, Covenants and Agreements*. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER SELLER, NOR ANY AGENT OR REPRESENTATIVE OF SELLER HAS MADE, AND SELLER IS NOT LIABLE OR RESPONSIBLE FOR OR BOUND IN ANY MANNER BY, ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS, OBLIGATIONS, GUARANTEES, STATEMENTS, INFORMATION OR INDUCEMENTS PERTAINING TO THE PROPERTY OR ANY PART THEREOF, TITLE TO THE PROPERTY, THE PHYSICAL CONDITION THEREOF, THE FITNESS AND QUALITY THEREOF, THE VALUE AND PROFITABILITY THEREOF, OR ANY OTHER MATTER OR THING WHATSOEVER WITH RESPECT THERETO. WITHOUT LIMITING THE FOREGOING, PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER SELLER NOR ANY MEMBER, EMPLOYEE, AGENT OR REPRESENTATIVE OF SELLER IS LIABLE OR RESPONSIBLE FOR OR BOUND IN ANY MANNER BY (AND PURCHASER HAS NOT RELIED UPON) ANY VERBAL OR WRITTEN OR IMPLIED REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS, OBLIGATIONS, GUARANTEES, STATEMENTS, INFORMATION OR INDUCEMENTS PERTAINING TO THE PROPERTY OR ANY PART THEREOF, AND ANY OTHER INFORMATION RESPECTING SAME FURNISHED BY OR OBTAINED FROM SELLER OR ANY AGENT OR REPRESENTATIVE OF SELLER. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, PURCHASER IS PURCHASING THE PROPERTY IN ITS "AS IS" CONDITION AT THE DATE HEREOF, REASONABLE WEAR AND TEAR FROM THE DATE HEREOF UNTIL THE CLOSING EXCEPTED.

5.4 *Survival of Seller's Representations and Warranties*. The representations and warranties contained in *Section 5.1* are true and accurate as of the date hereof and, except for any representations and warranties which are waived or deemed waived pursuant to *Section 5.2*, shall be deemed to be repeated and shall be true and accurate as of the Closing Date. Subject to the provisions of *Section 5.2*, the representations and warranties in *Section 5.1* shall

survive the closing for a period of one (1) year from the Closing Date and no action or proceeding thereon shall be commenced, at law or in equity, if a legal proceeding is not commenced within such time.

**ARTICLE 6**
**REPRESENTATIONS AND WARRANTIES OF PURCHASER**

6.1 *Representations and Warranties*. As an inducement to Seller to enter into this Agreement, Purchaser represents and warrants that:

(a) Purchaser is a limited partnership duly organized and validly existing under the laws of the State of Delaware, is in good standing, has the power and authority to enter into this Agreement and to consummate the transactions herein contemplated and the execution and delivery hereof and the performance by Purchaser of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Purchaser is a party or by which it is bound;

(b) the execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby in the manner contemplated herein will not violate any provision of law, statute, rule or regulation to which Purchaser is subject or violate any judgment, order, writ, injunction or decree of any court applicable to Purchaser;

(c) no consent, authorization, license, permit, registration or approval of, or exemption or other action by, any governmental or public body, commission or authority is required in connection with the execution, delivery and performance by Purchaser of this Agreement; and

(d) Purchaser has the financial ability to consummate this transaction on an all cash basis.

6.2 *Survival*. The representations and warranties contained in *Section 6.1* are true and accurate as of the date

hereof, shall be deemed to be repeated at and as of the Closing Date and shall be true and accurate as of such date. Each such representation and warranty shall survive the Closing Date for a period of one (1) year from the Closing Date.

## ARTICLE 7
## OTHER COVENANTS AND AGREEMENTS; RESERVED RIGHTS

7.1 *No Liens or Encumbrances.* Seller agrees that it will not create any liens or encumbrances against the Property after the date of this Agreement.

7.2 *Estoppel Certificates; Subordination, Nondisturbance and Attornment Agreements.*

(a) Seller shall, within ten (10) days after the date of this Agreement, prepare and submit to (i) the tenant under the KeyBank Lease an estoppel certificate with respect to such Lease in the form of *Exhibit E-1* annexed hereto, and (ii) the tenant under the Gemini Lease an estoppel certificate with respect to such Lease in the form of *Exhibit E-2* annexed hereto. Subject to the provisions hereof, Purchaser's obligations to close title hereunder is conditioned upon each of the Tenants executing and delivering to Seller an estoppel certificate which conforms in all material respects to the applicable estoppel certificate set forth in *Exhibit E-1* or *Exhibit E-2* (an *"Acceptable Estoppel Certificate"*). The failure of Seller to obtain Acceptable Estoppel Certificates shall not be deemed a default by Seller, it being agreed that the sole remedy of Purchaser in the event Seller does not obtain an Acceptable Estoppel Certificate from each of the Tenants shall be to terminate this Agreement in accordance with the provisions hereof. An estoppel certificate received from either of the Tenants shall not be an Acceptable Estoppel Certificate if the tenant discloses a material default on the part of landlord or tenant under its Lease or discloses another Material Matter (as hereinafter defined), which, in each case, was not included in the Lease and was not actually known to Purchaser as of the date of this Agreement. As used herein, a *"Material Matter"* shall mean a default or other matter relating to a Lease which, in each case, would subject the landlord thereunder to any liability, or otherwise adversely affect the rent, additional rent or other revenue that Purchaser will receive under the applicable Lease after the Closing Date.

(b) If Seller receives an estoppel certificate from either of the Tenants prior to the Closing Date which is not an Acceptable Estoppel Certificate, Seller shall have the right to furnish same to Purchaser and to inquire whether Purchaser will accept such estoppel certificate in lieu of an Acceptable Estoppel Certificate. Within two (2) Business Days after receiving any such estoppel certificate and inquiry from Seller, Purchaser shall give Seller notice stating whether Purchaser will accept such estoppel certificate in lieu of an Acceptable Estoppel Certificate. If Purchaser gives Seller notice that Purchaser will accept such estoppel certificate in lieu of an Acceptable Estoppel Certificate, then the condition that an Acceptable Estoppel Certificate be obtained from the applicable tenant shall be deemed waived and Purchaser shall accept instead the estoppel certificate which was furnished to it pursuant to the provisions hereof. If Purchaser fails to give such notice within such two (2) Business Day period, then Purchaser shall be deemed to have elected not to accept such estoppel certificate in lieu of an Acceptable Estoppel Certificate. If Purchaser gives notice that it will not accept such an estoppel certificate (or is deemed to have elected not to accept such an estoppel certificate), then Seller shall have the right at any time thereafter but prior to the Closing Date to terminate this Agreement by notice given to Purchaser. If this Agreement is terminated by Seller pursuant to this *Section 7.2(b)*, the Deposit shall be returned to Purchaser, and except as expressly provided herein, this Agreement and the rights and obligations of the respective parties hereunder shall be null and void.

(c) If as of two (2) Business Days preceding the initially scheduled Closing Date, Seller has not obtained and furnished to Purchaser a copy of an Acceptable Estoppel Certificate from each of the Tenants (or estoppel certificates which Purchaser has elected to accept in lieu of Acceptable Estoppel Certificates pursuant to *Section 7.2(b)*), Seller and Purchaser shall each have the right, by notice given to the other party on or before the initially scheduled Closing Date, to adjourn the Closing Date until the fifth (5th) Business Day after the initially scheduled Closing Date.

(d) If on the Closing Date (as same may be extended pursuant to any provision of this Agreement expressly providing for such an extension, including *Section*

*7.2(c)*), Seller has not obtained an Acceptable Estoppel Certificate from each of the Tenants (or estoppel certificates which Purchaser has elected to accept in lieu of Acceptable Estoppel Certificates pursuant to *Section 7.2(b)*), then Purchaser shall have the right to terminate this Agreement by giving Seller notice thereof on the Closing Date, whereupon the Deposit shall be returned to Purchaser, and, except as expressly provided herein, this Agreement and all rights and obligations of the respective parties hereunder shall be null and void. If Purchaser does not give Seller notice of Purchaser's election to terminate this Agreement on the Closing Date, Purchaser shall conclusively be deemed to have waived its right of termination under this *Section 7.2*.

(e) At Purchaser's request, Seller shall send to each of the Tenants, and request that such Tenants execute and return, a subordination, non-disturbance and attornment agreement (*"SNDA"*) as may be required by Purchaser's acquisition mortgage lender. Purchaser's obligations under this Agreement shall not be conditioned upon obtaining SNDA's from either of the Tenants, and if Seller does not obtain an SNDA from one or both of the Tenants, Purchaser shall nevertheless be obligated to close the transaction contemplated by this Agreement without any abatement of Purchase Price.

(f) Seller shall send to the tenant under the KeyBank Lease the estoppel certificate relating to the KeyBank Guaranty attached hereto as *Exhibit E-3* and shall request that the tenant have the guarantor execute and return said estoppel certificate. Purchaser's obligations under this Agreement shall not be conditioned upon obtaining an estoppel certificate from the guarantor, and if Seller does not obtain such an estoppel certificate, Purchaser shall nevertheless be obligated to close the transaction contemplated by this Agreement without any abatement of Purchase Price.

7.3. *Lease Enforcement; Compliance*. Prior to the Closing Date, Seller shall have the right, but not the obligation, to enforce the rights and remedies of landlord under the Leases and to (i) apply all or any portion of any security deposits held by Seller under the Leases toward unpaid rent or any loss or damage incurred by Seller by reason of any defaults by either of the Tenants, and (ii) draw on any letter of credit held by Seller as security under any of the Leases and apply all or any portion of the

proceeds of any such draw toward unpaid rent or any loss or damage incurred by Seller by reason of any defaults by either of the Tenants. Notwithstanding the foregoing, Seller shall not commence any legal action to terminate either of the Leases or to remove any of the Tenants under the Leases from possession of their space in the Building. Seller shall perform all of the obligations of landlord under the Leases which, under the terms of the Leases, are required to be performed by the landlord prior to the Closing Date. Between the date hereof and the Closing Date, Seller shall not enter into any amendment of either of the Leases, except for any amendment which Seller may be obligated to enter into pursuant to the provisions of the applicable Lease. Prior to the Closing Date Seller shall have the right, but not the obligation, to enforce the rights and remedies of landlord under the Cafeteria Agreement. In the event that the Cafeteria Agreement is terminated for any reason prior to the Closing Date, Seller shall have the right, but not the obligation, to enter into an agreement with an alternative cafeteria operator to operate the cafeteria currently operated by Cafeteria Operator, provided that any such agreement may be terminated by Seller and its successors on not less than thirty (30) days prior written notice (any such agreement being called the *"Replacement Cafeteria Agreement"*). If Seller enters into a Replacement Cafeteria Agreement pursuant to the provisions hereof, then representations and warranties under *Section 5.1* shall be automatically deemed modified to reflect the existence of the Replacement Cafeteria Agreement. If the Cafeteria Agreement or any Replacement Cafeteria Agreement is in effect on the Closing Date, then, on the Closing Date, Seller shall assign to Purchaser all of its right title and interest in and to the Cafeteria Agreement or the Replacement Cafeteria Agreement, as the case may be, and Purchaser shall assume all of the obligations of Seller thereunder arising from and after such date. Such assignment and assumption shall be accomplished by modifying the form Assignment and Assumption Agreement to be delivered by the parties pursuant to *Section 9.4(a)* to include the assignment and assumption of the Cafeteria Agreement or Replacement Cafeteria Agreement pursuant to the provisions hereof.

7.4 *Transfer of Letter of Credit*. Subject to Seller's rights under *Section 7.3*, on the Closing Date, Seller shall deliver to Purchaser any letter of credit then held by Seller as security for the performance of the obligations of any tenant under the Leases (including that certain Irrevocable

Standby Letter of Credit No. 839-57166, dated March 25, 2002, issued to Seller in connection with the Gemini Lease by Deutsche Bank AG New York Branch), together with any transfer request form executed by Seller which may be required pursuant to the applicable letter of credit to effectuate a transfer of the letter of credit to Purchaser.

7.5 *Service Contracts*. Prior to the Closing Date Seller shall give (or cause its property manager to give) such notices as may be required under all Service Contracts to effect the termination thereof. The Service Contracts shall not be assigned to or assumed by Purchaser.

7.6 *Maintenance of the Property*. Except to the extent that Seller is relieved of such obligations under *Article 8* and subject to the right of Tenants to make alterations and improvements pursuant to the Leases, between the date hereof and the Closing Date Seller shall maintain the Property in a manner consistent with Seller's past practices with respect to the Property and in substantially the same condition as now exists, ordinary wear and tear excepted; provided, however, that (a) Purchaser acknowledges that in contemplation of the sale of the Property, Seller may have altered or suspended certain capital improvement projects, and (b) Purchaser agrees that, subject to its right to terminate this Agreement under *Section 4.1* and *Section 5.2*, it shall accept the Property subject to, and Seller shall have no obligation to cure (i) all violations of Legal Requirements and (ii) all physical conditions which would give rise to such a violation. If Seller, in its sole discretion, elects to make any "capital repair" (as hereinafter defined) prior to the Closing Date, Seller shall give Purchaser notice of its intention to do so, together with a description of the contemplated capital repair. The term *"capital repair"* as used in the immediately preceding sentence means any repair or replacement to the Property or any part thereof which would costs more than $50,000.00 to complete.

7.7 *Insurance*. Seller shall maintain the property insurance coverage currently in effect for the Property through the Closing Date.

7.8. *Audit Letters*. Seller acknowledges that Purchaser may be required by the Securities and Exchange Commission to file audited financial statements for one to three years with regard to the Property. In connection with any such filing,

upon request from Purchaser, Seller shall, at no cost or liability to Seller, (i) provide Purchaser and its counsel, accountants, agents and representatives with reasonable access to Seller's books and records with respect to the ownership, management, maintenance and operation of the Property during the period that Seller owned the Property (the *"Books and Records"*), and permit them to copy same, and (ii) execute a "rep" letter addressed to Purchaser's accounting firm relating to the Books and Records if necessary and provided the letter is in form and substance reasonably satisfactory to Seller. Purchaser shall reimburse Seller, within ten (10) days after receiving any request therefor, for all reasonable costs and expenses incurred by Seller in connection with its obligations under this *Section 7.8*, including reasonable attorneys' or other professionals' fees incurred in connection with the review of any "rep" letter. The provisions of this *Section 7.8* shall survive the closing of title for a period of three (3) years.

## ARTICLE 8
## DAMAGE, DESTRUCTION AND CONDEMNATION

8.1 *Casualty*. The risk of loss or damage to the Property by fire or other casualty before the delivery of the deed hereunder is assumed by Seller. In the event of any damage to or destruction of the Improvements due to fire or any other cause or hazard, Seller shall promptly give notice thereof to Purchaser describing such damage and indicating the estimated cost for restoration to substantially the same condition as existed prior to the damage and the period of time anticipated as being necessary to complete such restoration (the *"Casualty Notice"*). If the cost of such restoration is estimated to be in excess of $1,000,000.00, then Seller shall have the right, upon notice to Purchaser given within fifteen (15) days after Seller gives Purchaser the Casualty Notice, to terminate this Agreement. If (x) the cost of such restoration is estimated to be in excess of $1,000,000.00, (y) the anticipated restoration period exceeds one hundred eighty (180) days, or (z) the damage or destruction has resulted in a Material Abatement of rental under the Leases or the termination of any of the Leases, then Purchaser shall have the right, upon notice to Seller given within fifteen (15) days after Purchaser's receipt of the Casualty Notice, to terminate this Agreement. Upon any termination of this Agreement under this *Section 8.1*, the

Deposit shall be returned to Purchaser, and, except as expressly provided herein, this Agreement and the rights and obligations of the respective parties hereunder shall be null and void. In the event of damage or destruction which does not give rise to a termination right pursuant to the provisions hereof, or in the event of damage or destruction which gives rise to a termination right but neither Purchaser nor Seller elects to terminate this Agreement, then (i) on the Closing Date, Purchaser shall be entitled to a credit against the Purchase Price in the amount equal to the sum of (1) the amount of any insurance proceeds actually received by Seller on account of such damage to or destruction of the Improvements (less an amount equal to all costs and expenses incurred by Seller in connection with the insurance claim), plus (2) the deductible amount under Seller's casualty insurance policy, plus (3) an amount equal to any restoration costs which are not covered by Seller's insurance, (ii) on the Closing Date Seller shall assign to Purchaser Seller's rights to any unpaid insurance proceeds arising out of such damage or destruction, and (iii) Seller shall reasonably cooperate with Purchaser in prosecuting the casualty insurance claim. The term *"Material Abatement"* as used herein means an abatement of rent under either or both of the Leases which in the aggregate (on a per diem basis) exceeds five percent (5%) of the per diem aggregate rental payable under the Leases immediately prior to the casualty and which abatement is reasonably anticipated to continue for more than sixty (60) days.

8.2 *Condemnation*. In the event any proceedings or negotiations are instituted which do or may result in a Taking of the Property or any portion thereof, Seller shall promptly notify Purchaser in writing thereof, describing the nature and extent thereof. If Purchaser determines in good faith that such Taking will materially adversely affect the use of the Property as an office building or will materially impair the ability to access the Property, Purchaser may, at its election, terminate this Agreement by written notice to Seller given within fifteen (15) days after Purchaser's receipt of such notice from Seller, whereupon the Deposit shall be returned to Purchaser, and, except as expressly set forth to the contrary herein, this Agreement and the rights and obligations of the respective parties hereunder shall be null and void. In the event Purchaser does not terminate this Agreement by reason of any such Taking within such fifteen (15) day period, then and in that event, the sale of the Property shall be consummated as herein provided and

Seller shall assign to Purchaser on the Closing Date all of Seller's right, title and interest in and to all awards payable by reason thereof and shall pay over to Purchaser all amounts theretofore received by Seller in connection with such Taking. Seller agrees not to settle or compromise any claim for such award without the prior written consent of Purchaser. Purchaser shall have the right to participate in any condemnation proceeding.

## ARTICLE 9
## CLOSING DATE AND DELIVERY OF DOCUMENTS; CONDITIONS PRECEDENT

9.1 *Closing Date*. The closing of this transaction shall be conducted at 10:00 a.m. on the first Business Day occurring ten (10) days after the expiration of the Due Diligence Period (the *"Closing Date"*), subject to extension pursuant to *Section 3.1(b)*, *Section 5.2(b)* or *Section 7.2(c)* hereof. If Purchaser requests, Seller will reasonably cooperate with Purchaser so that the closing may be conducted through escrow, with the Escrow Agent acting as the escrow agent pursuant to escrow instructions reasonably satisfactory to Seller; provided, however, that Seller shall not be obligated to delay the Closing Date to accommodate an escrow closing. If the closing of title does not occur on or before the initial Closing Date or on or before any extension thereof provided for under the express terms of this Agreement, then either Purchaser or Seller shall have the right to make TIME OF THE ESSENCE for the closing by notice given to the other party at least five (5) days prior to the date designated in such notice as the time of the essence Closing Date. The closing shall be conducted at the offices of Drinker Biddle & Shanley LLP, 500 Campus Drive, Florham Park, New Jersey. Upon the closing, possession of the Property, subject to the rights of Tenants under the Leases, shall be delivered to Purchaser, and Purchaser shall thence have the right to enjoy the rents, issues and profits therefrom.

9.2 *Documents to be Delivered by Seller*. On the Closing Date, Seller shall deliver to Purchaser the following documents:

(a) duly executed Deed of Bargain and Sale with Covenant Against Grantor's Acts from Seller for the Land and the Improvements in proper statutory form for recording;

(b) duly executed Bill of Sale for the Personal Property in form annexed hereto as *Exhibit F*;

(c) all as built plans, specifications and drawings and shop drawings (and all documents and other materials related thereto) and all manuals relating to the maintenance and operation of the Property in Seller's possession;

(d) the original tax bills for the Property, if available;

(e) duly executed Affidavit of Title in form annexed hereto as *Exhibit G*;

(f) duly executed FIRPTA Affidavit of Seller in form of *Exhibit H* annexed hereto;

(g) all keys or access cards to the Improvements;

(h) the original or, if not available, a copy of the Leases certified as a true copy by Seller;

(i) the original or, if not available, a copy of the Commission Agreements;

(j) notice to the Tenants under the Leases in the form of *Exhibit J* annexed hereto;

(k) "letter of non applicability" from the DEP confirming that the conveyance of the Land and Improvements is not subject to the provisions of ISRA, or, if the conveyance is subject to ISRA, evidence that the Property complies with such statute;

(l) such other documents and instruments as Title Insurer may reasonably request to perfect title to any of the Property in Purchaser, provided Seller shall not be obligated to execute any document which increases its liability hereunder**;**

(m) documentation to establish to Purchaser's reasonable satisfaction the due authorization of Seller's execution of all documents contemplated by this Agreement;

(n) any Deed and other document or instrument required pursuant to *Section 12.2(a)* hereof; and

(o) a certificate, dated as of the Closing Date and signed by Seller, stating that, subject to the provisions of *Section 5.2*, the representations and warranties in *Section 5.1* are true and accurate as of such date.

9.3 *Documents to be Delivered by Purchaser*. On the Closing Date, Purchaser shall deliver to Seller a certificate, dated as of the Closing Date and signed by Purchaser, stating that the representations and warranties contained in *Section 6.1* are true and accurate as of such date.

9.4 *Documents to be Delivered by Both Parties*. On the Closing Date, Seller and Purchaser shall each execute and deliver the following documents:

(a) duly executed Assignment and Assumption of the Leases, the Intangible Property, the Commission Agreements, the Easement Agreement and, subject to the provisions of *Section 7.3*, the Cafeteria Agreement or any Replacement Cafeteria Agreement, in form annexed hereto as *Exhibit I*; and

(b) a closing statement for this transaction reflecting all closing prorations.

9.5 *Conditions Precedent to Seller's Obligation to Complete Closing*. Purchaser agrees that Seller's obligation to complete the closing hereunder shall be subject to the fulfillment, prior to or on the Closing Date, of the following conditions precedent, provided however, that Seller, in its sole discretion, may elect to waive any thereof:

(a) Purchaser shall pay to Seller the Purchase Price as provided in *Article 2*;

(b) Purchaser shall not be in material default in the performance of its obligations under this Agreement; and

(c) the representations and warranties of Purchaser contained herein are true and correct in all material respects.

9.6 *Conditions Precedent to Purchaser's Obligation to Complete Closing*. Seller agrees that Purchaser's obligation to complete the closing hereunder shall be subject to the fulfillment, prior to or on the Closing Date, of the following conditions precedent, provided however, that Purchaser, in its sole discretion, may elect to waive any thereof:

(a) Title to the Property shall be as specified in *Section 3.1(a)* and the Title Insurer shall have issued the Owner's Title Policy or the Commitment in accordance with *Section 3.1(b)*;

(b) Seller shall not be in material default in the performance of its obligations under this Agreement;

(c) unless deemed waived by Purchaser, the representations and warranties of Seller contained herein are true and correct in all material respects; and

(d) unless waived by Purchaser, each of the Tenants shall have delivered an estoppel certificate pursuant to *Section 7.2*.

**ARTICLE 10**
**CLOSING ADJUSTMENTS**

10.1 *Adjustment Time*. All apportionments and adjustments shall be made as of 12:00 at the end of the day immediately preceding the Closing Date.

10.2 *Description of Items to be Adjusted*. The following apportionments and adjustments shall be made:

(a) real estate taxes assessed against the Land and Improvements based upon the calendar year assessed;

(b) the amount of the real estate transfer tax payable in connection with the conveyance of the Land and the Improvements shall be deducted from the Purchase Price and shall be paid by Purchaser directly to the taxing authority;

(c) if there are any confirmed or unconfirmed special assessments against the Land or the Improvements, Seller shall pay same if the work giving rise to the assessment was completed prior to the date of this Agreement, but if the work giving rise to the assessments was not completed prior to the date of this Agreement, same shall be paid or assumed by Purchaser;

(d) rents (including, without limitation, fixed rent and additional rents) payable under the Leases for the month in which the Closing Date occurs shall be apportioned on the Closing Date regardless of whether collected from Tenants. If any rents under the Leases relating to any period prior to the month in which the Closing Date occurs shall be unpaid as of the Closing Date, then the rents collected by Purchaser under the Leases on or after the Closing Date shall first be applied to all rents due at the time of such collection for the month in which the Closing Date occurs or for any subsequent month and to any reasonable out-of-pocket costs incurred by Purchaser in connection with any litigation or other legal action instituted by Purchaser to collect the rents (which costs shall be pro-rated to reflect the portion thereof allocable to rents collected as a result of such litigation or action which are payable to Seller), with the balance payable to Seller to the extent of rents unpaid as of the Closing Date which relate to any period prior to the month in which the Closing Date occurs. After the Closing Date, Purchaser shall take good faith efforts to collect such unpaid rents from the Tenants; provided, however, Purchaser shall not be required to institute any proceeding to collect

any such rents. If Seller shall not have received all accrued and unpaid rents relating to any period prior to the Closing Date within thirty (30) days thereafter, Seller, at its sole cost and expense, shall be entitled to bring such actions or proceedings not affecting possession as it shall desire to collect any such accrued and unpaid rents, and Purchaser shall cooperate with Seller, at Seller's cost, in any such action; and

(e) all other income and expense from the Property of every type and nature, including, without limitation, charges and expenses, if any, under the Easement Agreement. If any of the foregoing cannot be apportioned at the Closing Date because of the unavailability of the amounts which are to be apportioned, such items shall be apportioned as soon as practicable after the Closing Date and the parties shall reasonably cooperate with one another in connection with such apportionment.

10.3 *Final Adjustment of Real Estate Taxes.* If on the Closing Date final real estate tax bills for the calendar year in which the closing occurs are not available and the real estate tax adjustment is based upon preliminary tax bills, a final tax adjustment shall be made within ten (10) days after the final tax bill is issued, and Seller or Purchaser, as the case may be, shall make an appropriate payment to the other based upon such re-adjustment.

10.4 *Cash Security Deposits.* On the Closing Date, Seller shall transfer to Purchaser any unapplied cash security deposit then held by Seller pursuant to either of the Leases. To effectuate such transfer, Purchaser shall be entitled to a credit against the Purchase Price on the Closing Date in the aggregate amount of such unapplied cash security deposits, if any, then held by Seller.

10.5 *Final Apportionment.*

(a) If rents under the Leases (including expense reimbursement payments) are payable or accruable under the Leases on the basis of estimates or formulae and are subject to adjustment after the Closing Date, such rents shall be apportioned on

the Closing Date on the basis of the then current charges to the extent paid, as applicable, and shall be subject to reapportionment on the basis of the rents as finally determined to be owing under the Leases; it being recognized that the final expense reimbursement payments due from the Tenants will not be finally calculated until at least the first quarter of 2003. Within a reasonable time after Purchaser has made its calculations of the final expense reimbursement payments in respect of the pertinent fiscal periods and has billed Tenants therefor, but no later than April 15, 2003, Purchaser shall prepare and submit to Seller a final reapportionment of the rents and other items to be apportioned pursuant to this *Section 10.5* as of the Closing Date (the *"Final Apportionment Report"*). Seller shall raise any objections it has to the Final Apportionment Report by written notice to Purchaser given by no later than May 15, 2003 and stating in reasonable detail Seller's objections, and Purchaser shall allow Seller and its authorized representatives reasonable access during business hours to its books and records pertinent to the Property to permit Seller to review the Final Apportionment Report and to ascertain its accuracy.

(b) If Seller shall raise any objections to the Final Apportionment Report as provided above, the parties shall meet within five (5) Business Days after submission of Seller's notice thereof and attempt to resolve such objections. If any objections are not resolved within said five (5) day period, such objections may thereafter be submitted by either party to arbitration in accordance with *Section 10.5(c)*.

(c) In the event either party elects to arbitrate any item included in the Final Apportionment Report, such party shall notify the other. Seller and Purchaser shall then each appoint a qualified independent arbitrator and if the arbitrators so designated are unable to agree upon the matter they are requested to determine within fifteen (15) days after appointment, such matter shall be determined by a third qualified independent arbitrator to be selected by such

arbitrators and, in the event such arbitrators are unable to agree upon such third arbitrator, such third arbitrator shall be appointed by the Assignment Judge of the Superior Court of New Jersey, Morris County. Each of the arbitrators shall be a qualified, professional commercial property manager having at least ten (10) years experience in such discipline. The jurisdiction of the arbitrators shall be strictly limited to a determination of the issue submitted to arbitration. The arbitration proceedings shall be conducted under the then applicable rules, but not under the auspices, of the American Arbitration Association. The decision of the arbitrators shall be in writing with supporting reasons and shall be final and binding upon the parties.

(d) The Final Apportionment Report shall be deemed amended by any agreement of the parties or determination of the arbitrators, and, within ten (10) days after such agreement or determination (or, if Seller raised no objections to the Final Apportionment Report, the expiration of the objection period), Seller shall pay to Purchaser, or Purchaser shall pay to Seller, as applicable, the amount determined to be due from such party to the other pursuant to the Final Apportionment Report, as the same may be deemed to have been amended; provided, however, that Purchaser shall not be required to pay to Seller any amount attributable to uncollected rents or other charges to tenants as of such date but shall pay to Seller such amounts within thirty (30) days after Purchaser has collected same. Purchaser may deduct from any amounts due to Seller under this *Subsection (d)* an amount equal to the reasonable out-of-pocket costs incurred by Purchaser in pursuing any litigation or other legal action against the applicable tenant to collect such amounts (which costs shall be pro-rated to reflect the portion thereof allocable to rents and other amounts collected as a result of such litigation or action which are payable to Seller).

(e) If arbitration is required, each party shall bear the fees and expenses of the arbitrator

selected by it and the fees and expenses of any third arbitrator shall be shared equally.

10.6 *Errors in Closing Adjustments*. If after the closing, the parties discover any errors in adjustments and apportionments, same shall be corrected as soon after their discovery as possible. The provisions of this *Section 10.6* shall survive the closing, except that no adjustments shall be made later than nine (9) months after the Closing Date unless prior to such date the party seeking the adjustment shall have delivered a written notice to the other specifying the nature and basis for such claim.

## ARTICLE 11
## DEFAULT; REMEDIES

11.1 *Default by Purchaser Prior to Closing*. Seller may terminate this Agreement by notice to Purchaser at any time prior to the Closing Date in the event of (a) a material default by Purchaser under this Agreement (which remains uncured for ten (10) calendar days after Seller's notice to Purchaser thereof, unless such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such ten (10) day period, in which case Purchaser shall have such longer period as shall be necessary to cure such default, so long as Purchaser proceeds promptly to cure such default within such ten (10) day period, prosecutes such cure to completion with due diligence within twenty (20) calendar days and advises Seller of the actions which Purchaser is taking and the progress being made) or (b) a material breach of any representation or warranty by Purchaser expressly set forth in this Agreement. Notwithstanding the foregoing, (i) Purchaser shall not have any cure period with respect to the time of the essence Closing Date, and (ii) the cure period with respect to any failure to pay any installment of the Deposit on the date when due shall be only three (3) calendar days after Seller's notice to Purchaser thereof.

11.2 *Default by Seller Prior to Closing*. Purchaser may terminate this Agreement by notice to Seller at any time prior to the Closing Date in the event of (a) a material default by Seller under this Agreement (which remains uncured for ten (10) calendar days after Purchaser's notice to Seller thereof), unless such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within

such ten (10) day period, in which case Seller shall have such longer period as shall be necessary to cure such default, so long as Seller proceeds promptly to cure such default within such ten (10) day period, prosecutes such cure to completion with due diligence within twenty (20) days and advises Purchaser of the actions which Seller is taking and the progress being made) or (b) subject to the provisions of *Section 5.2*, a material breach of any representation or warranty by Seller expressly set forth in this Agreement.

11.3 *Remedies Prior to Closing Date.*

(a) *Of Seller*. If Purchaser materially defaults under this Agreement beyond any applicable cure period, or materially breaches any representation or warranty contained herein, Seller shall, as its sole and exclusive remedy hereunder, have the right to terminate this Agreement and receive $2,000,000.00 (and Seller shall have the right to receive the Deposit on account of such amount), and such payment shall constitute and be liquidated and agreed damages, whereupon the parties hereto shall be relieved of any further liability or obligation to each other, it being expressly understood that the receipt by Seller of such monies shall be the sole and exclusive right and remedy of Seller and constitutes a fair and reasonable amount for the damage sustained by Seller by reason of Purchaser's breach of this Agreement. Seller hereby waives and releases any right to seek specific performance against Purchaser.

(b) *Of Purchaser*. If Seller materially defaults under this Agreement beyond any applicable cure period, or materially breaches any representation or warranty contained herein, Purchaser shall, subject to the provisions of *Section 5.2*, be entitled, as its sole and exclusive remedies, either (i) to specific performance, provided Purchaser commences the action for specific performance within thirty (30) days after Purchaser learns of the default or material breach of the representation or warranty, as the case may be, or (ii) to terminate this Agreement and receive the Deposit together with all actual out of pocket expenses

incurred by Purchaser in negotiating this transaction and in performing its due diligence, not to exceed in aggregate the sum of $150,000.00. If Purchaser fails to commence an action against Seller for specific performance within thirty (30) days after Purchaser learns of the default or the material breach of a representation or warranty as the case may be, then Purchaser shall be deemed to have conclusively waived its right to specific performance. If Purchaser elects to terminate this Agreement, the return of the Deposit and payment of such out of pocket expenses shall constitute and be liquidated and agreed damages, and upon payment thereof, the parties hereto shall be relieved of any further liability or obligation to each other, it being expressly understood that such payment constitutes a fair and reasonable remedy for the damage sustained by Purchaser by reason of Seller's breach of this Agreement. Under no circumstances shall Seller be liable to Purchaser for any damages other than specified above, whether such damages are direct or consequential.

11.4 *Limitation on Purchaser's Remedies After Closing*. Notwithstanding any provision of this Agreement to the contrary or any provision of law or equity, if the closing occurs, Purchaser shall have no recourse, claim, remedy or right against Seller, at law or in equity, to assert or maintain any action for damages, direct, consequential or otherwise, or any other remedy available at law or in equity, or to rescind this Agreement, as a result of any of the representations or warranties of Seller being inaccurate if Purchaser knew or is deemed to know that such representation or warranty was inaccurate at the time of the closing. Purchaser shall conclusively be deemed to have known that a representation or warranty was inaccurate if this Agreement or any estoppel certificate executed by any of the Tenants and delivered to Purchaser, or any of the Leases, or any studies, tests, reports, or analyses prepared by or for or otherwise obtained by Purchaser, or any of the Property Documents delivered to Purchaser contains information which is inconsistent with the representations or warranties.

11.5 *Limitation on Seller's Damages After Closing*. Subject to the provisions of *Section 11.4*, Purchaser agrees

that, after the closing, Seller shall only be liable for direct, but not consequential or punitive, damages resulting from a breach of any provision of this Agreement or a breach of any representation or warranty; provided however, that (a) the total liability of Seller for all such breaches shall not, in the aggregate, exceed $2,000,000.00 and (b) such representations and warranties are personal to Purchaser and may not be assigned to or enforced by any other party other than an assignee of this Agreement in accordance with *Section 12.3*. Purchaser further agrees that no claim may or shall be made for any alleged breach under or relating to this Agreement unless the amount of such claims exceeds, individually or in the aggregate, the sum of $50,000.00 (at which point, subject to the above provisions, Seller shall be liable for all such damages caused thereby relating back to the first dollar of loss).

**ARTICLE 12**
**MISCELLANEOUS**

12.1 *Brokerage Commission and Finder's Fee*. The parties agree that they have dealt with each other and not through any real estate broker, investment banker, person, firm or entity who would, by reason of such dealings, be able to claim a real estate brokerage, business opportunity brokerage or finder's fee as the procuring cause of this transaction, except the Broker. Each of the parties agrees to indemnify the other and hold the other harmless of and from any and all loss, cost, damage, injury or expense arising out of, or in any way related to, assertions, by any other person, firm or entity of a claim to real estate brokerage, business opportunity brokerage or finder's fee based on alleged contacts between the claiming party and the indemnifying party which have resulted in allegedly providing a broker or finder with the right to claim such commission or finder's fee. Seller agrees to pay the Broker a commission pursuant to a separate agreement if, as and when title closes. The provisions of this *Section 12.1* shall survive the closing of title.

12.2 *Like-Kind Exchange*. (a) (i) Purchaser acknowledges that Seller may, at Seller's option, effect a like-kind exchange of the Property under Internal Revenue Code Section 1031 (the *"Code"*). Purchaser further acknowledges that, prior to closing, Seller may convey to one of its members (a *"Seller Transferee"*) an interest in

the Property as a tenant-in-common, in order to accommodate such Seller Transferee and/or Seller in effecting a like-kind exchange of an interest in the Property. Any transfer of an interest in the Property by Seller to a Seller Transferee shall be made subject to this Agreement. Purchaser shall reasonably cooperate with Seller and the Seller Transferee and shall execute any documents reasonably required to permit Seller and/or the Seller Transferee to effect such a like-kind exchange pursuant to the Code, provided (w) Seller shall reimburse Purchaser for reasonable fees and expenses incurred by Purchaser in connection with the exchanges contemplated by this *Section 12.2(a)*, (x) in no event shall Purchaser be obligated to take title to any property other than the Property or incur any additional liability in connection with such exchange, (y) in no event shall the Closing Date be delayed on account of any such exchange, and (z) in no event shall Seller be relieved of any of its obligations or liability hereunder in connection with any such exchange.

(ii) On the Closing Date, if Seller has conveyed a tenant-in-common interest in the Property to a Seller Transferee, Seller shall cause the Seller Transferee to deliver to Purchaser (x) a duly executed Deed of Bargain and Sale with Covenants against Grantor's Acts for Seller Transferee's interest in the Land and Improvements in proper statutory form for recording, and (y) any other document or instrument as the Title Insurer may reasonably require to perfect title in Purchaser to Seller Transferee's interest in the Property.

(iii) Seller shall indemnify, defend and hold harmless Purchaser from and against any and all claim, loss, cost, liability, damage or expense (including reasonable attorneys' fees) arising out of or in connection with the exchanges contemplated by *Section 12.2(a)*.

(iv) The provisions of this *Section 12.2(a)* shall survive the closing of title.

(b) Seller acknowledges that Purchaser may, at Purchaser's option, effect a like-kind exchange under Code Section 1031 in connection with its acquisition of the Property. Seller will reasonably cooperate with Purchaser and execute any documents reasonably required to permit Purchaser to effect such a like-kind exchange pursuant to Code Section 1031 provided (i) Purchaser shall reimburse

Seller for reasonable fees and expenses incurred by Seller in connection with the exchange contemplated by this *Section 12.2(b)*, (ii) in no event shall Seller be obligated to take title to any property other than the Property or incur any additional liability in connection with such exchange, (iii) in no event shall the Closing Date be delayed on account of any such exchange, and (iv) in no event shall Purchaser be relieved of any of its obligations or liability hereunder in connection with such exchange. Purchaser shall indemnify, defend and hold harmless Seller from and against any and all claim, loss, cost, liability, damage or expense (including reasonable attorneys' fees) arising out of or in connection with the exchange contemplated by this *Section 12.2(b)*. The provisions of this *Section 12.2(b)* shall survive the closing of title.

12.3 *Assignment*. Purchaser shall not have the right to directly or indirectly assign this Agreement or any rights hereunder, except that Purchaser shall have the right to assign this Agreement to an affiliate (as hereinafter defined), provided (a) a copy of the executed assignment is delivered to Seller not less that five (5) days prior to the Closing Date, (b) the assignee assumes all obligations of Purchaser hereunder, and (c) Purchaser remains primarily liable hereunder as a principal and not as a guarantor or surety. The term "affiliate" as used in this *Section 12.3* means an entity which is controlled by, controls, or is under common control with, Purchaser.

12.4 *Notices*. Any demand, notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, by recognized overnight national courier service (such as UPS) for next business day delivery, by telecopy (with a hard copy and a transmission confirmation sent by a recognized overnight national courier service), or by certified mail, return receipt requested, first-class postage prepaid to the parties at the addresses set forth below (or to such other addresses as the parties may specify by due notice to the other):

To Seller:

Two Gatehall Associates, LLC
c/o The Gale Company
200 Campus Drive
Florham Park, New Jersey 07932

Attention: Christopher F. Sameth
Fax: 973-301-9501

with copies to:

Drinker Biddle & Shanley LLP
500 Campus Drive
Florham Park, New Jersey 07932-1047
Attention: Michael E. Rothpletz, Jr., Esq.
Fax: 973-360-9831

To Purchaser:

Wells Operating Partnership, L.P.
c/o Wells Capital, Inc.
6200 The Corners Parkway, Suit 250
Norcross, Georgia 30092
Attention: Mr. Jeffrey A. Gilder
Fax: (770) 243-8510

with copy to:

Alston & Bird, LLP
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Attention: William L. O'Callaghan, Esq.
Fax Number: (404) 881-7777

Any notice delivered to a party's designated address by (a) personal delivery, (b) recognized overnight national courier service, or (c) certified mail, return receipt requested, shall be deemed to have been received by such party at the time the notice is delivered to such party. Any notice sent by fax to the party's designated fax number shall be effective upon receipt, provided receipt occurs before 5:00 PM on a business day in the State of New Jersey. Confirmation by the courier delivering any notice given pursuant to this *Section 12.4* shall be conclusive evidence of receipt of such notice. Each party hereby agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by any other party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the

courier service. Any notice given by an attorney for a party shall be effective for all purposes.

12.5 *Attorneys' Fees.* In the event any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof, or to seek rescission of this Agreement for default contemplated herein, whether legal or equitable, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. All indemnities provided for herein shall include, without limitation, the obligation to pay costs of defense in the form of court costs and reasonable attorneys' and paralegal fees and disbursements.

12.6 *Successors and Assigns.* The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

12.7 *No Personal Liability.* No member, principal, officer, director, employee, attorney, accountant or other agent or representative of Seller shall have any personal liability hereunder.

12.8 *Recordation.* Neither this Agreement nor any memorandum thereof shall be recorded by Purchaser and any such recording or attempt to record shall be deemed to be a material breach hereof by Purchaser. Except in connection with an action for specific performance permitted pursuant to the provisions hereof, Purchaser hereby waives any right to file a *lis pendens* or other form of attachment against the Property in connection with this Agreement or the transactions contemplated hereby. Purchaser hereby irrevocably appoints Seller as its agent and attorney in fact (coupled with an interest) to execute and deliver in the name of and on behalf of Purchaser any document required to discharge any *lis pendens* or other document filed by Purchaser with respect to the Property in violation of this *Section 12.8*. To the extent any such filing is made in violation of this provision, Purchaser shall indemnify and hold Seller harmless from and against any damages incurred by Seller in connection therewith. Nothing herein shall be deemed to prevent Purchaser from filing a Notice of Settlement.

12.9 *Governing Law.* This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey.

12.10 *Incorporation of Prior Agreements.* This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

12.11 *Modification of Agreement.* This Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modification or waiver shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

12.12 *Further Assurances.* After the Closing Date, Seller shall execute, acknowledge and deliver, for no further consideration, all such assignments, transfers, consents and other documents as Purchaser may reasonably request to carry out the provisions of this Agreement, provided Seller shall not be obligated to execute any such instrument which increases Seller's obligations or liabilities hereunder. The provisions of this *Section 12.12* shall survive the closing of title.

12.13 *Invalidity.* If any provision hereof shall be declared invalid by any court or in any administrative proceeding, the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The captions and paragraph headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of, or aid in interpretation of any of the provisions hereof.

12.14 *Confidentiality.* Prior to the closing of title, Purchaser agrees not to disclose that it has entered into this Agreement or any of the terms and conditions of this Agreement to any third party, except that Purchaser may disclose such information to its attorneys, accountants, prospective investors, mortgage brokers and lenders, provided Purchaser advises such parties of the confidentially provisions of this *Section 12.14* and instructs them to comply

with same. Purchaser acknowledges that any information furnished to Purchaser with respect to the Property is and has been so furnished on condition that Purchaser maintain the confidentiality thereof. Except as provided above, Purchaser shall hold in strict confidence any of the information in respect of the Property. In the event for any reason this Agreement is terminated or the closing is not conducted, Purchaser shall promptly return to Seller all documents made available to Purchaser. The provisions of this *Section 12.14* shall survive the termination of this Agreement. Purchaser shall not issue any press release or public statement relating to the Property prior to the closing of title. After the closing of title, Purchaser shall not refer to Morgan Stanley Dean Witter or The Gale Company in any press release or public statement relating to Property unless Purchaser has obtained Seller's prior written approval of the press release or public statement, which approval shall not be unreasonably withheld or delayed.

12.15 *Counterparts.* This Agreement may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

[CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

TWO GATEHALL ASSOCIATES, LLC

By: /s/ CHRISTOPHER F. SAMETH

Name: Christopher F. Sameth
Title: Authorized Representative

WELLS OPERATING PARTNERSHIP, L.P.

By: Wells Real Estate Investment Trust, Inc., general partner

By: /s/ DOUGLAS P. WILLIAMS

Name: Douglas P. Williams
Title: Executive Vice President

Escrow Agent signs this Agreement solely for the purpose of agreeing to comply with the provisions of *Section 2.4* hereof.

STEWART TITLE GUARANTY COMPANY

By: Cobe Title Agency, LLC, its agent

By: /S/ CLIFFORD A. BERNSTEIN

Name: Clifford A. Bernstein
Title: Co-President

**EXHIBIT A**
**LEGAL DESCRIPTION OF LAND**

BEGINNING AT A CAPPED IRON PIN FOUND ON THE NORTHEASTERLY RIGHT OF WAY LINE OF NJSH ROUTE 10, (A.K.A. MOUNT PLEASANT AVENUE, VARIABLE WIDTH RIGHT OF WAY) SAID POINT BEING ON THE DIVIDING LINE BETWEEN LOT 55 AND LOT 56, BLOCK 175 AND RUNNING, THENCE;

1. ALONG THE DIVIDING LINE BETWEEN LOT 55 AND LOT 56, BLOCK 175, NORTH 38 DEGREES—35 MINUTES—58 SECONDS EAST, A DISTANCE OF 489.37 FEET TO A CAPPED IRON PIN FOUND, THENCE;

2. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 55 AND LOTS 56, 59 & PART OF 6, BLOCK 175, NORTH 38 DEGREES—58 MINUTES—29 SECONDS EAST, A DISTANCE OF 427.51 FEET TO A CONCRETE MONUMENT FOUND, THENCE;

3. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 55 AND LOTS 24, 25, 26, 27, 28, 29, 30 & 31, SOUTH 49 DEGREES—51 MINUTES—16 SECONDS EAST, A DISTANCE OF 785.95 FEET TO A CAPPED IRON PIN FOUND, THENCE;

4. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 55 AND LOTS 32, 33, 34 AND PART OF LOT 35, BLOCK 175, SOUTH 49 DEGREES—42 MINUTES—13 SECONDS EAST, A DISTANCE OF 356.50 FEET TO A CONCRETE MONUMENT FOUND, THENCE;

5. ALONG THE DIVIDING LINE BETWEEN LOT 55 AND LOT 52.02, BLOCK 175, SOUTH 40 DEGREES—17 MINUTES—47 SECONDS WEST, A DISTANCE OF 60.55 FEET TO A CAPPED IRON PIN FOUND ON THE NORTHEASTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE, (60 FOOT WIDE RIGHT OF WAY), THENCE;

6. ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE, NORTH 49 DEGREES—54 MINUTES—26 SECONDS WEST, A DISTANCE OF 1.59 FEET TO A POINT OF CURVATURE, THENCE;

7. ALONG THE NORTHERLY RIGHT OF WAY LINE OF GATEHALL DRIVE ON A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET, A CENTRAL ANGLE OF 89 DEGREES—47 MINUTES—49 SECONDS, FOR AN ARC DISTANCE OF 564.21 FEET, ALSO BEARING A CHORD OF SOUTH 85 DEGREES—11

MINUTES—41 SECONDS WEST, A CHORD DISTANCE OF 508.21 FEET TO A POINT OF TANGENCY, THENCE;

8. ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE, SOUTH 40 DEGREES—17 MINUTES—47 SECONDS WEST, A DISTANCE OF 135.43 FEET TO A CONCRETE MONUMENT FOUND MARKING A POINT OF CURVATURE, THENCE;

9. CONTINUING ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 970.00 FEET, A CENTRAL ANGLE OF 17 DEGREES—14 MINUTES—52 SECONDS, FOR AN ARC LENGTH OF 292.00 FEET, ALSO BEARING A CHORD OF SOUTH 48 DEGREES—55 MINUTES—14 SECONDS WEST, A CHORD DISTANCE OF 290.90 FEET TO A POINT OF TANGENCY, THENCE;

10. CONTINUING ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE, SOUTH 57 DEGREES—32 MINUTES—40 SECONDS WEST, A DISTANCE OF 231.63 FEET TO A CONCRETE MONUMENT FOUND MARKING A POINT OF CURVATURE, THENCE;

11. CONTINUING ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 65.00 FEET, A CENTRAL ANGLE OF 51 DEGREES—40 MINUTES—51 SECONDS, FOR AN ARC DISTANCE OF 58.63 FEET, ALSO BEARING A CHORD OF SOUTH 83 DEGREES—23 MINUTES—05 SECONDS WEST, A CHORD DISTANCE OF 56.66 FEET TO A POINT OF NON-TANGENCY ON THE NORTHEASTERLY RIGHT OF WAY LINE OF NJSH ROUTE 10, THENCE;

12. ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF NJSH ROUTE 10, NORTH 32 DEGREES—27 MINUTES—20 SECONDS WEST, A DISTANCE OF 500.95 FEET TO A POINT OF CURVATURE, THENCE;

13. CONTINUING ALONG THE NORTHEASTERLY RIGHT OF WAY OF NJSH ROUTE 10 ON A CURVE TO THE LEFT, HAVING A RADIUS OF 11,524.20 FEET, A CENTRAL ANGLE OF 00 DEGREES—40 MINUTES—01 SECONDS, FOR AN ARC DISTANCE OF 134.15 FEET, ALSO BEARING A CHORD OF NORTH 32 DEGREES—47 MINUTES—21 SECONDS WEST, A CHORD DISTANCE OF 134.15 FEET TO THE POINT AND PLACE OF BEGINNING.

TOGETHER WITH ALL RIGHT, TITLE AND INTEREST OF SELLER IN AND TO THE EASEMENT AND MAINTENANCE AGREEMENT RECORDED IN DEED BOOK 2858, PAGE 684, AS AMENDED BY FIRST AMENDMENT TO

EASEMENT AND MAINTENANCE AGREEMENT RECORDED IN DEED BOOK 4446, PAGE 52.

**EXHIBIT 10.87**

**LEASE AGREEMENT WITH KEYBANK U.S.A., N.A.**
**FOR A PORTION OF THE KEYBANK PARSIPPANY BUILDING**

**AGREEMENT OF LEASE**

**between**

**TWO GATEHALL ASSOCIATES, LLC**

**Landlord**

**and**

**KEYBANK USA NATIONAL ASSOCIATION, a national banking association**

**The Entire Rentable Portion of the First and Second Floors**

**Two Gatehall Road**

**Parsippany, New Jersey**

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**LIST OF EXHIBITS**

## INDEX OF DEFINED TERMS

**LEASE AGREEMENT DATED MAY 29, 2000**

BETWEEN TWO GATEHALL ASSOCIATES, LLC ("**Landlord**"), having an office c/o GALE & WENTWORTH, LLC, 200 Campus Drive, Suite 200, Florham Park, New Jersey 07932 and KEYBANK USA NATIONAL ASSOCIATION, a national banking association ("**Tenant**") having an address c/o Keycorp, 127 Public Square, Cleveland, Ohio 44114.

***PREAMBLE***

**BASIC LEASE PROVISIONS AND DEFINITIONS.**

In addition to other terms elsewhere defined in this Lease, the following terms whenever used in this Lease should have only the meanings set forth in this Preamble, unless such meanings are expressly modified, limited, or expanded elsewhere herein.

I. ***Demised Premises***: The Demised Premises are as depicted on the floor plans annexed hereto and made a part hereof as **Exhibit A** and consist of two hundred thousand (200,000) square feet of **Rentable Area** (as defined in Building Office and Managers Association (**"BOMA"**) standard #ANSI Z65.1-1980 "*Modified*") of office space located on the first (1st) and second (2nd) floors in the building consisting of approximately four hundred thousand (400,000) square feet of Rentable Area situated on the Land (as defined in Paragraph 1(a) of this Lease) located at Two Gatehall Drive in the Township of Parsippany, Morris County, New Jersey, as shown on the site plan attached hereto and a part hereof as **Exhibit A-1** (the "Building").

II. ***Term***: Fifteen (15) years from the Rent Commencement Date (as hereinafter defined) subject to renewal in accordance with Section 24 of this Lease.

III. ***Commencement Date***:

Subject to Tenant Delay, Landlord Delay and Force Majeure (as such terms are hereinafter defined in this Lease and the Exhibits), the term of this Lease shall commence on the date of Substantial Completion of the Demised Premises. "Substantial Completion" shall mean the date when (i) the Tenant Improvements shall have been completed in accordance with the Final Plans (as modified by any Change Orders, as defined hereinafter) except for Punch List Items, as defined hereinafter and (ii) a temporary or permanent certificate of occupancy has been issued. Substantial Completion is anticipated by Landlord to occur on or about March 1, 2001, subject to Force Majeure, Tenant Delay and Landlord Delay. As used herein, Landlord shall be deemed to have "Substantially Completed" the Tenant Improvements notwithstanding that details of construction, decoration, and mechanical adjustment, which in the aggregate are minor in character and do not substantially interfere with the tenantability of the Demised Premises in any material respect, remain to be performed in such portion of the Demised Premises or any part thereof.

IV. ***Rent Commencement Date***:

(A) The Rent Commencement Date shall be the date on which Fixed Rent and Additional Rent hereunder shall first begin to accrue, and except as otherwise provided herein as a result of Force Majeure, Tenant Delay and/or Landlord Delay, the Rent Commencement Date shall be the same date as the Commencement Date but in no event earlier than March 1, 2001.

(B) Tenant shall receive a rent credit of one day for each day the Commencement Date is delayed beyond March 1, 2001 unless such delay is due to Force Majeure or a Tenant Delay net of any Landlord Delay. If the occurrence of the Commencement Date is delayed by reason of Tenant Delay net of any Landlord Delay, the Rent Commencement Date shall be the date, as reasonably designated by Landlord, which would have been the Commencement Date in the absence of such Tenant Delay net of any Landlord Delay provided that the Rent Commencement Date shall be no earlier than March 1, 2001.

V. ***Expiration Date:*** Midnight on the last day of the calendar month occurring fifteen (15) years after the Rent Commencement Date subject to renewal in accordance with Section 24 of this Lease.

VI. ***Renewal Term:*** Three (3) successive five (5) year periods. Each such five (5) year period is sometimes hereinafter referred to as a "Renewal Term."

VII. ***Permitted Use:*** General first-class office use, including executive, administrative and general office use and uses ancillary thereto, and for no other purpose; provided, however, subject to municipal approval, Tenant may use a portion of the first floor of the Demised Premises not to exceed 6,000 rentable square feet, during normal business hours, to operate a retail bank branch. Such retail bank branch may be operated and occupied by a subsidiary or affiliate of Tenant in accordance with Section 27 hereof. Tenant shall be responsible for providing adequate security for such branch and for all costs in connection therewith.

VIII. ***Fixed Rent:*** Fixed Rent during the initial term of this Lease shall be in accordance with **Exhibit G** attached hereto. During any Renewal Term Fixed Rent shall be at the Fair Market Renewal Rent, as defined in Paragraph 24 of this Lease.

IX. ***Late Charge:*** An amount equal to the sum of: (i) interest at Prime Rate, as defined hereinafter, plus four (4%) percent per annum, which interest shall accrue from the date any payment of Fixed Rent or Additional Rent is due until the date of payment of the same; plus (ii) an administrative fee equal to four (4%) percent of said late payment.

X. ***Tenant's Proportionate Share:*** Fifty (50%) percent, which percentage is arrived at by dividing (i) the Rentable Area of the Demised Premises (which, as of the Commencement Date, is agreed to be Two Hundred Thousand (200,000) square feet) by (ii) the Rentable Area of the Building (which, as of the Commencement Date, is agreed to be Four Hundred Thousand (400,000) square feet). Notwithstanding the foregoing, Tenant acknowledges that its Proportionate Share with respect to certain expenses which are directly or disproportionately attributable to Tenant or not provided to other tenants of the Building shall be appropriately adjusted to reflect such fact.

XI. ***Security Deposit:*** None.

XII. ***Tenant's S.I.C. Code (as per most recent S.I.C Manual as published by the United States Office of Management Budget):*** 522298.

XIII. ***Designated Broker:*** TC Northeast Metro, Inc. and Gale & Wentworth Real Estate Advisors, LLC.

XIV. ***Number of Tenant Allocated Parking Spaces:*** Eight Hundred Thirty (830) (including 16 handicap parking spaces as required by law and local municipal ordinance) exclusive spaces reserved in parking area serving the Building (**"Exclusive Spaces"**), as depicted on the parking plan attached hereto as **Exhibit E**, and zero (0) non-exclusive spaces in the common parking area serving the Building and other buildings on the Land (**"Non-Exclusive Spaces"**). Parking spaces are subject to the further provisions of Paragraph 23 of this Lease.

XV. ***Prime Rate:*** The prime commercial lending rate on 90 day loans announced by Citibank, N.A., or its successor.

XVI. ***Building Holidays:*** Building Holidays shall be President's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and day after; Christmas Day and New Year's Day; the Monday before or the Friday after if Christmas Day, New Year's Day, or Independence Day falls on Tuesday or on Thursday; and the Monday after or the Friday before if Christmas Day, New Year's Day, or Independence Day falls on Saturday or on Sunday.

XVII. ***Business Days:*** Weekdays excluding Building Holidays.

XVIII. ***Business Hours:*** The generally customary daytime business hours of Tenant (but not before 8:00 A.M. or after 6:00 P.M. on weekdays) and 8:00 A.M. to 1:00 P.M. on Saturdays. Business Hours do not include Sundays or Building Holidays.

The parties hereby agree to the following terms and conditions:

1. *Demised Premises, Term, and Purpose*.

(a) Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord the Demised Premises located in the Building, together with the non-exclusive right to use any pedestrian easements and/or vehicular easements that may exist from time to time for the benefit of tenants of the Building over any portion of the Land, together with all other Common Areas, as defined in Paragraph 1(d), for the Term commencing on the Commencement Date and ending on the Expiration Date, or such earlier date upon which the Term may expire or be terminated pursuant to the provisions of this Lease or pursuant to law. The parcel of land on which the Building is located (the **"Land"**) is known and designated as Lot 55, Block 175 on the tax maps of the Township of Parsippany.

(b) The Demised Premises shall be used by Tenant for the Permitted Use and for no other use or purpose. The Permitted Use shall not be deemed to include the following uses which are expressly prohibited: governmental offices; drive-up facility; educational, training, or similar classes for members of the general public; union offices; medical or similar treatments; barber or beauty parlor; gaming or political activities; pornographic; employment, recruiting, or placement activities (except executive search); retail or wholesale sale and delivery of goods; repairing, servicing, or receiving for repair or service; and any other use or uses that are of the same or similar nature or character. Tenant shall not use or occupy the Demised Premises or any part thereof for any purpose deemed unlawful, disreputable, or extra-hazardous on account of fire or other casualty or for any purposes that shall impair the character of the Building. Tenant, at its sole cost and expense, shall obtain any consents, licenses, permits, or approvals required or obtainable in normal course to conduct its business at the Demised Premises.

(c) The **"Common Areas"** shall consist of the "Building Common Areas," as defined hereinafter. The Common Areas shall be operated and maintained by Landlord and/or such other owners or operators for the benefit of all tenants in a first-class manner similar to that of other office buildings in the Morris County, New Jersey area that are reasonably similar to the Building with respect to tenant mix, size, and age. The use of the Common Areas shall be in common with Landlord, other tenants of the Building, and other persons entitled to use the same. Landlord shall not diminish the Common Areas in any way that has a materially negative impact on Tenant's ability to conduct its business for the Permitted Use at the Demised Premises.

The "Building Common Areas" shall be those parts of the Building and other improvements designated by Landlord for the common use of all tenants of the Building, including, but not limited to: utility lines, pumpstations, drainage basins, swales, detention or retention ponds, and other facilities on or serving the Land; halls; lobbies; delivery passages; drinking fountains; public toilets; parking facilities; lobby plantings and interior landscaped areas, exterior landscaped areas on the Land; and other facilities or Improvements owned, operated, or maintained, in whole or in part, by Landlord for use by all tenants of the Building.

(d) For purposes of this Lease the term **"Improvements"** shall mean and include all, whether existing now or in the future, buildings, including the Building, and/or appurtenant structures or improvements of any kind, whether above, on, or below the Land surface (including, without limitation, outbuildings; loading areas; canopies; walls; waterlines; sewer, electrical, and gas distribution facilities; parking facilities; walkways; streets; curbs; roads; rights of way; fences; hedges; exterior plantings; poles; and signs).

2. *Rent*.

(a) Beginning on the Rent Commencement Date, the rent reserved under this Lease for the Term hereof shall be and consist of: (i) the Fixed Rent payable in equal monthly installments in advance on the first day of each and every calendar month during the Term (except that Tenant shall pay one (1) monthly installment on the execution of this Lease, which installment shall be applied to the Monthly Fixed Rent due for the first (1st) month of the Term); plus (ii) such additional rent (**"Additional Rent"**) in an amount equal to Tenant's Proportionate Share of Operating Expenses and of Real Estate Taxes (as such terms are defined in Paragraph 3 of this Lease); all charges for services and utilities pursuant to Paragraph 15 hereof; and any other charges or amounts that shall become due and payable hereunder,

enforcement of any of the agreements, covenants, and obligations under this Lease and including, without limitation, the actual out-of-pocket expenses incurred by Landlord in the enforcement of any of the agreements, covenants, and obligations under this Lease and including reasonable legal fees that may accrue in the event suit for rent or dispossess proceedings are necessary to obtain the possession of the Demised Premises or to collect the rent; all of which Additional Rent shall be payable as hereinafter provided. All rent shall be paid to Landlord at its office stated above or such other place Landlord may designate in writing. If the Rent Commencement Date shall occur on a date other than the first calendar day of a month, the rent for the partial month commencing on the Rent Commencement Date shall be appropriately pro-rated on the basis of the monthly rent payable during the first year of the Term.

(b) Tenant does hereby covenant and agree to pay promptly the Fixed Rent and Additional Rent herein reserved as and when the same shall become due and payable, without demand therefor and without any set-off, recoupment, or deduction whatsoever, except as provided in **Exhibit G** attached hereto. All Additional Rent payable hereunder that is not due and payable on a monthly basis during the Term, unless otherwise specified herein, shall be due and payable within twenty (20) days of delivery by Landlord to Tenant of notice to pay the same.

(c) In the event that any payment of Fixed Rent or Additional Rent shall be paid more than five (5) days after the due date for the same as provided herein, Tenant shall pay, together with such payment, the Late Charge. Furthermore, if Tenant fails to remit a full monthly installment of the Monthly Fixed Rent or of the Additional Rent on or before the due date provided herein for two (2) consecutive months, then Landlord may require (i) all Fixed Rent and Additional Rent payments to be paid in advance on a quarterly annual basis, rather than a monthly basis, and (ii) an increase in an amount equal to one (1) installment of Monthly Fixed Rent in the Security Deposit. In addition, if Tenant submits to Landlord a check for which there are insufficient funds available, then Landlord may charge Tenant as Additional Rent an administrative and handling fee in the amount of One Hundred and 00/100 Dollars.

3. *Operating Expenses and Real Estate Taxes.*

(a) For purposes of this Paragraph, the following definitions shall apply:

**"Lease Year"** shall mean the period commencing from the Commencement Date and expiring at the end of the calendar year in which the Commencement Date occurs and each calendar year subsequent thereto during the Term and any Renewal Term.

**"Real Estate Taxes"** shall mean all real property taxes and assessments now or hereafter imposed upon the Land, the Improvements and other real property included with or located upon the Land. If, due to a change in the method of taxation or assessment, any franchise, income, profit or other tax, however designated, shall be substituted by the applicable taxing authority, in whole or in part, for the Real Estate Taxes now or hereafter imposed on the Land, the Improvements, or other real property included in the Land, such franchise, income, profit, or other tax shall be deemed to be included in the term "Real Estate Taxes." Real Estate Taxes shall not include any inheritance, estate, succession, transfer, gift, franchise, net income, capital stock tax, corporate, capital levy, stamp, or transfer tax (except to the extent that, as provided for above, such tax is substituted for and in lieu of Real Estate Taxes now or hereafter imposed). The Real Estate Taxes assessed for the 2000 calendar year are $954,860.68. In no event shall Landlord collect any amounts with respect to Real Estate Taxes which would, when taken together with those amounts collected by Landlord from other tenants in the Building (and in the event the Building is less than 100% occupied, paid directly by Landlord), exceed 100% of the actual Taxes for any calendar year. Taxes shall not include (i) any late charges assessed due to Landlord's failure to timely pay taxes, and (ii) taxes on or relating to inheritance, estate, succession, transfer, gift, franchise, net profits or income tax imposed by Landlord or agents of Landlord.

**"Operating Expenses"** shall mean the total of all the costs and expenses paid or incurred by Landlord (and/or others to the extent such costs paid or incurred by others are chargeable to Landlord) with respect to the management, operation, maintenance, and repair of the Land, the Building, and any of the other Improvements and the services provided tenants therein [excepting the cost of installing separate electric meters for the Demised Premises and electrical energy expenses paid directly by tenants (including Tenant) to Landlord or the applicable utility supplying said service pursuant to Paragraph 15 of this Lease and equivalent

provisions of other leases], including, without duplication, but not limited to: all utilities, including without limitation, water, electricity, gas, lighting, sewer and waste disposal; air conditioning, ventilation, and heating; lobby maintenance and cleaning; maintenance of elevators; protection and security; lobby plantings and interior landscape maintenance; exterior landscape maintenance; roads, streets and driveways, snow removal; parking lot maintenance, striping, and repairs (after the initial retopping and restriping currently contemplated by Landlord at Landlord's cost and expense); operation, maintenance, repair, or replacement of utility lines, pumpstations, drainage basins, detention basins, swales, detention or retention ponds, and other facilities on or serving the Land; maintenance and painting of non-tenanted areas; fire, all-risk, boiler and machinery, sprinkler, apparatus, public liability, environmental, property damage, rent, and plate glass insurance; supplies; wages, salaries, disability benefits, pensions, hospitalization, retirement plans, group insurance, worker's compensation insurance, payroll, social security, unemployment, and other similar taxes with respect to employees of Landlord; uniforms and workers' clothes for such employees and the cleaning thereof and other similar employees benefits and expenses imposed on Landlord pursuant to law or to any collective bargaining agreement with respect to Landlord's employees (up to and including the Building manager) to the extent and in such proportion that the services of such employees are dedicated to the operation of the Building; the cost for a bookkeeper and for an accountant and any other professional and consulting fees, including legal and auditing fees to the extent and in such proportion that the services of such professional and consultants are dedicated to the operation of the Building; association fees or dues; the expenses, including payments to attorneys and appraisers, incurred by Landlord in connection with any application or proceeding wherein Landlord obtains or seeks to obtain reduction or refund of the Real Estate Taxes payable or paid; management fees of the Building not to exceed 3 1/2% of gross rentals; and any other expenses of any other kind whatsoever reasonably incurred in managing, operating, maintaining, or repairing the Building, the Land or any other of the Improvements.

Landlord agrees that with respect to all maintenance, repair, replacement, and improvement expenses referred to in the immediately preceding paragraph involving contracts or individual expenditures exceeding Twenty-five Thousand and 00/100 Dollars ($25,000.00), other than emergency repairs, Landlord shall obtain at least two (2) competitive bids and shall utilize the lower (or lowest, as the case may be) responsible bidder for such work.

It is agreed, however, that the foregoing Operating Expenses shall exclude or have deducted from them, as the case may be and as shall be appropriate:

(i) leasing commissions;

(ii) salaries and other employee costs for executives above the grade of Building manager;

(iii) expenditures for capital improvements, except (x) those which under generally accepted accounting principles consistently applied (**"GAAP"**) are expensed or regarded as deferred expenses and (y) capital expenses required to comply with any Law, as hereinafter defined, enacted after the date of this Lease, and (z) capital expenditures incurred to reduce Operating Expenses to the extent of the savings realized therefrom; in any of which cases the costs thereof shall be included in Operating Expenses for the calendar year in which the costs are incurred and for subsequent calendar years on a straight line basis amortized over the useful life of such capital improvement or such other appropriate period not exceeding ten (10) years with an interest factor equal to the Prime Rate at the time of Landlord's having actually incurred said expenditure, provided, however, that nothing herein shall relieve Tenant of the responsibility for payments for capital improvements charged to Tenant pursuant to Paragraph 5 hereof and capital expenditures required by Law due solely to Tenant's use of the Demised Premises or any action of Tenant will be paid in full by Tenant within thirty (30) days of written demand therefor by Landlord;

(iv) advertising, marketing, and promotional expenditures;

(v) legal fees for lease negotiations and disputes with tenants;

(vi) legal and auditing fees, other than legal and auditing fees reasonably incurred in connection with (x) the maintenance and operation of the Building or (y) the preparation of statements required pursuant to additional rent or lease escalation provisions;

(vii) as a deduction, amounts received by Landlord through proceeds of insurance to the extent the proceeds are compensation for expenses that were previously included as Operating Expenses hereunder;

(viii) costs of environmental remediation, fines, penalties or other costs incurred by Landlord arising from, or in connection with, the presence of Hazardous Materials as of the date possession of the Demised Premises is delivered to Tenant costs as a result of or the presence of Hazardous Materials after the Date of possession of the Demised Premises not to exceed $100,000 per occurrence (in all cases excluding remediation as a result of Tenant's action);

(ix) amounts paid to an affiliate of Landlord for services rendered or goods furnished to the extent the amount paid exceeds the amount that would have been paid for goods and services of similar quality and promptness if procured in an arms-length transaction from a non-affiliate of Landlord;

(x) political or charitable contributions;

(xi) fines, penalties and interest not brought about by the acts or omissions of Tenant, or its employees or agents;

(xii) costs incurred in connection with the development, construction and operation of additional buildings;

(xiii) any insurable casualty damage which is not covered by Landlord's property insurance (a) due to the application of any deductible or retention in excess of $5,000 per occurrence, or (b) due to an insufficient limit of insurance or application of any coinsurance penalty.

In no event shall Landlord collect any amounts with respect to any individual item of Expenses which would, when taken together with those amounts collected by Landlord from other tenants in the Building (and in the event the Building is less than 100% occupied, paid by Landlord directly), exceed 100% of the actual Expenses incurred by Landlord with respect to such items. Landlord agrees to provide to Tenant, prior to the execution of this Lease Date, an estimate of Tenant's Pro Rata Share of Operating Expenses for the first Lease year of the Term. Tenant acknowledges that such estimate is a good faith estimate only and shall not be binding on Landlord.

If Landlord and/or others shall purchase any item of capital equipment or make any capital expenditures designed to result in savings or reductions in Operating Expenses, then the costs for same shall be included in Operating Expenses. The costs of such capital equipment or capital expenditures are to be included in Operating Expenses for the calendar year in which the costs are incurred and subsequent calendar years on a straight line basis amortized over such period of time as reasonably can be estimated as the time in which such savings or reductions in Operating Expenses are expected to equal Landlord's costs for such capital equipment or capital expenditure with an interest factor equal to the Prime Rate at the time of Landlord's having actually incurred said costs. If Landlord and/or others shall lease any such item of capital equipment designed to result in saving or reductions in Operating Expenses, then the rentals and other costs paid pursuant to such leasing shall be included in Operating Expenses for the calendar year in which they were incurred.

If during all or part of the Initial Year or any Lease Year, Landlord and/or others does not furnish any particular item(s) of work or service that would constitute an Operating Expense hereunder to portions of the Building due to the fact that: (1) construction of the Building is not completed, (2) such portions of the Building are not completed, (3) the Building shall have been less than ninety-five (95%) percent occupied; or (4) such item of work or service is not required or desired by the tenant of such portion or such tenant is itself obtaining and providing such item of work or service or for any other reason; then, for the purposes of computing the Additional Rent payable hereunder, the amount of the Operating Expenses for

such item for such period shall be increased by an amount equal to the additional operating and maintenance expenses that would reasonably have been incurred during such period by Landlord and/or others if it or they had at its or their own expense furnished such item of work or service to such portion of the Building. Furthermore, Real Estate Taxes, for the purposes of this Lease, shall reflect the fully assessed value of the Building multiplied by the tax rate then in effect. If all the Building, Land, and Improvements to be included in the Building have not been included in the assessed value of the Building for the calculation of Real Estate Taxes, then the Real Estate Taxes shall be adjusted by Landlord to reflect the amount of Real Estate Taxes that would be imposed on the Building if all of the Building, Land, and Improvements to be included in the Building were completed and included in said assessed value of the Building and in the Real Estate Taxes.

(b) In the event (i) that the Commencement Date shall occur on a day other than the first day of a calendar year, or (ii) that the Expiration Date or other termination date of this Lease shall occur on a day other than the last day of a calendar year, or (iii) of any abatement of the Fixed Rent payable hereunder pursuant to any provision of this Lease for any period of time not equal to a full calendar year, or (iv) of any increase or decrease in the Rentable Area of the Demised Premises or any increase or decrease in the Rentable Area of the Building, then in each such event in applying the provisions of this Paragraph 3 with respect to such calendar year in which such events have occurred, appropriate adjustments shall be made to Tenant's Proportionate Share of Operating Expenses and Real Estate Taxes payable pursuant to Paragraph 3(c) so as to apportion such payment on the basis of (1) the pro rata portion of the calendar year during which such payment is to be made and/or (2) the increase or decrease in Tenant's Proportionate Share of Operating Expenses and Real Estate Taxes by virtue of the changes in any such Rentable Area.

(c) Tenant shall be responsible for and shall pay to Landlord in accordance with this Paragraph 3 Tenant's Proportionate Share of Operating Expenses and of Real Estate Taxes paid or incurred by Landlord in each Lease Year during the Term, as hereinafter provided.

(i) During each Lease Year Tenant shall pay to Landlord monthly, on the first day of each calendar month, as Additional Rent, Landlord's estimate of Tenant's Proportionate Share of Operating Expenses and of Real Estate Taxes to be paid or incurred by Landlord in that particular Lease Year.

(ii) Prior to the end of the first (1st) Lease Year of the Term and thereafter for each successive Lease Year, or part thereof, Landlord shall send to Tenant a statement of the projected Operating Expenses (including line item detail) and Real Estate Taxes for the applicable Lease Year (**"Operating Expense/Real Estate Tax Projection"**) and shall indicate what the estimated amount of Tenant's Proportionate Share of said Operating Expenses and said Real Estate Taxes shall be, said amount to be paid in equal monthly installments (rounded to the nearest whole dollar) in advance on the first day of each month by Tenant as Additional Rent, commencing January lst of the applicable Lease Year.

(iii) If during the course of any Lease Year, Landlord shall have reason to believe that the Operating Expenses or Real Estate Taxes shall be higher than that upon which the aforesaid Operating Expense/Real Estate Tax Projection was originally based, as set forth in Subparagraph (c) (ii) above, then Landlord shall be entitled to adjust the Operating Expense/Real Estate Tax Projection by a lump sum invoice for the months of the Lease Year which precede the revised Operating Expense/Real Estate Tax Projection and to advise Tenant of an adjustment in future monthly projection amounts to the end result that Landlord's Operating Expense/Real Estate Tax Projection shall be on a reasonably current basis each Lease Year.

(iv) Within ninety (90) days following the end of each Lease Year, Landlord shall send to Tenant a statement of the actual Operating Expenses and Real Estate Taxes incurred for the prior Lease Year showing Tenant's Proportionate Share of the Operating Expenses and of the Real Estate Taxes due from Tenant. In the event that the amount prepaid by Tenant exceeds the amount that was actually due based upon actual year-end cost, Landlord shall pay to Tenant an amount equal to the over-charge. Landlord shall reimburse Tenant for such over-charge by either, at Landlord's option, (1) paying such amount together with the statement of the actual increase or (2) crediting such amount to the next installment of

Fixed or Additional Rent due and payable by Tenant. In the event that Landlord has undercharged Tenant, then Landlord shall provide Tenant with an invoice stating the additional amount due, which amount shall be paid in full by Tenant within twenty (20) days of receipt.

(d) Each and every of the aforesaid Operating Expense/Real Estate Tax Projection amounts, whether requiring lump sum payment or constituting projected monthly amounts added to the Fixed Rent, shall for all purposes be treated and considered as Additional Rent and the failure of Tenant to pay the same as and when due in advance and without demand shall have the same effect as a failure to pay any installment of the Fixed Rent and shall afford Landlord all or any of the remedies provided in this Lease therefor, including, without limitation, the Late Charge as provided in Paragraph 2(c) of this Lease.

(e) Tenant acknowledges and agrees that Landlord shall have the right to change the period of the Lease Year, either before or during the Term, to any other fiscal year or twelve month period. In the event that Landlord makes such a change, then the same shall be effective upon written notice to Tenant and, in such event, Tenant shall pay Tenant's Proportionate Share of Operating Expenses and of Real Estate Taxes paid or incurred by Landlord over the Operating Expenses and Real Estate Taxes paid or incurred by Landlord for the period from the end of the initially designated Lease Year, as last billed, to the beginning of the newly designated Lease Year, prorated for such period, within twenty (20) days of the rendering by Landlord of the bill for such interim period.

(f) Tenant acknowledges that Landlord shall have the exclusive right, but not the obligation, to contest or appeal any assessment for Real Estate Taxes. Notwithstanding the foregoing, if Tenant notifies Landlord in writing of its desire to contest or appeal an assessment and Landlord fails to contest or appeal such assessment within ninety (90) days of receipt of Tenant's notice, Tenant may thereafter, at Tenant's sole cost and expense, contest or appeal such assessment; provided, however, if Tenant loses such contest and such loss results in an increase in the assessment, Tenant shall be responsible for paying the entire increase.

(g) For the protection of Tenant, Landlord shall maintain books of account that shall be open to Tenant and its representatives so that Tenant, at its sole cost and expense, may audit said books of account to determine that any Operating Expenses have, in fact, been paid or incurred, said audit to be subject to the following conditions:

(1) Such audit shall be conducted only during regular business hours at the office where Landlord maintains said books of account;

(2) Tenant shall provide to Landlord fourteen (14) days' prior written notice;

(3) Tenant has not been notified that an Event of Default has occurred from the time Tenant provides Landlord with notice through the time such audit is conducted;

(4) Tenant shall deliver to Landlord a copy of the results of such audit within fifteen (15) days of its receipt by Tenant;

(5) Any information obtained by Tenant in connection with such an audit is sensitive and proprietary in nature, and Tenant agrees that all such information shall be kept private and confidential;

(6) Only an independent and nationally recognized accounting firm (or another accounting firm reasonably acceptable to Lender) that is not being compensated by Tenant on a contingency fee basis may perform such audit; and

(7) Any such audit must be concluded within five (5) days after it is first commenced.

If, as a result of the audit, any disagreement with respect to any one or more of the charges exists and is not satisfactorily settled between Landlord and Tenant, said disagreement may be referred by either party to an independent certified public accountant to be mutually agreed upon, and if such an accountant cannot be agreed upon, the American Arbitration Association may be asked

by either party to select an arbitrator whose decision shall be final and binding upon both parties, who shall jointly share any cost of such arbitration. Pending resolution of said dispute, Tenant shall pay to Landlord the sum so billed by Landlord, subject to the ultimate resolution as described above. Notwithstanding anything herein to the contrary, once Landlord shall have finally determined the Operating Expenses at the expiration of each Lease Year as described in Paragraph 3(c)(iv) above, then Tenant shall be entitled to audit and dispute any charge so established for a period of one hundred twenty (120) days after Tenant's receipt of such statement, and Tenant specifically waives any right to dispute or audit any such charge at the expiration of said one hundred twenty (120) day period. Furthermore, no subtenant shall have any right to conduct an audit, and no assignee shall conduct an audit for any period during which such assignee was not in possession of the Demised Premises.

4. *Completion of Improvements and Commencement of Rent*.

(a) Landlord agrees to provide the improvements and other work in and to the Demised Premises (the **"Tenant Improvements"**) in accordance with the terms, conditions, and provisions of **Exhibit B** attached hereto and made a part hereof.

(b) The Demised Premises shall be deemed ready for occupancy and the Commencement Date hereunder shall occur on the date that: (i) such portion of the Demised Premises shall be delivered to Tenant in tenantable condition, free of violations of any health, safety, fire, and other statutes and regulations governing such portion of the Demised Premises and its use, all of which shall be established by the issuance by the appropriate governmental authority of a certificate (temporary or final) permitting occupancy of such portion of the Demised Premises for the purposes set forth herein, it being understood if a temporary certificate of occupancy has been issued, Landlord shall proceed to complete the Tenant Improvements in order that a permanent certificate of occupancy may be obtained; and (ii) Landlord has Substantially Completed, as defined hereinafter, the Tenant Improvements.

(c) Tenant shall occupy such portion of the Demised Premises as soon as the same are ready for its occupancy and the Commencement Date shall have occurred (but not prior to said date except to install Tenant's personal property as provided in this Lease). If and when Tenant shall take actual possession of all or any part of the Demised Premises, it shall be conclusively presumed that the same is in satisfactory condition, except for latent defects and those items of work remaining to be performed by Landlord pursuant to this Paragraph 4 or any items of work set forth in a punch list (**"Punch List"**) to be submitted to and acknowledged by Landlord in writing within thirty (30) days after the Commencement Date. Landlord shall complete the Punch List within ninety (90) days after the identification thereof subject to Force Majeure.

(d) Upon prior written notice to Landlord, Tenant shall be permitted to enter the Demised Premises prior to the anticipated Commencement Date for the purpose of moving personal property into the Demised Premises, all without obligation to pay Fixed Rent or Additional Rent therefor, provided all of such work shall be performed for Tenant so as not to cause or create any labor dispute for Landlord or to disrupt the performance of the Tenant Improvements, and further provided Tenant complies with all of the other terms and provisions of this Lease, to include but not be limited to the provisions of Paragraph 10 of this Lease.

5. *Covenants as to Condition of Demised Premises and Compliance with Laws*.

(a) Subject to Paragraph 10(d) below, in the event that the Building or any of the equipment affixed thereto or stored therein should be damaged (other than by ordinary wear and tear) as a result of any act of Tenant, its agents, servants, employees, invitees, or contractors, Tenant shall, within thirty (30) days of notice, pay to Landlord the actual out-of-pocket cost of all required repairs, including structural repairs. Upon the request of Tenant, Landlord shall provide to Tenant copies of invoices and other reasonable back up information for any such expenses.

(b) Tenant shall commit no act of waste and shall take good care of the Demised Premises and the equipment affixed thereto and stored therein and, at Tenant's sole cost and expense, shall maintain the Demised Premises in good condition and state of repair. In addition, Tenant, at Tenant's sole cost and expense, shall promptly comply with all laws, rules, regulations, and ordinances of all governmental authorities or agencies having jurisdiction over

the Demised Premises and of all insurance bodies (including, without limitation, the Board of Fire Underwriters) at any time duly issued or in force, applicable to the Demised Premises or any part thereof or to Tenant's use thereof, including, without limitation the Americans with Disabilities Act (collectively **"Laws"** or, as the context requires, **"law"** or **"laws"**). Tenant agrees to provide Landlord with immediate notice of the need for any of the foregoing maintenance, repairs, or modifications, and Landlord shall perform, or cause to be performed, all of the same with the costs incurred therefor to be paid by Tenant immediately upon demand as Additional Rent.

(c) Landlord shall maintain and repair the Building Common Areas, the costs of which shall be passed through as an Operating Expense to the extent permitted in Paragraph 3 but subject to the obligations of Tenant to pay for the same as a direct Additional Rent expense as specifically provided in this Paragraph 5. Such maintenance and repair shall specifically include (i) maintenance and repairs to the Building's HVAC, fire safety (including without limitation, sprinklers), electrical, plumbing, or other systems to the extent that such systems service the Demised Premises in common with other tenanted areas (but specifically excluding the distribution portions of such Building systems located within the Demised Premises and specifically excluding the fixtures and systems that serve the Demised Premises exclusively, in which case Landlord shall make such repair and/or modification, but Tenant shall pay to Landlord the actual out-of-pocket costs incurred therefor within thirty (30) days of demand as Additional Rent) and (ii) any structural maintenance or repairs to the Building. Upon the request of Tenant, Landlord shall provide to Tenant copies of invoices and other reasonable back up information for any such expenses. In addition, Landlord shall perform all maintenance and make all repairs to the Common Areas of the Building and to the Land that are necessary to comply with any applicable Laws, the actual out-of-pocket costs of which shall be passed through to the Building tenants as an Operating Expense, unless excluded therefrom under the provisions of Paragraph 3.

(d) Upon the Expiration Date or sooner termination of this Lease, Tenant shall deliver up the Demised Premises in good order and condition, wear and tear from a reasonable use thereof and insured casualty excepted.

6. *Tenant Improvements, Alterations, and Installations.*

(a) All fixtures, equipment, improvements, alterations, installations that are attached to the Demised Premises; any additions and appurtenances made by Tenant to the Demised Premises; and any Tenant Improvements (excluding Tenant's trade fixtures, business equipment, movable partitions, and personal property) shall become the property of Landlord upon installation. Not later than the last day of the Term, Tenant shall, at its expense, remove from the Demised Premises all of Tenant's trade fixtures, business equipment, movable partitions, personal property, and any Alterations (as defined hereinafter) Landlord elects by written notice to Tenant to have removed pursuant to this Paragraph 6. Tenant, at its sole cost and expense, shall repair injury done by or in connection with the installation or removal of the Alterations required to be removed. Any equipment, fixtures, goods, or other property of Tenant not removed by Tenant upon the termination of this Lease or upon any quitting, vacating, or abandonment of the Demised Premises by Tenant shall be considered as abandoned, and Landlord shall have the right, without any notice to Tenant, to sell or otherwise dispose of the same, at the expense of Tenant, and shall not be accountable to Tenant for any part of the proceeds of such sale, if any. Landlord may have any such property stored at Tenant's risk and expense.

(b) Tenant, without Landlord's prior consent, shall have the right to make non-structural Alterations in or to the Demised Premises that (i) involve a total cost of not more than Fifty Thousand and 00/100 Dollars ($50,000.00) in any twelve (12) month period; (ii) do not require a building permit to be issued by any governmental authority to make same legally; (iii) do not affect any existing building systems outside the Demised Premises and do not impair or adversely affect any existing building systems within the Demised Premises; and (iv) do not result in a violation of the Permitted Use of the Demised Premises. No other Alterations (structural or non-structural) shall be made by Tenant without Landlord's express prior written approval. Landlord agrees that approval of Alterations of a non-structural nature that do not affect any building systems shall not be unreasonably withheld, conditioned or delayed. Landlord agrees not to unreasonably withhold, condition or delay its consent to a nonmaterial alteration within the Demised Premises which does affect a building system. Tenant shall give

Landlord prior written notice of any proposed alterations, installations, additions, or improvements (**"Alterations"**) with copies of proposed plans and as-built plans upon completion of the Alterations. Tenant acknowledges that the proposed plans and the as-built plans, both of which shall be complete, detailed, and accurate, shall be provided to Landlord on AutoCAD disks. Landlord shall have the right to elect that Tenant remove any Alteration made to the Demised Premises prior to the expiration of the Lease and to restore the Demised Premises to the condition existing prior to said Alteration. All such Alterations shall be done at Tenant's sole expense and the making thereof shall not interfere with the use of the Building by other tenants. Tenant agrees to indemnify, defend, and hold harmless Landlord and any mortgagee of Landlord, if any, from any and all costs, expenses, claims, causes of action, damages, and liabilities of any type or nature whatsoever (including, but not limited to, reasonable attorneys' fees and costs of litigation) arising out of or relating to the making of the Alterations by Tenant. The foregoing indemnity shall survive the expiration or sooner termination of this Lease. Nothing herein contained shall be construed as constituting the permission of Landlord for a mechanic or subcontractor to file a construction lien claim against the Demised Premises, and Tenant agrees to secure the removal of any such construction lien that a contractor purports to file against the Demised Premises by payment or otherwise pursuant to law. All Alterations shall be effected in compliance with all applicable Laws.

(c) Except as described in this Article 6, all improvements to the Premises including the Tenant Improvements (collectively, "Leasehold Improvements") shall be owned by Landlord and shall remain upon the Premises without compensation to Tenant. However, Landlord, by written notice to Tenant at the time Landlord consents to the installation of such Leasehold Improvements, may require Tenant to remove upon the expiration or earlier termination of this Lease, at Tenant's expense any Leasehold Improvements that are performed by or for the benefit of Tenant and, in Landlord's reasonable judgment, are of a nature that would require removal and repair costs that are materially in excess of the removal and repair costs associated with standard office improvements (collectively referred to as "Required Removables"). The Required Removables designated by Landlord shall be removed by Tenant before the Termination Date. Tenant shall repair damage caused by the installation or removal of Required Removables. If Tenant fails to remove any Required Removables or perform related repairs in a timely manner, Landlord, at Tenant's expense, may, after providing five (5) days advance written notice to Tenant, remove and dispose of the Required Removables and perform the required repairs. Tenant, within 30 days after receipt of an invoice, shall reimburse Landlord for the actual out-of-pocket costs incurred by Landlord. Notwithstanding anything to the contrary contained herein, (i) under no circumstances shall Tenant be required to remove the initial tenant improvements (including cabling) installed pursuant to the Work Letter attached to this Lease, (ii) all personal property not primarily a part of the Building, including moveable partitions, business and trade fixtures, machinery and equipment, communications and office equipment, whether or not attached to or built into the Demised Premises, which are installed in the Demised Premises by or for the account of Tenant and can be removed without damage to the Building or the Demised Premises or the structural, mechanical or electrical components thereof, and all furniture, furnishings and other articles of moveable personal property owned by Tenant and located in the Demised Premises (collectively "Tenant's Property") shall remain the property of Tenant and may be removed by Tenant or any person claiming under Tenant at any time or times during the Term. Tenant shall repair and restore any damage to the Building or the Demised Premises occasioned by the removal by Tenant or any person claiming under Tenant of any of Tenant's Property from the Demised Premises. Upon the expiration of the Term or earlier termination of this Lease, Tenant shall have the obligation, if directed in writing by Landlord to do so, to remove Tenant's Personal Property any other alterations, improvements or additions to the Demised Premises made by or for the account of Tenant. Except as described above, all Alterations shall become Landlord property at the end of the Term.

7. *Various Negative Covenants by Tenant*. Tenant agrees that it shall not, without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion:

(a) do anything in or near the Demised Premises that will increase the rate of fire insurance on the Building;

(b) permit the accumulation of waste or refuse matter in or near the Demised Premises, except in containers provided therefor;

(c) except as expressly permitted herein, permit any signs, lettering, or advertising matter to be erected or attached to the Demised Premises that is visible from outside of the Demised Premises;

(d) mortgage, hypothecate, pledge, assign, transfer, or sublet all or a portion of the Demised Premises or this Lease, as the case may be, except to the extent specifically permitted in Paragraph 27; or

(e) encumber or obstruct the Common Areas surrounding the Demised Premises, nor cause the same to be encumbered or obstructed, nor encumber or obstruct any access ways to the Demised Premises, nor cause the same to be encumbered or obstructed.

8. *Various Affirmative Covenants of Tenant*. Tenant covenants and agrees that Tenant will:

(a) At any time and from time to time execute, acknowledge, and deliver to Landlord, or to anyone Landlord shall designate, ten (10) days of receipt of request therefor, a tenant estoppel certificate in form reasonably acceptable to Landlord or to the financial institutions requesting the same relating to matters customarily included in tenant estoppel certificates. Notwithstanding anything herein to the contrary, in the event Tenant fails to return the requested estoppel certificate within such ten (10) day period, then the estoppel certificate shall be deemed accepted as complete and accurate by Tenant.

(b) Faithfully observe and comply with the rules and regulations attached hereto and made a part hereof as **Exhibit C** and such additional reasonable rules and regulations as Landlord may hereafter at any time or from time to time communicate in writing to Tenant, and which, in the reasonable judgment of Landlord, shall be necessary or desirable for the reputation, safety, care, or appearance of the Building, or the preservation of good order therein, or the operation or maintenance of the Building, or the equipment thereof, or the comfort of tenants or others in the Building, provided, however, that in the case of any conflict between the provisions of this Lease and any such rule or regulation, the provisions of this Lease control. Nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the rules and regulations or the terms, covenants, or conditions in any other lease as against any other tenant, and Landlord shall not be liable to Tenant for violation of any rule or regulation by any other tenant, its employees, agents, visitors, invitees, subtenants, or licensees. To the extent that Landlord does enforce said rules and regulations, Landlord agrees to use all reasonable efforts to do so in a non-discriminatory manner.

9. *Signage*.

(a) *Building Directory*. Landlord shall, at the request of Tenant, maintain a listing of the name of Tenant on the directory(ies) located at the Building. Said listing, which shall not include any individual names of Tenant's employees, shall be Building standard lettering.

(b) *Building Sign*. Landlord shall, at Tenant's cost and expense, display Tenant's name and logo on a non-exclusive ground monument sign to be located at the entrance to the Building. The size of such sign and lettering to be used on the monument shall be subject to municipal approval and Landlord's prior approval, which approval shall not be unreasonably withheld, and shall comply with reasonable rules and regulations of Landlord and local municipal regulations.

(c) *Facade Sign*. Tenant shall have the non-exclusive right, at Tenant's sole cost and expense, to display its corporate name or corporate logo on the facade of the Building. The size and location of such lettering shall be subject to municipal approval and Landlord's prior approval, which approval shall not be unreasonably withheld or delayed. At the end of the Term of this Lease, any such façade sign shall be removed by Tenant, at Tenant's sole cost and expense. Landlord shall not grant similar façade signage rights to any other tenant that is a bank, lending institution or which is in competition with Tenant. Tenant acknowledges that Exodus Communications, Inc. is not a bank or lending institution which is in competition with Tenant.

10. *Casualty and Insurance*.

(a) In the event of partial or total destruction of the Building or of the Demised Premises by reason of fire or any other cause, Tenant shall immediately notify Landlord of the same, and Landlord shall promptly restore and rebuild the Building and/or the Demised Premises (excluding the Tenant Improvements constructed by Landlord pursuant to **Exhibit B** and Tenant's trade fixtures, equipment, and personal property) at Landlord's expense (but only to the extent of the insurance proceeds covering such damage actually received by Landlord), unless Landlord elects by notice to Tenant within ninety (90) days of said destruction not to restore and rebuild the Building and/or Demised Premises, and, in such case, upon a date specified in said notice by Landlord, this Lease shall terminate. If Landlord elects to restore and rebuild the Demised Premises, then during the period of restoration of any such area, if any portion of the Demised Premises is rendered untenantable by said damage, Tenant waives the benefit of N.J.S.A. 46:8-6 and 46:8-7 and agrees that Tenant will not be relieved of its obligation to pay Fixed and Additional Rent in case of damage to or destruction of the Demised Premises or the Building, except with respect to the portion of the Fixed and Additional Rent herein reserved that relates to said untenantable portion only. Tenant acknowledges that Landlord will not carry insurance on Tenant's furniture, furnishings, fixtures, equipment, personal property, Tenant Improvements, and other Alterations; therefore, Tenant agrees that Landlord shall have no obligation to repair any damage to the same.

(b) Tenant shall, at Tenant's sole cost and expense, except to the extent prohibited by law with respect to worker's compensation insurance, for the benefit of Tenant, Landlord, and any Additional Insured (as hereinafter defined) and/or any other additional insured as Landlord shall from time to time reasonably determine, maintain or cause to be maintained (i) commercial general liability insurance coverage with a limit of not less than Five Million and 00/100 Dollars ($5,000,000.00) per each occurrence (the **"CGL"**), to include commercial excess liability coverage, if necessary [If the CGL contains a general aggregate, it shall apply separately to the Demised Premises. The CGL shall be written on ISO occurrence form CG00011093 or a substitute providing equivalent coverage and shall cover liability arising from the Demised Premises, operations, independent contractors, products-completed operations, personal injury, advertising liability, and liability under an insured contract. The commercial excess liability coverage shall be consistent with the primary coverage.]; (ii) worker's compensation insurance covering all persons employed in connection with the construction of any improvements by Tenant and the operation of its business upon the Demised Premises, although Tenant may self insure worker's compensation claims if approved to do so by the regulatory authorities in New Jersey; and (iii) Special Form ("all risk") coverage on all of Tenant's personal property, including, but not limited to, standard fire and extended coverage insurance with vandalism and malicious mischief endorsements on all of the Tenant Improvements and Alterations in or about the Demised Premises, to the extent of their full replacement value. If, in the opinion of any mortgagees or ground lessors of the Land and/or the Building, the foregoing coverages and/or limits shall become inadequate or less than that commonly maintained by prudent tenants in similar buildings in the area by tenants making similar uses, Landlord shall have the right to require Tenant to increase its insurance coverage and/or limits. All such insurance shall, to the extent permitted by law, name any mortgagees and ground lessors of the Land and the Building, and their successors and assigns (the **"Additional Insureds"**) and Landlord, as additional insureds and shall be written by an insurance carrier authorized to do business in the State of New Jersey and that is rated at least A+ XII by A.M. Best Company, Oldwick, New Jersey.

(c) Prior to the Commencement Date, Tenant shall deliver to Landlord a certificate of each policy required under this Lease, which certificate shall be in a form reasonably satisfactory to Landlord and shall, at a minimum: (i) specify the additional insured status of Landlord and of the Additional Insureds, (ii) evidence the waiver of subrogation required pursuant to Paragraph 10(d), and (iii) provide that said policy shall not be otherwise materially changed or canceled or lapse without providing to Landlord at the address specified in Paragraph 18 of this Lease at least thirty (30) days' written notice of such other material change, cancellation, or lapse. Tenant agrees to provide to Landlord timely renewal certificates as the coverage renews. Notwithstanding anything herein to the contrary, all policies required to be effected by Tenant under this Lease shall be maintained in force throughout the Term or any Renewal Term.

(d) Landlord and Tenant waive all rights of recovery against each other and the Additional Insureds for any loss, damages, or injury of any nature whatsoever to property for

which the waiving party is required to be insured. In addition, during the Term, Landlord and Tenant shall each maintain in effect in each insurance policy required under this Lease that relates to property damage a waiver of subrogation in favor of the other party and the Additional Insureds from its then-current insurance carriers and shall upon written request of the other party (made not more frequently than two (2) times each Lease Year) furnish evidence of such currently effective waiver which shall be in customary form.

(e) Each insurance policy required to be maintained under this Lease shall state that, with respect to the interest of Landlord and of the Additional Insureds, the insurance maintained pursuant to each such policy shall not be invalidated by any action or inaction of Tenant and shall insure Landlord and the Additional Insureds regardless of any breach or violation of any warranties, declarations, conditions, or exclusions by Tenant.

(f) Each insurance policy (if separate policies are issued) required to be maintained under this Lease shall state that all provisions of each such insurance policy, except for the limits of liability, shall operate in the same manner as if a separate policy had been issued to each person or entity insured thereunder.

(g) Each insurance policy required to be maintained by Tenant under this Lease shall state that the insurance provided thereunder is primary insurance without any right of contribution from any other insurance which may be carried by or for the benefit of Landlord or the Additional Insureds.

(h) Each insurance policy required to be maintained under this Lease shall recognize the indemnification set forth in Paragraph 11 of this Lease.

(i) The failure of Tenant to maintain any of the insurance required under this Lease, or to cause to be provided in any insurance policy the requirements set forth in this Paragraph 10, shall constitute a default under this Lease without any notice of any such default.

(j) Landlord shall maintain or cause to be maintained: (i) commercial general liability insurance on an occurrence basis, on ISO form CG0001 or its equivalent in respect of the Building and the conduct and operation of its business therein, with combined base and umbrella coverage limits of not less than Ten Million and 00/100 Dollars ($10,000,000.00) for bodily injury or death and property damage in any one occurrence, including water damage and sprinkler leakage legal liability; and (ii) Special Form ("All Risk") property insurance (including, without limitation, rent insurance) in respect of the Building and the buildings and other improvements (including, without limitation, the Common Areas) (except for the property Tenant is required to cover with insurance under Paragraph 10(b) and similar property of other tenants and occupants in the Building) for the benefit of the Additional Insureds, as their interests may appear. The property insurance with respect to the Building shall be in the amount of full replacement value with coinsurance waived or in an amount sufficient to avoid the effect of the co-insurance provisions of the applicable policy or policies. Landlord shall have the right to provide any insurance maintained or caused to be maintained by it under blanket policies provided that such policies shall in all other respects comply with the requirements of this Paragraph 10(j). The cost of maintaining the insurance required of Landlord under this Subparagraph (j) shall be an Operating Expense under Paragraph 3 hereof. Landlord shall also comply with New Jersey Workers' Compensation laws with respect to all employees and contractors engaged by Landlord who may perform services in connection with operations at the Premises, and shall maintain Auto Liability insurance at a limit not less than $1,000,000.00 per occurrence for bodily injury and property damage combined, for claims arising from the use of owned, non-owned, hired or borrowed autos in connection with operations at the Premises.

11. *Indemnification*.

(a) Subject to Paragraph 10(d) above, Tenant shall indemnify, defend, and hold harmless Landlord, the Additional Insureds, any mortgagee, and any lessor under any underlying leases or ground leases, from and against any expense (including, without limitation, legal and collection fees), loss, liability, suffered or incurred as a result of or in connection with (a) any breach of Tenant of its obligations contained in this Lease, or (b) its acts or omissions or the acts or omissions of its agents, representatives, servants, invitees, licensees, contractors, or employees. This provision shall survive the expiration or sooner termination of this Lease.

(b) Subject to waiver of subrogation, Landlord shall indemnify, defend, and hold harmless, Tenant from and against any expense (including, without limitation, legal and collection fees), loss, liability suffered or incurred as a result of or in connection with (a) any breach of Landlord of its obligations contained in this Lease, or (b) its acts or omissions or the acts or omissions of its agents, representatives, servants, invitees, licensees, contractors or employees. This provision shall survive the expiration or sooner termination of this Lease.

(c) Neither Landlord or Tenant shall be liable for consequential damages, except in the case of a holding over by Tenant.

(d) Notwithstanding the foregoing, Landlord agrees that Tenant shall not be liable for any loss or liability suffered or incurred as a result of the negligence or willful misconduct of Landlord, its agents, representatives, servants, invitees, licensees, contractors or employee.

12. *Non-Liability of Landlord*.

Landlord shall not be liable to Tenant for (and Tenant shall make no claim for) any property damage or personal injury that may be sustained by Tenant or by any other person as a consequence of the failure, breakage, leakage, inadequacy, defect, or obstruction of the water, plumbing, steam, sewer, waste or soil pipes, roof drains, leaders, gutters, valleys, downspouts, or the like or of the electrical, gas, power, conveyor, refrigeration, sprinkler, air conditioning, or heating systems, elevators or hoisting equipment; or by reason of the elements; or resulting from the carelessness, negligence, or improper conduct on the part of any other tenant of Landlord or on the part of Landlord's or Tenant's or any other tenant's agents, employees, guests, licensees, invitees, subtenants, assignees, or successors; or attributable to any interference with, interruption, or failure of any services or utilities to be furnished or supplied by Landlord. Notwithstanding the foregoing, Landlord agrees that Tenant shall not be liable for any loss or liability suffered or incurred as a result of the negligence or willful misconduct of Landlord, its agents, representatives, servants, invitees, licensees, contractors or employee. Tenant shall give Landlord prompt written notice of the occurrence of any events set forth in this Paragraph 12.

13. *Remedies and Termination Upon Tenant Default*.

(a) In the event that:

(i) Tenant shall default in the payment of any Fixed Rent, or any Additional Rent, or other charge payable monthly hereunder by Tenant to Landlord, on any date upon which the same becomes due, and such default shall continue for five (5) days after written notice thereof.

(ii) Tenant shall default in the payment of any Additional Rent that is not due and payable hereunder on a monthly basis on the date upon which the same becomes due, and such default shall continue for five (5) days after Landlord shall have given to Tenant a written notice specifying such default; or

(iii) Tenant shall default in the due keeping, observing, or performing of any covenant, agreement, term, provision, or condition of Paragraph 1(c) of this Lease on the part of Tenant to be kept, observed, or performed and if such default shall continue and shall not be remedied by Tenant within one (1) Business Day after Landlord shall have given to Tenant a written notice specifying the same; or

(iv) Tenant shall default in the due keeping, observing, or performing of any covenant, agreement, term, provision, or condition of this Lease on the part of Tenant to be kept, observed, or performed (other than a default of the character referred to in clauses (i), (ii), or (iii) of this Paragraph 13(a), and if such default shall continue and shall not be remedied by Tenant within fifteen (15) days after Landlord shall have given to Tenant a written notice specifying the same unless Tenant has commenced and diligently pursues and effects a cure of such default within an additional forty-five (45) day period (60 days in the aggregate); or

(v) by or against Tenant or any guarantor or surety of this Lease for adjudication of such party as a bankrupt or insolvent, or for the reorganization of such party, or for the appointment of a receiver or trustee of property of such party; an assignment by Tenant or any guarantor or surety for the benefit of creditors; the taking of possession of the property of Tenant or any guarantor or surety pursuant to statutory authority for the dissolution or liquidation of Tenant or such guarantor or surety; or

(vi) Failure by any surety or guarantor of this Lease to comply with all the provisions of the suretyship or guaranty agreement or attempt to revoke or contest its obligations under such guaranty agreement.

then, Landlord may, in addition to any other remedies herein contained, as may be permitted by law, without being liable for prosecution therefor, or for damages, re-enter the Demised Premises and have and again possess and enjoy the same; and as agent for Tenant or otherwise, re-let the Demised Premises and receive the rents therefor and apply the same first to the payment of such expenses, reasonable attorneys' fees and costs, as Landlord may have been put to in re-entering and repossessing the same and in making such repairs and alterations as may be necessary and second to the payment of the rents due hereunder. In addition to any post-judgment collection fees, Tenant shall remain liable for such rents as may be in arrears and also the rents as may accrue subsequent to the re-entry by Landlord to the extent of the difference between the rents reserved hereunder and the rents, if any, received by Landlord during the remainder of the unexpired Term hereof, after deducting the aforementioned expenses, fees, and costs; the same to be paid as such deficiencies arise and are ascertained each month. Landlord, at its option, may require Tenant to pay in a single lump sum payment, at the time of such termination or re-entry, as the case may be, a sum which represents the present value (using a discount rate of four (4%) percent per annum) of the excess of the aggregate of the Fixed Rent that would have been payable by Tenant for the period commencing with such termination or re-entry, as the case may be, and ending on the originally fixed Expiration Date of the Term, over the aggregate rental value of the Demised Premises for the same period. Nothing contained in this Lease shall be construed to impose upon Landlord the duty to mitigate damages in the event of a default by Tenant.

(b) Upon the occurrence of any of the contingencies set forth in the preceding Subparagraph (a) of this Paragraph 13, or should Tenant be adjudicated bankrupt or insolvent or placed in receivership, or should proceedings be instituted by or against Tenant for bankruptcy, insolvency, receivership, agreement of composition, or assignment for the benefit of creditors, or if this Lease or the estate of Tenant hereunder shall pass to another by virtue of any court proceedings, writ of execution, levy, sale, or by operation of law, Landlord may, if Landlord so elects, at any time thereafter, terminate this Lease and the Term hereof, upon giving to Tenant or to any trustee, receiver, assignee, or other person in charge of or acting as custodian of the assets or property of Tenant, five (5) days' notice in writing of Landlord's intention so to do. Upon the giving of such notice, this Lease and the Term hereof shall end on the date fixed in such notice as if the same date were the Expiration Date; and Landlord shall have the right to remove all persons, goods, fixtures, and chattels therefrom by force or otherwise without liability for damages.

(c) Tenant hereby appoints Landlord attorney-in-fact, irrevocably, to execute and deliver, on behalf of Tenant, any document reasonably needed by Landlord during any period Tenant is in default of any terms and provisions of this Lease beyond any applicable notice and cure period to cure any such default.

14. *Remedies Cumulative; Non-Waiver By Landlord*. The various rights, remedies, options, and elections of Landlord expressed herein are cumulative, and the failure of Landlord to enforce strict performance by Tenant of the conditions and covenants of this Lease, to exercise any election or option, or to resort or have recourse to any remedy herein conferred, or the acceptance by Landlord of any installment of rent after any breach by Tenant, in any one or more instances, shall not be construed or deemed to be a waiver or a relinquishment for the future by Landlord of any such conditions and covenants, options, elections, or remedies, but the same shall continue in full force and effect.

15. *Services; Electric Energy*.

(a) During Business Hours, Landlord shall (i) supply heating, ventilation, and air conditioning to the Demised Premises in accordance with the HVAC specifications attached hereto as **Exhibit F**; (ii) provide snow and ice removal for the parking area, sidewalks, and driveways in a reasonably expeditious manner; and (iii) provide refuse removal from a dumpster to be provided on site to be used for normal paper waste attendant to an office building. Tenant agrees at all times to cooperate fully with Landlord and to abide by all the regulations and requirements that Landlord may prescribe for the proper functioning and protection of such air conditioning system. Landlord shall clean the Demised Premises in accordance with the cleaning schedule annexed hereto as **Exhibit D**. The cost of the services and utilities provided pursuant to this Paragraph 15(a) is included in Operating Expenses, as defined in Paragraph 3(a).

In the event of a failure of one of foregoing services, Tenant shall provide Landlord with notice of the same. Upon receipt of such notice, Landlord agrees promptly, diligently, and with continuity to take all reasonable steps to remedy such failure and further agrees to use all reasonable efforts to minimize interruption to Tenant's business. Landlord shall be obligated to employ contractors or labor at overtime or other premium pay rates and incur overtime costs and expenses only (i) if a condition imminently threatening safety or health exists or (ii) at Tenant's request and expense (provided that the amounts payable by Tenant pursuant to this clause (ii) shall only include amounts in excess of regular, non-overtime pay rates). In the event of any such interruption of service which prevents Tenant from conducting business in the Demised Premises and which is in the control of Landlord to correct and which remains uncured for a period of five (5) business days, Tenant shall be entitled to an abatement of Fixed Rent for each business day beyond five (5) business days such interruption continues.

(b) Landlord reserves the right, without liability to Tenant and without constituting any claim of constructive eviction, to stop or interrupt any heating, lighting, ventilating, air conditioning, gas, steam, power, electricity, water, or other service and to stop or interrupt the use of any building or Building facilities at such times as may be necessary and for as long as may reasonably be required by reason of accidents, strikes, or the making of repairs, alterations, or improvements, or inability to secure a proper supply of fuel, gas, steam, water, electricity, labor or supplies, or by reason of any other similar or dissimilar cause beyond the reasonable control of Landlord. Landlord shall give Tenant reasonable prior written notice of any such interruption, except in the case of emergency. No such stoppage or interruption shall entitle Tenant to any diminution or abatement of rent or other compensation, nor shall this Lease or any of the obligations of Tenant be affected or reduced by reason of any such stoppage or interruption.

(c) Landlord shall furnish to Tenant, through the transmission facilities installed in the Demised Premises, electric energy to be used by Tenant, at Tenant's expense as provided for in this Paragraph 15, in the Demised Premises in such reasonable quantity as shall be sufficient to meet Tenant's ordinary business needs for lighting and the operation of its business machines, including, without limitation, photocopy equipment and computer and data processing and similar equipment, provided that Landlord shall not be obligated to provide such electrical energy in any amount in excess of six (6) watts per square foot of Rentable Area.

(d) Landlord shall, prior to the Commencement Date, at Landlord's sole cost and expense, install a separate electrical meter so as to measure Tenant's consumption of electricity with respect to the Demised Premises. Landlord shall charge Tenant for such electrical usage at Landlord's actual cost therefor (based upon the average kilowatt hour cost of each invoice) without mark-up, and Tenant shall pay such amount to Landlord as Additional Rent hereunder within thirty (30) days of Landlord's giving Tenant notice of the amount then due.

(e) If the cost to Landlord of electricity shall have been increased or decreased subsequently, by change in Landlord's electric rates, charges, fuel adjustment, or by taxes of any kind imposed thereon, or for any other reason, then the aforesaid electricity charge shall be increased or decreased in the same percentage.

(f) If Landlord discontinues furnishing electric energy to Tenant, Tenant shall arrange to obtain electric energy directly from the public utility company furnishing electric service to the Building. Such electric energy may be furnished to Tenant by means of the then

existing Building system feeders, risers, and wiring to the extent that the same are available, suitable and safe for such purposes. All meters and additional panel boards, feeds, risers, wiring, and other conductors and equipment that may be required to obtain electric energy directly from such public utility company shall be installed by Landlord at Tenant's expense. There shall be no discontinuance of the furnishing of electric current to the Demised Premises by Landlord until Tenant has completed its arrangements to obtain electric current directly from the public utility company furnishing electric current to the Building so that there is no interruption in the continuity of electric service.

(g) In the event that Tenant shall require electric energy for use in the Demised Premises in excess of the quantity to be initially furnished pursuant to **Exhibit B** and if, in Landlord's judgment, such excess requirements cannot be furnished unless additional risers, conduits, feeders, switchboards, and/or appurtenances are installed in the Building, Landlord, upon written request of Tenant, shall proceed with reasonable diligence to install such additional risers, conduits, feeders, switchboards, and/or appurtenances, provided the same and the use thereof shall not cause permanent damage or injury to the Building or the Demised Premises, or cause or create a dangerous or hazardous condition, or entail excessive or unreasonable alterations or repairs, or interfere with or disrupt other tenants or occupants of the Building, and Tenant agrees to pay all actual out-of-pocket costs and expenses incurred by Landlord in connection with such installation.

(h) Landlord, at Tenant's expense, shall purchase and install all lamps (including, but not limited to, incandescent and fluorescent), starters, and ballasts used in the Demised Premises.

(i) In order that Landlord may at all times have all necessary information which it requires in order to maintain and protect its equipment, Tenant agrees that Tenant shall not make any material alteration or material addition to the electrical equipment and/or appliances in the Demised Premises without the prior written consent of Landlord in each instance, which Landlord may withhold in its sole discretion, and shall promptly advise Landlord of any other alteration or addition to such electrical equipment and/or appliances.

16. *Subordination*. Provided Tenant shall have received a subordination, non-disturbance and attornment agreement in the form attached hereto as **Exhibit I**, or such other commercially reasonable form required by any ground lessor or mortgagee of Landlord, this Lease shall be subject and subordinate in all respects to any underlying leases, ground leases, licenses, or agreements, and to all mortgages which may now or hereafter be placed on or affect such leases, licenses, or agreements or the Land or the Demised Premises, and also to all renewals, modifications, consolidations, and extensions of such underlying leases, ground leases, licenses, agreements, and mortgages. Tenant shall execute and deliver such further instruments confirming such subordination as may be reasonably required by any holder of any such mortgage or by any lessor, licensor, or party to an agreement under any such underlying lease, ground lease, license, or agreement, respectively. If any underlying lease, ground lease, license, or agreement to which this Lease is subject and subordinate terminates, or if any mortgage to which this Lease is subordinate is foreclosed, Tenant shall, on timely request, attorn to the holder of the reversionary interest or to the mortgagee in possession, as the case may be. If Landlord shall notify Tenant that the Demised Premises or the Building is encumbered by a mortgage, then notwithstanding anything in this Lease to the contrary, no notice of default intended for Landlord shall be deemed properly given unless a copy thereof is simultaneously sent to such mortgagee in the manner provided for in Paragraph 18.

17. *Curing Tenant's and Landlord's Defaults*.

(a) If Tenant shall fail or refuse to comply with and perform any conditions and covenants of this Lease, Landlord may, if Landlord so elects, carry out and perform such conditions and covenants, at the cost and expense of Tenant, and the actual out-of-pocket cost and expense shall be payable within twenty (20) days of demand (with reasonable supporting documentation), or, at the option of Landlord, shall be added to the installment of Monthly Fixed Rent due immediately thereafter but in no case later than one month after such demand, whichever occurs sooner, and shall be due and payable as such. This remedy shall be in addition to such other remedies Landlord may have hereunder by reason of the breach of Tenant of any of the covenants and conditions in this Lease contained.

(b) Landlord shall be in default of this Lease if it fails to perform any obligation of Landlord under this Lease and if such failure is not cured within fifteen (15) days after written notice thereof is given by Tenant to Landlord; however, if said failure cannot reasonably be cured within fifteen (15) days, Landlord shall not be in default of this Lease if Landlord commences to cure the failure within the fifteen (15) day period and diligently continues to cure the default. If Landlord does not cure a default in accordance with the foregoing time periods, Tenant shall give to Landlord's first mortgagee(s), if any, notice of such default (in addition to the notice required to be given pursuant to Paragraph 16) and an additional cure period equal to that specified above for Landlord. If such default remains uncured after the expiration of the first mortgagee's cure period, Tenant may, upon at least ten (10) days prior written notice to Landlord and Landlord's first mortgagee, cure the default at Landlord's expense. If Tenant pays any reasonable sum in order to cure Landlord's default, such reasonable sum shall be reimbursed by Landlord to Tenant upon thirty (30) days' written notice, which notice shall include supporting documentation. If Landlord fails to so reimburse Tenant and if the existence of the default is not being disputed by Landlord, Tenant may withhold from future Fixed Rent payments due and owing the sum owed to Tenant. If the default is being disputed by Landlord, Tenant may not offset its rent obligations until the existence of Landlord's default and Tenant's entitlement to reimbursement hereunder has been established by the judgment of a court of competent jurisdiction.

(c) In addition to any and all other remedies Tenant may have under this Lease in the event Landlord defaults (i) in its obligation to provide janitorial and window washing services pursuant to this Lease or (ii) in its obligation to maintain certain items within the Demised Premises or the Building in accordance with this Lease (excepting structural items, HVAC and other Building systems and any other equipment or components warranties for which may be voided by unauthorized service thereto), and such defaults continue beyond the cure period therefor, then Tenant may, upon five (5) business days notice to Landlord, perform such cure and Landlord shall reimburse Tenant for the direct out-of-pocket costs therefor within thirty (30) days after Landlord's receipt of bills and invoices therefor.

18. *Notices*. Any notice, demand, statement, or other communication which under the terms of this Lease or under any statute or law must or may be given shall be given by hand delivery; or by registered or certified mail, return receipt requested; or by reputable private overnight delivery service providing a receipt of delivery or refusal, delivered, or addressed to the respective parties at the following address:

To Landlord:
c/o Gale & Wentworth, LLC
200 Campus Drive
Suite 200
Florham Park, New Jersey 07932
Attn: Robert B. Palestri

and

c/o Gale & Wentworth, LLC
200 Campus Drive
Suite 200
Florham Park, New Jersey 07932
Attn: Stephen Cusma, Esq.

and

Emmet, Marvin & Martin, LLP
120 Broadway—32nd Floor
New York, New York 10271
Attention: Patrick A. McCartney, Esq.

To Tenant:
At its address stated in the opening recital.

Attention: Mr. Joseph Ward
Director of Real Estate

and

Trammell Crow Outsourcing Services
c/o Keycorp
2025 Ontario, 4th Floor
Cleveland, Ohio 44115
Attention: Mr. Thomas Fischer

Any such notice, demand, statement, or other communication shall be deemed to have been given or made (i) upon delivery, if hand delivered, (ii) on the second Business Day after mailing, if mailed, postage paid, certified or registered mail, and (iii) on the next Business Day, if delivered, charges prepaid or charged to sender, by a reputable private overnight delivery service. Any of the above addresses may be changed at any time by notice given as provided above. Legal counsel for the respective parties may provide the requisite notice(s) hereunder on behalf of their respective client.

19. *Quiet Enjoyment*. Landlord covenants that Tenant, upon keeping and performing each and every covenant, agreement, term, provision, and condition herein contained on the part and on behalf of Tenant to be kept and performed, shall quietly enjoy the Demised Premises without hindrance or molestation by Landlord or by any other person lawfully claiming by, through, or under the same, subject to the covenants, agreements, terms, provisions, and conditions of this Lease and the effects of the application of same.

20. *Security Deposit*. Intentionally Omitted.

21. *Inspection and Entry by Landlord*.

(a) During the Term, Tenant agrees to permit Landlord and Landlord's agents, employees, or other representatives to show the Demised Premises to any lessor under any underlying lease or ground lease, to any mortgagee, or to any persons wishing to purchase the same or the Building. In addition, Tenant agrees that, from and after the twelfth (12th) month preceding the Expiration Date, Landlord or Landlord's agents, employees, or other representatives shall have the right to show the Demised Premises to any prospective tenants.

(b) Tenant agrees that Landlord and Landlord's agents, employees, or other representatives, shall have the right to enter into and upon the Demised Premises or any part thereof, at all reasonable hours, for the purpose of inspecting the same, or reading meters, or performing maintenance, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof. This clause shall not be deemed to be a covenant by Landlord nor be construed to create an obligation on the part of Landlord to make such inspection or repairs.

(c) Except in the event of an emergency, Landlord's rights under Paragraphs 21(a) and 21(b) shall be exercised at reasonable times upon reasonable prior notice and in such a manner intended not to unreasonably interfere with the conduct of Tenant's business in the Demised Premises. Tenant may have its representative accompany Landlord (or Landlord's representative) during any inspections or other entries of the Demised Premises by or on behalf of Landlord.

(d) Notwithstanding anything to the contrary contained in this Lease, in the event that at any time during the Term Tenant shall give a written notice to Landlord designating an area of the Demised Premises which is used by Tenant as a bank branch in accordance with Section VII of the Preamble, or for the storage of money, securities or valuable or confidential documents as the **"Security Area"** then from and after the date designated in such Notice, which shall be not less than five (5) days after the date of Landlord's receipt of Tenant's Notice, except in the event of an emergency, Landlord and its agents shall not exercise any right to enter the Security Area, unless Landlord is accompanied by an employee of Tenant; *provided*, *that*, Tenant shall make an employee available to accompany Landlord or its agents during such entry at any time during Business Hours.

22. *Brokerage*. Tenant and Landlord warrant and represent to each other that neither has dealt with any broker or brokers regarding the negotiation of this Lease, other than the Designated Broker. Tenant and Landlord agree to be responsible for and to indemnify and hold the other harmless from and against any claim for a commission or other compensation by any

broker other than the Designated Broker claiming to have negotiated with the indemnifying party with respect to the Demised Premises or to have called the said Demised Premises to Tenant's attention or to have called Tenant to Landlord's attention.

23. *Parking*. Tenant shall have the right under this Lease to the exclusive use of the Exclusive Spaces reserved in the parking area serving the Building, as depicted on the parking plan attached hereto as **Exhibit E**, which Exclusive Spaces shall be marked as such for Tenant's exclusive use by directional or other signage and by painting Tenant's corporate name on each space, and the nonexclusive use of the Non-Exclusive Spaces in the open common parking lot on the Land serving the Building and other buildings on or to be constructed on the Land. Tenant shall comply with such reasonable Rules and Regulations as Landlord may promulgate from time to time with respect to said parking. Landlord shall have the right to assign the location of said Non-Exclusive Spaces or may designate the location of same from time to time.

24. *Renewal Options.*

(a) Tenant is hereby granted three (3) successive option(s) to renew this Lease for a Renewal Term of five (5) years each, subject to the terms of this Paragraph 24. In the event that Tenant desires to renew this Lease, it shall give notice in writing to Landlord of its intention to renew the Lease at least twelve (12) months prior to the Expiration Date and at least twelve (12) months prior to the expiration of the (first) Renewal Term, as the case may be. During each of the Renewal Terms, Tenant shall lease the Demised Premises in its "AS IS" condition and all of the terms and conditions of this Lease shall otherwise remain in effect during each of the Renewal Terms, except that the annual Fixed Rent payable during each of the Renewal Terms shall be the annual fair market rental value of the Demised Premises based on a comparison of the rents and accrued escalations then being paid by tenants renewing leases for comparable space in the competitive market area of the Demised Premises, excluding from consideration rent concessions, such as free rent and work letter allowances, made to tenants leasing space initially, but taking into consideration rent concessions, such as refitting allowance, made to tenants renewing leases (**"Fair Market Renewal Rent"**); provided, however, that in no event shall the annual Fixed Rent be less than the annual Fixed Rent payable during the year preceding the first year of each such Renewal Term.

(b) The Fair Market Renewal Rent of the Demised Premises for purposes of Subparagraph (a) of this Paragraph 24 shall take into account the provisions of this Lease and shall be determined pursuant to the provisions of this Subparagraph 24(b). The Fair Market Renewal Rent shall be set forth by Landlord in a notice to Tenant at least sixty (60) days prior to the commencement of each of the applicable Renewal Terms. The Fair Market Renewal Rent set forth in such notice shall be binding upon both parties, unless Tenant shall notify Landlord of its objection within twenty (20) days after receipt of such notice. In the event of such an objection, which is not resolved within twenty (20) days thereafter, Tenant, at its own expense, shall designate an MAI or SREA appraiser in the Morris County area. Tenant's designated appraiser shall then determine and promptly report to both parties in writing the Fair Market Renewal Rent of the Demised Premises, which report shall be binding upon both parties, unless Landlord shall object to same within twenty (20) days after receipt of said report. If Landlord shall so object, both parties shall jointly appoint a separate MAI or SREA appraiser who shall determine the Fair Market Renewal Rent by selecting either Landlord's Fair Market Renewal Rent determination or Tenant's designated appraiser's Fair Market Renewal Rent determination according to whichever of the two valuations is closer to the actual Fair Market Renewal Rent in the opinion of such separate appraiser. The costs of such separate appraiser shall be shared equally by Landlord and Tenant.

(c) It shall be a condition of the exercise of the option set forth in this Paragraph 24, that at the time of the exercise of said option, Tenant shall not be in default under this Lease beyond applicable grace periods after notice.

(d) Tenant acknowledges and agrees that the option(s) set forth in this Paragraph 24 shall be personal to Tenant and shall not be exercisable by any party (including any assignees other than a corporate successor or affiliate with a net worth equal to or greater than that of Tenant as of the date hereof) other than Tenant named herein. Furthermore, notwithstanding anything herein to the contrary, Tenant shall not have the right to exercise the renewal option(s) set forth herein if the amount of Rentable Area of the Demised Premises

occupied by Tenant (or such corporate successor or affiliate with a net worth equal to or greater than that of Tenant as of the date hereof) at the time of the renewal is twenty-five (25%) percent or less than the amount of Rentable Area leased by Tenant as of the Commencement Date.

25. *Landlord's Inability to Perform.* This Lease and the obligation of Tenant to pay the rent hereunder and to comply with the covenants and conditions hereof shall not be affected, curtailed, impaired, or excused because of Landlord's inability to supply any service or material called for herein, by reason of any rule, order, regulation, or preemption by any governmental entity, authority, department, agency, or subdivision or for any delay that may arise by reason of negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of Landlord or for any other reason constituting Force Majeure. **"Force Majeure"** shall mean and include those situations beyond either party's control, including by way of example and not limitation, acts of God; accidents; repairs; strikes; shortages of labor, supplies, or materials; inclement weather; scheduling of planning board meetings or other municipal action affecting any issuance of construction permits and/or approvals; or, where applicable, the passage of time while waiting for an adjustment of insurance proceeds.

26. *Condemnation*.

(a) In the event that the whole of the Demised Premises shall be lawfully condemned or taken in any manner for any public or quasi-public use or purpose or is transferred, under threat of condemnation, by Landlord to any party having the right of condemnation (any of such acts are referred to herein as **"eminent domain"**), this Lease and the Term and estate hereby granted shall forthwith cease and terminate as to the date of vesting of title (**"date of taking"**), and Tenant shall have no claim against Landlord for, or make any claim for the value of, any unexpired term of this Lease, and the Fixed Rent and Additional Rent shall be apportioned as of such date.

(b) In the event that any part of the Demised Premises shall be so condemned or taken, this Lease shall be and remain unaffected by such condemnation or taking, except that the Fixed Rent and Additional Rent allocable to the part so taken shall be apportioned as of the date of taking, and Tenant shall have no claim against Landlord for, or make any claim for the value of, the portion of the unexpired Term of this Lease allocable to the part so taken, provided, however, that Landlord may elect to cancel this Lease in the event that more than twenty-five (25%) percent of the Demised Premises should be so condemned or taken, provided such notice of election is given by Landlord to Tenant not later than sixty (60) days after the date when title shall vest in the condemning authority. Upon the giving of such notice, this Lease shall terminate on the thirtieth (30th) day following the date of such notice, and the Fixed Rent and Additional Rent shall be apportioned as of such termination date, and Tenant shall have no claim against Landlord for, or make any claim for the value of, the unexpired Term of this Lease. Upon such partial taking and this Lease continuing in force as to any part of the Demised Premises, the Fixed Rent and Additional Rent shall be diminished by an amount representing the part of the Fixed Rent and Additional Rent properly applicable to the portion or portions of the Demised Premises that may be so condemned shall be reduced proportionately. If, as a result of the partial taking (and this Lease continuing in force as to the part of the Demised Premises not so taken), any part of the Demised Premises not taken is damaged, Landlord agrees with reasonable promptness to commence the work necessary to restore the damaged portion to the condition existing immediately prior to the taking and to prosecute the same with reasonable diligence to its completion. In the event Landlord and Tenant are unable to agree as to the amount by which the Fixed Rent and Additional Rent shall be diminished, the matter shall be determined by a mutually acceptable third party. Pending such determination, Tenant shall pay to Landlord the Fixed Rent and Additional Rent as fixed by Landlord, subject to adjustment upon resolution of such dispute.

(c) Nothing herein provided shall preclude Tenant from appearing, claiming, proving, and receiving in the condemnation proceeding Tenant's moving expenses and the value of trade fixtures provided such claim shall be separate from and shall not adversely affect Landlord's award.

(d) Subject to the provisions of Paragraph 26(c), the entire award for any act of eminent domain shall be paid to Landlord, and, in the event of a partial taking, if this Lease is not canceled by either party pursuant to the provisions of this Paragraph 26, Landlord, at

Landlord's own expense, shall restore the unaffected part of the Demised Premises to substantially the same condition and tenantability as existed prior to the taking. Until said unaffected portion is restored, Tenant shall be entitled to a proportionate abatement of Fixed Rent and Additional Rent of that portion of the Demised Premises that is being restored and is not usable until the completion of the restoration or until said portion of the Demised Premises is used by Tenant, whichever occurs sooner. Said unaffected portion shall be restored within a reasonable time, provided, however, if Landlord is delayed by Force Majeure, the time for completion shall be extended for a period equivalent to the delay. If such partial taking shall occur in the last year of the Term, either party, irrespective of the area of the space remaining, may elect to cancel this Lease and the Term hereby granted, provided such party shall, within sixty (60) days after such taking, give notice to that effect, and upon the giving of such notice, the Fixed Rent and Additional Rent shall be apportioned and paid to the date of expiration of the term specified, which date shall be not more than thirty (30) days after the date of such notice, and this Lease and the Term hereby granted shall cease, expire and come to an end upon the expiration of the period specified in said notice. If either party shall so elect to end this Lease and the Term hereby granted, Landlord need not restore any part of the Demised Premises and the entire award for partial condemnation shall be paid to Landlord, and Tenant shall have no claim to any part thereof.

(e) If the temporary use or occupancy of all or any part of the Demised Premises shall be so taken, (i) the Term shall not be reduced or affected in any way except as provided in (iv) below, (ii) Tenant shall continue to be responsible for all of its obligations hereunder and shall continue to pay all Fixed Rent and Additional Rent when due, (iii) Tenant shall be entitled to receive that portion of the award that represents reimbursement for the cost of restoration of the Demised Premises, compensation for the use and occupancy of the Demised Premises and for any taking of Tenant's property, except that, if the temporary period of taking shall extend beyond the expiration of the Term, the portion of the award representing compensation for the use and occupancy of the Demised Premises shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord shall receive that portion of the award which represents reimbursements for the cost of restoration of the Demised Premises, and (iv) if the date of taking shall occur during the last two (2) years of the Term and the taking shall exceed twenty-five (25%) percent of the Demised Premises, Tenant may elect to cancel this Lease by notice of election given by Tenant to Landlord not later than sixty (60) days after the date when title shall vest in the condemning authority. Upon the giving of such notice, this Lease shall terminate on the thirtieth (30th) day following the date of such notice, and the Fixed Rent and Additional Rent shall be apportioned as of such termination date, with Landlord, and not Tenant, to receive the portion of the award that represents reimbursement for the cost of restoration of the Demised Premises and the portion of the award representing compensation for the use and occupancy of the Demised Premises for the time subsequent to the cancellation date.

27. *Assignment and Subletting*.

Tenant may not mortgage, hypothecate, pledge, assign, transfer, or sublet all or a portion of the Demised Premises or this Lease, as the case may be, except as specifically permitted in this Paragraph 27.

(a) In the event that Tenant desires to assign this Lease or sublease any portion of the Demised Premises to any other party, Tenant shall notify Landlord of such intention at least thirty (30) Business Days prior to the effective date of any such assignment or sublease. Tenant acknowledges that such notice shall contain at least the following terms: (1) the effective date of the proposed assignment or sublease, (2) the term (including any renewal options) of any proposed sublease), (3) the terms and conditions of such assignment or sublease, and (4) complete and accurate banking, financial, and other credit information with respect to the proposed assignee or sublessee, which information must be sufficient to enable Landlord to judge the fiscal strength of said proposed assignee or sublessee. Tenant acknowledges that the fixed rent and additional rent to be charged to any permitted sublessee may not be less than those amounts that would be charged by Landlord in an arms-length transaction.

(i) In the event of an assignment or a sublease for the remainder of the Term of forty (40%) percent or more of the Rentable Area of the Demised Premises, Landlord shall have the option, exercisable in writing to Tenant within twenty (20) Business Days of Landlord's receipt of such notice from Tenant, to recapture this Lease, or the space intended to be sublet, as the case may be, in which case, (x) from and after the effective

date provided in Tenant's notice (or such later date that such assignment or sublease is actually effective pursuant to the instrument executed in connection with such transaction), Tenant shall be fully released from any and all obligations hereunder with respect to the Demised Premises in the case of an assignment, or with respect to the space to have been sublet, in the case of a sublease, and (y) upon a recapture of a portion of the Demised Premises, Landlord shall, at Tenant's sole cost and expense, construct demising walls prior to the commencement of such new tenancy.

(b) In the event Landlord does not exercise its recapture right set forth in subparagraph 27(a)(i) above or in the event Landlord has no right to recapture, Landlord shall not unreasonably withhold, condition or delay its consent to a proposed sublease or assignment provided the following terms and provisions shall apply to any assignment of this Lease or to any sublease for all or any portion of the Demised Premises, whether said sublease is for the remainder of the Term or not:

(i) Tenant shall provide to Landlord the following information at least twenty (20) Business Days prior to the effective date of any such assignment or sublease: the terms and conditions of its proposed assignment or sublease, together with information regarding the identity, address, and creditworthiness of the proposed assignee or sublessee.

(ii) with respect to a sublease, the Demised Premises shall not, without Landlord's prior written consent (which consent may be withheld by Landlord in its sole and absolute discretion), have been listed or otherwise publicly advertised for subletting at a rental rate less than the higher of (a) Fixed Rent, Additional Rent and all other charges due under this Lease with respect to such space, or (b) the prevailing rental rate set by Landlord for space in the Building, nor shall Tenant advise any broker, agent, finder or prospective subtenant that Tenant intends to sublet the Demised Premises at a rate less than the above rates;

(iii) no Event of Default shall have occurred and be continuing;

(iv) the proposed assignee or subtenant shall not be a person or entity with whom Landlord or an affiliate, subsidiary or parent of Landlord is then negotiating, or has, in the past twelve (12) months, negotiated with, to lease space in the Building or any other building owned by Landlord within a two (2) mile radius of the Building;

(v) the proposed assignee or subtenant shall not then be a tenant or other occupant of the Building or of any other building owned by Landlord within the Parsippany, New Jersey area;

(vi) in Landlord's sole judgment, the character of the business to be conducted or the proposed use of the Demised Premises by the proposed assignee or subtenant (a) shall not be likely to increase Landlord's operating expenses for the Building beyond that which would be incurred for use by Tenant or for use in accordance with the standards of use of other tenancies then being sought for the Building by Landlord; (b) shall not violate any provisions or restrictions contained in any other lease or instrument affecting the Building or Real Property; (c) shall not increase the burden on existing cleaning services or elevators over the burden prior to such proposed assignments or subletting; and (d) shall be consistent with the standards of first-class office buildings in the County of Morris, if Landlord shall have consented to an assignment or sublease and, as a result of the use and occupancy of the subleased portion on the Demised Premises by the subtenant, operating expenses for the Building are increased, then Tenant shall pay to Landlord, within ten (10) days after notice, as Additional Rent, all such resulting increases in operating expenses;

(vii) any subletting shall end no later than one (1) day before the Expiration Date (as extended by any renewal option theretofore exercised by Tenant);

(viii) the subletting or assignment must comply with all Requirements of Law and any space subleased, any space subleased, any space previously subleased, and the space, if any, retained by Tenant must be commercially reasonable in size and configuration as separate rental units and suitable for normal renting purposes; and

(ix) The proposed assignment or sublease shall be subject to Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed,

and shall be further subject to the consent of any mortgagee or ground lessor, if required under the terms of any mortgage or ground lease. In the event Landlord approves of any proposed assignment or sublease described herein, the following terms and conditions shall apply to the same:

(1) In the case of an assignment, the assignee shall assume, by written instrument, all of the obligations of this Lease arising after the date of the assignment, and a copy of such assumption agreement shall be furnished to Landlord within ten (10) days of its execution. In the case of a sublease, the sublessee shall acknowledge in writing and take subject to the terms and conditions of this Lease applicable to the portion of the Demised Premises sublet.

(2) Tenant and each assignee shall be and remain liable for the observance of all of the covenants and provisions of this Lease, including, but not limited to, the payment of Fixed Rent, Additional Rent and other charges due hereunder through the entire Term of this Lease, as the same may be renewed, extended or otherwise modified, provided, however, that Tenant's liability hereunder shall not apply to any obligations created by any subsequent modification or amendment made without the consent of Tenant, to any renewals of the Term occurring subsequent to such assignment, or to expansions of the Demised Premises.

(3) In any event, the acceptance by Landlord of any rent from any of the subtenants or the failure of Landlord to insist upon the strict performance of any of the terms, conditions and covenants herein from any assignee or subtenant shall not release Tenant herein from any and all of the obligations herein during and for the entire Term of this Lease.

(4) The assignment or sublease shall provide that there shall be no further assignments and/or subletting without Landlord's consent, which shall not be unreasonably withheld, conditioned, or delayed if the requirements of this Paragraph 27 are complied with.

(5) Tenant shall pay the actual reasonable legal costs incurred by Landlord to cover its handling charges for each request for consent to any assignment or sublet prior to its consideration of the same. Tenant acknowledges that its sole remedies with respect to any assertion that Landlord's failure to consent to any assignment or sublet is unreasonable shall be the remedy of specific performance, and Tenant shall have no other claim or cause of action against Landlord as a result of Landlord's actions in refusing to consent thereto.

(6) Tenant shall promptly deliver to Landlord, as and when received, fifty percent (50%) of the excess of any rent or other consideration paid to Tenant by any subtenant or assignee in excess of the Fixed Rent plus Additional Rent payable pursuant to Paragraph 3 for such space then being paid by Tenant to Landlord pursuant to the provisions of this Lease over the actual reasonable out-of-pocket costs of Tenant in making such assignment or sublease for (a) customary brokerage fees, attorneys' fees, and advertising fees, and (b) improvement and alteration costs to prepare the Demised Premises for such sublease or assignment, not to exceed then prevailing market terms.

(c) Notwithstanding anything here to the contrary, Tenant may assign its entire interest under this Lease or sublease all or any portion of the Premises to (i) an affiliate of Tenant (meaning an entity that controls, is controlled by, or is under common control with Tenant), (ii) any subsidiary or parent of Tenant, or (iii) to a successor to Tenant by purchase, merger, consolidation or reorganization without the consent of Landlord, provided that all of the following conditions are satisfied (a "Permitted Transfer"): (1) Tenant is not in default beyond any applicable notice and cure period set forth in Section 13 under this Lease; (2) in the case of (iii) above, Tenant's successor shall own all or substantially all of the assets of Tenant and Tenant's successor shall have a net worth which is at least equal to Tenant's net worth at the date of this Lease; (3) Tenant shall give Landlord written notice at least 30 days after the effective date of the Permitted Transfer; and (4) in all cases Guarantor reaffirms all of its obligations under the guaranty of this Lease dated on or about the date hereof. Tenant's notice to Landlord shall include information and documentation showing that each of the above conditions has been satisfied. If requested by Landlord, in the case of an assignment of the Lease, Tenant's successor shall sign a commercially reasonable form of assumption agreement.

(d) Tenant expressly acknowledges that any of the following instances shall be deemed to be a reasonable basis on which Landlord may withhold its consent under this Paragraph:

(i) the proposed assignee or subtenant is not, in Landlord's opinion, appropriate for the Building or in keeping with the character of its existing first class tenancies;

(ii) the proposed assignee's or subtenant's occupancy will cause a density of traffic or make demands on Building services, maintenance, or facilities unreasonably in excess of those related to Tenant's occupancy;

(iii) the proposed assignee or subtenant is (1) a tenant of the Building or any other building within the Parsippany, New Jersey area owned by or through the persons constituting Landlord hereunder or any affiliate, subsidiary, or parent of Landlord or (2) is vacating premises in such a building; or

(iv) Landlord (or any affiliate, subsidiary, or parent of Landlord) is negotiating or has negotiated with the proposed assignee or subtenant within the period of twelve (12) months preceding Tenant's request for consent,

Tenant further expressly acknowledges that the foregoing is not a complete list and shall in no way be construed to be a limitation on Landlord's ability to reasonably withhold its consent for other reasons not included above.

28. *Environmental Laws*.

(a) Tenant agrees to comply with all present or future federal, state, or local laws, statutes, codes, ordinances, rules, or regulations dealing with and/or relating to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution, (v) Hazardous Substances, or (vi) any other environmental or health matter, including, but not limited to the extent related to the conduct of Tenant's business in the Demised Premises pursuant to the Lease:

(i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. Sections 11001-11050, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq. (**"ISRA"**) Industrial Site Recovery Act of the State of New Jersey, N.J.S.A. 13:1K-6 et seq., the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Hazardous Substance Discharge—Reports and Notices Act, N.J.S.A. 13:1K-15 et seq., and in the regulations adopted and promulgated pursuant to each of said laws, and any successor statutes or regulations, amendments and/or substitutions thereto;

(ii) the United States Department of Transportation Table (49 C.F.R. 172.101 and any amendments thereto) or by the Environmental Protection Agency (or any successor agency);

(iii) 40 C.F.R. Section 261.20-261.24, inclusive of Section 302 of the Superfund Amendment and Reauthorization Act of 1986 ("SARA") and any successor statutes or regulations thereto,

(collectively, **"Environmental Laws"**) having jurisdiction over the Demised Premises and/or Tenant. Tenant agrees that such compliance shall be at Tenant's sole cost and expense. Tenant shall immediately provide Landlord, as they are issued or received by Tenant, with copies of all correspondence, reports, notices, orders, findings, declarations, and other materials that are pertinent to Tenant's compliance with Environmental Laws, in connection with Tenant's use and occupancy of the Demised Premises.

(b) Tenant represents to Landlord that Tenant's Standard Industrial Classification (SIC) Number as used on Tenant's Federal Tax Return is as set forth in the Preamble of this Lease. Tenant shall not conduct any operations at the Demised Premises that shall cause the Building or the Demised Premises to be deemed an "industrial establishment" as currently defined in ISRA or otherwise trigger ISRA. If, due to an amendment to ISRA or

otherwise Tenant's operations become subject to ISRA during the Term of the Lease, Tenant shall comply with all ISRA requirements at Tenant's sole cost and expense. Such expenses shall include, but not limited to, any applicable state agency fees, engineering fees, clean-up costs, filing fees, and suretyship expenses. In addition, in the event any other Building tenant or Landlord triggers ISRA, Tenant agrees to cooperate with Landlord, at Landlord's cost and expense, and provide any information relating to Tenant and its operations at the Demised Premises that is needed by Landlord to comply with ISRA. The foregoing undertakings shall survive the termination or sooner expiration of the Lease and surrender of the Demised Premises and shall also survive the sale, lease, or assignment of the Demised Premises by Landlord for a period of one (1) year.

(c) Tenant shall not generate, store, manufacture, refine, transport, treat, dispose of, or otherwise permit to be present on or about the Demised Premises any Hazardous Substances with the exception of de minimis quantities of Hazardous Substances commonly used in the cleaning and maintenance of general business offices in quantities appropriate to such use. As used herein, **"Hazardous Substance"** shall be defined as any "hazardous chemical," "hazardous substance," "hazardous waste," or similar term as defined in the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 U.S.C. §§9601, *et seq.),* ISRA, the New Jersey Spill Compensation and Control Act, as amended, (N.J.S.A. 58:10-23.llb, *et seq.),* any rules or regulations promulgated thereunder, or in any other present or future Environmental Laws. In no event shall Tenant have liability or obligation to Landlord for compliance with Environmental Laws or for Hazardous Substances present within the Demised Premises or the Building at or before the date hereof or if introduced in the Demised Premises after the date hereof unless so introduced by Tenant or any of its agents, contractors, vendors or any other party with access to the Demised Premises granted by Tenant.

(d) Tenant agrees to indemnify, defend, and hold harmless Landlord and each mortgagee of the Demised Premises from and against any and all liabilities, damages, claims, losses, judgments, causes of action, costs, and expenses (including the reasonable fees and expenses of counsel) that may be incurred by Landlord or any such mortgagee or threatened against Landlord or such mortgagee, relating to or arising out of any breach by Tenant of this Paragraph 28, which indemnification shall survive the expiration or sooner termination of this Lease until the expiration of the applicable statute of limitations.

(e) Landlord hereby represents and warrants that neither Landlord nor, to the best of Landlord's knowledge, any previous owner of the Demised Premises, used, generated, stored or disposed of, on, under or about the Demised Premises any Hazardous Wastes or Hazardous Substances, except in the ordinary course of business in compliance with all applicable federal, state and local laws or regulations. Landlord covenants that it shall not cause or permit any portion of the Building to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, produce or process Hazardous Wastes or Substances, except in the ordinary course of its business in compliance with all applicable federal, state and local laws or regulations. Landlord agrees to indemnify, defend and hold harmless Tenant from and against any and all liabilities, damages, claims, losses, judgments, causes of action, costs and expenses (including reasonable fees and expenses of counsel) relating to or arising out of any breach by Landlord of this Paragraph 28, which indemnification shall survive the expiration on sooner termination of this Lease until the expiration of the applicable statute of limitations.

29. *Parties Bound.*

(a) The covenants, agreements, terms, provisions, and conditions of this Lease shall bind and benefit the respective successors, assigns, and legal representatives of the parties hereto with the same effect as if mentioned in each instance where a party hereto is named or referred to, except that no violation of the provisions of Paragraph 7(d) or of Paragraph 27 hereof shall operate to vest any rights in any successor, assignee, or legal representative of Tenant and that the provisions of this Paragraph 29 shall not be construed as modifying the conditions contained in Paragraph 13 hereof.

(b) Tenant acknowledges and agrees that neither Landlord, the Morgan Guaranty Trust Company of New York, as trustee of the Commingled Pension Trust Fund (Special Situation Investments—Real Estate) of Morgan Guaranty Trust Company of New York, nor any shareholder, officer, director, partner (general or limited), limited liability company member, tenant-in-common, venturer, trustee, trust beneficiary, grantor, trustee-grantor, or other

individual or entity having an interest in Landlord shall have any personal liability for the performance of any of the terms, covenants, or conditions to be performed by Landlord under this Lease; rather, Tenant agrees to look solely to Landlord's interest and estate in the Land and the Building for the satisfaction of Tenant's remedies arising out of or related to this Lease.

(c) The term **"Landlord"** as used in this Lease means only the owner, or the mortgagee in possession, for the time being, of the Demised Premises (or the owner of a lease of the Demised Premises) so that in the event of, and from and after the date of, any sale or other transfer of the Land, the Building, or the Demised Premises, or of this Lease, such Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord under this Lease, and it shall be deemed and construed without further agreement between the parties or their successors-in-interest, or between the parties and the purchaser at any such sale, or the said lessee of the Land, Building, or of the Demised Premises, that the purchaser or other transferee of the same has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder.

30. *Miscellaneous.*

(a) This Lease contains the entire contract between the parties. No representative, agent, or employee of Landlord has been authorized to make any representations or promises with reference to the leasing of the Demised Premises or to vary, alter, or modify the terms hereof. No additions, changes or modifications, renewals, or extensions hereof shall be binding unless reduced to writing and signed by Landlord and Tenant.

(b) The terms, conditions, covenants, and provisions of this Lease shall be deemed to be severable. If any clause or provision herein contained be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision herein, but such other clauses or provisions shall remain in full force and effect.

(c) The paragraph headings in this Lease are for convenience only and are not to be considered in construing the same.

(d) If, in connection with obtaining financing for the Building, a banking, insurance, or other recognized institutional lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant shall not unreasonably withhold, delay, or defer its consent thereto, provided that such modifications do not in any significant manner increase the obligations of Tenant hereunder or affect the leasehold interest created or the conduct of Tenant's business operations at the Demised Premises.

(e) This Lease shall be governed by and construed in accordance with the laws of the State of New Jersey.

(f) The parties agree that any litigation arising out of this Lease shall be venued in the Superior Court of New Jersey. Each party waives trial by jury in any action or proceeding arising out of this Lease. In addition, if Landlord commences any summary proceedings or an action for nonpayment of fixed or Additional Rent, Tenant shall not interpose any non-mandatory counterclaim of any nature or description in any such proceeding or action.

(g) Tenant shall not do or cause anything to be done whereby the Demised Premises may be encumbered by a construction lien. If any construction lien is filed against the Demised Premises, the Building, or the Land as a result of any Alterations, repairs, or any other work or act of Tenant, Tenant shall discharge or bond the same within thirty (30) days from the date of notice of the filing of said lien. If Tenant shall fail to discharge or bond the lien, Landlord may bond or pay lien or claim for the account of Tenant without inquiring into the validity of the lien or claim, and Tenant shall reimburse Landlord upon demand.

(h) Tenant represents that the undersigned officer(s) have been duly authorized to enter into this Lease and that the execution and consummation of this Lease by Tenant does not and shall not violate any provision of any by-laws, certificate of incorporation, agreement, order, judgment, governmental regulation, or any other obligations to which Tenant is a party or is subject. Upon execution hereof, Tenant shall deliver a Secretary's certificate evidencing its authority to execute this Lease.

(i) In any case where Landlord's consent, permission, or approval is requested (or required to be requested) by Tenant in connection with this Lease, Landlord shall have the right to charge Tenant all costs (architectural, engineering and legal) as Additional Rent that Landlord incurs in determining whether such consent, permission, or approval shall be granted.

31. *Hold Over Tenancy.* If Tenant shall remain in the Demised Premises after the expiration of the Term of this Lease without having executed and delivered a new lease (or amendment to this Lease) with Landlord, such holding over shall not constitute a renewal or extension of this Lease. Landlord may, at its option, (i) elect to treat Tenant as one who has not removed at the end of its Term and thereupon be entitled to all the remedies against Tenant provided by law in that situation, or (ii) construe such holding over as a month-to-month tenancy subject to all the terms and conditions of this Lease, except as to the duration thereof, in which event Tenant shall pay to Landlord one hundred fifty (150%) percent during the first sixty (60) days of the hold-over and thereafter two hundred (200%) percent of the greater of: (x) the Fixed Monthly Rent in effect on the Expiration Date and (y) the then fair market rent of the Demised Premises; plus all other sums due hereunder, making such payment in accordance with this Lease. Tenant shall be otherwise bound by all of the terms, covenants, and conditions contained in this Lease.

32. *Landlord Estoppel.* Landlord shall from time to time, execute, acknowledge and deliver to Tenant within ten (10) business days of receipt of written request therefor, an estoppel certificate relating to matters customarily included in a landlord's estoppel certificate. Notwithstanding anything herein to the contrary, in the event Landlord fails to deliver the requested estoppel certificate within such ten (10) business day period, then the estoppel certificate shall be deemed accepted as complete and accurate by Landlord.

33. *Financial Statements.* Tenant agrees, within (90) days after the end of Tenant's accounting year, to furnish to Landlord and to any mortgagee or ground lessor of the Building and/or Land a certified balance sheet and profit and loss statement for the last accounting year.

34. *UPS/Emergency Generator.* Tenant shall have the option, upon obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld, to install an emergency generator/uninterrupted power source to service the Demised Premises in an area to be located either within or outside of the Demised Premises, the location and size of such area shall be designated by Landlord in its sole and absolute discretion, provided however that Tenants right shall be subject to and conditional upon the following:

(i) There shall exist no default on the part of Tenant under this Lease which remains uncured after the applicable notice and grace periods;

(ii) the designated area shall become and be deemed to be part of the Demised Premises for purposes of this Lease and the Fixed Rent payable hereunder and Tenant's Operating Share and Tenant's Tax Share shall each be increased on a pro rata basis based upon the total square footage of the designated area;

(iii) the equipment so installed and the performance of such installation and any other work in connection therewith shall all be subject to and performed in accordance with the requirements of Articles 3, 4, 6 and 9 and any other applicable provision of this Lease.

35. *Cafeteria.* Tenant hereby acknowledges and agrees that Landlord shall retain a food service operator for the operation of a cafeteria and/or food service establishment within the Building, which cafeteria and/or food service establishment may be equipped to furnish and/or serve, among other things, hot lunches and breakfasts at whatever rates or pricing such operator may elect to charge therefore. Landlord currently intends to locate the cafeteria in the portion of the Building located as **Exhibit J** attached hereto. Landlord reserves the right to relocate the cafeteria. Tenant acknowledges that the operator need not be open for business until Tenant has accepted all of the Demised Premises and same is occupied by a sufficient number of employees to justify the operation of the cafeteria. Tenant acknowledges that Landlord shall have no obligation to subsidize or support the cafeteria operator in any way. If the initial cafeteria operator shall close, Landlord shall use commercially reasonable efforts to locate a substitute operator subject to the terms hereof it being understood that if Landlord is not able to retain a substitute operator, or if providing a cafeteria is not in Landlord's reasonable determination

economically feasible, Landlord shall be under no obligation to operate or provide a cafeteria. Tenant and its employees, guests and invitees may patronize such establishment provided however, such patronage shall be at the Tenant's and/or patrons sole costs, election and risk and shall be subject to any and all reasonable rules and regulations as the operator of such establishment may enact or impose from time to time and the Landlord shall not be liable for any injury to person or property, or for loss, usury or damage by reason thereof. Tenant hereby expressly acknowledges and agrees that Landlord has made no representations and/or guarantees as to the quality, selection, safety and/or cost thereof and Landlord shall in no event be obligated to subsidize the cost of the cafeteria and/or of patronage thereof.

36. *Landlord Representations.* Landlord warrants and represents to Tenant as of the date hereof:

(a) to the knowledge of Landlord the Common Areas are in material compliance with all municipal, state and federal laws effecting the Building the non-compliance with which would materially adversely impact Tenant's occupancy of the Demised Premises, including the American with Disabilities Act as well as the regulations and accessibility guidelines promulgated thereunder; and

(b) to the knowledge of Landlord, the Demised Premises is in material compliance with all Environmental Laws.

37. *Roof Rights.* Tenant may, at its cost and expense, upon the prior written approval of the Landlord which approval shall not be unreasonably withheld install an antenna or a satellite dish on the roof space of the Building or on the ground outside the Building but only in a place and of a size that conforms with any applicable governmental ordinance and Landlord's criteria for such antenna and dishes. Any such installation shall include the installation of a conduit (to the extent necessary) to the roof area subject to rights of other tenants and Landlord's approval. Landlord shall have no liability to Tenant if Tenant's antenna or satellite dish shall not properly function due to the existence of another antenna, satellite dish or other instrument on the roof or on the ground outside the Building. Tenant shall maintain any antenna or satellite dish permitted hereunder in a good state of repair and shall save the Landlord and other occupants of the Building harmless from any loss, cost or damage as a result of the installation, maintenance of or existence of the same, and shall repair any damage which may have been caused by the installation or maintenance of the same. Notwithstanding the foregoing, Tenant shall not have access to the roof of the Building without a representative of the Landlord present. Any equipment installed on the roof shall be removed by Tenant, at Tenant's sole cost and expense, at the end of the Term of the Lease.

38. *ADA Compliance.* Landlord, at Landlord's expense, shall be responsible for causing the Common Areas of the Building to comply with the Americans with Disabilities Act as of the Rent Commencement Date, as may be amended from time to time, and the regulations promulgated pursuant to such Act ("ADA"). Tenant shall be responsible for causing the Demised Premises to comply with ADA. If, because of any installations made by Tenant in the Demised Premises, it becomes necessary for Landlord to modify any portions of the Common Areas of the Building to comply with the ADA, then such cost shall be borne by Tenant. If, because of any subsequent changes or amendments to the statute, rules or regulations of the ADA after the Rent Commencement Date, Landlord is obligated to alter the Common Areas, Landlord may seek reimbursement of the costs and expenses of such alterations by including such costs and expenses in the Operating Expenses and by amortizing the costs of such alterations as capital improvements pursuant to Paragraph 3 of this Lease.

39. *Temporary Space.*

(a) Commencing on the later to occur of: (i) August 1, 2000; or (ii) five (5) days from the date that Landlord recaptures the Temporary Space from the existing Tenant (the "Temporary Space Commencement Date"), and pending the completion of the Demised Premises, Tenant is hereby granted the right to occupy 10,000 rentable square feet of space on the first (1st) floor of the Building (hereinafter referred to as the "Temporary Space"), in its present "AS IS" condition, which Temporary Space is as shown on **Exhibit H** attached hereto. To the extent additional space adjacent to the Temporary Space becomes available, Landlord shall make up to 5,000 rentable square feet of such space available to Tenant on the same terms as the Temporary Space pursuant to this Section 39. The right to occupy the Temporary Space shall terminate upon the earlier to occur of (i) the date when the Tenant vacates such Temporary

Space; or (ii) the Commencement Date of the Demised Premises. During the period of the Tenant's occupancy of the aforementioned Temporary Space, Tenant will comply with all of the terms and conditions contained in this Lease.

(b) Landlord and Tenant hereby agree that Tenant shall not be required to pay Fixed Rent or Tenant's Proportionate Share of Real Estate Taxes and Operating Expenses for the Temporary Space for the period commencing on the Temporary Space Commencement Date and expiring on the Commencement Date of the Demised Premises.

(c) Tenant agrees that it shall be responsible for paying all charges for electricity and telephone service used by Tenant at the Temporary Space in accordance with the terms and provisions of the Lease.

(d) Tenant agrees that it shall provide evidence to Landlord, which evidence shall be acceptable to Landlord in all respects, that the Temporary Space is insured in accordance with the terms and provisions of Paragraph 10. Such evidence must be provided to Landlord at least three (3) days prior to the Temporary Space Commencement Date.

40. *Effectiveness.* Tenant acknowledges that Landlord has entered into an agreement to purchase the Land and the Building. The effectiveness of this Lease is subject to Landlord consummating the acquisition of the Land and the Building. If Landlord does not close on the purchase of the Land and the Building on or before June 30, 2000 this Lease shall terminate and be of no force or effect.

41. *Termination.* Tenant may terminate this Lease if Substantial Completion of the Demised Premises has not been achieved by Landlord by March 1, 2002 unless due to Force Majeure or Tenant Delay net of any Landlord Delay.

IN WITNESS WHEREOF Landlord and Tenant have caused this Lease to be executed as of the date first above written.

WITNESS:

/S/ CHRISTOPHER F. SAMETH

**Name: Christopher F. Sameth**

LANDLORD:
TWO GATEHALL ASSOCIATES, LLC

By: /S/ MARK YEAGER

**Name: Mark Yeager**
**Its Authorized Representative**

Date: 5/31/00

ATTEST:

/s/ THOMAS G. FISCHER

**Name: Thomas G. Fischer**

TENANT:
KEYBANK USA NATIONAL ASSOCIATION,
a national banking association

By: /S/ JOSEPH D. WARD

**Name: Joseph D. Ward**
**Title: Designated Signer**

Date: 5/26/00

STATE OF NEW JERSEY )
) ss.:
COUNTY OF MORRIS )

On the 31st day of May, 2000 before me personally came Mark Yeager, to me known, who, being by me duly sworn, did depose and say that he is an Authorized Representative of Two Gatehall Associates, LLC, the limited liability company described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said limited liability company.

/s/ MARY ANN CLYNE

**Notary Public**

My Commission Expires:
June 18, 2002

MARY ANN CLYNE
NOTARY PUBLIC OF NEW JERSEY
My Commission Exp. June 18, 2002

STATE OF OHIO )
) ss.:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this 26th day of May, 2000, by Joseph D. Ward, the Designated Signer of KEYBANK USA NATIONAL ASSOCIATION, a national banking association.

/s/ LYNN M. KLESCH

**Notary Public**

My Commission Expires:

Lynn M. Klesch, Notary Public
State of Ohio-Cuyahoga County

**EXHIBIT 10.88**

**LEASE AGREEMENT WITH GEMINI TECHNOLOGY SERVICES FOR A PORTION OF THE KEYBAK PARSIPPANY BUILDING**

**LEASE AGREEMENT**

**BETWEEN**

# TWO GATEHALL ASSOCIATES, L.L.C.,

**LESSOR,**

**—AND—**

# EXODUS COMMUNICATIONS, INC.,

**LESSEE.**

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**DATED: July 6, 2000**

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Prepared by:

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## LEASE AGREEMENT

**LEASE AGREEMENT** (this "Lease"), made as of July 6, 2000, between TWO GATEHALL ASSOCIATES, L.L.C. (the "LESSOR"), a Delaware limited liability company, having an address c/o Gale & Wentworth, LLC, 200 Campus Drive, Florham Park, New Jersey 07932, and EXODUS COMMUNICATIONS, INC. (the "LESSEE"), a Delaware corporation, having an address at 2831 Mission College Boulevard, Santa Clara, California, 95054-1838.

## PRELIMINARY STATEMENT

LESSOR is the owner in fee simple of a certain tract of land lying and being in the Township of Parsippany-Troy Hills, County of Morris, and State of New Jersey (the *"Land"*), as more particularly described on *Exhibit A* annexed hereto, upon which there is an office building (the *"Building"*) and other related improvements. For the purposes of this Lease, the Land and the Building, including all other improvements on the Land and all fixtures and appurtenances to the Land and the Building, are hereinafter collectively referred to as the *"Premises"*. The Premises are commonly known as Two Gatehall Drive, Parsippany, New Jersey.

LESSEE desires to lease from LESSOR approximately 204,515 rentable square feet of space in the Building in accordance with, and subject to, the provisions of this Lease.

**NOW, THEREFORE**, LESSOR and LESSEE agree as follows:

## ARTICLE 1
## DEFINITIONS

1.1 As used in this Lease, the following terms have the following respective meanings:

(a) *Additional Rent*: defined in *Section 3.2*.

(b) *Additional Insureds*: defined in *Section 14.1*.

(c) *Base Operating Expenses*: LESSOR'S Operating Expenses for the Base Period.

(d) *Base Period*: calendar year 2000.

(e) *Base Taxes*: Taxes for the Base Period.

(f) *Base Utility Costs*: Utility Costs for the Base Period.

(g) *Basic Rent*: defined in *Section 3.1* and specified in *Exhibit B* annexed hereto.

(h) *Basic Rent Payment Dates*: the first day of each consecutive calendar month during the Term.

(i) *Building*: defined in the Preliminary Statement.

(j) *Building Holidays*: shall mean Saturday, Sunday, New Year's Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.

(k) *Building Hours*: 7:00 AM to 7:00 PM, Monday through Friday, and 8:00 AM to 12:00 PM on Saturday, except for Building Holidays.

(l) *Building Repair:* defined in *Section 7.3(c)*.

(m) *Cables*: defined is *Section 32.4(a)*.

(n) *CGL*: defined in *Section 14.1*.

(o) *Commencement Date*: December 27, 2000; provided, however, if the Effective Date for Stage 1 of the Demised Premises has not occurred within two (2) days after the date of this Lease, then the Commencement Date shall be automatically extended beyond December 27, 2000 for a period equal to the number of days between the date of this Lease and the Effective Date for Stage 1 of the Demised Premises.

(p) *Conduits*: defined in *Section 31.1*.

(q) *Demised Premises*: (i) that portion of the ground floor of the Building cross-hatched on *Exhibit C-1* (the *"Ground Floor Space"*), and (ii) that portion of the third (3rd) floor of the Building cross-hatched on *Exhibit C-2* (the *"Third Floor Space"*), subject, however, to the provisions of *Section 2.1(b)*. The parties hereby agree that (x) the Ground Floor Space consists of 86,973 rentable square feet, (y) the Third Floor Space

consists of 117,542 rentable square feet, and (z) the Demised Premises consists of a total of 204,515 rentable square feet.

(r) *Effective Date*: defined in *Section 2.1(b)*.

(s) *Environmental Laws*: all statutes, regulations, codes and ordinances of any governmental entity, authority, agency and/or department relating to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution or (v) any other environmental or health matter, including, but not limited to, ISRA, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq*. and the regulations promulgated thereunder, the Hazardous Substance Discharge Reports and Notices Act, N.J.S.A. 13:1K-15 *et seq*. and the regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq*. and the regulations promulgated thereunder.

(t) *Equipment*: defined in *Section 31.1*.

(u) *Estimate*: defined in *Section 17.5(a)*.

(v) *Events of Default*: defined in *Article 19*.

(w) *Excess Costs*: defined in *Section 17.6(b)*.

(x) *Existing Tenant*: The CIT Group, Inc., or any successor or assign thereof, or any person or entity occupying space in the Building leased by CIT Group, Inc. (or its successors or assigns).

(y) *Excusable Delay*: any delay caused by governmental action, or lack thereof; shortages or unavailability of materials and/or supplies; labor disputes (including, but not limited to, strikes, slow downs, job actions, picketing and/or secondary boycotts); fire or other casualty; delays in transportation; acts of God; directives or requests by any governmental entity, authority, agency or department; any court or administrative orders or regulations; adjustments of insurance; acts of declared or undeclared war, public disorder, riot or civil commotion; or by anything else beyond the reasonable control of LESSOR or LESSEE, as the case may be, including, with respect to either party, delays caused directly or indirectly by the other party hereto.

(z) *Fair Market Value*: the amount a willing and independent buyer would pay for the Premises to a willing and

independent seller (neither party being forced to buy or sell); provided, however, in determining such amount any alterations and improvements made to the Premises by LESSEE shall not be taken into account.

(aa) *Final Plans*: defined in *Paragraph 2(c)* of *Exhibit D* annexed hereto.

(ab) *First Option Period*: defined in *Section 2.3*.

(ac) *Generator*: defined in *Section 32.4*(a).

(ad) *Ground Floor Space*: defined in *clause (q)* of this *Section 1.1*.

(ae) *Inner Data Center*: the portion of the Third Floor Space designated as the Inner Data Center on *Exhibit J* annexed hereto.

(af) *Insurance Requirements*: all terms of any insurance policy maintained by LESSOR with respect to the Premises and all requirements of the National Board of Fire Underwriters (or any other body exercising similar function) applicable to or affecting all or any part of the Premises.

(ag) *ISRA*: Industrial Site Recovery Act of the State of New Jersey, N.J.S.A. 13:1K-6 *et. seq*. and the regulations promulgated thereunder, together with any amendments thereto and/or substitutions thereof.

(ah) *Land*: defined in the Preliminary Statement and described by metes and bounds annexed hereto as *Exhibit A*.

(ai) *Legal Requirements*: all statutes, codes, ordinances, regulations, rules, orders, directives and requirements of any governmental entity, authority, agency and/or department, which now or at any time hereafter may be applicable to the Premises or any part thereof, including, but not limited to, all Environmental Laws.

(aj) *LESSEE*: the party defined as such in the first paragraph of this Lease.

(ak) *LESSEE'S Notice*: defined in *Section 16.2*.

(al) *LESSEE'S Proportionate Share*: for all purposes of this Lease, it is agreed that LESSEE'S Proportionate

Share shall be (i) 17.63% from the Effective Date for Stage 1 of the Demised Premises until the day immediately preceding the Effective Date for Stage 2 of the Demised Premises, (ii) 39.95% from the Effective Date for Stage 2 of the Demised Premises until the day immediately preceding the Effective Date for Stage 3 of the Demised Premises, (iii) 42.62% from the Effective Date for Stage 3 of the Demised Premises until the day immediately preceding the Effective Date for Stage 4 of the Demised Premises, (iv) 47.22% from the Effective Date for Stage 4 of the Demised Premises until the day immediately preceding the Effective Date for Stage 5 of the Demised Premises, and (v) 50.75% from the Effective Date for Stage 5 of the Demised Premises until the Termination Date.

(am) INTENTIONALLY OMITTED.

(an) *LESSEE'S Visitors*: LESSEE'S agents, servants, employees, subtenants, contractors, invitees, licensees and all other persons invited by LESSEE into the Demised Premises as guests or doing lawful business with LESSEE.

(ao) *LESSOR*: the party defined as such in the first paragraph of this Lease, including at any time after the date hereof, the then owner of LESSOR'S interest in the Premises.

(ap) *LESSOR'S Estimated Operating Expenses*: defined in *Section 5.2*.

(aq) *LESSOR'S Expense Statement*: defined in *Section 5.2*.

(ar) *LESSOR'S Operating Expenses*: those costs or expenses actually paid or incurred by LESSOR in connection with the ownership, operation, management, maintenance and repair of the Premises, including, but not limited to, the cost of sewer meter charges; water; window cleaning; exterminating; snow and ice removal; maintenance and cleaning of the parking lots and driveways (including resurfacing and re-striping); regulation of traffic; landscape and grounds maintenance; costs of insurance; maintenance, repair and replacement of utility systems; maintenance and repairs of any kind for which LESSOR is not reimbursed; painting and/or sealing of the exterior of the Building and the common areas; management fees; maintenance and service agreements; security services and/or alarm and fire protection systems and equipment; janitorial services; elevator service (if provided); wages, salaries, fringe benefits and other labor costs of all persons engaged by LESSOR for the operation,

maintenance and repair of the Premises; payroll taxes and workers' compensation for such persons; legal and accounting expenses (except legal expenses incurred in (i) preparing leases, (ii) enforcing the terms of leases, (iii) defense of LESSOR'S title to or interest in the Premises or any part thereof, or (iv) defense of disputes with other tenants or occupants of the Premises); licenses, permits and other governmental charges; rentals of machinery and equipment used in the operation and maintenance of the Premises (except for rentals of equipment the cost of which, if purchased, would be excluded from LESSOR'S Operating Expenses pursuant to the terms hereof); and any other expense or cost, which, in accordance with generally accepted accounting principles consistently applied and the standard management practices for buildings comparable to the Building, would be considered as an expense of operating, managing, maintaining or repairing the Premises. Supplementing the foregoing, (i) to the extent any person whose wage, salary, fringe benefits and taxes (payroll and workers' compensation, etc.) are included in LESSOR'S Operating Expenses does not devote his/her entire time to the Premises, then said wage, salary, fringe benefits and other items shall be included only in proportion to the amount of time spent with respect to the Premises, (ii) if any service is provided by an affiliate or subsidiary of LESSOR or the managing agent, the cost included in LESSOR'S Operating Expenses for such service shall not exceed the reasonable and customary cost charged by an independent third party performing the same services, and (iii) the management fees for any calendar year within the Term shall not exceed the customary amount generally paid for first class multi-tenant office buildings in the Parsippany-Troy Hills, New Jersey area (but in no event shall the management fees for any calendar year within the Term exceed three percent (3%) of the then aggregate annual rental [including fixed rent and additional rent] payable by all tenants [including LESSEE] of the Premises). Excluded from LESSOR'S Operating Expenses are (1) Taxes; (2) Utility Costs; (3) costs of any repairs to the roof of the Building and to the interior or exterior load bearing walls of the Building; (4) costs of any repairs to the foundation of the Building and to the structural columns and beams of the Building; (5) costs reimbursed by insurance or which would be reimbursed by insurance required to be maintained by LESSOR pursuant to this Lease; (6) the cost of any work or service performed by LESSOR for LESSEE or for any other tenant of the Building to the extent such work or service is not required by this Lease or the lease for such other tenant, whichever the case may be, regardless of whether LESSEE or such other tenant reimburses LESSOR; (7) the cost of any work or service performed by LESSOR for any tenant of the Building pursuant to the terms of said tenant's lease to the extent such

work or service is in excess of the work or service which LESSOR is obligated to perform under this Lease; (8) costs (including permit, license and inspection fees) in connection with preparing, improving, decorating, expanding or altering any space for any tenant of the Premises other than LESSEE; (9) advertising expenses; (10) real estate brokers' commissions; (11) franchise, transfer, inheritance or capital stock taxes or other taxes imposed upon or measured by the income or profits of LESSOR; (12) any expenses incurred by LESSOR which are considered capital in nature pursuant to generally accepted accounting principles and are amortized for tax purposes (other than those expenses set forth in *Section 5.1(b)* which may be capital in nature); (13) expenses for repair or replacement paid by condemnation awards; (14) costs associated with damage or repairs to the Premises necessitated by the gross negligence or willful misconduct of LESSOR or LESSOR'S employees; (15) reserves for LESSOR'S repair, replacement or improvement of the Premises or any portion thereof; (16) executive wages and salaries; (17) charitable or political contributions or fees paid to trade associates; (18) all principal, interest, loan fees, and other carrying costs related to any mortgage or deed of trust encumbering the Premises and all rental and other payments due under any ground or underlying lease, unless such costs are directly attributable to LESSEE'S or LESSEE'S Visitors' activities in, on or about the Premises, or as a result of a LESSEE'S breach or default under this Lease; (19) any costs incurred due to violations of any Legal Requirements which are occurring as of the date of this Lease; (20) fines or penalties payable as a result of any violation of any Legal Requirement; (21) the cost of acquisition of any item of sculpture or other object of art for the Premises, to the extent that the cost of such item or object exceeds $5,000.00; (22) the amount of any increase in insurance premiums occurring after the date of this Lease and caused solely as the result of the particular use (as opposed to general office use) of any tenant (other than LESSEE) or occupant of the Building; and (23) costs to remediate or cleanup any "hazardous substance" or "hazardous waste" (as those terms are defined in any Environmental Law). All accounting for LESSOR'S Operating Expenses shall be on the accrual basis. In the event that at any time after the date hereof, the Building is less than ninety five percent (95%) leased and occupied by tenants, LESSOR'S Operating Expenses shall be projected as if the Building were ninety five percent (95%) occupied at all times.

(as) *LESSOR'S Tax Statement*: defined in *Section 4.2*.

(at) *LESSOR'S Utility Statement*: defined in *Section 6.2*.

(au) *Lien*: any mortgage, pledge, lien, charge, encumbrance or security interest of any kind, including any inchoate mechanic's or materialmen's lien.

(av) *Major Work*: defined in *Section 7.5(b)*.

(aw) *Minor Work*: defined in *Section 7.5(a)*.

(ax) *Monthly Expense Payment*: defined in *Section 5.3*.

(ay) *Monthly Tax Payment*: defined in *Section 4.3*.

(az) *Net Award*: any insurance proceeds or condemnation award payable in connection with any damage, destruction or Taking, less any expenses actually incurred by LESSOR in recovering such amount.

(ba) *Net Rental Proceeds*: in the case of a sublease, the amount by which the aggregate of all rents, additional charges or other consideration payable under a sublease to LESSEE by the subtenant (including sums paid for the sale or rental of LESSEE'S fixtures, leasehold improvements, equipment, furniture or other personal property) exceeds the sum of (i) the Basic Rent plus all amounts payable by LESSEE pursuant to the provisions hereof during the term of the sublease in respect of the subleased space, (ii) brokerage commissions at prevailing rates due and owing to a real estate brokerage firm, (iii) other customary and reasonable costs incurred by LESSEE in connection with the subleasing (including, but not limited to, attorneys' fees and advertising costs), and (iv) the then net unamortized or undepreciated cost of the fixtures, leasehold improvements, equipment, furniture or other personal property included in the subletting; and in the case of an assignment, the amount by which all sums and other considerations paid to LESSEE by the assignee of this Lease for or by reason of such assignment (including sums paid for the sale of LESSEE'S fixtures, leasehold improvements, equipment, furniture or other personal property) exceeds the sum of (i) brokerage commissions at prevailing rates due and owing to a real estate brokerage firm, (ii) other customary and reasonable costs incurred by LESSEE in connection with the assignment (including, without limitation, attorneys' fees and advertising costs), and (iii) the then net unamortized or undepreciated cost

of the fixtures, leasehold improvements, equipment, furniture or other personal property sold to the assignee.

(bb) *Outer Data Center*: the portion of the Third Floor Space designated as the Outer Data Center on *Exhibit J* annexed hereto.

(bc) *Other Tenant*: defined in *Section 30.1*.

(bd) *Premises*: defined in the Preliminary Statement.

(be) *Prime Rate*: the prime commercial lending rate publicly announced from time to time by Citibank N.A. or any successor thereto.

(bf) *Projected Taxes*: defined in *Section 4.2*.

(bg) *Recapture Notice*: defined in *Section 16.5(a)*.

(bh) *Recapture Space*: defined in *Section 16.5(a)*.

(bi) *Restoration*: the restoration, replacement or rebuilding of the Building or any portion thereof (other than alterations or improvements made by LESSEE) as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking.

(bj) *Restoration Costs*: defined in *Section 17.6(b)*.

(bk) *Roof Top HVAC Equipment*: heating, ventilating and air-conditioning equipment to service the Demised Premises, including direct expansion units, condensers and related equipment.

(bl) *Roof Top Telecommunications Equipment*: satellite dish antennae for use in connection with LESSEE'S telecommunications business conducted in the Demised Premises and related equipment, including platforms on which the antennae will be located.

(bm) *Second Option Period*: defined in *Section 2.3*.

(bn) *Stage*: defined in *Section 2.1(b)*.

(bo) *Stage 1 of the Demised Premises*: defined in *Section 2.1(b)*.

(bp) *Stage 2 of the Demised Premises*: defined in *Section 2.1(b)*.

(bq) *Stage 3 of the Demised Premises*: defined in *Section 2.1(b)*.

(br) *Stage 4 of the Demised Premises*: defined in *Section 2.1(b)*.

(bs) *Stage 5 of the Demised Premises*: defined in *Section 2.1(b)*.

(bt) *Taking*: a taking of all or any part of the Premises, or any interest therein or right accruing thereto, as the result of, or in lieu of, or in anticipation of, the exercise of the right of condemnation or eminent domain pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Premises or any part thereof, by any governmental or quasi-governmental authority, civil or military.

(bu) *Taxes*: all real estate taxes and assessments or substitutes therefor or supplements thereto, upon, applicable, attributable or assessed against the Premises or any part thereof, or any improvement thereon owned by LESSOR and used in connection with the operation of the Building. Taxes shall not include any (i) net income, capital stock, transfer, franchise, gift, estate or inheritance tax; (ii) any cost to the extent otherwise included in LESSOR's Operating Expenses; (iii) any environmental assessments, charges or liens arising in connection with the remediation of "hazardous substances" or "hazardous wastes" (as such terms are defined in any Environmental Law), the causation of which arose, with respect to any Stage, prior to the Effective Date for such Stage, or, with respect to any other portion of the Premises, prior to the date of this Lease, or to the extent caused by LESSOR, its agents, employees or contractors or any tenant of the Premises (other than LESSEE or LESSEE's Visitors); (iv) reserves for future Taxes; or (v) any personal property taxes attributable to any sculpture, painting or other object of art if the cost of such sculpture, painting or other object exceeds $5,000.00. If any assessments are payable in installments over a period of time, LESSEE shall be liable only for the payment of those installments falling due during the Term, with appropriate proration for fractional

years. Notwithstanding anything to the contrary contained herein, if and to the extent that due to a change in the method of taxation or assessment any franchise, capital stock, capital, rent, income, profit or other tax or charge shall be substituted by the applicable taxing authority for the Taxes now or hereafter imposed upon the Premises, such franchise, capital stock, capital, rent, income, profit or other tax or charge shall be deemed included in the term *"Taxes"*, provided, however, that the amount of such tax, assessment, levy, imposition, charge or fee deemed to be included in the term *"Taxes"* shall be determined as if the Premises were the only asset of LESSOR and as if the rent received therefrom were the only income of LESSOR.

(bv) *Tenant Improvement Work:* defined in *Paragraph 2(C)* of *Exhibit D* annexed hereto.

(bw) *Term*: defined in *Section 2.2(a)*.

(bx) *Termination Date*: (i) December 31, 2013, or (ii) if LESSEE exercises its extension right with respect to the First Option Period pursuant to *Section 2.3* hereof, December 31, 2018, or (iii) if LESSEE exercises its extension right with respect to the Second Option Period pursuant to *Section 2.3* hereof, December 31, 2023, or (iv) if LESSEE exercises its extension right with respect to the Third Option Period pursuant to *Section 2.3* hereof, December 31, 2028, or (v) such earlier date upon which the Term may expire or be terminated pursuant to any of the conditions of this Lease or pursuant to law.

(by) *Third Floor Space*: defined in clause (q) of this *Section 1.1*.

(bz) *Third Option Period*: defined in *Section 2.3*.

(ca) *Underlying Encumbrance:* defined in *Section 23.1*.

(cb) *Utility Costs*: all costs (including surcharges and adjustments) incurred by LESSOR for electric service, fuel and gas service for the common areas and the common facilities of the Premises for any calendar year.

(cc) *Utility Increase*: defined in *Section 6.2*.

(cd) *Utility Payment*: defined in *Section 6.2*.

**ARTICLE 2**
**DEMISE; TERM**

2.1 (a) LESSOR, for and in consideration of the covenants hereinafter contained and made on the part of the LESSEE, does hereby demise and lease to LESSEE, and LESSEE does hereby hire from LESSOR, the Demised Premises, together with the right to use certain automobile parking spaces on the Land, certain portions of the roof of the Building and certain other portions of the Premises as expressly permitted herein, subject, however, to the terms and conditions of this Lease.

(b) Subject to the terms of this *Section 2.1(b)*, the Demised Premises will be delivered to LESSEE in the following stages (each such stage being called a *"Stage"*): (i) a portion of the Ground Floor Space consisting of 22,643 rentable square feet and a portion of the Third Floor Space consisting of 48,388 rentable square feet, the locations of which are cross-hatched on *Exhibit E-1* (said portion of the Ground Floor Space and of the Third Floor Space being called collectively *"Stage 1 of the Demised Premises"*), will be delivered to LESSEE on or about the date of this Lease, (ii) a portion of the Third Floor Space consisting of 51,414 rentable square feet and a portion of the Ground Floor Space consisting of 38,551 rentable square feet, the locations of which are cross-hatched on *Exhibit E-2* (said portion of the Third Floor Space and said portion of the Ground Floor Space being collectively called *"Stage 2 of the Demised Premises"*), will be delivered to LESSEE on or about August 15, 2000, (iii) a portion of the Third Floor Space consisting of 10,767 rentable square feet, the location of which is cross-hatched on *Exhibit E-3* (said portion of the Third Floor Space being called *"Stage 3 of the Demised Premises"*), will be delivered to LESSEE on or about October 15, 2000, (iv) a portion of the Ground Floor Space consisting of 11,340 rentable square feet and the remainder of the Third Floor Space consisting of 7,189 rentable square feet, the locations of which are cross-hatched on *Exhibit E-4* (said portion of the Ground Floor Space and said remainder of the Third Floor Space being collectively called *"Stage 4 of the Demised Premises"*) will be delivered to LESSEE on or about December 17, 2000, and (v) the remainder of the Ground Floor Space consisting of 14,225 rentable square feet, the location of which is cross-hatched on *Exhibit E-5* (said portion of the Ground Floor Space being called *"Stage 5 of the Demised Premises"*) will be delivered to LESSEE on or about March 30, 2001. Notwithstanding the foregoing, the actual date on which LESSOR gives LESSEE notice that LESSEE may enter any Stage of the Demised

Premises shall be deemed to be the *"Effective Date"* for such Stage, it being understood that the Effective Date for any Stage may be before or after the delivery date for the applicable Stage set forth above in this *Section 2.1(b)*. From and after the Effective Date for any Stage, LESSEE shall have exclusive possession of such Stage, subject, however, to the terms of this Lease. If LESSOR is unable to deliver possession of any Stage as of the delivery date for such Stage set forth above in this *Section 2.1(b)* as a result of the Existing Tenant failing to surrender such Stage or any portion thereof or for any other reason beyond the reasonable control of LESSOR, such non-delivery shall not affect the validity of this Lease and LESSOR shall not be liable for any damages which LESSEE may incur as a result of the delay in the Effective Date for any such Stage, subject, however, to the provisions of *Section 2.1(c)*. In the event that the Existing Tenant fails to surrender any Stage to LESSOR within thirty (30) days after the delivery date for such Stage set forth above, then LESSOR shall use, at no cost to LESSEE, commercially reasonable efforts to evict the Existing Tenant from such Stage as promptly as practicable through appropriate legal proceedings. Notwithstanding anything to the contrary contained herein, as of the Effective Date for Stage 1 of the Demised Premises, the term *"Demised Premises"* shall mean only Stage 1 of the Demised Premises, and thereafter the term *"Demised Premises"* shall be deemed to also include each additional Stage as of the Effective Date for such additional Stage.

(c) If the Effective Date for any Stage has not occurred within fifteen (15) calendar days after the delivery date for such Stage set forth in *Section 2.1(b)*, then upon the commencement of Basic Rent payments for such Stage pursuant to *Exhibit B* hereof, LESSEE shall be entitled to a credit against Basic Rent first coming due thereafter in an amount equal to the product of (i) the "daily Basic Rent" (as hereinafter defined) for such Stage, times (ii) the number of calendar days during the period commencing on the sixteenth (16th) calendar day after the delivery date for such Stage set forth in *Section 2.1(b)* and ending on the earlier to occur of the Effective Date for such Stage or the twenty ninth (29th) calendar day after the delivery date for such Stage set forth in *Section 2.1(b)*. If the Effective Date for any Stage has not occurred within thirty (30) calendar days after the delivery date for such Stage set forth in *Section 2.1(b)*, then upon the commencement of Basic Rent payments for such Stage pursuant to *Exhibit B* hereof, LESSEE shall be entitled to an additional credit against Basic Rent first coming due in an amount equal to the product of (x) two

(2) times the daily Basic Rent for such Stage, times (y) the number of calendar days during the period commencing on the thirtieth (30th) calendar day after the delivery date for such Stage set forth in *Section 2.1(b)* and ending on the Effective Date for such Stage. The *"daily Basic Rent"* for any Stage, for the purpose of this Section, means an amount equal to the quotient of (1) the annual Basic Rent for the applicable Stage as of the commencement of Basic Rent payments for such Stage pursuant to *Exhibit B*, divided by (2) three hundred sixty five (365). For example, the "daily Basic Rent" for Stage 1 of the Demised Premises would be $5,448.87 ($1,988,840.00 ÷ 365).

2.2 (a) The term (the *"Term"*) of this Lease shall commence on the Commencement Date and shall end on the Termination Date. Pursuant to *Article 32* hereof, LESSEE shall have the right to access the Premises prior to the Commencement Date to undertake Tenant Improvement Work. LESSEE acknowledges and agrees that such access shall be in accordance with all of the terms and conditions of this Lease, except for the provisions relating to the payment of Basic Rent, regardless of whether or not the Term shall thereafter commence.

(b) Within fifteen (15) days after the occurrence of the Effective Date for Stage 1 of the Demised Premises, LESSOR and LESSEE shall enter into an agreement memorializing the Effective Date for Stage 1 of the Demised Premises and memorializing the Commencement Date. Within fifteen (15) days after the occurrence of the Effective Date for each subsequent Stage of the Demised Premises, LESSOR and LESSEE shall enter into an agreement memorializing (i) such Effective Date, (ii) the Basic Rent payable with respect to the applicable Stage, and (iii) the aggregate Basic Rent payable with respect to all Stages for which an Effective Date has occurred.

(c) LESSEE acknowledges and agrees that, except as expressly set forth in this Lease, neither LESSOR nor any employee, agent or representative of LESSOR has made any express or implied representations or warranties with respect to (i) the physical condition of the Demised Premises or any other portion of the Premises, the fitness or quality thereof or any other matter or thing whatsoever with respect to the Demised Premises or any other portion of the Premises, (ii) whether LESSEE'S anticipated use of the Premises or the improvements and alterations which LESSEE intends to make are permitted under applicable Legal Requirements, or (iii) any other aspect of this transaction whatsoever, and that LESSEE is not relying upon any such representation or warranty in entering into this Lease.

Supplementing the foregoing, LESSEE agrees further to accept the Demised Premises and those other portions of the Premises that Lessee has the right to use pursuant to the terms hereof and each fixture or other item constituting a portion thereof in their "AS IS" condition as of the date of this Lease (except that each Stage of the Demised Premises shall be broom clean as of the Effective Date for such Stage), subject to ordinary wear and tear between the date hereof and the date that each portion of the Demises Premises is delivered to LESSEE in accordance with the terms hereof and subject to the rights of the Existing Tenant to remove any or all of its trade fixtures from the Premises, including, without limitation, glass partitions located in the Third Floor Space.

2.3 (a) Subject to the provisions of this *Section 2.3*, LESSOR hereby grants to LESSEE the right to extend the Term for a five (5) year period from January 1, 2014 to December 31, 2018, inclusive (the *"First Option Period*"), and, if LESSEE exercises its right to extend the Term for the First Option Period, then LESSOR hereby grants to LESSEE the right to extend the Term further for an additional five (5) year period from January 1, 2019 to December 31, 2023, inclusive (the *"Second Option Period*"), and, if LESSEE exercises its right to extend the Term for the Second Option Period, then LESSOR hereby grants to LESSEE the right to extend the Term further for an additional five (5) year period from January 1, 2024 to December 31, 2028 (the *"Third Option Period"*).

(b) Provided (x) no Event of Default is occurring as of the exercise of LESSEE'S extension right or as of the day preceding the commencement of the Option Period in question, and (y) LESSEE has not assigned this Lease (other than an assignment pursuant to *Section 16.7(b)* hereof), then LESSEE shall have the right to extend the Term for the Option Period in question by notice given to LESSOR not less than twelve (12) months, nor more than fifteen (15) months, prior to the commencement of the Option Period in question. LESSEE acknowledges and agrees that time is of the essence with respect to the giving of such notice. If LESSEE exercises its extension right, then all of the terms and conditions of this Lease shall apply during the Option Period in question, except that the Basic Rent shall be determined in accordance with the provisions of this *Section 2.3*, LESSOR shall not be obligated to perform any work to the Demised Premises or other portions of the Premises beyond the obligations expressly set forth in this Lease, LESSEE shall accept the Demised Premises and the other portions of the Premises that LESSEE has the right to use in

their then "AS IS" condition and LESSEE shall not have any right to extend the Term beyond the expiration of the Third Option Period.

(c) The annual Basic Rent for each Option Period shall be equal to the greater of (x) the annual Basic Rent payable under this Lease during the year immediately preceding the commencement of the Option Period in question, or (y) ninety-five percent (95%) of the then fair market rental value of the Demised Premises as of the commencement of the Option Period in question (as determined pursuant to the provisions set forth below).

(d) On or before the eleventh (11th) month preceding the commencement of the Option Period in question, LESSOR shall notify LESSEE of its determination of ninety-five percent (95%) of the fair market rental value of the Demised Premises for the Option Period in question. If such amount is equal to or less than the annual Basic Rent then payable by LESSEE, then the Basic Rent during the Option Period in question shall continue to be the annual Basic Rent then payable by LESSEE; if such amount is more than the annual Basic Rent then payable by LESSEE, then the Basic Rent during the Option Period in question shall be equal to ninety-five percent (95%) of the then fair market rental value of the Demised Premises as determined by LESSOR, subject, however, to LESSEE'S right to object to such determination. LESSEE shall have the right to object to the fair market rental value set forth in LESSOR'S notice by notice given to LESSOR within fifteen (15) days after receipt of LESSOR'S notice. If LESSEE objects to such fair market rental value, and if the parties are unable to resolve the dispute within thirty (30) days after LESSOR'S receipt of LESSEE'S objection notice, then the fair market rental value of the Demised Premises shall be determined pursuant to the provisions of the immediately following subsection.

(e) The phrase "fair market rental value" shall mean the rent generally payable in the general area of Parsippany-Troy Hills, New Jersey for premises of approximately the same size and quality as, and otherwise comparable to, the Demised Premises (and the other portions of the Premises that LESSEE has the right to use pursuant to the terms hereof) in a building comparable to the Building for an equivalent term; provided, however, the alterations and improvements installed by LESSEE in and about the Demised Premises shall not be considered in determining such fair market rental value. On or before the fiftieth (50th) day preceding the commencement of the Option

Period in question, LESSOR and LESSEE shall each appoint an appraiser who is a member of the Member Appraisal Institute of the American Institute of Real Estate Appraisers and who has at least ten (10) years experience appraising commercial properties in the northern New Jersey area. In the event either party fails to so appoint an appraiser on or before the day specified in the preceding sentence, the person appointed as the appraiser may appoint an appraiser to represent the party having failed to appoint an appraiser within ten (10) days after the expiration of such period. The two appraisers appointed in either manner shall then proceed to appraise the Demised Premises and determine its fair market rental value. In the event of their inability to reach a determination of the fair market rental value within thirty (30) days after their appointment, then they shall select a third appraiser. Said third appraiser shall appraise the Demised Premises within thirty (30) days after his or her appointment to determine its fair market rental value. In such event, the fair market rental value of the Demised Premises shall be the average of the two (2) closest appraisals. LESSOR and LESSEE agree to be bound by the determination of the fair market rental value of the Demised Premises arrived at by the appraisers. Each party shall be responsible for the fees and disbursements of its appraiser and attorneys, and the parties shall share equally the fees and disbursements of the third appraiser.

(f) In the event a final determination of the annual Basic Rent for the Option Period in question has not been made by the commencement date of said Option Period, then LESSEE shall pay to LESSOR the Basic Rent at the same rate as most recently paid by LESSEE. When the annual Basic Rent for the Option Period in question has been determined, if such amount is greater than the rate most recently paid by LESSEE, LESSEE shall pay to LESSOR, with the next monthly installment of Basic Rent due after such determination, an amount equal to the difference between the Basic Rent previously paid during said Option Period and the amount which would have been payable had the annual Basic Rent for said Option Period been made as of the commencement of said Option Period.

(g) The rights granted to LESSEE under this *Section 2.3* are personal to Exodus Communications, Inc., and they cannot be assigned separately from this Lease or in connection with an assignment of this Lease.

**ARTICLE 3**
**BASIC RENT; ADDITIONAL RENT**

3.1 LESSEE shall pay rent (*"Basic Rent"*) to LESSOR during the Term in the amounts and at the times provided in *Exhibit B* in lawful money of the United States of America. In the event that the date upon which LESSEE first becomes obligated to pay Basic Rent with respect to any Stage of the Demised Premises shall be other than a Basic Rent Payment Date, then the Basic Rent payment for such Stage for the calendar month in which such obligation first commences shall be prorated to reflect the actual number of days in such calendar month from and after the date which Basic Rent is payable for the applicable Stage; such prorated amount shall be paid to LESSOR within five (5) business days after the date on which LESSEE first becomes obligated to pay Basic Rent for the applicable Stage pursuant to *Exhibit B*.

3.2 In addition to the Basic Rent, LESSEE will pay and discharge when due, as additional rent (*"Additional Rent"*), all other amounts, liabilities and obligations which LESSEE herein agrees to pay to LESSOR, together with (after the giving of any applicable notice required to be given by LESSOR hereunder) all interest, penalties and costs which may be added thereto pursuant to the terms of this Lease; each such amount, liability and obligation, together with any interest, penalty and/or cost thereon, shall be deemed Additional Rent regardless of whether it is specifically referred to as Additional Rent in this Lease. LESSOR shall have all the rights, powers and remedies provided for in this Lease or at law or in equity or otherwise for failure to pay Additional Rent as are available for nonpayment of Basic Rent.

3.3 If any installment of Basic Rent or Additional Rent is not paid within ten (10) days after the date when due, LESSEE shall pay to LESSOR on demand, as Additional Rent, a late charge equal to four percent (4%) of the amount unpaid; provided, however, such late charge shall not apply to the first (1st) such late payment in any calendar year. In addition, any installment or installments of Basic Rent or Additional Rent accruing hereunder which are not paid within ten (10) days after the date when due, shall bear interest at the Prime Rate form the due date thereof until the date of payment, which interest shall be deemed Additional rent hereunder and shall be payable upon demand by LESSOR.

3.4 LESSEE will contract for and pay all charges for telecommunication services at any time rendered or used on or

about the Demised Premises or in connection with the Equipment to the company providing the same before any interest or penalty may be added thereto and will furnish to LESSOR, upon request, satisfactory proof evidencing such payment.

3.5 Except as herein provided, LESSEE hereby covenants and agrees to pay to LESSOR during the Term (and from and after the date hereof), at LESSOR'S address for notices hereunder, or such other place as LESSOR may from time to time designate in writing, without any offset, set-off, counterclaim, deduction, defense, abatement, suspension, deferment or diminution of any kind, except as expressly set forth in this Lease, (i) the Basic Rent, without notice or demand, (ii) Additional Rent and (iii) all other sums payable by LESSEE hereunder. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall LESSEE have any right to terminate or avoid this Lease or be entitled to the abatement of any Basic Rent, Additional Rent or other sums payable hereunder or any reduction thereof, nor shall the obligations and liabilities of LESSEE hereunder be in any way affected for any reason. The obligations of LESSEE hereunder shall be separate and independent covenants and agreements.

**ARTICLE 4**
**REAL ESTATE TAXES**

4.1 LESSEE shall pay to LESSOR, as Additional Rent, LESSEE'S Proportionate Share of the amount by which the Taxes for any calendar year during the Term exceeds the Base Taxes; provided, however, that if any special assessments may be payable in installments, LESSOR may elect to pay same over the longest period allowed by law. LESSEE'S Proportionate Share of the Taxes for less than a year shall be prorated and apportioned. Notwithstanding that the Commencement Date may occur after January 1, 2001, the entire calendar year 2001 shall be deemed to be within the Term for the purposes of this Article, subject, however, to *Section 4.9*.

4.2 Subject to *Section 4.9*, on or about January 1, 2001 and thereafter within ninety (90) days following the first day of each succeeding calendar year during the Term, LESSOR shall determine or estimate in good faith the amount by which the Taxes for the calendar year in question will exceed the Base Taxes (the *"Projected Taxes"*) and shall submit such information to LESSEE in a written statement (*"LESSOR'S Tax Statement"*).

4.3 Commencing on the first Basic Rent Payment Date following the submission of any LESSOR'S Tax Statement and continuing thereafter on each successive Basic Rent Payment Date until LESSOR renders the next LESSOR'S Tax Statement, LESSEE shall pay to LESSOR on account of its obligation under *Section 4.1* of this Lease, a sum (the *"Monthly Tax Payment"*) equal to one-twelfth (1/12) of LESSEE'S Proportionate Share of the Projected Taxes for such calendar year. LESSEE'S first Monthly Tax Payment after receipt of LESSOR'S Tax Statement shall be accompanied by the payment of an amount equal to the product of the number of full months, if any, within the calendar year which shall have elapsed prior to such first Monthly Tax Payment, *times* the Monthly Tax Payment; *minus* any Additional Rent already paid by LESSEE on account of its obligation under *Section 4.1* of this Lease for such calendar year.

4.4 Each LESSOR'S Tax Statement shall reconcile the payments made by LESSEE pursuant to the preceding LESSOR'S Tax Statement with LESSEE'S Proportionate Share of the actual Taxes imposed for the period covered thereby. Any balance due to LESSOR shall be paid by LESSEE within thirty (30) days after LESSEE'S receipt of LESSOR'S Tax Statement; any surplus due to LESSEE shall be applied by LESSOR against the next accruing monthly installment(s) of Additional Rent due under this Article. Upon request therefor from LESSEE, made within ninety (90) days after the giving of any LESSOR'S Tax Statement, LESSOR shall provide LESSEE with copies of the applicable tax bills (or other reasonable evidence of the Taxes) relating to the reconciliation set forth in such Statement. If the Term has expired or has been terminated, LESSEE shall pay the balance due to LESSOR or, alternatively, LESSOR shall refund the surplus to LESSEE, whichever the case may be, within thirty (30) days after LESSEE'S receipt of LESSOR'S Tax Statement; provided, however, if the Term shall have been terminated as a result of a default by LESSEE, then LESSOR shall have the right to retain such surplus to the extent LESSEE owes LESSOR any Basic Rent or Additional Rent.

4.5 (a) If LESSOR shall receive any refund of Taxes in respect of a calendar year and if LESSEE shall have paid Additional Rent based on the Taxes paid prior to the refund, LESSOR shall deduct from such tax refund any expenses, including, but not limited to, reasonable attorney's fees and appraisal fees, actually incurred in obtaining such tax refund, and out of the remaining balance of such tax refund, LESSOR shall credit LESSEE'S Proportionate Share of such refund against the next accruing monthly installments(s) of Additional Rent, or if the Term shall have expired, LESSEE'S Proportionate Share of such refund shall be

refunded to LESSEE within thirty (30) days after receipt thereof by LESSOR; provided, however, (i) if the Term shall have expired as a result of a default by LESSEE, LESSOR shall have the right to retain LESSEE'S Proportionate Share of the refund to the extent LESSEE owes LESSOR any Basic Rent or Additional Rent, and (ii) LESSEE'S Proportionate Share of such refund shall not exceed the amount of Additional Rent actually paid by LESSEE on account of the Taxes for the calendar year in question. Any expenses actually incurred by LESSOR in contesting the validity or the amount of the assessed valuation of the Premises or any Taxes, to the extent not offset by a tax refund, shall be included as an item of Taxes for the tax year in which such contest shall be finally determined for the purpose of computing the Additional Rent due LESSOR or any credit due to LESSEE hereunder.

(b) Notwithstanding anything to the contrary contained in this Lease, LESSEE shall not have the right to contest or appeal the validity of any Taxes or the amount of the assessed valuation of the Premises without the prior written consent of LESSOR. If LESSEE shall desire to contest or appeal the validity of any Taxes or the amount of the assessed valuation of the Premises, then LESSEE shall submit to LESSOR, for its review, a written notice setting forth the basis for such contest or appeal. Within thirty (30) days after LESSOR'S receipt of such notice, LESSOR shall notify LESSEE whether LESSOR believes, in its reasonable judgment, such contest or appeal is likely to succeed. If LESSOR determines that such contest or appeal has a reasonable likelihood of success, then LESSOR agrees to consent to such contest or appeal. In such event, LESSOR shall have the option to either (i) file such contest or appeal or (ii) permit LESSEE to file such contest or appeal. If LESSOR determines that such contest or appeal is not likely to succeed, then LESSOR shall have the right to deny its consent to such contest or appeal.

4.6 While proceedings for the reduction in assessed valuation for any year are pending, the computation and payment of LESSEE'S Proportionate Share of Taxes shall be based upon the original assessments for such year.

4.7 LESSEE shall also pay to LESSOR, as Additional Rent, upon demand, the amount of all increases in Taxes and/or all assessments or impositions made, levied or assessed against or imposed upon the Premises or any part thereof which are attributable to additions, alterations or improvements in, on or about the Demised Premises or other portions of the Premises made by or on behalf of LESSEE or which belong to LESSEE.

4.8 In no event shall any adjustment in LESSEE'S obligation to pay Additional Rent under this *Article 4* result in a decrease in the Basic Rent payable hereunder. LESSEE'S obligation to pay Additional Rent, and LESSOR'S obligation to credit and/or refund to LESSEE any amount, pursuant to the provisions of this *Article 4*, shall survive the Termination Date.

4.9 Notwithstanding anything to the contrary contained herein, LESSEE'S obligation to pay increases in Taxes pursuant to this *Article 4* for calendar year 2001 shall not commence until the first anniversary of the date of this Lease, it being understood that for calendar year 2001, the amount which LESSEE is obligated to pay pursuant to *Section 4.1* shall be prorated to reflect the actual number of days in calendar year 2001 from and after the first anniversary of the date of this Lease. For calendar year 2001, LESSOR'S Tax Statement shall be given on or about the first anniversary of the date of this Lease and shall reflect such prorated amount. Commencing on the first Basic Rent Payment Date following the submission of LESSOR'S Tax Statement for calendar year 2001 and continuing thereafter on each successive Basic Rent Payment Date until LESSOR renders the next LESSOR'S Tax Statement, LESSEE shall pay to LESSOR on account of its obligation under *Section 4.1*, a sum equal to the quotient of (a) LESSEE'S Proportionate Share of such prorated Projected Taxes for calendar year 2001 (as reflected in LESSOR'S Tax Statement), divided by (b) the number of calendar months remaining in calendar year 2001 from and after the delivery of LESSOR'S Tax Statement. LESSEE'S portion of any Tax refund for calendar year 2001 pursuant to *Section 4.5* shall also be prorated based on the partial calendar year from and after the first anniversary of the date of this Lease. Except as set forth in this *Section 4.9*, all of the provisions of *Article 4* shall apply with respect to calendar year 2001, including, without limitation, the reconciliation provisions of *Section 4.4*.

4.10 The provisions of *Section 33.3* shall apply to LESSOR'S Tax Statement.

## ARTICLE 5
## OPERATING EXPENSES

5.1 (a) LESSEE shall pay to LESSOR, as Additional Rent, LESSEE'S Proportionate Share of the amount by which LESSOR'S Operating Expenses for any calendar year during the Term exceeds the Base Operating Expenses. LESSEE'S Proportionate Share of LESSOR'S Operating Expenses for less than a calendar year shall be prorated and apportioned. Notwithstanding that the Commencement

Date may occur after January 1, 2001, the entire calendar year 2001 shall be deemed to be within the Term for the purposes of this Article, subject, however, to *Section 5.8*.

(b) (i) LESSOR'S Operating Expenses shall include the cost of any equipment, device, capital improvement or replacement acquired to achieve cost savings in the operation, maintenance and repair of the Premises, the useful life for which is in whole or in part within the Term.

(ii) LESSOR'S Operating Expenses shall also include expenses which are considered capital in nature pursuant to generally accepted accounting principles, consistently applied, and are required by any Legal Requirements which become effective on or after the date of this Lease, the useful life for which is in whole or in part within the Lease Term.

(iii) The cost of the aforesaid equipment, device, capital improvement, expense or replacement, together with interest thereon at an interest rate equal to the annual Prime Rate in effect as of the date of installation and/or completion of such equipment, device, capital improvement, expense or replacement plus 2%, shall be amortized (on a straight line basis) over a period equal to the useful life of the item in question. The annual amortized cost shall be included in LESSOR'S Operating Expenses for the calendar year in question; provided, however, with respect to the costs under clause (i) only, the amount included in LESSOR'S Operating Expenses for any calendar year shall not exceed the amount of cost savings reasonably anticipated for such calendar year.

5.2 Subject to *Section 5.8*, on or about January 1, 2001 and thereafter within ninety (90) days following the first day of each succeeding calendar year within the Term, LESSOR shall determine or estimate the amount by which LESSOR'S Operating Expenses for the calendar year in question will exceed the Base Operating Expenses ("*LESSOR'S Estimated Operating Expenses*") and shall submit such information to LESSEE in a written statement ("*LESSOR'S Expense Statement*").

5.3 Commencing on the first Basic Rent Payment Date following the submission of any LESSOR'S Expense Statement and continuing thereafter on each successive Basic Rent Payment Date until LESSOR renders the next LESSOR'S Expense Statement, LESSEE shall pay to LESSOR on account of its obligation under *Section 5.1* of this Lease, a sum (the "*Monthly Expense Payment*") equal to one-

twelfth (1/12) of LESSEE'S Proportionate Share of LESSOR'S Estimated Operating Expenses for such calendar year. LESSEE'S first Monthly Expense Payment after receipt of LESSOR'S Expense Statement shall be accompanied by the payment of an amount equal to the product of the number of full months, if any, within the calendar year which shall have elapsed prior to such first Monthly Expense Payment, *times* the Monthly Expense Payment; *minus* any Additional Rent already paid by LESSEE on account of its obligation under *Section 5.1* of this Lease for such calendar year.

5.4 Each LESSOR'S Expense Statement shall reconcile the payments made by LESSEE pursuant to the preceding LESSOR'S Expense Statement with LESSEE'S Proportionate Share of LESSOR'S Operating Expenses for the period covered thereby. Any balance due to LESSOR shall be paid by LESSEE within thirty (30) days after LESSEE'S receipt of LESSOR'S Expense Statement; any surplus due to LESSEE shall be applied by LESSOR against the next accruing monthly installment(s) of Additional Rent due under this Article. If the Term has expired or has been terminated, LESSEE shall pay the balance due to LESSOR or, alternatively, LESSOR shall refund the surplus to LESSEE, whichever the case may be, within thirty (30) days after LESSEE'S receipt of LESSOR'S Expense Statement; provided, however, if the Term shall have been terminated as a result of a default by LESSEE, then LESSOR shall have the right to retain such surplus to the extent LESSEE owes LESSOR any Basic Rent or Additional Rent.

5.5 LESSEE or its representative shall have the right to examine LESSOR'S books and records with respect to the reconciliation of LESSOR'S Operating Expenses for the prior calendar year set forth in LESSOR'S Expense Statement during normal business hours at any time within ninety (90) days following the delivery by LESSOR to LESSEE of such LESSOR'S Expense Statement. Unless LESSEE shall give LESSOR a notice objecting to said reconciliation and specifying the respects in which said reconciliation is claimed to be incorrect within thirty (30) days after its examination of LESSOR'S books and records, said reconciliation shall be considered as final and accepted by LESSEE. If LESSEE objects to any reconciliation as set forth above, and if it is thereafter conclusively determined that LESSEE was overcharged by more than five percent (5%) for the applicable calendar year, LESSEE shall be entitled to a credit against the next payment of Additional Rent due hereunder in an amount equal to the overcharge and LESSOR shall pay to LESSEE the reasonable costs incurred by LESSEE in examining LESSOR'S books and records with respect to the applicable reconciliation within fifteen (15) days after receiving a request therefor from LESSEE, together with

a copy of all applicable invoices. If LESSEE objects to any reconciliation as set forth above, and if it is thereafter conclusively determined that LESSEE was overcharged (but not by more than five percent (5%)) for the applicable calendar year, LESSEE shall be entitled to a credit against the next payment of Additional Rent due hereunder in an amount equal to the overcharge and LESSEE shall bear the cost of its examination of LESSOR'S books and records with respect to the applicable reconciliation. If LESSEE'S examination of LESSOR'S books and records determines that LESSEE was undercharged for the applicable calendar year, LESSEE shall promptly pay the amount of the undercharge to LESSOR and LESSEE shall bear the costs of its examination of LESSSOR'S books and records. Notwithstanding anything to the contrary contained in this Article, LESSEE shall not be permitted to examine LESSOR'S books and records or to dispute said reconciliation unless LESSEE has paid to LESSOR the amount due as shown on LESSOR'S Expense Statement; said payment is a condition precedent to said examination and/or dispute.

5.6 In no event shall any adjustment in LESSEE'S obligation to pay Additional Rent under this *Article 5* result in a decrease in the Basic Rent payable hereunder. LESSEE'S obligation to pay Additional Rent, and LESSOR'S obligation to credit and/or refund to LESSEE any amount, pursuant to the provisions of this *Article 5*, shall survive the Termination Date.

5.7 If any tenant in the Building for any reason shall not be provided all services generally provided by LESSOR to other tenants of the Building, then for purposes of determining LESSOR'S Operating Expenses, LESSOR shall reasonably estimate what LESSOR'S Operating Expenses would have been had such service been provided to all tenants.

5.8 Notwithstanding anything to the contrary contained herein, LESSEE'S obligation to pay increases in LESSOR'S Operating Expenses pursuant to this *Article 5* for calendar year 2001 shall not commence until the first anniversary of the date of this Lease, it being understood that for calendar year 2001, the amount which LESSEE is obligated to pay pursuant to *Section 5.1* shall be prorated to reflect the actual number of days in calendar year 2001 from and after the first anniversary of the date of this Lease. For calendar year 2001, LESSOR'S Expense Statement shall be given on or about the first anniversary of the date of this Lease and shall reflect such prorated amount. Commencing on the first Basic Rent Payment Date following the submission of LESSOR'S Expense Statement for calendar year 2001 and continuing thereafter on each successive Basic Rent Payment Date until LESSOR renders

the next LESSOR'S Expense Statement, LESSEE shall pay to LESSOR on account of its obligation under *Section 5.1*, a sum equal to the quotient of (a) LESSEE'S Proportionate Share of such prorated LESSOR'S Estimated Operating Expenses for calendar year 2001 (as reflected in LESSOR'S Expense Statement), divided by (b) the number of calendar months remaining in calendar year 2001 from and after the delivery of LESSOR'S Expense Statement. Except as set forth in this *Section 5.8*, all of the provisions of *Article 5* shall apply with respect to calendar year 2001, including, without limitation, the reconciliation provisions of *Section 5.4*.

5.9 LESSEE shall also pay to LESSOR, as Additional Rent, upon demand, the amount of any increase in LESSOR'S Operating Expenses or in any other costs of operating, maintaining or repairing the Premises which is attributable to LESSEE'S use or manner of use of the Demised Premises or other portions of the Premises, to activities conducted on or about the Demised Premises or other portions of the Premises by LESSEE or on behalf of LESSEE or to any additions, improvements or alterations to the Demised Premises or other portions of the Premises made by or on behalf of LESSEE.

5.10 The provisions of *Section 33.3* shall apply to LESSOR'S Expense Statement.

**ARTICLE 6**
**UTILITY COSTS**

6.1 LESSEE shall pay to LESSOR, as Additional Rent, LESSEE'S Proportionate Share of the amount by which the Utility Costs for any calendar year during the Term exceeds the Base Utility Costs. LESSEE'S Proportionate Share of the Utility Costs for less than a year shall be prorated and apportioned. Notwithstanding that the Commencement Date may occur after January 1, 2001, the entire calendar year 2001 shall be deemed to be within the Term for the purposes of this Article, subject, however, to *Section 6.5*.

6.2 Subject to *Section 6.5*, on or about January 1, 2001 and thereafter within ninety (90) days following the first day of each succeeding calendar year during the Term, LESSOR shall determine or estimate the amount by which Utility Costs for such calendar year will exceed Base Utility Costs (such excess being hereinafter referred to as the "*Utility Increase*"), and LESSOR shall submit such information to LESSEE in a written statement ("*LESSOR'S Utility Statement*"). Commencing on the first Basic Rent

Payment Date following the submission of any LESSOR'S Utility Statement and continuing thereafter on each successive Basic Rent Payment Date until LESSOR renders the next LESSOR'S Utility Statement, LESSEE shall pay to LESSOR on account of its obligation under *Section 6.1* of this Lease, a sum (the *"Utility Payment"*) equal to one-twelfth (1/12) of LESSEE'S Proportionate Share of the Utility Increase. LESSEE'S first Utility Payment after receipt of LESSOR'S Utility Statement shall be accompanied by the payment of an amount equal to the product of the number of full months, if any, within the calendar year which have elapsed prior to such first Utility Payment, *times* the Utility Payment; *minus* any Additional Rent already paid by LESSEE on account of its obligation under *Section 6.1* of this Lease for such calendar year.

6.3 Each LESSOR'S Utility Statement shall reconcile the payments made by LESSEE pursuant to the preceding LESSOR'S Utility Statement with LESSEE'S Proportionate Share of the actual Utility Increase for the period covered thereby. Any balance due to LESSOR shall be paid by LESSEE within thirty (30) days after LESSEE'S receipt of LESSOR'S Utility Statement; any surplus due to LESSEE shall be applied by LESSOR against the next accruing monthly installment(s) of Additional Rent due under this Article. If the Term has expired or has been terminated, LESSEE shall pay the balance due to LESSOR or, alternatively, LESSOR shall refund the surplus to LESSEE, whichever the case may be, within thirty (30) days after LESSEE'S receipt of LESSOR'S Utility Statement; provided, however, if the Term shall have been terminated as a result of a default by LESSEE, then LESSOR shall have the right to retain such surplus to the extent LESSEE owes LESSOR any Basic Rent or Additional Rent.

6.4 LESSEE or its representative shall have the right to examine LESSOR'S books and records with respect to the reconciliation of Utility Costs for the prior calendar year set forth in LESSOR'S Utility Statement during normal business hours at any time within ninety (90) days following the delivery by LESSOR to LESSEE of such LESSOR'S Utility Statement. Unless LESSEE shall give LESSOR a notice objecting to said reconciliation and specifying the respects in which said reconciliation is claimed to be incorrect within thirty (30) days after its examination of LESSOR'S books and records, said reconciliation shall be considered as final and accepted by LESSEE. If LESSEE objects to any reconciliation as set forth above, and if it is thereafter conclusively determined that LESSEE was overcharged by more than five percent (5%) for the applicable calendar year, LESSEE shall be entitled to a credit against the next payment of Additional Rent due hereunder in an amount equal to the overcharge

and LESSOR shall pay to LESSEE the reasonable costs incurred by LESSEE in examining LESSOR'S books and records with respect to the applicable reconciliation within fifteen (15) days after receiving a request therefor from LESSEE, together with a copy of all applicable invoices. If LESSEE objects to any reconciliation as set forth above, and if it is thereafter conclusively determined that LESSEE was overcharged (but not by more than five percent (5%)) for the applicable calendar year, LESSEE shall be entitled to a credit against the next payment of Additional Rent due hereunder in an amount equal to the overcharge and LESSEE shall bear the cost of its examination of LESSOR'S books and records with respect to the applicable reconciliation. If LESSEE'S examination of LESSOR'S books and records determines that LESSEE was undercharged for the applicable calendar year, LESSEE shall promptly pay the amount of the undercharge to LESSOR and LESSEE shall bear the costs of its examination of LESSSOR'S books and records. Notwithstanding anything to the contrary contained in this Article, LESSEE shall not be permitted to examine LESSOR'S books and records or to dispute said reconciliation unless LESSEE has paid to LESSOR the amount due as shown on LESSOR'S Utility Statement; said payment is a condition precedent to said examination and/or dispute.

6.5 Notwithstanding anything to the contrary contained herein, LESSEE'S obligation to pay increases in Utility Costs pursuant to this *Article 6* for calendar year 2001 shall not commence until the first anniversary of the date of this Lease, it being understood that for calendar year 2001, the amount which LESSEE is obligated to pay pursuant to *Section 6.1* shall be prorated to reflect the actual number of days in calendar year 2001 from and after the first anniversary of the date of this Lease. For calendar year 2001, LESSOR'S Utility Statement shall be given on or about the first anniversary of the date of this Lease and shall reflect such prorated amount. Commencing on the first Basic Rent Payment Date following the submission of LESSOR'S Utility Statement for calendar year 2001 and continuing thereafter on each successive Basic Rent Payment Date until LESSOR renders the next LESSOR'S Utility Statement, LESSEE shall pay to LESSOR on account of its obligation under *Section 6.1*, a sum equal to the quotient of (a) LESSEE'S Proportionate Share of such prorated Utility Increases for calendar year 2001 (as reflected in LESSOR'S Utility Statement), divided by (b) the number of calendar months remaining in calendar year 2001 from and after the delivery of LESSOR'S Utility Statement. Except as set forth in this *Section 6.5*, all of the provisions of *Article 6* shall apply with respect to calendar year 2001, including, without limitation, the reconciliation provisions under *Section 6.3*.

6.6 In no event shall any adjustment in LESSEE'S obligation to pay Additional Rent under this *Article 6* result in a decrease in the Basic Rent payable hereunder. LESSEE'S obligation to pay Additional Rent pursuant to the provisions of this *Article 6* shall survive the Termination Date.

6.7 The provisions of *Section 33.3* shall apply to LESSOR'S Utility Statement.

**ARTICLE 7**
**MAINTENANCE, ALTERATIONS AND**
**ADDITIONS; REMOVAL OF TRADE FIXTURES**

7.1 LESSEE agrees, at its sole cost and expense, to (i) keep the Demised Premises (including, without limitation, all security, life safety, communications, electrical, mechanical, plumbing, heating, ventilating, air-conditioning and other systems or portions thereof located within and servicing the Demised Premises) in good order and condition (except for ordinary wear and tear and Restoration for which LESSOR is responsible pursuant to *Article 17* or *18* hereof) and will make all non-structural repairs, alterations, renewals and replacements, ordinary and extraordinary, foreseen or unforeseen, and shall take such other action as may be necessary or appropriate to keep and maintain the Demised Premises (including, without limitation, such systems or portions thereof located within and servicing the Demised Premises) in good order and condition (except for ordinary wear and tear and Restoration for which LESSOR is responsible pursuant to *Article 17* or *18* hereof), and (ii) keep all alterations and improvements undertaken by LESSEE at the Premises, whether within or outside of the Demised Premises (including, without limitation, the Equipment and all security, life safety, communications, electrical, mechanical, plumbing, heating, ventilating, air-conditioning and other systems, equipment or portions thereof installed or altered by LESSEE) in good order and condition (except for ordinary wear and tear) and will make all repairs, alterations, renewals and replacements, ordinary and extraordinary, foreseen or unforeseen, and shall take such other action as may be necessary or appropriate to keep and maintain the alterations and improvements made by LESSEE in good order and condition, and (iii) keep the exterior membrane of the roof of the Building in good order and condition (except for ordinary wear and tear and Restoration for which LESSOR is responsible pursuant to *Article 17* or *18* hereof) and will make all repairs, renewals and replacements, ordinary and extraordinary, foreseen or unforeseen,

and shall take such other action as may be necessary or appropriate to keep and maintain the exterior membrane of the roof in good order and condition. Except as expressly provided in this Lease, LESSOR shall not be obligated in any way to maintain, alter or repair the Demised Premises. LESSOR shall not be obligated in any way to maintain, alter, repair, restore or replace any of the alterations or improvements made by LESSEE, including, without limitation, the Equipment. Notice is hereby given that, except with respect to repairs or restoration undertaken by LESSOR, LESSOR will not be liable for any labor, services or materials furnished or to be furnished to LESSEE, or to anyone holding the Demised Premises or any part thereof through or under LESSEE, and that no mechanics' or other liens for any such labor or materials shall attach to or affect the interest of LESSOR in and to the Premises.

7.2 LESSOR hereby authorizes LESSEE to assert all rights and claims, and to bring suits, actions and proceedings, in LESSOR'S name or in either or both LESSOR'S and LESSEE'S name, in respect of any and all contracts, manufacturer's or supplier's warranties or undertakings, express or implied, relating to any portion of the Premises required to be maintained, repaired, altered, removed or replaced by LESSEE; provided, however, that LESSOR shall not be obligated to incur any cost in connection therewith.

7.3 (a) LESSOR shall maintain and make all repairs and replacements to (i) the foundation, footings, load bearing walls, the structural columns and beams, the exterior walls, the exterior windows and the roof of the Building (other than the portions of the roof for which LESSEE is responsible pursuant to *Section 7.1*), (ii) all portions of life safety, electrical and plumbing systems located outside of the Demised Premises which service the Demised Premises (other than those systems and equipment or portions thereof for which LESSEE is responsible pursuant to *Section 7.1* or *Article 31*), (iii) the common area lobbies, bathrooms and hallways of the Building and the Building systems servicing such common areas, and (iv) the landscaping, parking lots, driveways and sidewalks on the Land; provided, however, if such repairs and replacements are necessitated by the intentional acts or negligence of LESSEE or LESSEE'S Visitors, then LESSEE shall reimburse LESSOR, upon demand, for the reasonable cost thereof. The costs and expenses incurred by LESSOR in connection with such maintenance, repairs and replacements shall be included in LESSOR'S Operating Expenses to the extent permitted by the terms of this Lease.

(b) Notwithstanding anything to the contrary contained herein, except in the case of an emergency and except as set forth in *Section 20.8* hereof, LESSOR shall not make or permit to be made any penetrations of the roof of the Building without obtaining LESSEE'S prior written approval. LESSEE shall not withhold such approval unless the proposed roof penetration would materially adversely affect LESSEE'S equipment located within or servicing the Demised Premises. Within five (5) days after receiving any request for such approval from LESSOR, together with reasonably detailed plans for the proposed penetrations, LESSEE shall give LESSOR notice that LESSEE approves or disapproves the proposed penetrations. Any disapproval notice shall state with reasonable specificity the reasons for disapproval and any modifications to the plans necessary to make the proposed penetrations acceptable to LESSEE. If LESSEE fails to approve or disapprove any proposed penetrations by notice given to LESSOR within said five (5) day period, LESSEE shall be deemed to have approved the proposed penetrations. All roof penetrations made or permitted to be made by LESSOR shall be in accordance with the plans approved (or deemed to be approved) by LESSEE.

(c) If LESSEE reasonably believes that a repair is required to any portion of the Premises for which LESSOR is responsible pursuant to *Section 7.3(a)*, which, if not completed promptly, would materially adversely affect LESSEE'S use or occupancy of the Demised Premises for the purposes permitted herein (any such repair being hereinafter referred to as *"Building Repair"*), then LESSEE shall give LESSOR a notice describing, in reasonable detail, such Building Repair. Within a reasonable period of time after LESSOR'S receipt of such notice, LESSOR and LESSEE shall inspect the Premises to determine whether any such Building Repair is required; in the case of an emergency of the type described in *Section 7.3(e)*, such reasonable period of time shall not be more than twelve (12) hours after LESSOR shall have received LESSEE'S notice (which notice shall include a statement that the need for a repair constitutes an emergency under this *Section 7.3(c)* and that an inspection is required within twelve (12) hours after LESSOR'S receipt of the notice). If it is reasonably determined that a Building Repair is required, then LESSOR agrees to prosecute such Building Repair with due diligence.

(d) In the event LESSOR fails to make any Building Repair within a reasonable period of time after the parties have determined that such a Building Repair is required, then LESSEE shall have the right to give LESSOR a default notice describing in reasonable detail the nature of the Building Repair

and demanding that the same be repaired. In such event, LESSOR shall have fifteen (15) days after LESSOR'S receipt of such notice to make the Building Repair described in such default notice; provided, however, if the nature of the Building Repair is such that more than fifteen (15) days are required, then LESSOR shall not be deemed to be in default so long as LESSOR commences the Building Repair within said fifteen (15) day period and thereafter diligently prosecutes the same to completion. If LESSOR fails to make the Building Repair or, if applicable, fails to commence the Building Repair within said fifteen (15) day period, as the same may be extended, then LESSEE shall have the right to send LESSOR a second notice after the expiration of said period advising LESSOR of its failure to make the Building Repair or, if applicable, its failure to commence the Building Repair; said second notice shall contain a statement which is substantially the same as the following statement: "If LESSOR fails to make the Building Repair or, if applicable, fails to commence the Building Repair described herein within five (5) business days after LESSOR'S receipt of this second notice, then LESSEE shall have the right, upon notice to LESSOR, to make such repair". If LESSOR fails to make the Building Repair or, if applicable, fails to commence the Building Repair within said five (5) business day period, then, upon notice to LESSOR, LESSEE may exercise its right to make said Building Repair. In such event, LESSOR agrees to reimburse LESSEE for the reasonable costs and expenses incurred by LESSEE with respect to said Building Repair within thirty (30) days after LESSOR'S receipt of a reasonably detailed statement, together with appropriate back-up, setting forth such costs and expenses.

(e) If it is reasonably determined that there is an imminent threat of (1) material damage to LESSEE'S equipment located at the Premises, or (2) a material interference with LESSEE'S ability to conduct its business from the Demised Premises, then such situation shall constitute an emergency and the time periods within which LESSOR shall make the Building Repair in question (as set forth in *Section 7.3(d)*) shall be changed as follows: the fifteen (15) day period shall be deemed a one (1) business day period; and the second (2nd) notice shall not be required. In the event of an emergency, LESSEE'S notice to LESSOR shall set forth the reasons why the failure to make the Building Repair constitutes an emergency and shall contain a statement which is substantially the same as the following statement: "This is an emergency, and LESSEE shall have the right to make the Building Repair stated therein if LESSOR fails to make or, if applicable, fails to commence the Building Repair described herein within one (1) business day after LESSOR'S receipt of this notice."

(f) In the event LESSEE exercises its right to make a Building Repair, LESSEE acknowledges and agrees that (i) LESSEE shall be responsible for any damage to the Premises, or any part thereof, arising out of or in connection with the exercise of its rights under this Section, (ii) all work shall be conducted with due diligence in a good and workmanlike manner in accordance with all applicable Legal Requirements, and (iii) LESSEE shall not interfere with the use and enjoyment of other tenants of the Building.

7.4 (a) All maintenance and repair, and each addition, improvement or alteration, performed by, on behalf of or for the account of LESSEE (i) must not, individually or in the aggregate, lessen the Fair Market Value of the Premises or adversely affect the usefulness of the Premises (other than the Demised Premises portion of the Premises) for use as an office building facility, (ii) shall be completed expeditiously in a good and workmanlike manner, and in compliance with all applicable Legal and Insurance Requirements, (iii) shall be completed free and clear of all Liens, (iv) shall be performed by contractors and subcontractors approved by LESSOR, which approval shall not be unreasonably withheld or delayed, and (v) shall not disrupt, interfere with or otherwise adversely affect (1) life safety, security, electrical, mechanical, plumbing or any other system of the Building (other than portions thereof located within and exclusively servicing the Demised Premises), and (2) any service or utility furnished to the Building or any portion thereof. LESSOR hereby approves Nova Construction Corp. as the general contractor and construction manager for the Tenant Improvement Work. If LESSOR determines that the performance of any addition, improvement or alteration or other work undertaken by LESSEE would interfere with any other tenant's or occupant's peaceful use and enjoyment of the Building, LESSOR may require that LESSEE undertake such addition, improvement, alteration or other work at times other than during Building Hours.

(b) Supplementing the provisions of *Section 7.4(a)*, in connection with LESSEE'S maintenance, repair or replacement of the exterior membrane of the roof of the Building or any portion thereof, (i) LESSEE shall give LESSOR not less than five (5) business days prior written notice of any such maintenance, repair or replacement, (ii) all such maintenance, repairs and replacements shall be completed in accordance with plans approved in advance by LESSOR (which approval shall not be unreasonably withheld, conditioned or delayed), and (iii) LESSEE shall not interfere with the operation of equipment and facilities located

on or about the roof of the Building. During any roof maintenance, repairs or replacement, LESSOR shall have the right to require that LESSEE or LESSEE'S agents, contractors or employees at all time be accompanied by a representative of LESSOR. LESSEE shall pay LESSOR for the reasonable cost of furnishing such a representative within fifteen (15) days after receiving any request therefor from LESSOR.

7.5 (a) If no Event of Default is occurring, LESSEE may, upon prior notice to LESSOR and submission of plans and specifications, make interior, non-structural improvements or alterations to the Demised Premises, so long as the same do not affect, alter, interfere with or disrupt any of the life safety, security, electrical, mechanical, plumbing or other system of the Building, do not affect the outside appearance of the Building, do not affect the roof of the Building, do not affect the ingress to or egress from the Demised Premises and do not affect any structural element of the Building (any such work being called herein *"Minor Work"*). The level of detail for plans and specification submitted to LESSOR for such Minor Work shall be sufficient for LESSOR to evaluate and understand the Minor Work; provided, however, for minor cosmetic work (such as painting or re-carpeting) a written description of the work will satisfy the requirement for plans and specifications.

(b) Except as expressly set forth in this *Section 7.5*, *Article 31* or *Article 32*, LESSEE shall not make any improvement or alteration to the Demised Premises or other parts of the Premises. LESSEE shall not make any addition, improvement or alteration of the Demised Premises or any other portion of the Premises affecting, altering, interfering with or disrupting any life safety, security, electrical, mechanical, plumbing or other system of the Building, or affecting the outside appearance, the roof, the ingress to or the egress from the Demised Premises and/or any structural element of the Building (any such work being hereinafter referred to as *"Major Work"*), unless LESSEE submits to LESSOR detailed plans and specifications therefor and LESSOR approves such plans and specifications in writing (which such approval shall be at LESSOR'S sole discretion). Notwithstanding the foregoing, provided no Event of Default is occurring, LESSOR agrees not to unreasonably withhold or condition its approval for Major Work to the interior of the Demised Premises, provided the Major Work (i) does not interfere with, disrupt or adversely affect any life safety, security, electrical, mechanical, plumbing or other system of the Building, and (ii) does not affect the outside appearance of the Premises. LESSOR shall approve or disapprove any written request for approval of Major Work by

notice to LESSEE given within twenty (20) days after receiving such request, together with detailed plans and specifications for the Major Work.

7.6 (a) Except as hereinafter provided in this *Section 7.6(a)* and in *Article 31*, all additions, improvements and alterations to the Demised Premises or other portions of the Premises shall, upon installation, become the property of LESSOR and shall be deemed part of, and shall be surrendered with, the Demised Premises and such other portions of the Premises, unless LESSOR, by notice given to LESSEE elects to relinquish LESSOR'S right thereto. If LESSOR elects to relinquish LESSOR'S right to any such addition, improvement or alteration, LESSEE shall remove said addition, improvement or alteration, shall promptly repair any damage to the Demised Premises or other portions of the Premises caused by said removal and shall restore the Demised Premises and other portions of the Premises, as the case may be, to the condition existing prior to the installation of said addition, improvement or alteration; all such work shall be done prior to the Termination Date. Notwithstanding the foregoing, simultaneously with the giving of any approval for alterations, additions or improvements to the Demised Premises or other portions of the Premises, LESSOR shall advise LESSEE in writing if LESSOR will require the removal of such alterations, additions or improvements prior to the Termination Date.

(b) (i) At any time during the Term, LESSEE may install or place or reinstall or replace and remove from the Demised Premises any trade equipment, trade fixtures, machinery and personal property belonging to LESSEE, provided that (i) LESSEE shall repair all damage caused by such removal and (ii) LESSEE shall not install any equipment, machinery or other items upon the roof of the Building or make any openings on or about such roof except as specified in *Article 31*. Such trade equipment, trade fixtures, machinery and personal property shall not become the property of LESSOR.

(ii) In the event that LESSEE installs or causes to be installed in the Demised Premises or other parts of the Premises in accordance with the terms of this Lease any of the equipment or other items listed on *Exhibit H*, such equipment and items shall be deemed to be personal property or trade fixtures for the purposes of this *Section 7.6(b)*. Without limiting any requirement pursuant to the terms of this Lease for obtaining LESSOR'S approval for the installation of any of the equipment or items specified in *Exhibit H*, in the event LESSEE installs any such equipment in the Demised Premises or other parts of the

Premises pursuant to the terms hereof, then, subject to the provisions of *Section 7.7(a)* hereof, LESSEE shall remove all such equipment and items in accordance with the provisions of this Lease upon the expiration or earlier termination of the Term and repair any damage to the Demised Premises or other parts of the Premises caused by the installation or removal of such equipment, all at LESSEE'S sole cost and expense (or, at LESSOR'S election, LESSOR shall perform such repairs and LESSEE shall reimburse LESSOR for the reasonable costs thereof within thirty (30) days after receipt by LESSEE of LESSOR'S demand therefor).

7.7 (a) Notwithstanding anything to the contrary contained in this Lease, prior to the Termination Date, LESSEE shall, at its sole cost and expense, alter and improve the Demised Premises and other portions of the Premises in accordance with the terms hereof. LESSEE shall install and construct (i) all systems, equipment and facilities necessary to service the entire Demised Premises as a first class general office space, including, without limitation, electrical, sprinkler, plumbing, heating, ventilating, air-conditioning and life safety systems, and (ii) raised floor systems, lighting fixtures, and dropped ceilings for the entire Demised Premises. LESSEE shall also complete, at its sole cost and expense, any demolition, restoration and other work necessary in connection with the construction and installation required by this Section. All such alterations and improvements shall be completed in accordance with plans and specifications approved in writing by LESSOR, which approval shall not be unreasonably withheld, conditioned or delayed. LESSEE shall submit to LESSOR detailed plans and specifications for the alterations and improvements required hereunder not less than eleven (11) months prior to the Termination Date. All materials, equipment and facilities installed pursuant to this Section shall be new in the final year of the Term and shall be of comparable quality to such materials, equipment and facilities then generally being installed by landlords of first class office buildings in the Morris County, New Jersey area. LESSEE hereby acknowledges and agrees that the provisions of *Sections 7.4*, *7.6* and *8.3* shall also govern the work required by this Section. In the event LESSEE fails to complete the alterations and improvements required hereunder prior to the Termination Date, then LESSEE shall be deemed a holdover tenant until such alterations and improvements have been completed and shall be subject to the provisions of *Section 24.3*.

**ARTICLE 8**
**USE OF DEMISED PREMISES; LESSOR REPRESENTATIONS**

8.1 LESSEE shall not, except with the prior consent of LESSOR, use or suffer or permit the use of the Demised Premises or any part thereof for any purposes other than for executive and general offices and for installation, operation, modification and maintenance of equipment and facilities in connection with LESSEE'S telecommunications business; provided, however, anything in this Lease to the contrary notwithstanding, that (a) the portions of the Demised Premises which are identified as toilets or utility areas shall be used by LESSEE only for the purposes for which they are designed and (b) LESSEE complies with the requirements of *Section 8.2* hereof.

8.2 LESSEE shall not use, or suffer or permit the use of, the Demised Premises or any part thereof or any other part of the Premises in any manner or for any purpose or do, bring or keep anything, or suffer or permit anything to be done, brought or kept, therein (including, but not limited to, the installation or operation of any electrical, electronic, communications or other equipment) (a) which would violate any covenant, agreement, term, provision or condition of this Lease or is unlawful or in contravention of the certificate of occupancy for the Building, or is in contravention of any Legal or Insurance Requirement to which the Premises is subject, or (b) which would overload or could cause an overload of the electrical or mechanical systems of the Building or which would exceed the floor load per square foot which the floor was designed to carry and which is allowed by law, or (c) which would interfere with other tenants' or occupants' peaceful use and enjoyment of other leased space or common areas of the Premises, or (d) which in the reasonable judgment of the LESSOR may in any way impair or interfere with the proper and economic operation of the electrical, heating, ventilating, air conditioning and other systems of the Building. LESSEE shall not use or suffer or permit the Building or any component thereof to be used in any manner or permit anything to be done therein or anything to be brought into or kept thereon which, in the reasonable judgment of LESSOR, would in any way impair or tend to impair or exceed the design criteria, the structural integrity, character or appearance of the Building, or result in the use of the Building or any component thereof in a manner or for a purpose not intended; nor shall the LESSEE use, or suffer or permit the use of, the Demised Premises or any part thereof in any manner, or do, or suffer or permit the doing of, anything therein or in connection with the LESSEE'S business or advertising which, in the

reasonable judgment of the LESSOR, may be prejudicial to the business of LESSOR. Subject to *Section 32.5*, LESSEE shall not use, suffer or permit the use of the Demised Premises or any part thereof or any other portion of the Premises to be used in any manner or for any purpose do, bring or keep anything therein which would emit sound which is audible in any leasable areas of the Building other than the Demised Premises or which would cause vibrations outside of the Demised Premises.

8.3 LESSEE shall obtain, at its sole cost and expense, all approvals, permits, licenses or authorizations of any nature required in connection with the operation of LESSEE'S business at the Demised Premises and the improvements and alterations to be made by LESSEE at the Premises, including, without limitation, the Tenant Improvement Work. Within five (5) business days after the submission thereof, LESSEE shall provide LESSOR with copies of all applications, plans and other documents submitted to any governmental authority in connection with approvals, permits, licenses and authorizations necessary for any alteration or improvement to the Premises and LESSEE shall notify LESSOR in advance of any hearing or other meeting with any governmental official(s) in connection therewith. LESSOR shall reasonably cooperate with LESSEE, at no cost to LESSOR, in connection with LESSEE'S applications for permits, approvals, licenses and authorizations necessary for the Tenant Improvement Work; provided, however, LESSOR shall not be required to incur any obligation or liability in connection therewith. LESSEE shall promptly furnish LESSOR with a copy of all permits, approvals, authorizations and licenses issued with respect to improvements and alterations to be made by LESSEE.

8.4 (a) LESSOR represents that as of the date hereof (i) it has no knowledge that any of the common area lobbies, corridors, or bathrooms of the Building or the parking lots and sidewalks on the Land or any of the common Building systems are in violation of any Legal Requirements, (ii) it has no knowledge of any spill, discharge or release of any "hazardous substance" or "hazardous waste" (as those terms are defined in any Environmental Law) at the Premises or that the Premises are in violation of any Environmental Law, and (iii) to the best of its knowledge, the common systems referenced in clause (i) above are in good working condition and the common areas and systems referenced in said clause (i) were constructed in a good and workmanlike manner with good quality materials.

(b) In the event of any breach of a representation contained in *Section 8.4*, LESSOR shall, at its sole

cost and expense, cure such breach as promptly as practicable, subject to Excusable Delays. Provided LESSOR complies with the provisions of this *Section 8.4(b)*, LESSOR shall have no liability to LESSEE for any breach of a representation set forth in *Section 8.4(a)* and LESSEE shall have no other remedy with respect to such breach.

**ARTICLE 9**
**LESSOR'S SERVICES**

9.1 LESSOR shall furnish to LESSEE only the services set forth in this Lease. All costs and expenses actually incurred by LESSOR in connection with providing said services shall be included in LESSOR'S Operating Expenses.

9.2 Throughout the Term, LESSOR shall supply (i) hot and cold water to any lavatories within or serving the Demised Premises; (ii) passenger elevator service during Building Hours each day (other than during Building Holidays) to each floor of the Demised Premises, with one of the elevators being subject to call during hours other than Building Hours or on Building Holidays; and (iii) snow and ice removal from the parking areas, driveways and sidewalks each day (other than during Building Holidays) within a reasonable time after accumulation thereof. For transportation of equipment or materials in connection with any alterations or improvements undertaken by LESSEE, LESSEE shall, if required by LESSOR, utilize only the elevator designated by LESSOR as a freight elevator.

9.3 (a) LESSEE shall, at its sole cost and expense and prior to occupying any portion of the Demised Premises for the purpose of conducting business, cause the electricity for the lights and outlets in the Demised Premises and for all heating, ventilating and air-conditioning systems servicing the Demised Premises and for all other equipment and facilities to be installed by LESSEE (including, without limitation, the Equipment) at the Premises to be separately metered, and LESSEE shall contract with, and shall pay all charges for such electricity to, the utility company supplying such electricity. As a supplement to, and not a limitation of, LESSEE'S obligations under the preceding sentence, with respect to any portion of the Demised Premises (whether it be an entire Stage or any other portion of the Demised Premises), LESSEE shall cause such portion of the Demised Premises to be separately metered for electricity in accordance with the preceding sentence on or before the date that LESSEE receives a certificate of occupancy or a temporary

certificate of occupancy, as the case may be, for such portion of the Demised Premises.

(b) INTENTIONALLY OMITTED

(c) Except as provided in *Section 9.6*, LESSEE hereby expressly agrees and acknowledges that (i) LESSOR shall not be liable in any way to LESSEE (A) for any loss, damage, failure, defect or change in the quantity or character of electricity furnished to the Demised Premises or any of the systems servicing the Demised Premises or any equipment installed by LESSEE at the Premises, (B) or if such quantity or character of electricity furnished to the Demised Premises or the systems servicing the Demised Premises or any equipment installed by LESSEE at the Premises is no longer available or suitable for LESSEE'S needs, or (C) for any cessation, diminution or interruption of the supply thereof.

9.4 (a) Except as set forth in *Section 9.6*, LESSOR shall not be liable to LESSEE for any costs, expenses or damages incurred by LESSEE as a result of any interruption of any utility service to the Premises or any portion thereof. Except as set forth in *Section 9.6*, any failure to furnish any service hereunder or any interruption of any utility service to the Premises or any part thereof (i) shall not be construed as a constructive eviction or eviction of LESSEE, (ii) shall not excuse LESSEE from failing to perform any of its obligations hereunder and (iii) shall not entitle LESSEE to any abatement or offset against Basic Rent or Additional Rent. LESSEE agrees that upon reasonable prior notice from LESSOR (except that no notice shall be required in the case of emergency) any service to be provided by LESSOR may be stopped and/or interrupted in connection with any inspection, repair, replacement or emergency.

9.5 The parties hereto shall comply with all mandatory and voluntary energy conservation controls and requirements imposed or instituted by the Federal, State or local governments and applicable to office buildings, or as may be required to operate the Building as an office building comparable to equivalent facilities in the Morris County area including, without limitation, controls on the permitted range of temperature settings in office buildings, and requirements necessitating curtailment of the volume of energy consumption or the hours of operation of the Building. Any terms or conditions of this Lease that conflict or interfere with such controls or requirements shall be suspended for the duration of such controls or requirements. Compliance with such controls or requirements shall

not be considered an eviction, actual or constructive, of LESSEE from the Demised Premises and shall not entitle LESSEE to terminate this Lease or to an abatement of any Basic Rent or Additional Rent.

9.6 Notwithstanding anything to the contrary contained in this Lease, if, solely as a result of the negligent acts or willful misconduct of LESSOR or of its employees, agents or contractors, (i) there is a cessation or interruption in the supply of electricity to the Demised Premises or any other utility service to the Demised Premises and (ii) LESSEE is unable to use the Demised Premises or any portion thereof for six (6) or more consecutive business days as a result of such cessation or interruption, then the Basic Rent and the Additional Rent shall be equitably abated during the period from the sixth ($6^{th}$) consecutive business day to the earlier to occur of (x) the date on which such cessation or interruption ceases or (y) the date on which LESSEE resumes using all or any portion of the Demised Premises for the conduct of business.

**ARTICLE 10**
**COMPLIANCE WITH REQUIREMENTS**

10.1 (a) LESSEE will (i) comply with all Legal and Insurance Requirements applicable to the Demised Premises (including, without limitation, the alterations and improvements therein) and the use thereof or applicable to any alterations or improvements made by LESSEE outside of the Demised Premises and the use of such alterations and improvements, and (ii) maintain and comply with all permits, licenses and other authorizations required by any governmental authority for LESSEE'S use of the Demised Premises (including, without limitation, the alterations and improvements therein) and the alterations and improvements made by LESSEE outside of the Demised Premises and for the proper operation, maintenance and repair of the Demised Premises and such alterations and improvements or any part thereof. LESSOR will join in the application (but at no cost to LESSOR) for any permit or authorization with respect to Legal Requirements if such joinder is necessary.

(b) Supplementing the provisions of *clause (i)* of *Section 10.1(a)*, if any structural repairs or replacements are required in connection with such compliance, LESSOR may perform such repairs or replacements for LESSEE'S account, and LESSEE shall reimburse LESSOR, upon demand, for the costs and expenses

actually incurred by LESSOR in connection with such repairs or replacements.

10.2 LESSEE shall not do, or permit to be done, anything in or to the Demised Premises or other parts of the Premises, or bring or keep anything therein which will, in any way, increase the cost of fire or public liability insurance on the Premises, or invalidate or conflict with the fire insurance or public liability insurance policies covering the Premises or any personal property kept therein by LESSOR, or obstruct or interfere with the rights of LESSOR or of other tenants, or in any other way injure LESSOR or other tenants, or subject LESSOR to any liability for injury to persons or damage to property, or interfere with the good order of the Building, or conflict with the Legal Requirements. Any increase in fire insurance premiums on the Premises or the contents within the Building, or any increase in the premiums of any other insurance carried by LESSOR in connection with the Building or the Premises, caused by the use or occupancy of the Demised Premises or other portions of the Premises by LESSEE and any expense or cost incurred in consequence of the negligence, carelessness or willful action of LESSEE, shall be Additional Rent and paid by LESSEE to LESSOR within thirty (30) days of demand therefore made by LESSOR to LESSEE.

## ARTICLE 11
## COMPLIANCE WITH ENVIRONMENTAL LAWS

11.1 Supplementing the provisions of *Article 10*, LESSEE shall comply, at its sole cost and expense, with all Environmental Laws in connection with its use and occupancy of the Demised Premises and in connection with its use of all alterations and improvements made by LESSEE outside of the Demised Premises; provided, however, the provisions of this *Article 11* shall not obligate LESSEE to comply with the Environmental Laws if such compliance is required solely as a result of the occurrence of a spill, discharge or other event in or on the Premises prior to the date of this Lease or, with respect to any Stage, the Effective Date of such Stage, or if such spill, discharge or other event was not caused by the act, negligence or omission of LESSEE or LESSEE'S Visitors.

11.2 LESSEE shall deliver promptly to LESSOR a true and complete photocopy of any correspondence, notice, report, sampling, test, finding, declaration, submission, order, complaint, citation or any other instrument, document, agreement and/or information submitted to, or received from, any

governmental entity, department or agency in connection with any Environmental Law relating to or affecting LESSEE, LESSEE'S employees, and/or LESSEE'S use and occupancy of the Demised Premises.

11.3 LESSEE shall not cause or permit any "hazardous substance" or "hazardous waste" (as such terms are defined in ISRA) to be brought, kept or stored on or about the Demised Premises, other than (a) normal quantities of office and cleaning supplies which shall be stored, disposed of and otherwise used in accordance with all applicable Legal Requirements, and (b) fuel for electric generator facilities installed pursuant to the terms of this Lease which shall be stored, disposed of and otherwise used in accordance with all applicable Legal Requirements. Subject to the immediately preceding sentence, LESSEE shall not engage in, or permit any other person or entity to engage in, any activity, operation or business on or about the Demised Premises which involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and/or hazardous wastes.

11.4 (a) If a spill or discharge of a hazardous substance or a hazardous waste occurs on the Premises, LESSEE shall give LESSOR immediate oral and written notice of such spill and/or discharge, setting forth in reasonable detail all relevant facts. In the event such spill or discharge arose out of or in connection with LESSEE'S use and occupancy of the Demised Premises, or in the event such spill or discharge was caused by the act, negligence or omission of LESSEE or LESSEE'S Visitors, then LESSEE shall pay all costs and expenses relating to compliance with the applicable Environmental Laws (including, without limitation, the costs and expenses of the site investigations and of the removal and remediation of such hazardous substance or hazardous wastes).

(b) Without relieving LESSEE of its obligations under this Lease and without waiving any default by LESSEE under this Lease, LESSOR shall have the right, but not the obligation, to take such action as LESSOR deems necessary or advisable to cleanup, remove, resolve or minimize the impact of or otherwise deal with any spill or discharge of any hazardous substance or hazardous waste. In the event such spill or discharge arose out of or in connection with LESSEE'S use and occupancy of the Demised Premises, or in the event such spill or discharge was caused by the act, negligence or omission of LESSEE or LESSEE'S Visitors, then LESSEE shall pay to LESSOR on demand, as Additional Rent, all

costs and expenses actually incurred by LESSOR in connection with any action taken by LESSOR.

11.5 (a) If LESSEE'S operations at the Demised Premises now or hereafter constitute an *"Industrial Establishment*" (as defined under ISRA) or are subject to the provisions of any other Environmental Law, then LESSEE agrees to comply, at its sole cost and expense, with all requirements of ISRA and any other applicable Environmental Law to the satisfaction of LESSOR and the governmental entity, department or agency having jurisdiction over such matters (including, but not limited to, performing site investigations and performing any removal and remediation required in connection therewith) in connection with (i) the occurrence of the Termination Date, (ii) any termination of this Lease prior to the Termination Date, (iii) any closure, transfer or consolidation of LESSEE'S operations at the Demised Premises, (iv) any change in the ownership or control of LESSEE, (v) any permitted assignment of this Lease or permitted sublease of all or part of the Demised Premises or (vi) any other action by LESSEE which triggers ISRA or any other Environmental Law.

(b) In connection with subsection (a) above, if, with respect to ISRA, LESSEE has failed to obtain a negative declaration or to complete an approved clean-up plan or to otherwise comply with the provisions of ISRA prior to the Termination Date, or if, with respect to any other Environmental Law, LESSEE has failed to fully comply with the applicable provisions of such other Environmental Law prior to the Termination Date, LESSEE shall be deemed to be a holdover tenant, shall pay rent at the rate set forth in *Section 24.3* and shall continue to diligently pursue compliance with ISRA and/or such other Environmental Law. Upon LESSEE'S full compliance with the provisions of ISRA or of such other Environmental Law, LESSEE shall deliver possession of the Demised Premises to LESSOR in accordance with the provisions of this Lease and such holdover rent shall be adjusted as of said date.

11.6 (a) In connection with (i) any sale or other disposition of all or part of LESSOR'S interest in the Premises, (ii) any change in the ownership or control of LESSOR, (iii) any condemnation, (iv) any foreclosure or (v) any other action by LESSOR which triggers ISRA or any other Environmental Law, LESSOR shall comply, at its sole cost and expense, with all requirements of ISRA and such other applicable Environmental Law; provided, however, if any site investigation is required as a result of LESSEE'S use and occupancy of the Demised Premises or other parts of the Premises or a spill or discharge of a hazardous substance

or hazardous waste caused by the act, negligence or omission of LESSEE or LESSEE'S Visitors, then LESSEE shall pay all costs associated with said site investigation; in addition, if any removal and remediation is required as a result of a spill or discharge of a hazardous substance or hazardous waste caused by the act, negligence or omission of LESSEE or LESSEE'S Visitors, then LESSEE shall pay all costs associated with said removal and remediation.

(b) If, in connection with such compliance, LESSOR requires any affidavits, certifications or other information from LESSEE, LESSEE agrees to cooperate with LESSOR and to deliver to LESSOR without charge all such documents within five (5) business days after LESSEE'S receipt of said request. LESSEE shall not be required to perform any investigations or conduct any tests in connection therewith unless such investigations or tests are required as a result of LESSEE'S use and occupancy of the Demised Premises or other parts of the Premises or a spill or discharge of a hazardous substance or hazardous waste caused by the act, negligence or omission of LESSEE or LESSEE'S Visitors.

11.7 LESSEE hereby agrees to defend, indemnify and hold LESSOR harmless from and against any and all claims, losses, liability, damages and expenses (including, without limitation, site investigation costs, removal and remediation costs and reasonable attorneys' fees and disbursements) arising out of or in connection with (i) LESSEE'S use and occupancy of the Demised Premises and other portions of the Premises, (ii) any spill or discharge of a hazardous substance or hazardous waste by LESSEE or LESSEE'S Visitors and/or (iii) LESSEE'S failure to comply with the provisions of this *Article 11*.

11.8 If LESSOR has given to LESSEE the name and address of any holder of an Underlying Encumbrance, LESSEE agrees to send to said holder a photocopy of those items given to LESSOR pursuant to the provisions of *Section 11.2*.

11.9 LESSEE'S obligations under this *Article 11* shall survive the expiration or earlier termination of this Lease.

## ARTICLE 12
## DISCHARGE OF LIENS

LESSEE will discharge within fifteen (15) days after receipt of written notice thereof any Lien on the Premises or the

Basic Rent, Additional Rent or any other sums payable under this Lease, caused by or arising out of LESSEE'S acts or LESSEE'S failure to perform any obligation hereunder.

**ARTICLE 13**
**PERMITTED CONTESTS**

LESSEE may contest by appropriate proceedings, the amount, validity or application of any Legal Requirement (including controls and requirements with which LESSEE is obligated to comply pursuant to *Section 9.5*) which LESSEE is obligated to comply with or any Lien which LESSEE is obligated to discharge, provided that (a) such proceedings shall suspend the collection thereof, (b) no part of the Premises or of any Basic Rent or Additional Rent or other sum payable hereunder would be subject to loss, sale or forfeiture during such proceedings, (c) LESSOR would not be subject to any civil or criminal liability for failure to pay or perform, as the case may be, (d) LESSEE shall have furnished such security as may be required in the proceedings or reasonably requested by LESSOR, (e) such proceedings shall not affect the payment of Basic Rent, Additional Rent or any other sum payable to LESSOR hereunder or prevent LESSEE from using the Demised Premises for its intended purposes, and (f) LESSEE shall notify LESSOR of any such proceedings not less than ten (10) days prior to the commencement thereof, and shall describe such proceedings in reasonable detail. LESSEE will conduct all such contests in good faith and with due diligence and will, promptly after the determination of such contest, pay and discharge all amounts which shall be determined to be payable therein.

**ARTICLE 14**
**INSURANCE; INDEMNIFICATION**

14.1 LESSEE shall, at LESSEE'S sole cost and expense, except to the extent prohibited by law with respect to worker's compensation insurance, for the benefit of LESSEE, LESSOR, and any Additional Insured and/or any other additional insured as LESSOR shall from time to time reasonably determine, maintain or cause to be maintained (i) commercial general liability insurance coverage with a limit of not less than Five Million and 00/100 Dollars ($5,000,000.00) per each occurrence (the "*CGL*"), to include commercial umbrella liability coverage, if necessary [If the CGL contains a general aggregate, it shall apply separately to the Demised Premises. The CGL shall be written on ISO occurrence form CG00011093 or a substitute

providing equivalent coverage and shall cover liability arising from the Demised Premises and other portions of the Premises which LESSEE has the right to use, operations, independent contractors, products-completed operations, personal injury, advertising liability, and liability under an insured contract. The commercial umbrella liability coverage shall be consistent with the primary coverage.]; (ii) worker's compensation insurance covering all persons employed in connection with the construction of any improvements by LESSEE and the operation of its business upon the Demised Premises; and (iii) Special Form ("all risk") coverage, including, but not limited to, standard fire and extended coverage insurance with vandalism and malicious mischief endorsements, on all personal property of LESSEE and on all improvements and alterations made by LESSEE in or about the Demised Premises or other portions of the Premises (including, without limitation, the Equipment and the Tenant Improvement Work) to the extent of their full replacement value. If, in the reasonable opinion of LESSOR or any mortgagees or ground lessors of the Land and/or the Building taking into account the practices of landlords of similar buildings in the area of the Building, the foregoing coverages and/or limits shall become inadequate or less than that commonly maintained by prudent tenants making similar uses in similar buildings in the area, LESSOR shall have the right to require LESSEE to increase its insurance coverage and/or limits. All such insurance shall, to the extent permitted by law, name any mortgagees and ground lessors of the Land and the Building and their successors and assigns (the "*Additional Insureds*") and LESSOR, as additional insureds and shall be written by an insurance carrier authorized to do business in the State of New Jersey and that is rated at least A+ XII by A.M. Best Company, Oldwick, New Jersey.

14.2 Prior to the date of this Lease, LESSEE shall deliver to LESSOR a certificate of each policy required under this Lease, which certificate shall be in a form reasonably satisfactory to LESSOR and shall, at a minimum: (i) specify the additional insured status of LESSOR and of the Additional Insureds, (ii) evidence the waiver of subrogation required pursuant to *Section 14.3*, and (iii) provide that said policy shall not be reduced in amount (or otherwise materially changed) or canceled or lapse without providing to LESSOR at the address specified in *Article 26* of this Lease at least thirty (30) days' written notice of such reduction (or other material change), cancellation, or lapse. LESSEE agrees to provide to LESSOR timely renewal certificates as the coverage renews. Notwithstanding anything herein to the contrary, all policies required to be effected by LESSEE under this Lease shall be

maintained in force from and after the date hereof and throughout the Term.

14.3 LESSOR and LESSEE waive all rights of recovery against each other and the Additional Insureds for any loss, damages, or injury of any nature whatsoever to property for which the waiving party is required to be insured. In addition, LESSOR and LESSEE shall each maintain in effect in each insurance policy required under this Lease that relates to property damage a waiver of subrogation in favor of the other party and the Additional Insureds from its then-current insurance carriers and shall upon written request of the other party (made not more frequently than two (2) times each calendar year) furnish evidence of such currently effective waiver which shall be in customary form.

14.4 (a) Each insurance policy required to be maintained by LESSEE under this Lease shall state that, with respect to the interest of LESSOR and of the Additional Insureds, the insurance maintained pursuant to each such policy shall not be invalidated by any action or inaction of LESSEE and shall insure LESSOR and the Additional Insureds regardless of any breach or violation of any warranties, declarations, conditions, or exclusions by LESSEE.

(b) Each insurance policy required to be maintained by LESSEE under this Lease shall state that all provisions of each such insurance policy, except for the limits of liability, shall operate in the same manner as if a separate policy had been issued to each person or entity insured thereunder.

(c) Each insurance policy required to be maintained by LESSEE under this Lease shall state that the insurance provided thereunder is primary insurance without any right of contribution from any other insurance which may be carried by or for the benefit of LESSOR or the Additional Insureds.

(d) Each insurance policy required to be maintained by LESSEE under this Lease shall recognize the indemnification set forth in *Section 14.6*.

14.5 LESSOR shall maintain or cause to be maintained: (i) commercial general public liability insurance in respect of the Building and the conduct and operation of its business therein, with combined base and umbrella coverage limits of not

less than Ten Million and 00/100 Dollars ($10,000,000.00) for bodily injury or death and property damage in any one occurrence, including water damage and sprinkler leakage legal liability; and (ii) fire and extended coverage insurance with commercially reasonable deductibles (including, without limitation, rent insurance) in respect of the Building (except for the property LESSEE is required to cover with insurance under *Section 14.1* and similar property of other tenants and occupants in the Building) for the benefit of LESSOR and the Additional Insureds, as their interests may appear. The fire and extended coverage insurance with respect to the Building shall be in the amount of full replacement value. LESSOR shall have the right to provide any insurance maintained or caused to be maintained by it under blanket policies provided that such policies shall in all other respects comply with the requirements of this *Section 14.5*. LESSOR shall also have the right, but not the obligation, to maintain such other insurance applicable to the Premises as LESSOR shall in good faith determine. The cost of the insurance maintained by LESSOR under this Section shall be included in LESSOR'S Operating Expenses.

14.6 LESSEE hereby indemnifies, and shall pay, protect and hold LESSOR harmless from and against all liabilities, losses, claims, demands, costs, expenses (including reasonable attorneys' fees and expenses) and judgments of any nature, (except to the extent LESSOR is compensated by insurance maintained by LESSOR or LESSEE hereunder and except for such of the foregoing as arise from the negligence, recklessness or willful misconduct of LESSOR, its agents, servants or employees) arising, or alleged to arise, from or in connection with, (i) any injury to, or the death of, any person or loss or damage to property occurring in or about the Demised Premises, (ii) any injury to, or the death of, any person or loss or damage to property caused by, or alleged to be caused by, the negligence, recklessness or willful misconduct of LESSEE or LESSEE'S Visitors, or (iii) any breach or default by LESSEE in the performance of its obligations under this Lease. LESSEE will resist and defend any action, suit or proceeding brought against LESSOR by reason of any such occurrence by independent counsel selected by LESSEE, which is reasonably acceptable to LESSOR. The obligations of LESSEE under this *Section 14.6* shall survive any termination of this Lease.

14.7 LESSOR hereby indemnifies, and shall pay, protect and hold LESSEE harmless from and against all liabilities, losses, claims, demands, costs, expenses (including reasonable attorneys' fees and expenses) and judgments of any nature (except to the extent LESSEE is compensated by insurance maintained by LESSEE or

LESSOR hereunder and except for such of the foregoing as arise from the negligence, recklessness or willful misconduct of LESSEE, its agents, servants or employees) arising, or alleged to arise, from or in connection with, (i) any injury to, or the death of, any person or loss or damage to property caused by, or alleged to be caused by, the negligence, recklessness or willful misconduct of LESSOR or LESSOR'S agents, employees or contractors, or (ii) any breach or default by LESSOR in the performance of its obligations under this Lease. LESSOR will resist and defend any action, suit or proceeding brought against LESSEE by reason of any such occurrence by independent counsel selected by LESSOR, which is reasonably acceptable to LESSEE. The obligations of LESSOR under this *Section 14.7* shall survive any termination of this Lease.

## ARTICLE 15
## ESTOPPEL CERTIFICATES

15.1 At any time and from time to time, upon not less than fifteen (15) days' prior notice by LESSOR, LESSEE shall execute, acknowledge and deliver to LESSOR a statement (or, if LESSEE is a corporation, an authorized officer of LESSEE shall execute, acknowledge and deliver to LESSOR a statement) certifying the following: (i) the Commencement Date and the Effective Date for any Stage, (ii) the Termination Date, (iii) the date(s) of any amendment(s) and/or modification(s) to this Lease, (iv) that this Lease was properly executed and is in full force and effect without amendment or modification, or, alternatively, that this Lease and all amendments and/or modifications thereto have been properly executed and are in full force and effect, (v) the current annual Basic Rent, the current monthly installments of Basic Rent and the date on which LESSEE'S obligation to pay Basic Rent commenced, (vi) the current monthly installment of Additional Rent for Taxes, LESSOR'S Operating Expenses and Utility Costs, (vii) the date to which Basic Rent and Additional Rent have been paid, (viii) the amount of the security deposit, if any, (ix) that all work to be done to the Demised Premises by LESSOR has been completed in accordance with this Lease and have been accepted by LESSEE, except as specifically provided in the estoppel certificate, (x) that no installment of Basic Rent or Additional Rent has been paid more than thirty (30) days in advance, (xi) that LESSEE is not in arrears in the payment of any Basic Rent or Additional Rent, (xii) that, to the best of LESSEE'S knowledge, neither party to this Lease is in default in the keeping, observance or performance of any covenant, agreement, provision or condition contained in this Lease and no event has occurred which,

with the giving of notice or the passage of time, or both, would result in a default by either party, except as specifically provided in the estoppel certificate, (xiii) that, to the best of LESSEE'S knowledge, LESSEE has no existing defenses, offsets, liens, claims or credits against the Basic Rent or Additional Rent or against enforcement of this Lease by LESSOR, (xiv) that LESSEE has not been granted any options or rights of first refusal to extend the Term, to lease additional space, to terminate this Lease before the Termination Date or to purchase the Premises, except as specifically provided in this Lease, (xv) that LESSEE has not received any notice of violation of Legal Requirements or Insurance Requirements relating to the Premises or to the Demised Premises, (xvi) that LESSEE has not assigned this Lease or sublet all or any portion of the Demised Premises, (xvii) that no "hazardous substances" or "hazardous wastes" have been generated, manufactured, refined, transported, treated, stored, handled, disposed or spilled on or about the Demised Premises and (xviii) such other commercially reasonable matters as the person or entity requesting the Certificate may request. LESSEE hereby acknowledges and agrees that such statement may be relied upon by any mortgagee, or any prospective purchaser, lessee, sublessee, mortgagee or assignee of any mortgage, of the Premises or any part thereof. Prior to submitting any such statement to LESSEE for LESSEE'S execution, LESSOR shall insert in the statement, if applicable with respect to such statement and to the extent known by LESSOR, Basic Rent and Additional Rent information, LESSEE'S Proportionate Share, the Commencement Date, the Termination Date, the Effective Dates for any Stages, the dates of any amendments or modifications of the Lease, and the amount of the security deposit.

15.2 If LESSEE shall fail or otherwise refuse to execute an estoppel certificate in accordance with *Section 15.1*, then and upon such event, LESSEE shall be deemed to have executed and delivered the required certificate.

## ARTICLE 16
## ASSIGNMENT AND SUBLETTING

16.1 Except as otherwise expressly provided in this *Article 16*, LESSEE shall not sell, assign, transfer, hypothecate, mortgage, encumber, grant concessions or licenses, sublet, or otherwise dispose of any interest in this Lease or the Demised Premises or the other portions of the Premises that LESSEE has the right to use, by operation of law or otherwise, without the prior written consent of LESSOR. Any consent granted by LESSOR in any

instance shall not be construed to constitute a consent with respect to any other instance or request. If the Demised Premises or any part thereof should be sublet, used, or occupied by anyone other than LESSEE, or if this Lease should be assigned by LESSEE, LESSOR shall have the right to collect rent from the assignee, subtenant, user or occupant, but no such assignment, subletting, use, occupancy or collection shall be deemed a waiver of any of LESSOR'S rights under the provisions of this *Section 16.1*, a waiver of any of LESSEE'S covenants contained in this *Article 16*, the acceptance of the assignee, subtenant, user or occupant as tenant, or a release of LESSEE from further performance by LESSEE of LESSEE'S obligations under the Lease.

16.2 If LESSEE shall desire to sublet the Demised Premises or to assign this Lease, it shall first submit to LESSOR a written notice (*"LESSEE'S Notice"*) setting forth in reasonable detail:

(a) the name and address of the proposed sublessee or assignee;

(b) the terms and conditions of the proposed subletting or assignment (including the proposed commencement date of the sublease or the effective date of the assignment, which shall be at least thirty (30) days after LESSEE'S Notice is given);

(c) the nature and character of the business of the proposed sublessee or assignee; and

(d) banking, financial, and other credit information relating to the proposed sublessee or assignee, in reasonably sufficient detail, to enable LESSOR to determine the proposed sublessee's or assignee's financial responsibility.

16.3 Within fifteen (15) days after LESSOR'S receipt of LESSEE'S Notice, LESSOR agrees that it shall notify LESSEE whether LESSOR (i) consents to the proposed sublet or assignment, (ii) does not consent to the proposed sublet or assignment, or (iii) elects to exercise its recapture right, as described in *Section 16.5*. In the event LESSOR does not elect to exercise its recapture right, then LESSOR agrees not to unreasonably withhold its consent to the proposed sublet or assignment. In the event LESSOR does not consent to the proposed sublet or assignment and does not exercise any recapture right that may be applicable, LESSOR shall provide LESSEE with a statement setting forth the

reasons for withholding consent to the applicable sublease or assignment.

16.4 In addition to the foregoing requirements,

(a) no assignment or sublease shall be permitted if, at the effective date of such assignment or sublease, an Event of Default is occurring; and

(b) no assignment or sublease shall be permitted unless LESSEE agrees, at the time of the proposed assignment or sublease and in LESSEE'S Notice, to pay to LESSOR, immediately upon receipt thereof, fifty percent (50%) of all Net Rental Proceeds, of whatever nature, payable by the prospective assignee or sublessee to LESSEE pursuant to such assignment or sublease.

16.5 (a) If any LESSEE'S Notice relates to a proposed assignment of this Lease or a sublease of all or substantially all of the Demised Premises ("substantially all of the Demised Premises", for the purposes of this Section, meaning ninety percent (90%) or more of the Demised Premises) or a sublease of any portion of the Demised Premises for all or substantially all of the remainder of the then current Term ("substantially all of the remainder of the then current Term", for the purposes of this Section, meaning ninety percent (90%) or more of the remaining days in the then current Term), LESSOR shall have the right, to be exercised by giving written notice (the *"Recapture Notice"*) to LESSEE within thirty (30) days after receipt of LESSEE'S Notice, to recapture the space described in LESSEE'S Notice (the *"Recapture Space"*). The Recapture Notice shall cancel and terminate this Lease with respect to the Recapture Space as of the date stated in LESSEE'S Notice for the commencement of the proposed assignment or sublease as fully and completely as if that date had been herein definitively fixed as the Termination Date, and LESSEE shall surrender possession of the Recapture Space as of such date. Thereafter, the Basic Rent and Additional Rent shall be equitably adjusted based upon the square footage of the Demised Premises then remaining, after deducting the square footage attributable to the Recapture Space.

(b) In the event LESSOR elects to exercise its recapture right and the Recaptured Space is less than the entire Demised Premises, then LESSOR, at its sole expense, shall have the right to make any alterations to the Demised Premises required, in LESSOR'S reasonable judgment, to make such Recaptured Space a self-contained rental unit. LESSOR agrees to perform all such work, if any, with as little inconvenience to LESSEE'S business as

is reasonably possible; provided, however, LESSOR shall not be required to perform such work after normal business hours or on weekends; and provided further, LESSOR shall not be deemed guilty of an eviction, partial eviction, constructive eviction or disturbance of LESSEE'S use or possession of the Demised Premises, and shall not be liable to LESSEE for same.

16.6 In addition to the foregoing requirements, any sublease must contain the following provisions:

(a) the sublease shall be subject and subordinate to all of the terms and conditions of this Lease;

(b) at LESSOR'S option, in the event of cancellation or termination of this Lease for any reason or the surrender of this Lease, whether voluntarily, involuntarily, or by operation of law, prior to the expiration of such sublease, including extensions and renewals of such sublease, the subtenant shall make full and complete attornment to LESSOR for the balance of the term of the sublease. The attornment shall be evidenced by an agreement in form and substance reasonably satisfactory to LESSOR which the subtenant shall execute and deliver at any time within fifteen (15) days after request by LESSOR or its successors and assigns;

(c) the term of the sublease shall not extend beyond a date which is one day prior to the Termination Date;

(d) no subtenant shall be permitted to further sublet all or any portion of the subleased space or to assign its sublease without LESSOR'S prior written consent; and

(e) the subtenant shall waive the provisions of any law now or subsequently in effect which may give the subtenant any right of election to terminate the sublease or to surrender possession of the space subleased in the event that any proceeding is brought by LESSOR to terminate this Lease.

16.7 (a) Each of the following events shall be deemed to constitute an assignment of this Lease and each shall require the prior written consent of LESSOR:

(i) any assignment or transfer of this Lease by operation of law; or

(ii) any hypothecation, pledge, or collateral assignment of this Lease; or

(iii) any involuntary assignment or transfer of this Lease in connection with bankruptcy, insolvency, receivership, or similar proceeding; or

(iv) any assignment, transfer, disposition, sale or acquisition of a controlling interest in LESSEE to or by any person, entity, or group of related persons or affiliated entities, whether in a single transaction or in a series of related or unrelated transactions; or

(v) any issuance of an interest or interests in LESSEE (whether stock, membership or partnership interests, or otherwise) to any person, entity, or group of related persons or affiliated entities, whether in a single transaction or in a series of related or unrelated transactions, which results in such person, entity, or group holding a controlling interest in LESSEE. For purposes of the immediately foregoing, a "controlling interest" of LESSEE shall mean 50% or more of the aggregate issued and outstanding equitable interests (whether stock, partnership interests, membership interests or otherwise) of LESSEE.

(b) (i) Notwithstanding anything to the contrary contained in this Lease, LESSEE may, without LESSOR'S prior consent, but upon not less than five (5) days' prior notice to LESSOR, assign this Lease to, or sublet all or part of the Demised Premises to, any corporation or other business entity which controls, is controlled by, or is under common control with LESSEE (herein referred to as a "related corporation"), subject, however, to compliance with LESSEE'S obligations under this Lease, provided that (x) such related corporation's use is consistent with the uses permitted under this Lease, and (y) prior to such assignment or subletting, LESSEE furnishes LESSOR with the name of any such related corporation and a written certification from a duly authorized officer of LESSEE certifying to LESSOR that such assignee or subtenant is a related corporation of LESSEE. From time to time during such assignment or subletting, upon written request by LESSOR, a duly authorized officer of LESSEE shall certify in writing to LESSOR, and shall substantiate by reasonable evidence, that such assignee or subtenant continues to be a related corporation of LESSEE. LESSEE hereby acknowledges and agrees that an assignment of this Lease shall be deemed to have occurred at such time as such assignee or subtenant ceases to be a related corporation of LESSEE, and that such assignment shall be subject to all the provisions of this *Article 16* (including, without limitation, the obligation to obtain LESSOR'S prior written consent). Any assignment or subletting by a related

corporation of LESSEE shall not be deemed to relieve, release, impair or discharge any of LESSEE'S obligations hereunder. For the purposes hereof, "control" shall be deemed to mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation or other business entity, through the ownership of voting securities, by contract, or otherwise.

(ii) Notwithstanding anything to the contrary contained in this Lease, LESSEE may, without LESSOR'S prior consent assign this Lease and the leasehold estate hereby created to a successor corporation of LESSEE (as hereinafter defined), provided LESSEE gives LESSOR notice of such assignment prior to or within five (5) days after the occurrence thereof. A "successor corporation," as used in this subsection, shall mean (x) a corporation or other business entity which is the surviving entity resulting from a merger or consolidation with, or other reorganization of, LESSEE, its successors or assigns, completed in accordance with applicable statutory provisions for the merger, consolidation or reorganization, provided that by operation of law or by effective provisions contained in the instruments of merger or consolidation, or reorganization the liabilities of the corporations or other business entities participating in such merger, consolidation or reorganization are assumed by the corporation or other business entity surviving such merger, consolidation or reorganization, or (y) a corporation or other business entity acquiring all or substantially all of the assets of LESSEE, including the leasehold estate created by this Lease, and assuming the obligations of LESSEE under this Lease, or (z) a corporation or other business entity acquiring all or substantially all of the outstanding stock or other ownership interest of LESSEE and assuming the obligations of LESSEE under this Lease; provided that such merger, consolidation, reorganization or acquisition, whichever the case may be, is not principally for the purpose of transferring the leasehold estate created hereby. If LESSOR reasonably determines that, after giving effect to any such merger, consolidation, reorganization or acquisition, whichever the case may be, the corporation or other business entity surviving such merger or created by such consolidation or reorganization, or acquiring such assets or such stock, as the case may be, is less creditworthy than LESSEE because such corporation's or other entity's net worth is less than that of LESSEE immediately prior to the merger, consolidation, reorganization or acquisition or based on any other reasonable criteria, then LESSOR shall have the right to require that the security under *Article 28* be immediately restored to two million eight hundred thousand dollars ($2,800,000.00) and that

the security remain at that amount for the balance of the Term notwithstanding anything to the contrary contained in *Article 28*.

(iii) All provisions of this *Article 16* shall be applicable to any assignment or sublease pursuant to this *Section 16.7(b)* other than the provisions of *Sections 16.1, 16.2, 16.3, 16.4(b), 16.5 and 16.11*.

16.8 It is a further condition to the effectiveness of any assignment otherwise complying with this *Article 16* that the assignee execute, acknowledge, and deliver to LESSOR an agreement in form and substance reasonably satisfactory to LESSOR whereby the assignee assumes all of the obligations of LESSEE under this Lease and agrees that the provisions of this *Article 16* shall continue to be binding upon it with respect to all future assignments and deemed assignments of this Lease.

16.9 No assignment of this Lease nor any sublease of all or any portion of the Demised Premises shall release or discharge LESSEE from any liability, whether past, present, or future, under this Lease and LESSEE shall continue to remain primarily liable under this Lease.

16.10 LESSEE shall be responsible for obtaining all permits and approvals required by any governmental or quasi-governmental agency in connection with any assignment of this Lease or any subletting of the Demised Premises, and LESSEE shall deliver copies of these documents to LESSOR prior to the commencement of any work, if work is to be done. LESSEE is also responsible for and is required to reimburse LESSOR for all reasonable fees, costs and expenses, including, but not limited to, reasonable attorneys' fees and disbursements, which LESSOR incurs in reviewing any proposed assignment of this Lease, any proposed sublease of the Demised Premises, and any permits, approvals, and applications for construction within the Demised Premises.

16.11 If LESSOR consents to any proposed assignment or sublease and LESSEE fails to consummate the assignment or sublease to which LESSOR consented within one hundred twenty (120) days after the giving of such consent, LESSEE shall be required again to comply with all of the provisions and conditions of this *Article 16* before assigning this Lease or subletting the Demised Premises. If LESSEE consummates the assignment or sublease to which LESSOR consented within said one hundred twenty (120) day period, LESSEE agrees that it shall deliver to LESSOR a fully executed, duplicate original counterpart of the assignment or

sublease agreement within ten (10) days of the date of execution of such item.

16.12 LESSEE agrees that under no circumstances shall LESSOR be liable in damages or subject to liability by reason of LESSOR'S failure or refusal to grant its consent to any proposed assignment of this Lease or subletting of the Demised Premises.

16.13 If LESSOR withholds its consent of any proposed assignment or sublease, LESSEE shall defend, indemnify, and hold LESSOR harmless from and reimburse LESSOR for all liability, damages, costs, fees, expenses, penalties, and charges (including, but not limited to, reasonable attorneys' fees and disbursements) arising out of any claims that may be made against LESSOR by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

16.14 LESSOR acknowledges that in connection with LESSEE'S telecommunications business, LESSEE may enter into agreements with third parties whereby such third parties locate telecommunications and/or computer equipment within the Demised Premises for the purpose of LESSEE operating such equipment on behalf of such third parties. LESSOR acknowledges further that such agreements with third parties shall not constitute an assignment of this Lease or a sublease of the Demised Premises or a transfer or other disposition of any interest in this Lease or the Demised Premises which would require LESSOR'S consent pursuant to this Article 16. LESSOR shall not be entitled to any of the consideration paid by such third parties to LESSEE pursuant to such agreements.

16.15 (a) Notwithstanding anything to the contrary contained in this Lease, in the event that this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to LESSOR, shall be and remain the exclusive property of LESSOR and shall not constitute property of LESSEE or of the estate of LESSEE within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting LESSOR'S property under the preceding sentence not paid or delivered to LESSOR shall be held in trust for the benefit of LESSOR and be promptly paid to or turned over to LESSOR.

(b) If LESSEE proposes to assign this Lease pursuant to the provisions of 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 LESSEE, then notice of such proposed assignment setting forth (i) the name and address of such person or entity, (ii) all of the terms and conditions of such offer and (iii) the adequate assurance to be provided by LESSEE to assure such person's or entity's future performance under this Lease, including, without limitation, the assurance referred to in Section 365(b)(3) of the Bankruptcy Code, or any such successor or substitute legislation or rule thereto, shall be given to LESSOR by LESSEE no later than twenty (20) days after receipt by LESSEE, but in any event no later than ten (10) days prior to the date that LESSEE shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption; for the purposes of clause (iii) of this sentence, the phrase "adequate assurance" shall mean the deposit of cash security in an amount equal to the Basic Rent and Additional Rent payable under this Lease for the next succeeding twelve (12) months (which annual Additional Rent shall be reasonably estimated by LESSOR). LESSOR shall thereupon have the prior right and option, to be exercised by notice to LESSEE 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 for the assignment of this Lease. 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 or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to LESSOR an instrument confirming such assumption.

16.16 (a) Provided no Event of Default is occurring and subject to the prior written consent of both LESSOR (which consent shall not be unreasonably withheld, conditioned or delayed) and the holder of any Underlying Encumbrance (which consent may be granted or denied in such holder's sole discretion), LESSEE shall have the right to mortgage its interest in this Lease subject to and in accordance with the terms of this *Section 16.16*. Not less than sixty (60) days prior to the anticipated date of the making of any such mortgage, LESSEE shall request LESSOR'S approval therefor and shall provide LESSOR with (i) the name and address of the proposed mortgagee; (ii) a detailed description of the terms and conditions of the proposed mortgage transaction; and (iii) financial and credit information relating to the proposed mortgagee. Any such leasehold mortgage shall be subject and subordinate to all of the terms and conditions of this Lease.

No such leasehold mortgage or any renewal thereof shall extend to or affect the interest and estate of LESSOR in and to the Premises or any part thereof. With respect to any such leasehold mortgage, the leasehold mortgagee shall be any of the following types of entities: a commercial bank, savings institution, trust company or a national banking association.

(b) No leasehold mortgage shall be valid or of any force or effect unless and until LESSOR shall have received a photostatic copy of the original of each instrument creating and affecting such mortgage, and unless the leasehold mortgage shall contain the following provisions:

(i) "This mortgage is executed upon the condition that no purchaser at any foreclosure sale shall acquire any right, title or interest in or to the Lease hereby mortgaged, unless the said purchaser, or the person, firm or corporation to whom or to which such purchaser's right has been assigned, shall, in the instrument transferring to such purchaser or to such assignee LESSEE'S interest under the said Lease, assume and agree to perform all of the terms, covenants and conditions of said Lease to be observed or performed on the part of LESSEE, and moreover, that no further or additional mortgage or assignment of said Lease shall be made, except subject to the provisions contained in *Article 16* of said Lease, and that a duplicate original of said assumption agreement, in form reasonably satisfactory to LESSOR'S counsel and duly executed and acknowledged by such purchaser or such assignee, is delivered to LESSOR immediately after the consummation of such sale, or, in any event, prior to taking possession of the Demised Premises."

(ii) "The mortgagee waives all right and option to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward payment of the sum secured by the mortgage to the extent such proceeds are payable to LESSOR or are required to be used for the repair or restoration of the mortgaged premises in accordance with the provisions of the Lease hereby mortgaged."

(iii) "This mortgage and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to any mortgage which may now or at any time hereafter affect all or any portion of the Premises or LESSOR'S interest therein and to all ground leases which may now or at any time hereafter affect all or any portion of the Premises. Nevertheless, the holder of this

mortgage agrees from time to time upon request and without charge, to execute, acknowledge and deliver any instruments requested by LESSOR under the Lease hereby mortgaged to evidence the foregoing subordination."

(c) The rights granted under this *Section 16.16* are personal to Exodus Communications, Inc. and may not be assigned separately from this Lease or in connection with any assignment of this Lease.

**ARTICLE 17**
**CASUALTY**

17.1 If there is any damage to or destruction of the Demised Premises, LESSEE shall promptly give notice thereof to LESSOR, describing the nature and extent thereof.

17.2 If the Demised Premises are damaged, but no portion thereof is rendered unusable for LESSEE'S business, and this Lease is not terminated pursuant to *Section 17.4, 17.5 or 17.6* hereof, LESSOR shall, at its own expense and not as a LESSOR'S Operating Expense, cause Restoration to be completed as soon as reasonably practicable but in no event later than ninety (90) days from the occurrence, subject to any Excusable Delays, and the Basic Rent and Additional Rent shall not abate.

17.3 If the Demised Premises are damaged or destroyed and are rendered partially or wholly unusable for LESSEE'S business, and this Lease is not terminated pursuant to *Section 17.4, 17.5 or 17.6* hereof, LESSOR shall, at its own expense and not as a LESSOR'S Operating Expense, cause Restoration to be completed as soon as reasonably practicable but in no event later than two hundred seventy (270) days from the occurrence, subject to any Excusable Delays, and the Basic Rent and Additional Rent shall be equitably abated until the completion of Restoration of the Demised Premises based upon the portion of the Demised Premises which is unusable for the conduct of LESSEE'S business and which requires Restoration. LESSOR shall reasonably cooperate with LESSEE during any such Restoration so that LESSEE may simultaneously restore alterations and improvements which were made by LESSEE; provided, however, LESSOR shall not be required to delay any Restoration or to otherwise permit any interference with Restoration as part of such cooperation. If at any time LESSOR reasonably determines that LESSEE'S restoration of alterations and improvements is interfering with Restoration, LESSOR shall have the right to require LESSEE to cease performing its restoration

until such time as resumption of restoration work by LESSEE will not interfere with LESSOR'S Restoration.

17.4 If, in the sole opinion of LESSOR, the Building is damaged or destroyed and the total cost of Restoration shall amount to forty percent (40%) or more of the full insurable value of the Building (not including any value attributable to improvements or alterations made by LESSEE), LESSOR, in lieu of Restoration, may elect to terminate this Lease, provided that notice of such termination shall be sent to LESSEE within sixty (60) days after the occurrence of such casualty. If LESSOR exercises its right to terminate this Lease, this Lease shall cease, terminate and expire, and all Basic Rent and Additional Rent shall be prorated, as of the date of such damage or destruction.

17.5 (a) If any part of the Demised Premises or other portions of the Building are damaged or destroyed, LESSOR shall, within forty five (45) days of the occurrence of such casualty, furnish LESSEE with a reasonable estimate (the *"Estimate*") from an independent architect selected by LESSOR of the amount of time required to complete Restoration to the Demised Premises and to the entire Building.

(b) If any part of the Building is damaged or destroyed and the Estimate provides that more than two hundred seventy (270) days are necessary to complete Restoration of the Building, or if during the final year of the Term the Demised Premises are damaged or destroyed and rendered partially or wholly unusable for LESSEE'S business, LESSOR may elect to terminate this Lease provided notice of such termination shall be sent to LESSEE within sixty (60) days after the occurrence of such casualty. If LESSOR exercises its right to terminate this Lease, this Lease shall cease, terminate and expire, and all Basic Rent and Additional Rent shall be prorated, as of the date of such damage or destruction.

(c) If the Demised Premises is damaged or destroyed and rendered partially or wholly unusable for LESSEE'S business and the Estimate provides that more than two hundred seventy (270) days are necessary to complete Restoration to the Demised Premises, or if during the final year of the Term the Demised Premises are damaged or destroyed and rendered partially or wholly unusable for LESSEE'S business, LESSEE may elect to terminate this Lease provided notice of such termination shall be sent to LESSOR, in the case of a termination based on an Estimate of more than 270 days, within fifteen (15) days after LESSEE'S

receipt of the Estimate or, in the case of a termination due to a casualty occurring during the final year of the Term, within sixty (60) days after the date of the casualty. IF LESSEE exercises its right to terminate this Lease, this Lease shall cease, terminate and expire, and all Basic Rent and Additional Rent shall be prorated, as of the date of such damage or destruction.

(e) If LESSOR undertakes Restoration of the Demised Premises in accordance with the terms hereof and such Restoration of the Demised Premises is not substantially completed within two hundred seventy (270) days after the date of the casualty (or as of such later date as is reasonably necessary due to Excusable Delays), then, subject to the terms hereof, LESSEE shall have the right to terminate this Lease by notice given to LESSOR within thirty (30) days after the expiration of such two hundred seventy (270) day period (or any extension thereof, as the case may be). LESSEE'S notice shall specify a date for the termination of this Lease, which date shall not be more than ninety (90) days nor less than sixty (60) days after the date of the giving by LESSEE of the notice. If Restoration of the Demised Premises is substantially completed on or before the termination date specified in LESSEE'S notice, LESSEE'S right to terminate this Lease shall be deemed null and void and this Lease shall remain in full force and effect. If Restoration of the Demised Premises is not substantially completed on or before the date specified in LESSEE'S notice for termination of this Lease, then, as of such date, this Lease shall cease, terminate and expire, and all Basic Rent and Additional Rent shall be prorated, as of such date. Upon request from LESSEE from time to time during any Restoration, LESSOR shall notify LESSEE of any Excusable Delays.

17.6 (a) LESSOR shall not be required to expend for Restoration an amount in excess of the Net Award received by it. In the event such amount is not adequate or the holder of an Underlying Encumbrance elects to retain the Net Award, LESSOR shall have the right to terminate this Lease provided notice of such termination shall be sent to LESSEE within sixty (60) days after the amount of such Net Award is ascertained, or after the date on which the holder of the Underlying Encumbrance notifies LESSOR that it has elected to retain the Net Award, whichever the case may be. If LESSOR exercises its right to terminate this Lease, this Lease shall cease, terminate and expire, and all Basic Rent and Additional Rent shall be prorated, as of the date of such damage or destruction. LESSOR agrees to request that the holder of any Underlying Encumbrance consent to the use of any Net Award for Restoration.

(b) Notwithstanding anything to the contrary contained herein, provided no Event of Default is occurring and provided further that LESSEE complies with all of the provisions of this *Section 17.6(b)*, LESSEE may prevent LESSOR from terminating this Lease pursuant to *Section 17.6(a)* (or render any termination notice given by LESSOR pursuant to such Section of no effect) by agreeing in writing in form satisfactory to LESSOR, within fifteen (15) days after LESSEE'S receipt of LESSOR'S termination notice, to pay LESSOR an amount equal to all costs and expenses incurred by LESSOR for or in connection with Restoration of the Building (such costs and expenses being called *"Restoration Costs*") (Restoration Costs shall include, without limitation, architectural and engineering fees, labor and material costs, permit and inspection fees and general conditions costs), less the amount of any Net Award which LESSOR actually receives and is permitted to use for Restoration purposes (such amount being called the *"Excess Costs*"). If LESSEE exercises such right, then, within ten (10) days after demand from LESSOR, LESSEE shall pay to LESSOR, prior to commencement of Restoration, LESSOR'S estimate of the Excess Costs. In the event that at any time during or after Restoration, LESSOR determines or estimates that amounts previously paid by LESSEE are insufficient to cover all Excess Costs, then, within ten (10) days after demand from LESSOR, LESSEE shall pay to LESSOR such additional amounts as LESSOR deems necessary. If LESSEE exercises its rights pursuant to this Section, then upon completion of Restoration of the Building, LESSOR shall promptly pay to LESSEE the amount, if any, by which the sum of all amounts paid by LESSEE to LESSOR pursuant to this *Section 17.6(b)* plus any Net Award which LESSOR actually receives and is permitted to use for Restoration purposes exceeds the total actual Restoration Costs. Within ten (10) days after request from LESSOR, LESSEE shall provide LESSOR, as security for LESSEE'S obligations hereunder, with an irrevocable unconditional letter of credit issued by a commercial bank having an office within the New York City/New Jersey metropolitan area (which bank shall have a rating of A or better by Standard & Poor's or any successor thereto); said letter of credit shall be for the benefit of LESSOR, shall contain terms and conditions reasonably satisfactory to LESSOR and shall have a face amount equal to twenty percent (20%) of LESSOR'S estimate of Excess Costs. Should LESSEE fail to pay any amount due pursuant to this *Section 17.6(b)* on or before the due date thereof, then, in addition to all other remedies available to LESSOR, LESSOR shall have the right to draw upon the letter of credit to satisfy such payment obligation and to cover any loss or damage sustained by LESSOR as a result of LESSEE'S failure to pay any amount when due.

**ARTICLE 18**
**CONDEMNATION**

18.1 LESSEE hereby irrevocably assigns to LESSOR any award or payment to which LESSEE becomes entitled by reason of any Taking of all or any part of the Demised Premises or other parts of the Premises, whether the same shall be paid or payable in respect of LESSEE'S leasehold interest hereunder or otherwise, except that LESSEE shall be entitled to any award or payment for the Taking of LESSEE'S trade fixtures or personal property or for loss of business, relocation or moving expenses provided the amount of the Net Award payable to LESSOR with respect to the fee interest is not diminished. All amounts payable pursuant to any agreement with any condemning authority which have been made in settlement of or under threat of any condemnation or other eminent domain proceeding shall be deemed to be an award made in such proceeding. LESSEE agrees that this Lease shall control the rights of LESSOR and LESSEE in any Net Award and any contrary provision of any present or future law is hereby waived.

18.2 In the event of a Taking of the whole of the Demised Premises, then the Term shall cease and terminate as of the date when possession is taken by the condemning authority and all Basic Rent and Additional Rent shall be paid up to that date.

18.3 In the event of a Taking of twenty percent (20%) or more of the Demised Premises, then, if LESSEE shall determine in good faith and certify to LESSOR that because of such Taking, continuance of its business at the Demised Premises would be uneconomical, LESSEE may, at any time either prior to or within a period of sixty (60) days after the date when possession of such Demised Premises shall be required by the condemning authority, elect to terminate this Lease. In the event that LESSEE shall fail to exercise any such option to terminate this Lease, or in the event of a Taking of the Demised Premises under circumstances under which LESSEE will have no such option, then, and in either of such events, LESSOR shall, subject to the provisions of *Section 18.4*, cause Restoration to be completed as soon as reasonably practicable, but in no case later than one hundred eighty (180) days after the date the condemning authority takes possession of such portion of the Demised Premises, subject to any Excusable Delays, and the Basic Rent and Additional Rent thereafter payable during the Term shall be equitably prorated based upon the square foot area of the Demised Premises actually taken.

18.4 If (a) the Net Award is inadequate to complete Restoration of the Demised Premises, or (b) in the case of a Taking of thirty (30%) percent or more of the Demised Premises, LESSEE has not elected to terminate this Lease pursuant to *Section 18.3* hereof, then LESSOR may elect either to complete such Restoration or terminate this Lease by giving notice to LESSEE within thirty (30) days after (x) the amount of the Net Award is ascertained or (y) the expiration of the sixty (60) day period within which LESSEE may terminate this Lease (as described in *Section 18.3* hereof), whichever the case may be. In such event, all Basic Rent and Additional Rent shall be apportioned as of the date the condemning authority actually takes possession of the Demised Premises.

**ARTICLE 19**
**EVENTS OF DEFAULT**

19.1 Any of the following occurrences, conditions or acts shall constitute an *"Event of Default*" under this Lease:

(a) If LESSEE shall default in making payment when due of any Basic Rent, Additional Rent or other amount payable by LESSEE hereunder, and such default shall continue for ten (10) days; or

(b) If LESSEE fails to deliver to LESSOR the security required pursuant to *Article 28* within five (5) business days after the date of this Lease; or

(c) if LESSEE shall file a petition in bankruptcy pursuant to the Bankruptcy Code or under any similar federal or state law, or shall be adjudicated a bankrupt or become insolvent, or shall commit any act of bankruptcy as defined in any such law, or shall take any action in furtherance of any of the foregoing; or

(d) if a petition or answer shall be filed proposing the adjudication of LESSEE as a bankrupt pursuant to the Bankruptcy Code or any similar federal or state law, and (i) LESSEE shall consent to the filing thereof, or (ii) such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or

(e) if a receiver, trustee or liquidator (or other similar official) of LESSEE or of all or substantially all of its business or assets or of the estate or interest of LESSEE

in the Demised Premises shall be appointed and shall not be discharged within sixty (60) days thereafter or if LESSEE shall consent to or acquiesce in such appointment; or

(f) if the estate or interest of LESSEE in the Demised Premises shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within sixty (60) days after such levy or attachment; or

(g) if LESSEE shall use or suffer or knowingly permit the use of the Demised Premises or any part thereof for any purpose other than expressly specified in *Section 8.1*; or

(h) if LESSEE fails to comply with any of the provisions of *Article 11*; or

(i) if LESSEE fails to discharge any Lien within the time period set forth in *Article 12*; or

(j) if LESSEE fails to maintain the insurance required pursuant to *Article 14*, or LESSEE fails to deliver to LESSOR the insurance certificates required by *Article 14* within the time periods set forth in *Article 14*; or

(k) if LESSEE fails to deliver to LESSOR the estoppel certificate required by *Article 15* within the time period set forth therein; or

(l) if LESSEE assigns this Lease or sublets all or any portion of the Demised Premises without complying with all the provisions of *Article 16*; or

(m) if LESSEE fails to deliver to LESSOR the subordination agreement required by *Section 23.1* within the time period set forth therein; or

(n) if LESSEE fails to comply with any Legal or Insurance Requirement, and such failure continues for a period of fifteen (15) days after LESSOR shall have given notice to LESSEE specifying such default and demanding that the same be cured; or

(o) if LESSEE shall default in the observance or performance of any provision of this Lease other than those provisions contemplated by *clauses (a)* through *(n)*, inclusive, of this *Section 19.1*, and such default shall continue for thirty (30) days after LESSOR shall have given notice to LESSEE specifying such default and demanding that the same be cured (unless such

default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) days, in which case LESSEE shall have such longer period as shall be necessary to cure the default, so long as LESSEE proceeds promptly to cure the same within such thirty (30) day period, prosecutes the cure to completion with due diligence and advises LESSOR from time to time, upon LESSOR'S request, of the actions which LESSEE is taking and the progress being made).

**ARTICLE 20**
**CONDITIONAL LIMITATIONS; REMEDIES**

20.1 This Lease and the Term and estate hereby granted are subject to the limitation that whenever an Event of Default shall have happened and be continuing, LESSOR shall have the right, at its election, then or thereafter while any such Event of Default shall continue and notwithstanding the fact that LESSOR may have some other remedy hereunder or at law or in equity, to give LESSEE written notice of LESSOR'S intention to terminate this Lease on a date specified in such notice, which date shall be not less than five (5) days after the giving of such notice, and upon the date so specified, this Lease and the estate hereby granted shall expire and terminate with the same force and effect as if the date specified in such notice were the date hereinbefore fixed for the expiration of this Lease, and all right of LESSEE hereunder shall expire and terminate, and LESSEE shall be liable as hereinafter in this *Article 20* provided. If any such notice is given, LESSOR shall have, on such date so specified, the right of re-entry and possession of the Demised Premises and the right to remove all persons and property therefrom and to store such property in a warehouse or elsewhere at the risk and expense, and for the account, of LESSEE. Should LESSOR elect to re-enter as herein provided or should LESSOR take possession pursuant to legal proceedings or pursuant to any notice provided for by law, LESSOR may from time to time re-let the Demised Premises or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as LESSOR may deem advisable, with the right to make alterations in and repairs to the Demised Premises.

20.2 In the event of any termination of this Lease as in this *Article 20* provided or as required or permitted by law, LESSEE shall forthwith quit and surrender the Demised Premises to LESSOR, and LESSOR may, without further notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or otherwise, and again have, repossess and enjoy the

same as if this Lease had not been made, and in any such event LESSEE and no person claiming through or under LESSEE by virtue of any law or an order of any court shall be entitled to possession or to remain in possession of the Demised Premises but shall forthwith quit and surrender the Demised Premises, and LESSOR at its option shall forthwith, notwithstanding any other provision of this Lease, be entitled to recover from LESSEE, as and for liquidated damages, the sum of:

(a) all Basic Rent, Additional Rent and other amounts payable by LESSEE hereunder then due or accrued and unpaid, and

(b) for loss of the bargain, an amount equal to the aggregate of all unpaid Basic Rent and Additional Rent which would have been payable if this Lease had not been terminated prior to the end of the Term then in effect, less the then fair market rental value of the Demised Premises (taking into consideration any reasonable reletting period and deducting therefrom any costs and expenses which LESSOR would reasonably incur in connection therewith), discounted to its then present value in accordance with accepted financial practice using a rate equal to six percent (6%) per annum; and

(c) all other damages and expenses (including attorneys' fees and expenses), which LESSOR shall have sustained by reason of the breach of any provision of this Lease.

20.3 Nothing herein contained shall limit or prejudice the right of LESSOR, in any bankruptcy or insolvency proceeding, to prove for and obtain as liquidated damages by reason of such termination an amount equal to the maximum allowed by any bankruptcy or insolvency proceedings, or to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law whether such amount shall be greater or less than the excess referred to above.

20.4 INTENTIONALLY OMITTED.

20.5 Nothing herein shall be deemed to affect the right of LESSOR to indemnification pursuant to *Section 14.6* of this Lease.

20.6 At the request of LESSOR upon the occurrence of an Event of Default, LESSEE will quit and surrender the Demised Premises to LESSOR or its agents, and LESSOR may without further

notice enter upon, re-enter and repossess the Demised Premises by summary proceedings, ejectment or otherwise. The words "enter", "re-enter", and "re-entry" are not restricted to their technical legal meanings.

20.7 If either LESSOR or LESSEE shall be in default in the observance or performance of any provision of this Lease, and an action shall be brought for the enforcement thereof in which it shall be determined that said party was in default, the defaulting party shall pay to the non-defaulting party all reasonable fees, costs and other expenses incurred by the non-defaulting party in connection therewith, including reasonable attorneys' fees and expenses. In the event it is determined that said party was not in default, then the party alleging said default shall pay to the other party all the aforesaid reasonable fees, costs and expenses incurred by said party.

20.8 If LESSEE shall default in the keeping, observance or performance of any covenant, agreement, term, provision or condition herein contained, LESSOR, without thereby waiving such default, may perform the same for the account and at the expense of LESSEE (a) immediately or at any time thereafter and without notice in the case of emergency or in case such default will result in a violation of any Legal or Insurance Requirement, or in the imposition of any Lien against all or any portion of the Premises and (b) in any other case if such default continues after thirty (30) days from the date of the giving by LESSOR to LESSEE of notice of LESSOR'S intention so to perform the same. All costs and expenses incurred by LESSOR in connection with any such performance by it for the account of LESSEE and also all costs and expenses, including attorneys' fees and disbursements incurred by LESSOR in any action or proceeding (including any summary dispossess proceeding) brought by LESSOR to enforce any obligation of LESSEE under this Lease and/or right of LESSOR in or to the Demised Premises, shall be paid by LESSEE to LESSOR upon demand.

20.9 Except as otherwise provided in this *Article 20*, no right or remedy herein conferred upon or reserved to LESSOR or LESSEE is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or now or hereafter existing. No waiver by LESSOR or by LESSEE of any provision of this Lease shall be deemed to have been made unless expressly so made in writing. LESSOR and LESSEE shall be entitled, to the extent permitted by law, to injunctive relief in case of the violation, or attempted or threatened violation, of

any provision of this Lease, or to a decree compelling observance or performance of any provision of this Lease, or to any other legal or equitable remedy.

**ARTICLE 21**
**ACCESS; RESERVATION OF EASEMENTS**

21.1 LESSOR and LESSOR'S agents and representatives shall have the right to enter into or upon the Demised Premises, or any part thereof, at all reasonable hours for the following purposes: (1) examining the Demised Premises; (2) making such repairs or alterations therein as may be necessary in LESSOR'S sole judgment for the safety and preservation of the Demised Premises; (3) erecting, maintaining, repairing or replacing wires, cables, ducts, pipes, conduits, vents or plumbing equipment running in, to or through the Building; (4) showing the Demised Premises to prospective new tenants during the last twelve (12) months of the Term; or (5) showing the Demised Premises during the Term to any mortgagees or prospective purchasers of the Premises. LESSOR shall give LESSEE three (3) business days prior written notice before commencing any non-emergency repair or alteration. LESSOR shall give LESSEE one (1) business day prior written notice before making any other non-emergency entry into the Demised Premises. LESSEE shall have the right to (i) have a representative accompany LESSOR and its agents and representatives during any non-emergency entry in the Demised Premises, provided, however, LESSOR shall not be required to reschedule any entry for which notice was given to LESSEE in accordance with the preceding sentence, and (ii), except in the case of emergency entries, require that any person entering the Demised Premises for or on behalf of LESSOR sign a confidentiality agreement in the form of *Exhibit I*, provided, however, if LESSEE does not have such forms readily available at the time of any permitted entry pursuant to the terms hereof, such persons shall not be precluded from entering the Demised Premises.

21.2 LESSOR may enter upon the Demised Premises at any time in case of emergency without prior notice to LESSEE.

21.3 LESSOR, in exercising any of its rights under this *Article 21*, shall not be deemed guilty of an eviction, partial eviction, constructive eviction or disturbance of LESSEE'S use or possession of the Demised Premises and shall not be liable to LESSEE for same.

21.4 Any entry by LESSOR and all work performed by or on behalf of LESSOR in or on the Demised Premises pursuant to this

*Article 21* shall be performed with as little inconvenience to LESSEE'S business as is reasonably possible.

21.5 LESSEE may change any locks or install any additional locks on doors entering into the Demised Premises without giving LESSOR a copy of any such lock key, provided LESSEE maintains security personnel at the entrances to the Demised Premises 24 hours per day, 365 days per year, which security personnel shall permit LESSOR or LESSOR'S representatives access to the Demises Premises in accordance with the terms of this Lease. If in an emergency LESSOR is unable to gain entry to the Demised Premises by unlocking entry doors thereto, LESSOR may force or otherwise enter the Demised Premises, without liability to LESSEE for any damage resulting directly or indirectly therefrom. LESSEE shall be responsible for all damages created or caused by its failure to give LESSOR a copy of any key to any lock installed by LESSEE controlling entry to the Demised Premises.

21.6 LESSOR reserves the right, from time to time, to make changes, alterations, additions, improvements, repairs or replacements in or to (i) those portions of the Demised Premises which LESSOR is obligated to maintain and repair pursuant to the provisions of *Section 7.3* and (ii) to the other portions of the Demised Premises and to the fixtures and equipment in the Demised Premises as LESSOR may reasonably deem necessary to comply with any applicable Legal Requirements and/or to correct any unsafe condition; provided, however, that there be no unreasonable obstruction of the means of access to the Demised Premises or unreasonable interference with LESSEE'S use of the Demised Premises and the usable square foot area of the Demised Premises is not unreasonably affected thereby. Nothing contained in this Article shall be deemed to relieve LESSEE of any duty, obligation or liability of LESSEE with respect to making any repair, replacement or improvement or complying with any applicable Legal Requirements. Notwithstanding the preceding provisions of this Section, except in the event of an emergency, LESSOR shall not undertake any work in the Demised Premises for which LESSEE is responsible pursuant to the terms of this Lease unless LESSEE has failed to perform such work after the expiration of any applicable notice and cure period contained in this Lease.

## ARTICLE 22
## ACCORD AND SATISFACTION

The receipt by LESSOR of any installment of Basic Rent or of any Additional Rent with knowledge of a default by LESSEE

under the terms and conditions of this Lease shall not be deemed a waiver of such default. No payment by LESSEE or receipt by LESSOR of a lesser amount than the rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and LESSOR may accept such check or payment without prejudice to LESSOR'S right to recover the balance of such rent or pursue any other remedy in this Lease provided.

**ARTICLE 23**
**SUBORDINATION**

23.1 (a) Subject to the provisions of *Section 23.1(b)*, this Lease and the term and estate hereby granted are and shall be subject and subordinate to the lien of each mortgage which may now or at any time hereafter affect all or any portion of the Premises or LESSOR'S interest therein and to all ground leases which may now or at any time hereafter affect all or any portion of the Premises (any such mortgage or ground lease being herein called an *"Underlying Encumbrance"*). The foregoing provisions for the subordination of this Lease and the term and estate hereby granted to an Underlying Encumbrance shall be self-operative and no further instrument shall be required to effect any such subordination; provided, however, at any time and from time to time, upon not less than fifteen (15) days' prior notice by LESSOR, LESSEE shall execute, acknowledge and deliver to LESSOR any and all commercially reasonable instruments that may be necessary or proper to effect such subordination or to confirm or evidence the same; provided, however, that such instruments contain a nondisturbance provision substantially in the form set forth in *Section 23.1(b)*.

(b) Notwithstanding anything to the contrary contained in this *Article 23*, LESSOR agrees to obtain a non-disturbance agreement (duly executed and acknowledged) from the holder of any Underlying Encumbrance encumbering the Premises as of the date of this Lease and from the holder of any future Underlying Encumbrance. Said non-disturbance agreement shall be such holder's standard form of agreement (which shall be commercially reasonable taking into account such agreements generally made by other similar holders) and shall provide, in part, that this Lease and LESSEE'S rights, options and privileges hereunder shall not be disturbed during the Term of this Lease so long as there is no Event of Default. LESSEE'S obligation to subordinate this Lease is conditioned upon LESSEE receiving the

aforesaid non-disturbance agreement. LESSEE hereby acknowledges that simultaneously with the execution of this Lease, LESSEE has entered into such a nondisturbance agreement satisfying the requirements of this *Section 23.1(b)* with the holder of the mortgage affecting the Premises as of the date hereof.

23.2 If all or any portion of LESSOR'S estate in the Premises shall be sold or conveyed to any person, firm or corporation upon the exercise of any remedy provided for in any mortgage or by law or equity, such person, firm or corporation and each person, firm or corporation thereafter succeeding to its interest in the Premises (a) shall not be liable for any act or omission of LESSOR under this Lease occurring prior to such sale or conveyance, (b) shall not be subject to any offset, defense or counterclaim accruing prior to such sale or conveyance, (c) shall not be bound by any payment prior to such sale or conveyance of Basic Rent, Additional Rent or other payments for more than one month in advance (except prepayments in the nature of a security deposit or other security for the performance by LESSEE of its obligations hereunder),(d) shall not be liable for any amounts due from LESSOR pursuant to *Section 17.6(b)* hereof unless LESSOR has actually paid such amounts due from LESSOR to such person, firm or corporation or the person, firm or corporation thereafter succeeding to its interest in the Premises, as the case may be, and (e) shall be liable for the keeping, observance and performance of the other covenants, agreements, terms, provisions and conditions to be kept, observed and performed by LESSOR under this Lease only during the period such person, firm or corporation shall hold such interest.

23.3 In the event of an act or omission by LESSOR which would give LESSEE the right to terminate this Lease or to claim a partial or total eviction, LESSEE will not exercise any such right until it has given written notice of such act or omission, or, in the case of the Demised Premises or any part thereof becoming untenantable as the result of damage from fire or other casualty, written notice of the occurrence of such damage, to the holder of any Underlying Encumbrance whose name and address shall previously have been furnished to LESSEE in writing, by delivering such notice of such act, omission or damage addressed to such holder at said address or if such holder hereafter furnishes another address to LESSEE in writing at the last address of such holder so furnished to LESSEE, and, unless otherwise provided herein, until a reasonable period for remedying such act, omission or damage shall have elapsed following such giving of such notice, provided any such holder, with reasonable diligence, shall, following the giving of such notice, have commenced and

continued to remedy such act, omission or damage or to cause the same to be remedied.

**ARTICLE 24**
**LESSEE'S REMOVAL**

24.1 Upon the expiration or earlier termination of this Lease, LESSEE shall surrender the Demised Premises and other portions of the Premises which LESSEE has the right to use to LESSOR in the condition same is required to be maintained under *Article 7* and *Article 31* of this Lease and broom clean. Any personal property which shall remain in any part of the Premises after the expiration or earlier termination of this Lease shall be deemed to have been abandoned, and either may be retained by LESSOR as its property or may be disposed of in such manner as LESSOR may see fit; provided, however, that, notwithstanding the foregoing, LESSEE will, upon request of LESSOR made not later than thirty (30) days after the expiration or earlier termination of this Lease, promptly remove from the Premises any such personal property.

24.2 INTENTIONALLY OMITTED.

24.3 If LESSEE holds over possession of the Demised Premises beyond the Termination Date, such holding over shall not be deemed to extend the Term or renew this Lease but such holding over shall continue upon the terms, covenants and conditions of this Lease except that LESSEE agrees that the charge for use and occupancy of the Demised Premises for each calendar month or portion thereof that LESSEE holds over (even if such part shall be one day) shall be a liquidated sum equal to one hundred fifty percent (150%) of the Basic Rent and Additional Rent required to be paid by LESSEE during the calendar month preceding the Termination Date. Notwithstanding the foregoing, such holdover payment shall be payable by LESSEE on a per diem basis for the first (1st) month of any holdover period. The parties recognize and agree that the damage to LESSOR resulting from any failure by LESSEE to timely surrender possession of the Demised Premises will be extremely substantial, will exceed the amount of the monthly Basic Rent and Additional Rent payable hereunder and will be impossible to accurately measure. If the Demised Premises are not surrendered upon the expiration of this Lease, LESSEE shall indemnify, defend and hold harmless LESSOR against any and all losses and liabilities resulting therefrom, including, without limitation, any claims made by any succeeding tenant founded upon such delay, so long as LESSOR has notified LESSEE, prior to such

holding over, that LESSOR has executed a lease or other occupancy agreement for all or any portion of the Demised Premises. Nothing contained in this Lease shall be construed as a consent by LESSOR to the occupancy or possession by LESSEE of the Demised Premises beyond the Termination Date, and LESSOR, upon said Termination Date, shall be entitled to the benefit of all legal remedies that now may be in force or may be hereafter enacted relating to the immediate repossession of the Demised Premises. The provisions of this Article shall survive the expiration or sooner termination of this Lease.

**ARTICLE 25**
**BROKERS**

LESSEE represents to LESSOR that LESSEE has not dealt with any real estate broker or sales representative in connection with this transaction other than CB Richard Ellis, Inc.; the phrase "real estate broker or sales representative" shall be deemed to include any finder/consultant retained by LESSEE, but whose fees are to be paid by LESSOR. LESSEE agrees to indemnify and hold harmless LESSOR, LESSOR'S managing agent, and the respective directors, officers, employees, members and partners of the foregoing entities, or of any partner or member of the foregoing entities, from and against any threatened or asserted claims, liabilities, losses or judgments (including reasonable attorneys' fees and disbursements) by any real estate broker or sales representative (other than the one set forth above) based on alleged contacts between such broker or sales representative and LESSEE which have resulted in allegedly providing such broker or sales representative with the right to claim a commission or finder's fee in connection with this Lease. The provisions of this Article shall survive the expiration or sooner termination of this Lease.

**ARTICLE 26**
**NOTICES**

All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be delivered by (a) certified mail, postage prepaid, (b) a nationally recognized overnight delivery service such as Federal Express, or (c) facsimile transmission (followed by a hard copy sent as provided in clause (b) above), addressed as follows:

To LESSOR:

Two Gatehall Associates, L.L.C.
c/o Gale & Wentworth, LLC
200 Campus Drive
Florham Park, New Jersey 07932
Florham Park, New Jersey 07932
Fax no. (973) 301-9501

with a copy to:

Two Gatehall Associates, L.L.C.
c/o Gale & Wentworth, LLC
200 Campus Drive
Florham Park, New Jersey 07932
Attention: Stephen J. Cusma, Esq.
Fax no. (973) 301-9501

and with an additional copy to:

Drinker Biddle & Shanley LLP
500 Campus Drive
Florham Park, New Jersey 07932
Attention: Michael E. Rothpletz,Jr., Esq.
Fax no. (973) 360-9831

To LESSEE:

Exodus Communications, Inc.
2831 Mission College Boulevard
Santa Clara, California 95054-1838
Attention: General Counsel
Fax no. (408)346-2420

with a copy to:

Exodus Communications, Inc.
2831 Mission College Boulevard
Santa Clara, California 95054-1838
Attention: Senior Director of Real Estate
Fax no.(408)878-7255

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by mail shall be deemed to have been received by the addressee on the fifth business day after posting in the United States mail, or, if transmitted by overnight delivery service, on the first business

day after transmittal, or, if transmitted by facsimile, upon receipt, provided receipt occurs before 5:00 p.m. on a business day in the jurisdiction of the recipient. Counsel for a party may give notice to the other party with the same effect as if given by a party.

**ARTICLE 27**
**NATURE OF LESSOR'S OBLIGATIONS**

Anything in the Lease to the contrary notwithstanding, no recourse or relief shall be had under any rule of law, statute or constitution or by any enforcement of any assessments or penalties, or otherwise or based on or in respect of this Lease (whether by breach of any obligation, monetary or non-monetary), against LESSOR, it being expressly understood that all obligations of LESSOR under or relating to this Lease are solely obligations payable out of the Premises and are compensable solely therefrom, except that LESSEE shall have recourse to the net proceeds of any sale of the Premises received by LESSOR and to the proceeds of any insurance paid in connection with the Building and retained by LESSOR and not used in Restoration; provided, however, any claim with respect to net sale proceeds or insurance proceeds must be made by LESSEE in writing to LESSOR within one hundred eighty (180) days after the date of the applicable sale of the Premises or the date of LESSOR'S receipt of the insurance proceeds, as the case may be. It is expressly understood that all such liability is and is being expressly waived and released as a condition of and as consideration for the execution of this Lease, and LESSEE expressly waives and releases all such liability as a condition of, and as consideration for, the execution of this Lease by LESSOR. For the purposes of this Section "net proceeds of any sale of the Premises" shall mean the applicable sale price of the Premises less all costs and expenses of LESSOR associated with the sale transaction, including, without limitation, mortgage payoffs, brokerage commissions, expense adjustments and transfer taxes.

**ARTICLE 28**
**SECURITY DEPOSIT**

28.1 (a) Subject to *Section 28.5* hereof, within five (5) business days after the date of this Lease, LESSEE shall deposit with LESSOR the sum of two million eight hundred thousand dollars ($2,800,000.00), the same to be held by LESSOR as security for the full and faithful performance by LESSEE of the terms and conditions by it to be observed and performed hereunder. The

security deposit and/or any letter of credit under *Section 28.5* hereof shall not be considered an advanced payment of rent or a measure of LESSOR'S damages in case of a default by LESSEE. If any Basic Rent, Additional Rent or other sum payable by LESSEE to LESSOR becomes overdue and remains unpaid after the giving of any applicable notice of default required herein and the expiration of any applicable cure period provided for herein, or should LESSOR make any payments on behalf of LESSEE pursuant to the terms hereof, or should LESSEE fail to perform any of the terms and conditions of this Lease after the giving of any applicable notice required hereunder and the expiration of any applicable cure period provided for herein, then LESSOR, at its option, and without prejudice to any other remedy which LESSOR may have on account thereof, shall appropriate and apply said deposit, or so much thereof as may be required to compensate or reimburse LESSOR, as the case may be, toward the payment of Basic Rent, Additional Rent or other such sum payable hereunder, or loss or damage actually sustained by LESSOR due to the breach or failure to perform on the part of LESSEE, and upon demand, LESSEE shall restore such security to the original sum deposited.

(b) LESSOR hereby agrees that the amount required as security under this Lease shall be reduced from two million eight hundred thousand dollars ($2,800,000.00) to two million five hundred thousand dollars ($2,500,000.00) as of the first (1st) anniversary of the date of this Lease, reduced from two million five hundred thousand dollars ($2,500,000.00) to two million two hundred thousand dollars ($2,200,000.00) as of the second (2nd) anniversary of the date of this Lease, reduced from two million two hundred thousand dollars ($2,200,000.00) to one million nine hundred thousand dollars ($1,900,000.00) as of the third (3rd) anniversary of the date of this Lease, reduced from one million nine hundred thousand dollars ($1,900,000.00) to one million six hundred thousand dollars ($1,600,000.00) as of the fourth (4th) anniversary of the date of this Lease, and reduced from one million six hundred thousand dollars ($1,600,000.00) to one million four hundred thirty five thousand dollars ($1,435,000.00) as of the fifth (5th) anniversary of the date of this Lease; provided, however, there shall be no reduction in the amount required as security if, as of the anniversary date in question, an Event of Default is occurring. For the purposes of this Lease, the term "security" or "security deposit" shall mean the amount of security required under this Lease as of the date in question.

28.2 Conditioned upon the full compliance by LESSEE of all of the terms of this Lease, and the prompt payment of all sums

due hereunder, said deposit, if any, then held by LESSOR shall be returned in full to LESSEE within fifteen (15) days after the end of the Term.

28.3 In the event of bankruptcy or other debtor-creditor proceeding against LESSEE, such security deposit shall be deemed to be applied first to the payment of rent and other charges due LESSOR for all periods prior to filing of such proceedings.

28.4 In the event of any transfer of title to the Premises, or any assignment of LESSOR'S interest under this Lease, LESSOR shall have the right to transfer the security deposit to said transferee or assignee, and LESSOR shall thereupon be released by LESSEE from all liability for the return of such security deposit. In such event, LESSEE agrees to look to the new lessor for the return of the security deposit. It is hereby agreed that the provisions of this Section shall apply to every transfer or assignment made of the security deposit to a new lessor.

28.5 (a) In lieu of depositing cash as a security deposit, LESSEE may elect to deliver to LESSOR within five (5) business days after the date of this Lease a one (1) year, irrevocable unconditional letter of credit issued by a commercial bank having an office within the New York City/New Jersey metropolitan area (which bank shall have a rating of A or better by Standard & Poor's or any successor thereto); said letter of credit shall be for the benefit of LESSOR, shall contain the obligation of the issuing bank to issue a new letter of credit, without charge, to any assignee of LESSOR'S interest under this Lease, and shall contain such other commercially reasonable terms and conditions as are reasonably satisfactory to LESSOR. The face amount of the letter of credit delivered to LESSOR shall be equal to the amount of security then required under this *Article 28*, and the face amount of any replacement letter of credit delivered to LESSOR shall be equal to the amount of the security deposit then required under this Lease.

(b) LESSOR shall have the right to draw down the letter of credit for any of the reasons set forth in *Section 28.1* for the application of the cash deposit in an amount equal to the Basic Rent, Additional Rent or other sum payable hereunder, or any payments made by LESSOR on behalf of LESSEE, or any loss or damage sustained by LESSOR as a result of LESSEE'S failure to perform any of the terms and conditions of this Lease after the giving of any applicable notice and the expiration of any applicable cure period provided for herein.

To exercise such right, (i) LESSOR shall present the letter of credit to the issuing bank at the office in New York City/New Jersey set forth on the letter of credit and (ii) LESSOR shall deliver to the issuing bank a statement from LESSOR setting forth the amount of the draw and stating that LESSOR is entitled to draw down the letter of credit pursuant to the provisions of *Section 28.5* of this Lease. LESSOR shall apply the proceeds thereof towards the payment of the Basic Rent, Additional Rent or such other sum payable hereunder, or any payments made by LESSOR on behalf of LESSEE pursuant to the terms of this Lease, or any loss or damage sustained by LESSOR due to the breach or failure to perform on the part of LESSEE, and LESSOR shall hold the balance, if any, pursuant to the provisions of *subsection (f)* hereof. Within ten (10) business days after demand, LESSEE shall deposit with LESSOR an amount (in the form of cash) equal to the portion of said proceeds applied pursuant to the provisions of the immediately preceding sentence.

(c) At least thirty (30) days prior to the expiration of any original letter of credit delivered by LESSEE to LESSOR with respect to this Lease, or the expiration of any replacement letter of credit, LESSEE shall deliver to LESSOR either (i) an extension of such original or replacement letter of credit from the issuing bank so long as such bank has a rating of A or better by Standard & Poor's or any successor thereto, or (ii) a replacement letter of credit issued by a commercial bank having an office within the New York City/New Jersey metropolitan area (which bank shall have a rating of A or better by Standard & Poor's or any successor thereto), containing the same terms and for the face amount then required under *Section 28.5(a)*. In addition, if Standard & Poor's (or any successor) lowers the rating of the issuing bank of the letter of credit then held by LESSOR below A, then LESSEE shall deliver to LESSOR, within thirty (30) days after the lowering of the rating, a replacement letter of credit issued by a commercial bank having an office within the New York City/New Jersey metropolitan area (which bank shall have a rating of A or better by Standard & Poor's or any successor thereto) containing substantially the same terms and for the face amount then required under *Section 28.5(a)*. In the event LESSEE fails to deliver said extension or replacement letter of credit on or before the date set forth above, LESSOR shall have the right to draw down the entire amount of the letter of credit. To exercise such right, (i) LESSOR shall present the letter of credit to the issuing bank at the office in New York City/New Jersey set forth on the letter of credit and (ii) LESSOR shall deliver to the issuing bank a statement from LESSOR stating that LESSOR is

entitled to draw down the letter of credit pursuant to the provisions of *Section 28.5* of this Lease. The proceeds of said letter of credit shall be held by LESSOR pursuant to the provisions of *subsection (f)* hereof.

(d) Notwithstanding anything to the contrary contained herein, LESSEE hereby expressly acknowledges that the drawing down of said letter of credit shall not operate as a waiver of or preclude LESSOR from exercising any of LESSOR'S other rights and remedies under this Lease. In addition, LESSEE hereby agrees that LESSOR shall not be required to give LESSEE any prior notice of the drawing down of the letter of credit, and LESSEE hereby waives any such notice to which it may be entitled.

(e) In the event of an assignment of this Lease by LESSOR, LESSEE shall obtain either (i) a new letter of credit from the issuing bank containing the same terms and for the same face amount as the letter of credit then held by LESSOR which names the new lessor as the beneficiary or (ii) the written consent of the issuing bank to the assignment of the then existing letter of credit from the existing LESSOR to the new lessor in form and substance reasonably satisfactory to the new lessor. If LESSEE obtains a new letter of credit, LESSOR shall surrender the existing letter of credit to LESSEE simultaneously with its receipt of the new letter of credit; the parties agree to coordinate such delivery and surrender so that it is done on the effective date of the assignment of this Lease by LESSOR.

(f) The proceeds from any letter of credit shall be held by LESSOR in accordance with the provisions of *Section 28.1*.

(g) If, as of the Termination Date, LESSOR has a letter of credit in its possession, then LESSOR agrees to return such letter of credit to LESSEE within fifteen (15) days after the end of the Term unless there is a continuing Event of Default.

28.6 Notwithstanding anything to the contrary contained in this Article, if LESSEE receives a Standard & Poor's (or any successor thereto) "long-term issuer credit rating" of A or better, then for as long as such credit rating remains at A or better, LESSEE shall have no obligation to deposit with LESSOR the security pursuant to this *Article 28*. Upon receiving notice from LESSEE that LESSEE has received such an A rating or better, provided no Event of Default is

occurring, LESSOR shall promptly return to LESSEE any cash security or letter of credit then held by LESSOR pursuant to this *Article 28*. If, after the return of any cash deposit or letter of credit pursuant to this Section, Standard & Poor's (or any successor thereto) lowers LESSEE'S long-term issuer credit rating to below A, LESSEE shall provide LESSOR with notice thereof, and within five (5) business days after any such lowering of LESSEE'S credit rating, LESSEE shall pay to LESSOR a security deposit in the amount then required pursuant to *Section 28.1* or deliver to LESSOR a letter of credit in the face amount of the security then required pursuant to *Section 28.1* and otherwise satisfying the requirements of this *Article 28* and all of LESSEE'S other obligations under this *Article 28* shall be automatically reactivated and shall thereafter remain in full force and effect.

**ARTICLE 29**
**PARKING**

29.1 Subject to the provisions of this Lease, (a) from the date of this Lease to the day immediately preceding the Effective Date for Stage 4 of the Demised Premises, LESSEE and LESSEE'S Visitors shall have the right to the exclusive use of one hundred (100) parking spaces on the Land in the location designated by LESSOR, (b) commencing on the Effective Date for Stage 4 of the Demised Premises and throughout the remainder of the Term, LESSEE and LESSEE'S Visitors shall have the nonexclusive right, in common with others, to park up to one hundred fifty (150) vehicles in the parking spaces on the Land which are not designated as of the Effective Date for Stage 4 of the Demised Premises or at any time thereafter for the exclusive use of others, and (c) LESSOR agrees to mark, at LESSEE'S cost and expense, one hundred (100) parking spaces (in addition to those that LESSEE has the right to use pursuant to clause (b)) on the Land for the exclusive use of LESSEE and LESSEE'S Visitors commencing on the Effective Date for Stage 4 of the Demised Premises and for the remainder of the Term, which spaces shall be in the location cross-hatched on *Exhibit F* annexed hereto. LESSOR shall have no obligation to police the parking areas or to otherwise enforce the parking rights granted to LESSEE hereunder. LESSOR shall have no liability to LESSEE for any violation of these parking rights by any tenant of the Building or any other third party.

29.2 LESSEE shall comply, and shall take reasonable efforts to cause LESSEE'S Visitors to comply, with any reasonable

rules and regulations promulgated by LESSOR from time to time with respect to the parking areas on the Land; provided such rules and regulations do not decrease the total number of parking spaces which LESSEE has the right to use pursuant to the terms hereof and provided further that such rules and regulations do not materially increase LESSEE'S obligations or liabilities hereunder. LESSEE shall not, and LESSEE shall not permit LESSEE'S Visitors to, use more parking spaces on the Land than those allocated to LESSEE pursuant to this Article; and LESSEE shall not, and LESSEE shall not permit LESSEE'S Visitors to, park in any spaces on the Land reserved for other tenants of the Building.

29.3 If LESSEE or any LESSEE'S Visitor is parked illegally on the Land, or in areas designated for use of others, or in driveways, fire lanes or areas not striped for general parking or otherwise in violation of this Article, then LESSOR may, after the giving of written notice to LESSEE at least one (1) time with respect to any vehicle, tow away from the Premises, at LESSEE'S cost, vehicles used by LESSEE or LESSEE'S Visitors. LESSOR may also attach violation stickers or notices to any vehicles used by LESSEE or LESSEE'S Visitors, in violation of this Article or any reasonable parking rules and regulations promulgated by LESSOR. The parking spaces shall be used by LESSEE and LESSEE'S Visitors only for parking in connection with LESSEE'S business being conducted at the Demised Premises and for no other purposes.

29.4 Notwithstanding anything to the contrary contained in this Lease, LESSOR shall have the right, at its sole cost and expense, to alter and reconfigure the parking areas on the Land from time to time, including the parking areas that LESSEE has the right to use pursuant to the terms hereof. In the event of any such alteration or reconfiguration, LESSOR shall have the right to relocate in whole or in part the parking spaces that LESSEE has the right to use pursuant to *Section 29.1* , including the exclusive and the nonexclusive spaces; provided, however, that after any such relocation of parking spaces, there shall be no reduction in the number of parking spaces that LESSEE has the right to use, it being understood that in the event of any such relocation, (a) there would continue to be one hundred (100) parking spaces on the Land marked for LESSEE'S exclusive use, and (b) LESSEE would continue to have the nonexclusive right, in common with others, to park up to one hundred fifty (150) vehicles in parking spaces on the Land which are not designated at the time of such relocation or thereafter for the exclusive use of others.

**ARTICLE 30**
**SIGNAGE**

30.1 Subject to the provisions of this *Article 30* and to applicable Legal Requirements, LESSEE shall have the right, at its sole cost and expense, to install its name and logo on a monument sign to be installed by LESSOR near the entrance to the Building. In addition, if at any time during the Term, LESSOR permits any other tenant of the Building (the *"Other Tenant"*) to install an identification sign on the facade of the Building, then, subject to the provisions of this *Article 30*, LESSEE shall have the right, at its sole cost and expense, to install its name on the facade of the Building. To exercise said rights, LESSEE shall submit to LESSOR for its approval (which shall not be unreasonably withheld, conditioned or delayed) plans and specifications for the sign in question. LESSEE shall attach to the plans and specifications for the identification sign on the Building an elevation of the Building showing the location, size, design and color of said sign. Said plans and specifications shall be in compliance with all applicable Legal Requirements. Within fifteen (15) days after receipt of said plans and specifications, LESSOR shall notify LESSEE whether LESSOR approves or disapproves the proposed sign and/or the proposed location of said sign. If LESSOR disapproves the proposed signs and/or the proposed location of the signs, LESSOR shall specify the reasons for said disapproval in said notice.

30.2 Notwithstanding anything to the contrary contained herein, (i) LESSEE'S signage to be installed on the monument shall be in LESSOR'S building standard form and size, and (ii) the area of LESSEE'S signage on the Building facade shall not exceed "LESSEE'S permitted sign area" (as hereinafter defined). "LESSEE'S permitted sign area" means the area in square feet equal to the product of (1) the square foot area of the Other Tenant's Building facade sign, times (2) the quotient of (x) the rentable square foot area of the Demised Premises (as set forth in *Section 1.1(q)*, divided by (y) the rentable square foot area of the space in the Building leased to the Other Tenant (as set forth in such Other Tenant's lease).

30.3 Prior to commencing the construction of the signs, LESSEE shall obtain LESSOR'S approval of the proposed contractor, which approval shall not be unreasonably withheld, and LESSEE shall deliver to LESSOR a copy of all governmental approvals and permits required in connection with the installation of said signs and a copy of any required insurance certificates.

30.4 LESSEE agrees to construct the signs in accordance with the approved plans and specifications and to complete such work expeditiously, in a good and workmanlike manner, and free and clear of all Liens.

30.5 LESSEE hereby covenants and agrees, at its sole cost and expense, to maintain the signs in good condition and repair during the Term, subject to ordinary wear and tear, and to promptly make all repairs and/or replacements required thereto. On or before the Termination Date, LESSEE shall remove the signs and shall restore the Building and the existing monument to the condition existing prior to the installation of said signs; the restoration of the Building shall include, but shall not be limited to, any repainting thereof required as a result of any discoloration or fading.

**ARTICLE 31**
**SPECIAL USES**

31.1 Subject to the requirements of this *Article 31* and other applicable provisions of this Lease, LESSEE may, at its sole cost and expense throughout the Term, (i) install, maintain, repair, replace, alter and operate (x) the Roof Top Telecommunications Equipment and the Roof Top HVAC Equipment on the roof of the Building in locations approved by LESSOR (which approval shall not be unreasonably withheld, conditioned or delayed), and (y) transmission lines, wires, cables, risers and conduits (collectively, *"Conduits"*) through conduit space in the Building designated by LESSOR for the operation of the Roof Top HVAC Equipment, the Roof Top Telecommunications Equipment and equipment and facilities installed in the Demised Premises pursuant to this Lease (the Roof Top Telecommunications Equipment, the Roof Top HVAC Equipment and the Conduits and any alterations thereto or replacements thereof being called herein collectively, the *"Equipment"*). Notwithstanding anything to the contrary contained herein, the area of the roof of the Building in which LESSEE has the right to install the Roof Top HVAC Equipment and the Roof Top Telecommunications Equipment shall not exceed LESSEE'S Proportionate Share of the "usable roof area" (as hereinafter defined). The *"usable roof area"* shall mean the total area of the surface of the roof of the Building, less that portion thereof on which any heating, ventilating, air conditioning (other than the Roof Top HVAC Equipment), mechanical or other equipment or facilities servicing the Building are now or hereafter located.

31.2 LESSEE hereby covenants and agrees that the initial installation of the Equipment shall be subject to the provisions of *Exhibit D* hereof, including, without limitation, LESSOR'S rights to approve the working drawings and specifications therefor, which approval shall not be unreasonably withheld or conditioned. LESSEE shall not alter or replace any of the Equipment after the initial installation thereof, unless LESSEE submits to LESSOR detailed plans and specifications therefor and LESSOR approves such plans and specifications in writing (such approval shall not be unreasonably withheld, conditioned or delayed). Any replacement Equipment shall be comparable to the equipment being replaced. LESSEE acknowledges that LESSOR'S review and approval rights with respect to the Equipment shall include, but shall not be limited to, consideration of the size, weight, affect on Building systems, affect on tenants and other occupants of the Building, aesthetics and manner of attachment and installation, and the affect on the character of the Premises (other than interior portions of the Demised Premises) as a first class multi-tenant office Building. LESSEE hereby acknowledges and agrees that the provisions of *Sections 7.4*, *7.6(a)* and *8.3* shall also govern the installation, maintenance, repair, alteration and replacement of the Equipment to the extent such provisions are not inconsistent with the provisions of this *Article 31*.

31.3 LESSEE hereby covenants and agrees that (i) LESSEE shall, at its sole cost and expense, comply with all Legal Requirements (including, without limitation, Environmental Laws) and Insurance Requirements and procure and maintain all necessary permits and approvals required in connection with the operation, installation, maintenance, repair, alteration and replacement of the Equipment; (ii) The Equipment shall not adversely affect, undermine or interfere with the structure of the Building or any of the systems of the Building (including, without limitation, the electrical, plumbing, heating, ventilating, air conditioning and life safety systems); (iii) The Equipment shall not interfere with the use and enjoyment of other areas of the Building by tenants, their employees and other occupants of the Building; (iv) LESSEE shall, at its sole cost and expense, promptly repair any damage (whether structural or non-structural) caused to the roof or any other portion of the Premises or its fixtures, equipment and appurtenances by reason of the installation, maintenance, repair, alteration, replacement or operation of the Equipment (or, at LESSOR'S election, LESSOR shall perform such repairs and LESSEE shall reimburse LESSOR for the costs thereof within thirty (30) days after receipt of demand therefor from LESSOR); (v) the Equipment shall not emit sound

which is audible in any leasable areas of the Building other than the Demised Premises; (vi) the Equipment shall not cause vibrations outside of the Demised Premises; and (vii) LESSEE shall pay any additional or increased insurance premiums incurred by LESSOR, and shall obtain and pay for any additional insurance coverage for the benefit of LESSOR in such amount and of such type as LESSOR may reasonably require in connection with the Equipment.

31.4 (a) LESSEE acknowledges that LESSEE'S use of the roof and the conduit space in the Building pursuant to this *Article 31* is a non-exclusive use, and, subject to the terms hereof, LESSOR may permit any person or entity to use any of the conduit spaces in the Building and any portion of the roof of the Building, other than those portions of the roof which contain Equipment pursuant to the terms hereof. LESSEE covenants and agrees that the Equipment and LESSEE'S installation, alteration, maintenance, repair, replacement and operation thereof shall not affect or otherwise interfere with the operations of any equipment or facilities of the Existing Tenant or its subtenant which are located at the Premises as of the date of this Lease. In the event of any such interference, LESSEE shall immediately upon receiving notice thereof, at its sole cost and expense, take all actions necessary to cease the interference.

(b) Subject to *Section 31.4(a)* and *Section 31.11*, LESSOR shall not interfere, or permit its agents, contractors or other tenants to interfere, with the operation of the Equipment; provided, however, (i) LESSEE shall reasonably cooperate with LESSOR in connection with maintenance, repairs, replacements and alterations of any portion of the Building undertaken or permitted by LESSOR and in connection with the installation, maintenance, repair, replacement, alteration and operation of other equipment and facilities by LESSOR or any other person or entity, including, without limitation, other roof top telecommunications, heating, ventilating, air conditioning or mechanical equipment; and (ii) LESSOR shall have no obligation to prevent any interference with the operations of the Equipment which may be caused by equipment and facilities of the Existing Tenant and its subtenant which are located at the Premises as of the date of this Lease.

(c) In the event of any material interference with the operation of the Equipment caused by LESSOR or LESSOR'S agents, employees or contractors or by other tenants of the Building (other than interference caused by the operation of equipment and facilities of the Existing Tenant or its subtenant which are located at the Premises as of the date of this Lease),

LESSEE shall notify LESSOR thereof, and thereafter LESSOR shall promptly, at its sole cost and expense, cause such interference to be discontinued.

31.5 Without limiting LESSEE'S obligations under *Section 14.6*, LESSEE shall indemnify and hold harmless LESSOR, its employees, agents and contractors, from and against any and all liability, damages, claims, costs or expenses relating to the installation, maintenance, operation, repair, alteration and replacement of any Equipment, together with all costs, expenses and liabilities incurred in or in connection with each such claims or action or proceeding brought thereon (including, without limitation, all reasonable attorneys' fees and expenses), except for such of the foregoing that arise from the gross negligence or willful misconduct of LESSOR. LESSEE'S obligations under this Section shall survive the expiration or termination of the Term.

31.6 LESSEE shall remove the Equipment upon the expiration or earlier termination of the Term and repair any damage to the roof of the Building or other portions of the Premises caused by the installation or removal of the Equipment, all at LESSEE'S sole cost and expense (or, at LESSOR'S election, LESSOR shall perform such repairs and LESSEE shall reimburse LESSOR for the reasonable costs thereof within thirty (30) days after receipt by LESSEE of LESSOR'S demand therefor). LESSOR shall have no obligation to repair or maintain the Equipment.

31.7 For the purpose of installing, maintaining, repairing, replacing, altering and operating the Equipment, (i) LESSEE shall have keyed access to the roof of the Building at all times during the Term, and (ii) upon prior notice to LESSOR and at reasonable times, LESSEE shall have access to the conduit spaces in the Building in which the Conduits are located from the basement of the Building or the roof. LESSOR shall have the right to require, as a condition to such access to the conduit spaces, that LESSEE or LESSEE'S agents, contractors or employees at all times be accompanied by a representative of LESSOR who LESSOR shall make available upon reasonable notice. LESSEE shall pay LESSOR for the costs of furnishing such a representative within fifteen (15) days after receiving any request therefor from LESSOR.

31.8 At LESSEE'S sole cost and expense, LESSEE shall cause the Equipment's consumption of all utilities, including, without limitation, electricity and gas service, to be metered (either separately or in connection with the applicable utility supply to the Demised Premises) by the applicable utility. LESSEE

shall pay all costs of such utilities directly to the applicable utility.

31.9 The rights granted under this *Article 31* are personal to Exodus Communications, Inc. and to any assignee pursuant to *Section 16.7(b)* and may not be assigned separately from this Lease or in connection with any assignment of this Lease except an assignment pursuant to *Section 16.7(b)*.

31.10 From and after the Commencement Date and throughout the Term, LESSEE shall have the right, at its sole cost and expense, to install on the Land and operate, maintain, repair and replace supplementary lighting facilities for the parking lots and sidewalks on the Land. All such supplementary lighting shall be separately metered for electricity and LESSEE shall pay the cost of such electricity directly to the applicable utility prior to the due date thereof. Throughout the Term, LESSEE shall maintain all such supplementary lighting and related facilities in good condition and repair, subject to ordinary wear and tear, and shall make all renewals, repairs and replacements thereto, ordinary and extraordinary, which may be required to maintain same in such condition. Prior to installing any such supplementary lighting and related facilities, LESSEE shall submit detailed plans and specifications therefor to LESSOR for LESSOR'S approval, which approval shall not be unreasonably withheld, conditioned or delayed. LESSEE acknowledges that such supplementary lighting facilities and the illumination supplied thereby shall be of a quality and character appropriate for a first-class office building. LESSEE hereby acknowledges and agrees that the provisions of *Section 7.4*, *7.6(a)* and *8.3* shall also govern the installation, maintenance, replacement and repair of the supplementary lighting and related facilities. Notwithstanding anything to the contrary contained herein, the supplementary lighting and the installation, maintenance, repair, replacement and operation thereof shall not (a) result in the loss of use of any parking spaces on the Land and shall not otherwise interfere with the use of the parking lots, driveways, sidewalks or any other improvements or facilities on the Land, and (b) shall not affect any of the systems servicing the Premises or any part thereof. LESSEE shall, at its sole cost and expense, promptly repair any damage caused to the Premises or its fixtures, equipment or appurtenances by reason of the installation, maintenance, repair and replacement of the supplementary lighting facilities. Prior to the Termination Date, LESSEE shall, if required by LESSOR, at LESSEE'S sole cost and expense, remove all such supplementary lighting and relating facilities installed by LESSEE and shall restore the Premises to the condition prior to

installation thereof. Alternatively, LESSOR shall have the right to undertake such removal and restoration at LESSEE'S cost. LESSEE acknowledges that LESSOR has the right, from time to time, to alter and reconfigure the parking areas on the Land. In connection with any such alteration or reconfiguration, LESSEE shall, at its sole cost and expense, relocate and/or replace light fixtures and facilities installed by LESSEE pursuant to the terms hereof to another location reasonably designated by LESSOR.

31.11 (a) LESSOR shall have the right, from time to time, to require LESSEE to permanently relocate Equipment and any other improvements and facilities installed by LESSEE (including, without limitation, supplementary lighting facilities) which are located outside of the Demised Premises to other locations at the Premises which are reasonably satisfactory to LESSEE and LESSOR, provided such relocation does not materially interfere with the conduct of LESSEE'S business and provided further that LESSOR pays the actual reasonable costs and expenses incurred by LESSEE to relocate such Equipment or other improvements and facilities. In the event that LESSOR requires such relocation, LESSEE shall promptly perform the relocation in accordance with plans which are reasonably satisfactory to LESSEE and LESSOR.

(b) In connection with maintenance, repairs, alterations and replacement of the Building or any part thereof or the equipment and facilities therein or thereon, LESSOR shall have the right to require LESSEE, at LESSEE'S cost, to temporarily relocate Equipment; provided, however, LESSOR shall take all practicable efforts to avoid any such relocation and to minimize interference with the operations of the Equipment. Except in the case of an emergency, LESSOR shall give LESSEE reasonable prior notice of any intended maintenance, alteration, repairs, or replacements which would require the relocation of Equipment.

**ARTICLE 32**
**TENANT IMPROVEMENT WORK;**
**EXISTING TENANT FACILITIES AND OPERATION**

32.1 From and after the Effective Date for each Stage of the Demised Premises, LESSEE shall have the right, at its sole cost and expense, to construct the applicable Tenant Improvement Work in such Stage in accordance with the provisions of this Lease. From and after the Effective Date for Stage 1 of the Demised Premises, LESSEE shall have the right, at its sole cost and expense, to construct the applicable Tenant Improvement

Work on the roof of the Building in accordance with the provisions of this Lease.

32.2 Notwithstanding anything to the contrary contained herein, LESSOR shall have the right, but not the obligation, to undertake all or any portion of the demolition work in the Demised Premises reflected on the Final Plans by notice given to LESSEE simultaneously with LESSOR'S approval of the Final Plans in accordance with *Exhibit D*. In the event that LESSOR elects to undertake any of the demolition work, LESSOR shall complete same at its sole cost and expense as promptly as practicable (provided LESSOR shall not be obligated to undertake such work on weekends or beyond normal business hours) and in accordance with the Final Plans and all applicable Legal Requirements; provided, however, LESSOR shall not be obligated to commence any such demolition work in any Stage of the Demised Premises until after the Effective Date for the applicable Stage. Any materials or equipment removed from the Demised Premises by LESSOR in undertaking any such demolition work in accordance with the Final Plans shall be the property of LESSOR, with LESSOR having no obligation to pay LESSEE or give any other consideration to LESSEE therefor.

32.3 LESSEE shall pay to LESSOR, within fifteen (15) days after receiving any request therefor from LESSSOR given from time to time (each request shall include a copy of applicable invoices), an amount equal to the product of 1.5 times the supervisory fee (as hereinafter defined). In addition, LESSEE shall pay to LESSOR, within fifteen (15) days after any request therefor from LESSOR given from time to time (each request shall include a copy of applicable invoices), an amount equal to all out-of-pocket costs and expenses actually incurred by LESSOR for architectural and engineering services (including, without limitation, mechanical and electrical engineering services) in connection with the review of LESSEE'S plans and specifications for the Tenant Improvement Work and the Equipment and any modifications thereto (including, without limitation, preliminary plans and specifications and working drawings and specifications). The "supervisory fee" as used herein shall mean all fees incurred by LESSOR for the services of a representative (which representative may change from time to time) of a contractor selected by LESSOR to supervise all aspects of the Tenant Improvement Work and the installation of the Equipment, including, without limitation, plan review and onsite inspection, supervision and coordination. Nothing contained herein shall obligate LESSOR to retain such a representative or to have such a representative available at any time.

32.4 (a) LESSEE acknowledges that (x) Stage 1 of the Demised Premises contains a generator and related equipment (collectively, the *"Generator*") which provides a back-up electricity source for certain equipment used by the Existing Tenant in its operations, and (y) the Third Floor Space contains two (2) sets of cables (collectively, the *"Cables*") which service Existing Tenant's computer and other equipment contained in the Inner Data Center and the Outer Data Center.

(b) Until the Effective Date for Stage 4 of the Demised Premises, LESSEE shall not alter, disturb or otherwise interfere with the Cables, and LESSOR shall have the right to place and maintain barriers or other protective devices on and around the Cables; provided, however, that if LESSEE shall desire to relocate the Cables that are within the Demised Premises to the roof of the Building, then LESSEE may, at its sole cost and expense, relocate such Cables in accordance with detailed plans and specifications approved in writing in advance by LESSOR (which approval shall not be unreasonably withheld, conditioned or delayed provided that if the Existing Tenant shall object to the plans, LESSOR may disapprove the plans and specifications whether or not said objection is reasonable), provided that in no event shall such relocation of the Cables cause any disruption or interference with the operations of the Cables or the equipment and facilities serviced thereby.

(c) (i) LESSEE shall not alter, disturb or otherwise interfere with the Generator or the operation thereof except in accordance with the terms hereof. If LESSEE desires to remove the Generator from Stage 1 of the Demised Premises prior to the Effective Date for Stage 4 of the Demised Premises, LESSEE shall provide LESSOR with notice thereof, together with detailed plans and specifications for an alternative electric generator to replace the Generator, which alternative generator shall be located at the Premises (but outside of the Demised Premises) in a location designated by LESSOR and shall be otherwise acceptable to LESSOR, including, without limitation, as to quality of equipment and capability of providing an uninterrupted supply of electricity of a quantity and character sufficient to operate the equipment and facilities serviced by the Generator. LESSOR shall not unreasonably withhold, condition or delay its approval of any such plans. Upon receiving LESSOR'S written approval of such plans and specification, LESSEE shall, prior to relocating, altering or in any way interfering with the operation of the Generator, at its sole cost and expense, install the alternative generator in

accordance with the plans and specifications approved by LESSOR. LESSEE represents and warrants that any such alternative generator shall provide electricity in the event of any failure or interruption of the primary electricity source in quantity and character sufficient for the uninterrupted normal operation of the equipment and facilities of the Existing Tenant currently serviced by the Generator. After the installation of the alternative generator in accordance with the terms hereof, LESSEE shall, at its sole cost and expense, relocate the Generator to another portion of the Premises designated by LESSOR. Alternatively, if LESSOR, in its sole discretion, elects not to re-use the Generator at the Premises, then after the installation of the alternative generator in accordance with the terms hereof, LESSOR shall remove the Generator from the Demised Premises at its sole cost and expense. LESSEE hereby acknowledges that the Generator and any alternative generator installed by LESSEE pursuant to this Section shall remain the property of LESSOR.

(ii) If LESSEE does not relocate the Generator pursuant to *Subsection (i)* above, then, as promptly as practicable after the Effective Date for Stage 4 of the Demised Premises, but not later than thirty (30) days after the Effective Date for Stage 4 of the Demised Premises, LESSOR shall, at its sole cost and expense, remove the Generator from the Demised Premises.

(d) (i) LESSEE shall construct partition walls on the third (3rd) floor of the Building and the ground floor of the Building in the locations indicated on *Exhibit J* annexed hereto. All such partition walls shall be from the floor slab of the applicable floor to the underside of the floor above (in the case of the third floor, to the underside of the roof deck). Within fifteen (15) days after the date of this Lease, LESSEE shall provide plans and specifications to LESSOR for such partition walls, and, in the case of the partition wall on the third floor, for the removal of the existing partition wall located where the new partition wall will be installed. LESSOR shall approve or disapprove such plans and specifications, or any revisions thereto, as the case may be, within five (5) business days after receipt thereof. LESSOR shall not unreasonably withhold or condition its approval of such plans and specifications or any revisions thereto. Any notice of disapproval given by LESSOR shall state the revisions to the plans and specifications necessary to obtain LESSOR'S approval. Within five (5) business days after receiving any such notice of disapproval, LESSEE shall submit to LESSOR revised plans and

specifications reflecting the modifications reasonably requested by LESSOR. The preceding four (4) sentences shall be repeated until the plans and specifications are approved by LESSOR. As promptly as practicable after the approval by LESSOR of the plans and specifications, LESSEE shall install the partition wall on the ground floor in accordance with the plans and specifications approved by LESSOR. After September 15, 2000, LESSEE shall as promptly as practicable, but prior to the Effective Date for Stage 3 of the Demised Premises, install the partition wall on the third floor in accordance with the plans approved by LESSOR. All work in connection with the installation of the partition wall on the third floor pursuant to this Section (including, without limitation, the removal of the existing partition wall) shall be conducted at times other than during working hours (as hereinafter defined). The term *"working hours*", as used in this Section, shall mean Monday through Friday from 7:00 a.m. to 8:00 p.m. and Saturday from 8:00 a.m. to 12:00 p.m.

(ii) LESSEE shall bear all costs and expenses in connection with the installation of the partition wall on the third floor of the Building, including, without limitation, costs of demolition of the existing partition wall. LESSOR shall pay LESSEE an amount equal to fifty percent (50%) of the reasonable costs incurred by LESSEE to construct the partition wall on the ground floor in accordance with the terms of this *Section 32.4(d)*. LESSOR shall pay LESSEE such amount within fifteen (15) days after the later to occur of (x) the date on which LESSEE has completed the installation of the partition wall on the ground floor in accordance with the terms hereof, or (y) the date on which LESSOR receives LESSEE'S request for payment, which request shall include a statement of the costs incurred and a copy of applicable invoices.

(e) Until the Effective Date for Stage 3 of the Demised Premises, the Existing Tenant and its employees, agents, contractors and representatives shall have the unrestricted right of access twenty four (24) hours a day, seven (7) days a week through the Third Floor Space to the Outer Data Center. Until the Effective Date for Stage 4 of the Demised Premises, the Existing Tenant and its employees, agents, contractors and representatives shall have the unrestricted right of access twenty four (24) hours a day, seven (7) days a week to the Inner Data Center. Notwithstanding anything to the contrary contained in this Lease, the Existing Tenant and its employees, agents, contractors and representatives shall not be required to sign a confidentiality agreement as a condition to admittance to the

Third Floor Space for the purpose of accessing the Inner Data Center and the Outer Data Center prior to the applicable date set forth above. Until the Effective Date for Stage 4 of the Demised Premises, LESSOR and its agents, employees and contractors shall have unrestricted access to the Cables and the Generator for the purpose of inspecting, maintaining, operating, repairing and replacing same. LESSEE shall have the right to construct a temporary corridor in the Demised Premises to provide direct access to the Inner Data Center and the Outer Data Center for the Existing Tenant in accordance with plans approved in advance by LESSOR (which approval shall not be unreasonably withheld, conditioned or delayed).

(f) All work undertaken by LESSEE pursuant to this *Section 32.4* shall (i) be performed by contractors and subcontractors approved by LESSOR (which approval shall not be unreasonably withheld, conditioned or delayed), and (ii) be performed in a good and workmanlike manner and in accordance with all applicable Legal Requirements. LESSOR hereby approves Nova Construction Corp. as the general contractor and construction manager for such work. In connection with all such work, LESSEE and its agents, employees and contractors shall not interfere with (x) the operations of the Existing Tenant or its equipment and facilities, or (y) the operation of equipment and facilities servicing the Building or any portion thereof, including, without limitation, the telecommunications equipment located in the room in which the partition wall will be installed on the ground floor of the Building.

(g) Without limiting LESSEE'S obligations under *Section 14.6*, LESSEE shall indemnify and hold harmless LESSOR and its employees, agents and contractors from and against any and all liability, damages, claims, costs or expenses (including, without limitation, reasonable attorneys' fees) relating to or arising out of or in connection with any interference with the operations of the Cables or the Generator prior to the Effective Date for Stage 4 of the Demised Premises caused by LESSEE or LESSEE'S Visitors.

32.5 LESSOR acknowledges that from time to time during LESSEE'S construction of the Tenant Improvement Work, LESSEE and its contractors may cause sound which can be heard outside of the Demised Premises and vibrations which may be detected outside of the Demised Premises; provided, however, LESSEE hereby agrees that (i) it shall take all practicable efforts to minimize such sounds and vibrations, and (ii) LESSEE shall not cause or permit any sounds or vibrations which would disturb the Existing Tenant, any other tenant or occupant of the Building or any of their employees

or which would interfere with the use and enjoyment of the common areas or leasable areas of the Building (other than the Demised Premises) by the Existing Tenant, any other tenant or occupant of the Building or any of their employees. Without limiting LESSEE'S obligations under *Section 14.6*, LESSEE shall indemnify and hold harmless LESSOR, its employees, agents and contractors, from and against any and all liability, damages, claims, costs or expenses arising out of any claim by the Existing Tenant or any other tenant or permitted occupant of the Building of any disturbance or interference with the use of the Building (other than the Demised Premises) arising out of noise or vibrations caused by LESSEE or LESSEE'S Visitors, together with all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon (including, without limitation, all reasonable attorneys' fees and expenses). LESSEE'S obligations under this Section shall survive the expiration or termination of the Term.

32.6 LESSEE shall pay, or cause LESSEE'S contractor to pay, LESSOR for each calendar month or portion thereof during the "construction period" (as hereinafter defined), an amount equal to one twelfth (1/12) of the product of $1.30 times the amount of the aggregate rentable square footage of the Demised Premises for which an Effective Date has occurred (but not including the rentable square footage of any portion of the Demised Premises which has been separately metered for electricity pursuant to *Section 9.3(a)*). LESSEE shall pay, or cause its contractor to pay, such amount for each calendar month or portion thereof during the construction period on the twenty fifth (25th) day of the applicable calendar month. In the event that the Effective Date for any Stage is a day other than the first day of a calendar month, then the first such monthly payment with respect to such Stage shall be prorated to reflect the actual number of days in such calendar month after the Effective Date for such Stage. In the event that any portion of the Demised Premises becomes separately metered pursuant to *Section 9.3(a)* during any calendar month, then the payment pursuant to this *Section 32.6* with respect to such portion of the Demised Premises for that calendar month shall be prorated to reflect the period within the calendar month prior to the date of separate metering. LESSOR hereby acknowledges that LESSE may cause LESSEE'S contractor to pay the amounts due pursuant to this *Section 32.6* as a cost of completing the Tenant Improvement Work; provided, however, in no event shall such contractor's failure to pay such amounts relieve LESSEE of its liability hereunder. The term *"construction period"* as used in this Section means the period commencing on the date of this Lease

and ending on the date as of which the entire Demised Premises has been separately metered pursuant to *Section 9.3(a)*.

**ARTICLE 33**
**MISCELLANEOUS**

33.1 This Lease may not be amended, modified nor may any obligation hereunder be waived, orally, and no such amendment, modification, termination or waiver, shall be effective unless in writing and signed by the party against whom enforcement thereof is sought. No waiver by LESSOR or LESSEE of any obligation of the other party hereunder shall be deemed to constitute a waiver of the future performance of such obligation by the other party. If any provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto, except as provided in *Article 16*. Upon due performance of the covenants and agreements to be performed by LESSEE under this Lease, LESSOR covenants that LESSEE shall and may at all times peaceably and quietly have, hold and enjoy the Demised Premises during the Term. The table of contents and the article headings are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. *Exhibits A, B, C-1, C-2, D, E-1, E-2, E-3, E-4, E-5, F, G, H, I, and J* annexed hereto are incorporated into this Lease. This Lease will be simultaneously executed in several counterparts, each of which when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes. This Lease shall be governed by and construed in accordance with the laws of the State of New Jersey.

33.2 No act or thing done by LESSOR or LESSOR'S agents during the Term shall be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by LESSOR. No employee of LESSOR or LESSOR'S agents shall have any authority to accept the keys to the Demised Premises prior to the Termination Date and the delivery of keys to any employee of LESSOR or LESSOR'S agents shall not operate as an acceptance of a termination of this Lease or an acceptance of a surrender of the Demised Premises.

33.3 LESSOR'S failure during the Term to prepare and deliver any of the statements, notices or bills set forth in this

Lease shall not in any way cause LESSOR to forfeit or surrender its rights to collect any amount that may have become due and owing to it during the Term.

33.4 LESSOR shall have the right, at any time and from time to time, to request financial information from LESSEE; provided, however, if (a) LESSEE'S stock is traded through a public exchange, and (b) LESSEE reports comprehensive financial information not less frequently than twice annually to the Securities Exchange Commission, which information is readily available to the public, then LESSOR shall not request financial information from LESSEE, except that LESSOR shall have the right to request, and LESSEE shall provide, any supplemental financial information that LESSOR reasonably deems necessary (provided that LESSEE shall not be obligated to provide any such supplemental financial information which it reasonably deems confidential). LESSEE agrees to deliver such financial information to LESSOR within fifteen (15) days after LESSEE'S receipt of said request so long as such information is reasonable and is readily available. LESSOR agrees not to request such financial information more than one (1) time during each calendar year occurring during the Term; provided, however, LESSOR may request such information in connection with (i) any sale, transfer or other disposition of LESSOR'S interest in the Premises and/or the Building, (ii) any financing or refinancing of the Premises and (iii) any assignment of this Lease by LESSEE or any subletting of all or any portion of the Demised Premises by LESSEE notwithstanding any prior request by LESSOR in said calendar year.

33.5 LESSOR hereby waives any statutory lien or right of distraint it may have in any inventory, trade equipment, machinery or other personal property belonging to LESSEE. If LESSEE desires to finance any of its inventory, trade equipment, machinery or other personal property located at the Premises, LESSOR agrees, upon request from LESSEE, to execute, deliver and acknowledge, without charge, a waiver, in form and substance reasonably satisfactory to LESSOR, of any statutory lien or right of distraint in favor of LESSOR in such inventory, trade equipment, machinery or personal property. LESSEE agrees to reimburse LESSOR for all reasonable attorneys' fees and disbursements incurred in connection with the preparation, negotiation and execution of such waiver.

33.6 The submission of this Lease to LESSEE for examination does not constitute an offer to lease the Demised Premises on the terms set forth herein, and this Lease shall

become effective as a lease agreement only upon the execution and delivery of the Lease by LESSOR and LESSEE.

33.7 Subject to all applicable Legal Requirements, LESSEE and LESSEE'S Visitors shall be permitted keyed access to the Demised Premises twenty-four (24) hours per day, seven (7) days per week.

33.8 The term "LESSOR", as used in this Lease, shall mean only the owner of the title to the Premises as of the date in question. Upon the sale, transfer or other conveyance by LESSOR of the Premises, LESSOR shall be released from any and all liability under this Lease arising after the date of such sale, transfer or other conveyance.

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date first above written.

| | |
|---|---|
| WITNESS: | LESSOR:<br>TWO GATEHALL ASSOCIATES, L.L.C. |
| /S/ CHRISTOPHER F. SAMETH | By: /s/ MARK Yeager |
| Christopher F. Sameth | Name: Mark Yeager<br>Title: Authorized Representative |
| WITNESS: | LESSEE:<br>EXODUS COMMUNICATIONS, INC. |
| /S/ MARY ANNE WELLMAN | By: /S/ SAM MOHAMAD |
| Mary Anne Wellman | Name: Sam Mohamad<br>Title: President, WW Sales & International Field Operations |

**EXHIBIT A**
**DESCRIPTION OF LAND**

All that land and premises situate, lying and being in the Township of Parsippany-Troy Hills, County of Morris, and State of New Jersey, more fully described as follows:

BEGINNING AT A CAPPED IRON PIN FOUND ON THE NORTHEASTERLY RIGHT OF WAY LINE OF NJSH ROUTE 10, (A.K.A. MOUNT PLEASANT AVENUE, VARIABLE WIDTH RIGHT OF WAY) SAID POINT BEING ON THE DIVIDING LINE BETWEEN LOT 55 AND LOT 56, BLOCK 175 AND RUNNING, THENCE;

1. ALONG THE DIVIDING LINE BETWEEN LOT 55 AND LOT 56, BLOCK 175, NORTH 38 DEGREES—35 MINUTES—58 SECONDS EAST, A DISTANCE OF 489.37 FEET TO A CAPPED IRON PIN FOUND, THENCE;

2. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 55 AND LOTS 56, 59 & PART OF 6, BLOCK 175, NORTH 38 DEGREES—58 MINUTES —29 SECONDS EAST, A DISTANCE OF 427.51 FEET TO A CONCRETE MONUMENT FOUND, THENCE;

3. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 55 AND LOTS 24, 25, 26, 27, 28, 29, 30 & 31, SOUTH 49 DEGREES—51 MINUTES—16 SECONDS EAST, A DISTANCE OF 785.95 FEET TO A CAPPED IRON PIN FOUND, THENCE;

4. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 55 AND LOTS 32, 33, 34 AND PART OF LOT 35, BLOCK 175, SOUTH 49 DEGREES—42 MINUTES—13 SECONDS EAST, A DISTANCE OF 356.50 FEET TO A CONCRETE MONUMENT FOUND, THENCE;

5. ALONG THE DIVIDING LINE BETWEEN LOT 55 AND LOT 52.02, BLOCK 175, SOUTH 40 DEGREES—17 MINUTES—47 SECONDS WEST, A DISTANCE OF 60.55 FEET TO A CAPPED IRON PIN FOUND ON THE NORTHEASTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE, (60 FOOT WIDE RIGHT WAY), THENCE;

6. ALONG THE NORTHEASTERLY RIGT OF WAY LINE OF GATEHALL DRIVE NORTH 49 DEGREES—54 MINUTES—26 SECONDS WEST, A DISTANCE OF 1.59 FEET TO A POINT OF CURVATURE, THENCE;

7. ALONG THE NORTHERLY RIGHT OF WAY LINE OF GATEHALL DRIVE ON A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET, A CENTRAL ANGLE OF 89 DEGREES—47 MINUTES—49 SECONDS, FOR AN ARC DISTANCE OF 564.21 FEET, ALSO BEARING A CHORD OF

SOUTH 85 DEGREES—11 MINUTES—41 SECONDS WEST, A CHORD DISTANCE OF 508.21 FEET TO A POINT OF TANGENCY, THENCE;

8. ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE, SOUTH 40 DEGREES—17 MINUTES—47 SECONDS WEST, A DISTANCE OF 135.43 FEET TO A CONCRETE MONUMENT FOUND MARKING A POINT OF CURVATURE, THENCE;

9. CONTINUING ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 970.00 FEET, A CENTRAL ANGLE OF 17 DEGREES—14 MINUTES—52 SECONDS, FOR AN ARC LENGTH OF 292.00 FEET. ALSO BEARING A CHORD OF SOUTH 48 DEGREES—55 MINUTES—14 SECONDS WEST, A CHORD DISTANCE OF 290.00 FEET TO A POINT OF TANGENCY, THENCE;

10. CONTINUING ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE, SOUTH 57 DEGREES—32 MINUTES—40 SECONDS WEST, A DISTANCE OF 231.63 FEET TO A CONCRETE MONUMENT FOUND MARKING A POINT OF CURVATURE, THENCE;

11. CONTINUING ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF GATEHALL DRIVE ON A CURE TO THE RIGHT, HAVING A RADIUS OF 65.00 FEET, A CENTRAL ANGLE OF 51 DEGREES—40 MINUTES—51 SECONDS, FOR AN ARC DISTANCE OF 58.63 FEET. ALSO BEARING A CHORD OF SOUTH 83 DEGREES—23 MINUTES—05 SECONDS WEST, A CHORD DISTANCE OF 56.66 FEET TO A POINT OF NON-TANGENCY ON THE NORTHEASTERLY RIGHT OF WAY LINE OF NJSH ROUTE 10, THENCE;

12. ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF NJSH ROUTE 10, NORTH 32 DEGREES—27 MINUTES—20 SECONDS WEST, A DISTANCE OF 500.95 FEET TO A POINT OF CURVATURE, THENCE;

13. CONTINUING ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF NJSH ROUTE 10 ON A CURVE TO THE LEFT, HAVING A RADIUS OF 11,524.20 FEET, A CENTRAL ANGLE OF 00 DEGREES—40 MINUTES—01 SECONDS, FOR AN ARC DISTANCE OF 134.15 FEET. ALSO BEARING A CHORD OF NORTH 32 DEGREES—47 MINUTES—21 SECONDS WEST, A CHORT DISTANCE OF 134.15 FEET TO THE POINT AND PLACE OF BEGINNING.

**EXHIBIT B**
**BASIC RENT**

The Basic Rent shall be payable in equal monthly installments, in advance, on the Basic Rent Payment Dates, commencing on the Commencement Date. The Basic Rent for the Term shall be payable as follows:

(A) For the period from the Commencement Date until December 31, 2005, inclusive, LESSEE shall pay Basic Rent for the Demised Premises as follows:

(i) with respect to Stage 1 of the Demised Premises, for the period from the Commencement Date until December 31, 2005, inclusive, the Basic Rent shall be one million nine hundred eighty eight thousand eight hundred forty and 00/100 dollars ($1,988,840.00) per annum, payable in equal monthly installments of one hundred sixty five thousand seven hundred thirty six and 66/100 dollars ($165,736.66); and

(ii) with respect to Stage 2 of the Demised Premises, for the period from the one hundred eightieth (180th) calendar day after the Effective Date for Stage 2 of the Demised Premises until October 31, 2001, inclusive, the Basic Rent shall be one million nine hundred eighty four thousand eight hundred sixty four and 00/100 dollars ($1,984,864.00) per annum, payable in equal monthly installments of one hundred sixty five thousand four hundred five and 33/100 dollars ($165,405.33), and for the period from November 1, 2001 until December 31, 2005, inclusive, the Basic Rent shall be two million five hundred nineteen thousand twenty and 00/100 dollars ($2,519,020.00) per annum, payable in equal monthly installments of two hundred nine thousand nine hundred eighteen and 33/100 dollars ($209,918.33); and

(iii) with respect to Stage 3 of the Demised Premises, for the period from the one hundred eightieth (180th) calendar day after the Effective Date for Stage 3 of the Demised Premises until December 31, 2005, inclusive, the Basic Rent shall be three hundred one thousand four hundred seventy six and 00/100 dollars ($301,476.00) per annum, payable in equal monthly installments of twenty five thousand one hundred twenty three and 00/100 dollars ($25,123.00); and

(iv) with respect to Stage 4 of the Demised Premises, for the period from the one hundred eightieth (180th) calendar day after the Effective Date for Stage 4 of the Demised

Premises until October 31, 2001, inclusive, the Basic Rent shall be two hundred one thousand two hundred ninety two and 00/100 dollars ($201,292.00) per annum, payable in equal monthly installments of sixteen thousand seven hundred seventy four and 33/100 dollars ($16,774.33), and for the period from November 1, 2001 until December 31, 2005, inclusive, the Basic Rent shall be five hundred eighteen thousand seven hundred eighty four and 00/100 dollars ($518,784.00) per annum, payable in equal monthly installments of forty three thousand two hundred thirty two and 00/100 dollars ($43,232.00); and

(v) with respect to Stage 5 of the Demised Premises, for the period from November 1, 2001 until December 31, 2005, inclusive, the Basic Rent shall be three hundred ninety eight thousand three hundred and 00/100 dollars ($398,300.00) per annum, payable in equal monthly installments of thirty three thousand one hundred ninety one and 66/100 dollars ($33,191.66).

(B) For the period from January 1, 2006 until December 31, 2009, inclusive, the Basic Rent for the Demised Premises shall be six million two hundred eighty eight thousand eight hundred thirty six and 25/100 dollars ($6,288,836.25) per annum, payable in equal monthly installments of five hundred twenty four thousand sixty nine and 68/100 dollars ($524,069.68).

(C) For the period from January 1, 2010 until December 31, 2013, inclusive, the Basic Rent for the Demised Premises shall be six million nine hundred fifty three thousand five hundred ten and 00/100 dollars ($6,953,510.00) per annum, payable in equal monthly installments of five hundred seventy nine thousand four hundred fifty nine and 16/100 dollars ($579,459.16).

**EXHIBIT 10.89**

**AMENDMENT TO LEASE AGREEMENT WITH GEMINI TECHNOLOGY SERVICES FOR A PORTION OF THE KEYBANK PARSIPPANY BUILDING**

**FIRST AMENDMENT TO LEASE AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") made as of the 17 day of January, 2002, by and between TWO GATEHALL ASSOCIATES, L.L.C. (the *"LESSOR"*), a Delaware limited liability company, having an address c/o Gale & Wentworth, LLC, 200 Campus Drive, Florham Park, New Jersey 07932, GEMINI TECHNOLOGY SERVICES, INC. (the *"LESSEE"*), a Delaware corporation, having an address at c/o Deutsche Bank AG, 1251 Avenue of the Americas, Mail Stop NYC 07-2804, New York, New York 10020, and EXODUS COMMUNICATIONS, INC. ("Exodus"), a Delaware corporation, having an address at 2831 Mission College Boulevard, Santa Clara, California, 95054-1838.

**W I T N E S S E T H**

WHEREAS, pursuant to a certain Lease Agreement dated July 6, 2000 (the *"Lease"*), LESSOR leased to Exodus, and Exodus hired from LESSOR, approximately 204,515 rentable square feet of space (the *"Demised Premises"*) in the building commonly known as Two Gatehall Drive, Parsippany, New Jersey; and

WHEREAS, pursuant to an Asset Purchase Agreement dated as of the date hereof between Deutsche Bank, AG, New York Branch (*"Deutsche New York"*) (an affiliate of LESSEE) and Exodus (the *"Asset Purchase Agreement"*), Exodus has agreed to assign all of its right, title and interest as "tenant" under the Lease to LESSEE and Deutsche New York has agreed to cause LESSEE to assume all of the obligations and liabilities of the "tenant" under the Lease, subject however to the terms of the Asset Purchase Agreement; and

WHEREAS, LESSEE and LESSOR desire to modify the Lease in certain respects, all subject to and in accordance with the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual convenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, LESSOR and LESSEE hereby agree as follows:

1. Capitalized terms used herein but not defined herein shall have the meanings given in the Lease.

2. As of the Contingency Satisfaction Date (as that term is defined in *Paragraph 10(a)* of this Amendment), the Lease shall

be deemed amended as follows:

(a) The first sentence of Section 2.3(b) of the Lease shall be deleted in its entirety and the following sentence is inserted in lieu thereof:

Provided no Event of Default is occurring as of the exercise of LESSEE'S extension right or as of the day preceding the commencement of the Option Period in question, then LESSEE shall have the right to extend the Term for the Option Period in question by notice given to LESSOR not less than twelve (12) months, nor more than fifteen (15) months, prior to the commencement of the Option Period in question.

(b) Section 2.3(g) of the Lease shall be deleted in its entirety.

(c) Section 8.1 of the Lease shall be amended by inserting the phrase ", including a data center," immediately following the word "facilities" in the fifth (5th) line thereof.

(d) Subsection 16.7(b)(ii) of the Lease shall be amended by deleting the last sentence of said Subsection.

(e) Section 16.16 of the Lease shall be deleted in its entirety, it being understood that LESSEE shall not have the right to mortgage its interest in the Lease.

(f) Clause (b) of Section 19.1 of the Lease shall be deleted in its entirety.

(g) Article 26 of the Lease shall be amended by deleting the notice addresses for LESSEE and inserting the following addresses in lieu thereof:

Gemini Technology Services, Inc.
c/o Deutsche Bank AG
1251 Avenue of the Americas
Mail Stop NYC 07-2804
New York, New York 10020
Attn. Corporate Real Estate Services, Bruce Bloch
Fax No. (212) 469-3415

With a copy of any default notice to:

Moses & Singer LLP
1301 Avenue of the Americas
New York, New York 10019
Attn. Richard Strauss, Esq.
Fax No. (212) 554-7700

(h) Article 28 of the Lease shall be deleted in its entirety, and the following Article 28 shall be inserted in lieu thereof:

**ARTICLE 28**
**SECURITY**

28.1 (a) On or before the Contingency Satisfaction Date, LESSEE shall deliver to LESSOR a one (1) year, irrevocable, unconditional letter of credit for the benefit of LESSOR in the amount of THIRTY FIVE MILLION DOLLARS ($35,000,000.00 USD), issued by an Acceptable Issuer (as hereinafter defined) and containing, among other provisions, (i) an "evergreen clause" providing that it shall automatically renew as of its initial and each subsequent expiry date unless the issuing bank gives LESSOR written notice of the non-renewal at least sixty (60) days prior to the then applicable expiry date, and (ii) a provision obligating the issuing bank to issue a new letter of credit, without charge, to any assignee of LESSOR'S interest under the Lease, and (iii) a provision stating that the letter of credit shall not in any way be modified or amended without LESSOR'S prior written consent, and (iv) such other commercially reasonable provisions as LESSOR may require from time to time during the Term. Such letter of credit to be delivered by LESSEE on or before the Contingency Satisfaction Date shall be substantially in the form annexed hereto as *Exhibit K*, with any deviations from such form subject to LESSOR's prior written approval, which approval shall not be unreasonably withheld. The term *"Acceptable Issuer"*, as used herein, shall mean a commercial bank having (x) an office within the New York City/New Jersey Metropolitan Area, (y) a rating of A or better by Standard & Poor's or any successor thereto, and (z) a combined capital, surplus and undivided profits of not

less than $1,000,000,000.00. LESSOR hereby acknowledges that, as of the date hereof, based on the representation of LESSEE set forth in *Section 28.7* hereof, Deutsche New York, as a New York branch of Deutsche Bank, AG, satisfies said criteria for an Acceptable Issuer.

(b) The letter of credit and any proceeds thereof shall be held by LESSOR as security for the full and faithful performance by LESSEE of the terms and conditions by it to be observed and performed under the Lease. The letter of credit or any proceeds thereof shall not be considered an advanced payment of rent or a measure of LESSOR'S damages in case of a default by LESSEE. If any Basic Rent, Additional Rent or other sum payable by LESSEE to LESSOR becomes overdue and remains unpaid after the giving of any applicable notice of default required herein and the expiration of any applicable cure period provided for herein, or should LESSEE fail to perform any of the terms and conditions of this Lease after the giving of any applicable notice required hereunder and the expiration of any applicable cure period provided for herein, then LESSOR, at its option, and without prejudice to any other remedy which LESSOR may have on account thereof, shall have the right to draw on the letter of credit and apply the proceeds thereof in the amount required to compensate or reimburse LESSOR, as the case may be, toward the payment of Basic Rent, Additional Rent or other such sum payable hereunder, or loss or damage actually sustained by LESSOR due to the breach or failure to perform on the part of LESSEE, or any other amounts to which LESSOR is entitled under the Lease on account of LESSEE'S breach or failure to perform.

(c) (i) Subject to the provisions hereof, LESSOR agrees that the amount of the letter of credit required as security under the Lease (initially $35,000,000.00 USD) shall be reduced by TWO MILLION DOLLARS ($2,000,000.00 USD) on the first anniversary of the Contingency Satisfaction Date and shall be further reduced by TWO MILLION DOLLARS ($2,000,000.00 USD) on each subsequent anniversary of the Contingency Satisfaction Date, unless an "Event of Default" is occurring as of the anniversary date in question, in which case there shall be no reduction in the letter of credit for such year but subsequent annual reductions

shall continue in accordance with and subject to the provisions hereof provided no Event of Default is occurring as of the applicable subsequent anniversary of the Contingency Satisfaction Date. Notwithstanding anything to the contrary contained in this Article, in no event shall the amount of the letter of credit be reduced below FIFTEEN MILLION DOLLARS ($15,000,000.00 USD).

(ii) Subject to the provisions hereof, if LESSEE receives a Standard & Poor's (or any successor thereto) "long-term issuer credit rating" of A or better and LESSEE gives LESSOR notice thereof, then, for as long as such credit rating remains at A or better, the amount of the letter of credit required as security hereunder shall be reduced to FIFTEEN MILLION DOLLARS ($15,000,000.00 USD) unless the letter of credit has already been reduced to said amount pursuant to subsection (i) above.

(iii) On or after the effective date of any such reduction of the letter of credit pursuant to this *Section 28.1(c)*, LESSEE shall have the right to replace the letter of credit then held by LESSOR in accordance with the provisions of *Section 28.5(d)* hereof. From and after the effective date of any such reduction of the letter of credit and prior to the replacement thereof by LESSEE pursuant to *Section 28.5(d)*, LESSOR shall not draw on the letter of credit in an amount in excess of the then applicable reduced amount for the letter of credit.

(iv) If, after the reduction of the letter of credit pursuant to *Subsection 28.1(c)(ii)*, Standard & Poor's (or any successor thereto) lowers LESSEE'S long-term issuer credit rating to below A, LESSEE shall provide LESSOR with notice thereof, and, provided the amount of the letter of credit then required under *Subsection 28.1(c)(i)* is greater than $15,000,000.00, LESSEE shall, within five (5) business days after any such lowering of LESSEE'S credit rating, deliver to LESSOR either (a) a replacement letter of credit in the face amount of the letter of credit then required pursuant to *Subsection 28.1(c)(i)* and otherwise satisfying the requirements of this *Article 28*, or (b) an amendment to the letter of credit then held by LESSOR increasing the face amount

of the letter of credit to the amount then required pursuant to *Subsection 28.1(c)(i)* and otherwise satisfying all of the requirements of this *Article 28*.

28.2 Conditioned upon the full compliance by LESSEE of all of the terms of this Lease as of the date of LESSOR'S return of the letter of credit pursuant to this Section, and the receipt by LESSOR of all sums due hereunder as of such date, said letter of credit then held by LESSOR, and any proceeds of any draw of the letter of credit by LESSOR which have not been applied by LESSOR in accordance with the provisions hereof, shall be returned to LESSEE within thirty (30) days after the end of the Term, unless there is a continuing Event of Default.

28.3 In the event of bankruptcy or other debtor-creditor proceeding against LESSEE, any proceeds of the letter of credit shall be deemed to be applied first to the payment of rent and other charges due LESSOR for all periods prior to filing of such proceedings.

28.4 In the event of any transfer of title to the Premises, or any assignment of LESSOR'S interest under this Lease, LESSOR shall transfer the letter of credit and any proceeds thereof that have not previously been applied by LESSOR in accordance with the provisions hereof to said transferee or assignee and LESSOR shall thereupon be released by LESSEE from all liability for the return of such letter of credit and/or proceeds, as the case may be; provided, however, LESSOR shall not be obligated to transfer the letter of credit or proceeds in the event of (i) a collateral assignment of its interest under the Lease, or (ii) any transfer of fee title to the Premises where LESSOR retains a leasehold interest in the Premises and retains the lessor's interest under the Lease. In the event of such transfer of the letter of credit and any such proceeds thereof, LESSEE agrees to look to the new lessor for the return of the letter of credit and any proceeds thereof. It is hereby agreed that the provisions of this Section shall apply to every transfer or assignment made of the letter of credit and/or the proceeds thereof to a new lessor. Nothing contained in this *Section 28.4* shall be deemed or construed to relieve or limit LESSEE'S obligations

under *Section 28.5(d)* or under any other provision hereof.

28.5 (a) LESSOR shall have the right to draw down the letter of credit pursuant to *Section 28.1* or *Section 28.5(b)* and to apply the proceeds thereof in accordance with the provisions of *Section 28.1*. To exercise its right to draw on the letter of credit, (i) LESSOR shall present the letter of credit to the issuing bank at the office in New York City/New Jersey set forth on the letter of credit and (ii) LESSOR shall deliver to the issuing bank a statement from LESSOR setting forth the amount of the draw and stating that LESSOR is entitled to draw down the letter of credit pursuant to the provisions of *Section 28.1* or *Section 28.5(b)* of this Lease, as the case may be. If LESSOR exercises its right to draw on the letter of credit, then, within ten (10) business days after demand, LESSEE shall deliver to LESSOR either (x) a replacement letter of credit issued by an Acceptable Issuer in the full amount of the letter of credit then required pursuant to *Section 28.1* and satisfying all of the other requirements of said *Section 28.1*, or (y), provided the issuer of the letter of credit then held by LESSOR continues to be an Acceptable Issuer, an amendment to such letter of credit which restores the face amount thereof to the full amount then required pursuant to *Section 28.1* and which amendment shall otherwise satisfy all of the requirements of *Section 28.1*. Upon receipt of any such replacement letter of credit, LESSOR shall return to LESSEE (1) the replaced letter of credit then held by LESSOR, and (2) any of the proceeds of the draw of such replaced letter of credit which have not been applied by LESSOR in accordance with *Section 28.1*. Upon receipt of any such amendment to the letter of credit then held by LESSOR, LESSOR shall return to LESSEE any of the proceeds of the draw of such letter of credit which have not been applied by LESSOR in accordance with *Section 28.1*.

(b) (i) If any letter credit held by LESSOR is not renewed by the issuer thereof, then, at least forty five (45) days prior to the expiration of the letter of credit, LESSEE shall deliver to LESSOR a replacement letter of credit issued by an Acceptable Issuer, containing the same terms and for the face

amount then required under *Section 28.1*. From time to time throughout the Term (but not more frequently than one (1) time per annum) LESSOR may request that LESSEE deliver to LESSOR a letter from the issuing bank of the letter of credit confirming that the letter of credit remains in full force and effect. Within ten (10) business days after receiving any such request, LESSEE shall deliver to LESSOR a statement (the *"Confirming Statement"*) executed by the issuing bank, in form reasonably satisfactory to LESSOR, confirming that the letter of credit remains in full force and effect and stating the then applicable expiration date (subject to automatic extension) of the letter of credit. In addition, if at any time during the Term the issuing bank of the letter of credit then being held by LESSOR (including, without limitation, Deutsche New York) no longer satisfies all of the criteria for an Acceptable Issuer, because (x) Standard & Poor's (or any successor) lowers the rating of said issuing bank (or, in the case of Deutsche New York, Standard & Poor's lowers the rating of Deutsche Bank, AG) below A, or (y) said issuing bank (or Deutsche Bank, AG, if the issuer is Deutsche New York) no longer has combined capital, surplus and undivided profits of not less than $1,000,000,000.00 USD, or (z) said issuing bank no longer has an office within the New York City/ New Jersey Metropolitan Area, then LESSEE shall deliver to LESSOR, within thirty (30) days after the lowering of the rating, the reduction in combined capital, surplus and undivided profits below said level, or the closing by the issuing bank of its last office in the New York City/ New Jersey Metropolitan Area, as the case may be, a replacement letter of credit issued by an Acceptable Issuer containing substantially the same terms and for the face amount then required under *Section 28.1*.

(ii) In the event LESSEE fails to deliver any replacement letter of credit or Confirming Statement, as the case may be, on or before the date set forth in *Subsection 28.5(b)(i)*, LESSOR shall have the right to draw down the entire amount of the letter of credit; provided, however, (1) in the event that LESSEE'S obligation to deliver a replacement letter of credit arises as a result of the issuing bank of the letter of credit no longer satisfying all of the criteria of an Acceptable Issuer, then, unless the

issuing bank is Deutsche New York or any of its affiliates, LESSOR shall not draw on the letter of credit pursuant to this *Subsection 28.5(b)(ii)* unless LESSEE has failed to deliver to LESSOR a replacement letter of credit satisfying the requirements hereof on or before the later to occur of (x) the tenth (10th) day after LESSOR gives LESSEE notice that the issuing bank is no longer an Acceptable Issuer, or (y) the thirtieth (30th) day after the date on which the issuing bank no longer satisfies all of the criteria of an Acceptable Issuer, and (2) in the event LESSEE fails to deliver any Confirming Statement, LESSOR shall not draw on the letter of credit on account of such failure prior to the forty fifth (45th) day before the expiration of the then current term of the letter of credit. Any proceeds of the draw of the letter of credit made pursuant to this *Subsection 28.5(b)(ii)* shall be held by LESSOR in a trust account or accounts with a commercial bank or banks selected by LESSOR in its sole discretion; such proceeds, unless applied by LESSOR in accordance with the provisions hereof, shall not be commingled with other funds of LESSOR or any other party. Any such proceeds may be applied by LESSOR at any time in accordance with the provisions of *Section 28.1(b)*. Notwithstanding that such funds are held in a trust account, any interest which accrues thereon shall be the property of LESSOR and shall not be paid to LESSEE.

(c) Notwithstanding anything to the contrary contained herein, LESSEE hereby expressly acknowledges that the drawing down of said letter of credit shall not operate as a waiver of or preclude LESSOR from exercising any of LESSOR'S other rights and remedies under this Lease. In addition, LESSEE hereby agrees that LESSOR shall not be required to give LESSEE any prior notice of the drawing down of the letter of credit, and LESSEE hereby waives any such notice to which it may be entitled. The provisions of this Section shall not be deemed or construed as a waiver of any of LESSEE'S rights under *Article 19* of the Lease.

(d) (i) In the event of an assignment of this Lease by LESSOR, LESSEE shall obtain, at its sole cost and expense, either (x) a new letter of credit from the issuing bank containing the same terms and

for the same face amount as the letter of credit then held by LESSOR which names the new lessor as the beneficiary or (y) the written consent of the issuing bank to the assignment of the then existing letter of credit from the existing LESSOR to the new lessor in form and substance reasonably satisfactory to the new lessor.

(ii) LESSEE shall have the right from time to time throughout the Term to deliver to LESSOR a replacement letter of credit issued by an Acceptable Issuer in the full amount then required under *Section 28.1* and satisfying all of the other requirements for the letter of credit under said *Section 28.1*.

(iii) If LESSEE obtains such a new letter of credit or replacement letter of credit, LESSOR shall surrender the existing letter of credit to LESSEE simultaneously with LESSOR'S receipt of the new or replacement letter of credit. The parties agree to coordinate the delivery of a new letter of credit and surrender of the existing letter of credit so that it is done on the effective date of the assignment of this Lease by LESSOR. In the event that the written consent of the issuing bank to the assignment of the then existing letter of credit is to be delivered pursuant to *Subsection 28.5(d)(i)*, LESSEE and LESSOR shall coordinate such delivery such that it is done on or prior to the effective date of the assignment of the Lease by LESSOR.

28.6. If Standard & Poor's, or any successor thereto, shall change its rating system, then the "A or better" rating required under this Article shall be automatically adjusted to the comparable rating under the new system. If Standard & Poor's, or its successor, shall cease to maintain or publish a rating, then a comparable rating shall be utilized from a recognized authority (comparable to Standard & Poor's) in lieu of the rating required hereunder.

28.7 LESSEE hereby represents and warrants to LESSOR that (i) Deutsche New York is an unincorporated branch bank of Deutsche Bank, AG, a banking corporation organized under the laws of the Federal Republic of Germany, and, (ii) Deutsche Bank, AG will be bound by, and will have liability to LESSOR for,

all of the obligations of Deutsche New York under any letter of credit issued to LESSOR by Deutsche New York pursuant to the terms hereof.

(i) Section 31.9 of the Lease shall be deleted in its entirety.

(j) *Exhibit C-1* to the Lease shall be deleted in its entirety, and *Exhibit C-1* to this Amendment shall be inserted in lieu thereof.

(k) *Exhibit K* to this Amendment shall be inserted into the Lease as *Exhibit K* thereto.

3. (a) LESSEE hereby acknowledges that LESSOR and Exodus entered into certain agreements, pursuant to *Section 2.2(b)* of the Lease, memorializing the Effective Date with respect to Stage 1 of the Demised Premises, Stage 2 of the Demised Premises, Stage 3 of the Demised Premises, and Stage 4 of the Demised Premises, dated, respectively, July 25, 2000, August 14, 2000, October 23, 2000, and December 11, 2000 (collectively, the *"Effective Date Agreements"*). Copies of the Effective Date Agreements have been delivered to LESSEE. LESSEE hereby confirms the respective Effective Dates for Stage 1 of the Demised Premises, Stage 2 of the Demised Premises, Stage 3 of the Demised Premises, and Stage 4 of the Demised Premises, as set forth in the Effective Date Agreements.

(b) Exodus hereby acknowledges that Exodus failed to execute and deliver to LESSOR such an agreement memorializing the Effective Date with respect to Stage 5 of the Demised Premises, as required by *Section 2.2(b)* of the Lease. Exodus hereby agrees, and LESSEE hereby acknowledges, that (i) LESSOR has delivered Stage 5 of the Demised Premises in accordance with the Lease; (ii) the Effective Date for Stage 5 of the Demised Premises is April 13, 2001; (iii) Basic Rent with respect to Stage 5 of the Demised Premises is payable in accordance with *Exhibit B* to the Lease; and (iv) LESSEE is not entitled to any credit against Basic Rent under *Section 2.1(c)* of the Lease.

4. LESSEE shall accept the Demised Premises in its "AS IS" physical condition and state of repair as of the Contingency Satisfaction Date. In this regard, LESSOR shall have no obligation to do any work or perform any services to the Demised Premises or the Premises in connection with this Amendment; provided however, this *Paragraph 4* shall not be deemed or

construed to relieve LESSOR of any of its maintenance or repair obligations expressly set forth in the Lease or relieve Exodus of its obligations under the Lease or the Asset Purchase Agreement.

5. (a) LESSEE hereby certifies to LESSOR that, as of the date hereof, LESSEE has no knowledge of any default, or any event or condition which, with the passage of time or the giving of notice, or both, would constitute a default, by LESSOR under the Lease.

(b) LESSEE acknowledges and agrees that neither LESSOR, nor any agent or representative of LESSOR has made, and LESSOR is not liable or responsible for or bound in any manner by, any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Building, the Demised Premises, the Lease, this Amendment, or any other matter or thing with respect thereto, except as expressly set forth in the Lease and except as expressly set forth in *Paragraph 5(c)* hereof.

(c) LESSOR hereby certifies to LESSEE that, as of the date hereof, (i) Exodus has paid LESSOR all rental and other amounts currently due and owing to LESSOR under the Lease, except for the amounts specified in Section I of *Schedule 1* annexed hereto and made a part hereof and except for late charges and interest payable under the Lease relating to such amounts (the late charges and interest payable with respect to the amounts specified in Section I of *Schedule 1* are hereinafter called the *"Current Late Charges"*), (ii) LESSOR has no knowledge of any default, or any event or condition which, with the passage of time or the giving of notice, or both, would constitute a default, by Exodus under the Lease, except as listed on *Schedule 1*, (iii) LESSOR has received no written notice from Exodus that Exodus has assigned its interest in the Lease or sublet all or any portion of the Demised Premises, and (iv) the Lease has not been amended. Within five (5) business days after receiving a written request therefor from LESSEE made prior to the Contingency Satisfaction Date, LESSOR shall execute and deliver to LESSEE a supplemental statement certifying that, as of the date of the supplemental statement, (i) LESSOR has no knowledge of any default, or any event or condition which, with the passage of time or the giving of notice, or both, would constitute a default, by Exodus under the Lease, except as listed in such supplemental statement, (ii) LESSOR has received no written notice from Exodus that Exodus has assigned its interest under the Lease or sublet all or any portion of the

Demised Premises, except as listed in such supplemental amendment, and (iii) the Lease has not been amended, except as specified in such supplemental statement. Provided LESSEE gives LESSOR the advanced notice specified above, which notice indicates the closing date under the Asset Purchase Agreement, and requests the delivery of such supplemental statement on such date, LESSOR shall send the notice for receipt by LESSEE on such closing date in accordance with the Provisions of *Paragraph 11* hereof; provided, however, LESSOR shall have no liability to LESSEE in the event LESSEE does not receive such statement on the closing date. LESSOR hereby agrees that, unless this Amendment is cancelled pursuant to *Paragraph 10(c)* hereof, LESSOR waives the payment of the Current Late Charges or any other late charges or interest which may hereafter accrue under the Lease related to the amounts reflected in Section I of *Schedule 1*; provided, however, except as expressly set forth in this sentence, nothing contained herein shall be deemed or construed as a waiver by LESSOR of any future late charges or interest payments due under the Lease.

(d) LESSOR hereby agrees that it shall not enter into any amendment to the Lease with Exodus without the prior written consent of LESSEE.

6. LESSEE hereby acknowledges that simultaneously with the execution of this Amendment, LESSEE has entered into a nondisturbance agreement satisfying the requirements of *Section 23.1(b)* of the Lease with the holder of the mortgage affecting the Premises as of the date hereof.

7. On or before the Contingency Satisfaction Date, LESSEE shall deliver to LESSOR the letter of credit required under *Article 28* of the Lease.

8. Except as expressly provided in this Amendment, all of the terms and conditions of the Lease shall remain unmodified and shall continue in full force and effect, and are hereby ratified and confirmed.

9. (a) LESSEE represents and warrants to LESSOR that LESSEE has not dealt with any real estate broker or sales representative in connection with the Asset Purchase Agreement or this Amendment, other than Insignia/ESG, Inc. (*"LESSEE'S Broker"*) and CB Richard Ellis, Inc. and CSFB Realty, Inc. (collectively, the *"Exodus Brokers"*). LESSEE shall pay, or cause to be paid, prior to or simultaneously with the occurrence of the Contingency Satisfaction Date, any and all sums due LESSEE'S Broker in connection with the Asset Purchase Agreement

and the transactions contemplated thereby and/or this Amendment, and, after the Contingency Satisfaction Date, shall provide LESSOR with evidence of the payment thereof within five (5) business days after receiving any request therefor from LESSOR. LESSEE hereby agrees to indemnify, defend and hold harmless LESSOR, LESSOR'S managing agent, and the respective members, partners, directors, officers and employees of the foregoing entities from and against any threatened or asserted claims, liabilities, losses or judgements (including reasonable attorneys' fees and disbursements) by any broker or sales representative, including LESSEE'S Broker, but excluding the Exodus Brokers, claiming or alleging to have dealt with LESSEE in connection with the Asset Purchase Agreement or this Amendment. This indemnification shall survive the expiration or earlier termination of the Lease or the cancellation of this Amendment.

(b) Exodus represents and warrants to LESSOR that Exodus has not dealt with any real estate broker or sales representative in connection with the Asset Purchase Agreement or this Amendment, other than LESSEE'S Broker and the Exodus Brokers. Exodus shall pay, or cause to be paid, prior to or simultaneously with the occurrence of the Contingency Satisfaction Date, any and all sums due the Exodus Brokers in connection with the Asset Purchase Agreement and the transactions contemplated thereby and/or this Amendment, and shall provide LESSOR with evidence of the payment thereof within five (5) days after receiving a request therefor from LESSOR. Exodus hereby agrees to indemnify, defend and hold harmless LESSOR, LESSOR'S managing agent, and the respective members, partners, directors, officers and employees of the foregoing entities from and against any threatened or asserted claims, liabilities, losses or judgements (including reasonable attorneys' fees and disbursements) by any broker or sales representative, including the Exodus Brokers but excluding LESSEE'S Broker, claiming or alleging to have dealt with Exodus in connection with the Asset Purchase Agreement or this Amendment. This indemnification shall survive the expiration or earlier termination of the Lease or the cancellation of this Amendment.

(c) LESSOR represents and warrants to LESSEE that LESSOR has not dealt with any real estate broker or sales representative in connection with this Amendment, other than LESSEE'S Broker and the Exodus Brokers. LESSOR hereby agrees to indemnify, defend and hold harmless LESSEE and LESSEE'S directors, officers and employees from and against any

threatened or asserted claims, liabilities, losses or judgements (including reasonable attorneys' fees and disbursements) arising out of or in connection with a breach of the foregoing representation by LESSOR. This indemnification shall survive the expiration or earlier termination of the Lease or the cancellation of this Amendment.

10. (a) LESSOR and LESSEE acknowledge and agree that this Amendment is contingent upon the occurrence of each of the following conditions:

(1) a final non-appealable order in the form of *Schedule 2* annexed hereto (the *"Sale Order"*) has been entered by the United States Bankruptcy Court for the District of Delaware (the *"Bankruptcy Court"*) and there shall be no unsatisfied conditions to the Sale Order's effectiveness;

(2) all pre-petition and post-petition defaults under the Lease have been cured in accordance with the Sale Order as of the date of the execution and delivery of the Assignment and Assumption (as hereinafter defined) by LESSEE and Exodus, including, without limitation, those specified in *Schedule 1* annexed hereto;

(3) LESSEE and Exodus shall have executed and unconditionally delivered to each other and to LESSOR an assignment and assumption of the Lease in accordance with the Sale Order in the form annexed hereto as *Schedule 3* (the *"Assignment and Assumption"*); and

(4) a letter of credit satisfying all of the requirements of Article 28 of the Lease, as modified by this Amendment, shall have been delivered to LESSOR and any conditions to the effectiveness of such delivery shall have been satisfied.

The term *"Contingency Satisfaction Date"*, as used herein, means the date on which the last of the conditions set forth in the immediately preceding sentence has been satisfied. Within five (5) business days after the occurrence of the Contingency Satisfaction Date, LESSOR and LESSEE shall execute and deliver to each other an agreement memorializing the occurrence of the Contingency Satisfaction Date and confirming that the cancellation right set forth in *Paragraph 10(c)* hereof is null and void and of no further force or effect, provided, however, the failure to execute and deliver such agreement shall not affect the occurrence of the Contingency Satisfaction Date.

(b) LESSEE agrees that it shall not enter into the Assignment and Assumption until all other conditions of the Contingency Satisfaction Date set forth in *Paragraph 10(a)* hereof have been satisfied.

(c) If the Contingency Satisfaction Date has not occurred on or before the Outside Date (as hereinafter defined), LESSOR and LESSEE shall each have the right to cancel this Amendment by notice given to the other party at any time thereafter but prior to the occurrence of the Contingency Satisfaction Date whereupon, except as expressly set forth herein, this Amendment shall be null and void and of no further force and effect. The term *"Outside Date"*, as used herein, means March 31, 2002; provided, however, LESSEE shall have the right by notice given to LESSOR on or before March 31, 2002 (time being of the essence with respect to such notice) to extend the Outside Date to a date specified by LESSEE in such notice, which date shall not be later than June 3, 2002, provided that at the time of the giving of such notice the following conditions shall be satisfied: (1) Exodus shall have paid all rental and other amounts then due and payable under the Lease or provided LESSOR which adequate assurances of the payment of all rental and other amounts which may be due or become due under the Lease prior to the Outside Date (as extended) in the form of a letter of credit or other security reasonably satisfactory to LESSOR, and (2) the Asset Purchase Agreement remains in full force and effect. If the Asset Purchase Agreement is terminated prior to the Contingency Satisfaction Date, LESSEE shall give LESSOR notice thereof within five (5) days after the date of such termination, and LESSOR and LESSEE shall each have the right to cancel this Amendment by notice given to the other party at any time after the termination of the Asset Purchase Agreement but prior to the occurrence of the Contingency Satisfaction Date whereupon, except as expressly set forth herein, this Amendment shall be null and void and of no further force and effect.

11. Prior to the Contingency Satisfaction Date, all notices or other communications given by LESSEE or LESSOR to the other hereunder shall be in writing and shall be given in accordance with Article 26 of the Lease as modified by *Paragraph 2* of this Amendment notwithstanding that such modifications do not become effective until the Contingency Satisfaction Date.

12. LESSOR is currently holding a letter of credit as security for Exodus' performance of its obligations under the

Lease pursuant to Article 28 thereof. Nothing contained in this Amendment shall be deemed or construed as a waiver of any of LESSOR'S rights under Article 28, including, without limitation, its right to draw on said letter of credit and apply the proceeds thereof in accordance with said Article 28. Within fifteen (15) days after the occurrence of the Contingency Satisfaction Date, LESSOR shall deliver to Exodus said letter of credit, if it has not been delivered to the issuer thereof, together with the proceeds of any draw of said letter of credit which have not been applied by LESSOR in accordance with Article 28 of the Lease. For the purposes of this *Paragraph 12*, Article 28 of the Lease shall mean Article 28 in its form prior to amendment pursuant to the terms of this Amendment.

13. This Amendment may not be changed orally and shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns and legal representatives. This Amendment embodies and constitutes the entire understanding between the parties with respect to the subject matter hereof and all prior agreements, representations and statements, oral or written, relating to the subject matter hereof, are merged into this Amendment.

14. If any provision of this Amendment shall be held invalid or unenforceable according to law, the remaining provisions herein shall not be affected thereby and shall continue in full force and effect.

15. This Amendment may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

16. The mailing or delivery of this document or any draft of this document by LESSOR or its agent to LESSEE, its agent or attorney, shall not be deemed an offer by LESSOR on the terms set forth in this document or draft, and this document or draft may be withdrawn or modified by LESSOR or its agent at any time and for any reason. The purpose of this paragraph is to place LESSEE on notice that this document or draft shall not be effective, nor shall LESSEE have any rights with respect hereto, unless and until both LESSOR and LESSEE shall execute this document.

IN WITNESS WHEREOF, the parties hereto have signed this Amendment as of the date first above written.

WITNESS:

LESSOR:

TWO GATEHALL ASSOCIATES, L.L.C

By: /s/ CHRISTOPHER F. SAMETH
Name: Christopher F. Sameth
Title: Authorized Representative

WITNESS:

LESSEE:

GEMINI TECHNOLOGY SERVICES, INC.

By: /s/ D. L. WIENER
Name: D. L. Wiener
Title: Vice President

By: /s/ HOWARD BECKER
Name: Howard Becker
Title: Vice President

Exodus executes this Amendment solely for the purpose of agreeing to the provisions of *Paragraphs 3(b), 9(b) and 12* hereof.

WITNESS:

EXODUS COMMUNICATIONS, INC.

By: /s/ LAURIE D. PRIDDY
Name: Laurie D. Priddy
Title: EVP Worldwide Operations

**EXHIBIT 23.3**

**CONSENT OF ERNST & YOUNG LLP**

**CONSENT OF INDEPENDENT AUDITORS**

We consent to the reference to our firm under the caption "Financial Statements" and to the use of our report dated October 21, 2002 on the Statement of Revenues over Certain Operating Expenses for the Harcourt Austin Building and our report dated September 26, 2002 on the Statement of Revenues over Certain Operating Expenses for the IRS Long Island Buildings, in Amendment No. 1 to the Registration Statement (Form S-11 No. 333-85848) and related Prospectus of Wells Real Estate Investment Trust, Inc. for the registration of 330,000,000 shares of its common stock.

/s/ ERNST & YOUNG LLP

Atlanta, Georgia
October 25, 2002

**EXHIBIT 23.4**

**CONSENT OF ERNST & YOUNG LLP**

**CONSENT OF INDEPENDENT AUDITORS**

We consent to the reference to our firm under the caption "Financial Statements" and to the use of our report dated January 31, 2002 on the Statement of Revenues over Certain Operating Expenses for the KeyBank Parsippany Building, in Amendment No. 1 to the Registration Statement (Form S-11 No. 333-85848) and related Prospectus of Wells Real Estate Investment Trust, Inc. for the registration of 330,000,000 shares of its common stock.

/s/ ERNST & YOUNG LLP

New York, New York
October 25, 2002

**EXHIBIT 24.1**

**POWER OF ATTORNEY**

**POWER OF ATTORNEY**

Each person whose signature appears below hereby constitutes and appoints Leo F. Wells, III and Douglas P. Williams, or either of them acting singly, as his true and lawful attorney-in-fact, for him and in his name, place and stead, to execute and sign any and all amendments, including any post-effective amendments, to the Registration Statement on Form S-11 of Wells Real Estate Investment Trust, Inc. or any additional Registration Statement filed pursuant to Rule 462 and to cause the same to be filed with the Securities and Exchange Commission hereby granting to said attorneys-in-fact and each of them full power and authority to do and perform all and every act and thing whatsoever requisite or desirable to be done in and about the premises as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all acts and things that said attorneys-in-fact or either of them may do or cause to be done by virtue of these presents.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Power of Attorney has been signed below, effective as of April 5, 2002, by the following persons and in the capacities indicated below.

| Signature | Title |
|---|---|
| /s/ LEO F. WELLS, III<br>**Leo F. Wells, III** | President and Director<br>(Principal Executive Officer) |
| /S/ DOUGLAS P. WILLIAMS<br>**Douglas P. Williams** | Executive Vice President and Director<br>(Principal Financial and Accounting Officer) |
| /S/ JOHN L. BELL<br>**John L. Bell** | Director |
| /S/ RICHARD W. CARPENTER<br>**Richard W. Carpenter** | Director |
| /S/ BUD CARTER<br>**Bud Carter** | Director |
| /S/ WILLIAM H. KEOGLER, JR.<br>**William H. Keogler, Jr.** | Director |
| /S/ DONALD S. MOSS<br>**Donald S. Moss** | Director |
| /S/ WALTER W. SESSOMS<br>**Walter W. Sessoms** | Director |
| /S/ NEIL H. STRICKLAND<br>**Neil H. Strickland** | Director |

**EXHIBIT 24.2**

**POWER OF ATTORNEY**

**POWER OF ATTORNEY**

The person whose signature appears below hereby constitutes and appoints Leo F. Wells, III and Douglas P. Williams, or either of them acting singly, as his true and lawful attorney-in-fact, for him and in his name, place and stead, to execute and sign any and all amendments, including any post-effective amendments, to the Registration Statement on Form S-11 of Wells Real Estate Investment Trust, Inc. or any additional Registration Statement filed pursuant to Rule 462 and to cause the same to be filed with the Securities and Exchange Commission hereby granting to said attorneys-in-fact and each of them full power and authority to do and perform all and every act and thing whatsoever requisite or desirable to be done in and about the premises as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all acts and things that said attorneys-in-fact or either of them may do or cause to be done by virtue of these presents.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Power of Attorney has been signed below, effective as of July 10, 2002, by the following person and in the capacity indicated below.

| Signatures | Title |
|---|---|
| /s/ MICHAEL R. BUCHANAN | Director |
| **Michael R. Buchanan** | |