Table of Contents

As filed with the Securities and Exchange Commission on July 15, 2002

Registration No. 333-85848

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

# AMENDMENT NO. 2
# 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.

**CALCULATION OF REGISTRATION FEE**

| Title of Securities Being Registered | Amount Being Registered | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee(3) |
|---|---|---|---|---|
| Common Stock, $.01 par value | 330,000,000 | $ 10.00 | $3,300,000,000 | |
| Common Stock, $.01 par value(1) | 6,600,000 | $ 12.00 | $ 79,200,000 | $ 310,887 |
| Soliciting Dealer Warrants(2) | 6,600,000 | $ 0.0008 | $ 5,280 | |

(1) Represents shares which are issuable upon exercise of warrants issuable to Wells Investment Securities, Inc. (the Dealer Manager) or its assignees pursuant to that certain Warrant Purchase Agreement between the Registrant and the Dealer Manager.
(2) Represents warrants issuable to the Dealer Manager to purchase 6,600,000 shares pursuant to the Warrant Purchase Agreement.
(3) Registrant previously paid a registration fee of $318,174 upon its initial filing of the Registration Statement which included an original registration of 13,200,000 warrants, so the Registrant overpaid its filing fee by $7,287 and no amounts need to be remitted with this filing.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

**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 , 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 , 2002

## TABLE OF CONTENTS

## 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. 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 $1,148,954,134 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 $1,148,954,134 raised in the third offering, we have invested $627,067,589 in real estate properties and, as of June 30, 2002, we have $344,706,229 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 , 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 and 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 the 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 , 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 the 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 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 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 shall 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 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 | Positin(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 | Position |
|---|---|---|
| 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 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 equal 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 Company, 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 prevail 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. 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.

| 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. | Alpharetta, GA | 100% | $ 15,100,000 | 66,811 | $ 1,344,905 |
| | Koninklijke Philips Electronics N.V. | | | | 34,396 | $ 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 | 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. | Schaumburg, IL | 100% | $32,225,000(2) | 129,157 | $ 2,067,204 |
| | The Apollo Group, Inc. | | | | 28,322 | $ 477,226 |
| | Global Knowledge Network | | | | 22,028 | $ 393,776 |
| | Various other tenants | | | | 8,884 | $ 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% | $ 5,545,700 | 268,290 | $4,225,860(4) |
| 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. | Oklahoma City, OK | 55.0% | $ 15,300,000 | 103,500 | $ 1,242,000 |
| | Jordan Associates, Inc. | | | | 25,000 | $ 294,500 |
| Metris Minnesota | Metris Direct, Inc. | Minnetonka, MN | 100% | $ 52,800,000 | 300,633 | $ 4,960,445 |
| Stone & Webster | Stone & Webster, Inc. | Houston, TX | 100% | $ 44,970,000 | 206,048 | $ 4,533,056 |
| | SYSCO Corporation | | | | 106,516 | $ 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 | | | | **$1,016,787,664** | **7,951,248** | **$110,025,835(4)** |

(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) 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 | 8.5% | 638,722 | 8.0% | $ 9,023,417 | 8.2% |
| California | 4 | $ 40,924,206 | 4.0% | 320,336 | 4.0% | $ 5,047,615 | 4.6% |
| Colorado | 5 | $ 63,010,058 | 6.2% | 483,334 | 6.1% | $ 7,180,677 | 6.5% |
| Florida | 6 | $ 83,452,854 | 8.2% | 582,591 | 7.3% | $ 8,243,917 | 7.5% |
| Georgia | 3 | $ 70,600,000 | 6.9% | 439,894 | 5.5% | $ 8,086,981 | 7.4% |
| Illinois | 3 | $ 121,905,940 | 12.0% | 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 | 8.0% | 409,253 | 5.1% | $ 10,501,699 | 9.5% |
| Michigan | 4 | $ 76,015,000 | 7.5% | 443,731 | 5.6% | $ 7,503,567 | 6.8% |
| Minnesota | 1 | $ 52,800,000 | 5.2% | 300,633 | 3.8% | $ 4,960,445 | 4.5% |
| New Jersey | 1 | $ 33,648,156 | 3.3% | 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 | 3.3% | 286,786 | 3.6% | $ 3,261,402 | 3.0% |
| Pennsylvania | 2 | $ 20,291,200 | 2.0% | 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 | 5.3% | 987,460 | 12.4% | $ 5,600,433 | 5.1% |
| Texas | 6 | $ 150,115,700 | 14.8% | 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% |
| **Total** | **53** | **$1,016,787,664** | **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% |
| | 7,951,248 | 100.0% | $110,025,835 | 100.00% | $99,374,066 | 100.0% |

(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. The Company does not have control over the operations of the joint ventures; however, it does exercise significant influence. Accordingly, investment 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, Inc. (TRW), which remains an obligor on the Experian lease, 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/TRW lease is $3,438,277. Experian/TRW, 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/TRW lease, assigned its interest in the Experian/TRW lease to Experian in 1996 but remains as an obligor of the Experian/TRW lease.

*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 Technologies, Inc. (Agilent) leases 66,811 rentable square feet of the Agilent Atlanta Building (66%). 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 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 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 | Building | Rentable Sq. Ft. | Percentage of Building |
|---|---|---|---|
| TCI Great Lakes, Inc. | Windy Point I | 129,157 | 69% |
| The Apollo Group, Inc. | Windy Point I | 28,322 | 15% |
| Global Knowledge Network, Inc. | Windy Point I | 22,028 | 12% |
| Multiple Tenants | Windy Point I | 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 lease commenced in September 2000 and expires in December 2011. Metris has the right to renew the Metris 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 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 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 lease commenced in November 2000 and expires in October 2010. Motorola has the right to extend the Motorola 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 lease is $3,324,428.

The Motorola 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 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 yearly 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 yearly 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 lease commenced in August 1998 and expires in August 2005. Motorola has the right to extend the Motorola lease for four additional five-year periods of time at the then-prevailing market rental rate. The current annual rent payable under the Motorola 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 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 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 lease. See the property description for the Metris Minnesota Building above for a detailed description of Metris and Metris Companies, Inc.

The Metris lease commenced in February 2000 and expires in January 2010. Metris has the right to extend the Metris lease for two additional five-year periods of time. The monthly base rent payable for the renewal terms of the Metris lease shall be equal to the then-current market rate. The current annual base rent payable for the Metris 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 Lakewood, 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. 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 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 Company 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 (Code) to be taxed as a REIT under the 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 $185,291,196 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 $13,117,293 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 |

| | 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 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 | $ 10,779,745 | $ 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 | 613,034 | 299,094 |
| Funds from operations (FFO) | 17,209,979 | 6,837,455 |
| Adjustments: | | |
| Loan cost amortization | 175,462 | 214,757 |
| Straight line rent | (348,808) | (616,465) |
| Straight line rent—unconsolidated partnerships | (52,995) | (39,739) |
| Lease acquisition fees paid | 400,000 | 0 |
| Lease acquisition fees paid—unconsolidated partnerships | 0 | (2,356) |
| Adjusted funds from operations (AFFO) | $ 17,383,639 | $ 6,393,653 |
| **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 $1,148,954,134 from the sale of approximately 114,895,413 shares in our third public offering. Accordingly, as of June 30, 2002, we had received aggregate gross offering proceeds of approximately $1,456,365,246 from the sale of approximately 145,636,525 shares in our three prior public offerings. After payment of $50,546,025 in acquisition and advisory fees and acquisition expenses, payment of $163,626,948 in selling commissions and organization and offering expenses, and common stock redemptions of $12,193,121 pursuant to our share redemption program, as of June 30, 2002, we had raised aggregate net offering proceeds available for investment in properties of $1,229,999,152, out of which $885,292,923 had been invested in real estate properties, and $344,706,229 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-US 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, 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 are 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 144,417,213 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 structure is utilized generally to provide for the acquisition of real property from owners who desire to defer taxable gain otherwise to be recognized by them upon the disposition of their property. Such owners may also desire to achieve diversity in their investment and other benefits afforded to owners of stock 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 requires that Wells OP be operated in a manner that will enable the Wells REIT to (1) 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 , 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. 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 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.

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

**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 Arthur Andersen LLP (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 | Buildings and Improvements | Construction in Progress | 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 (the "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 Wells REIT dated July , 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 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 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 liquidate an investment in 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 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 "Investor 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 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 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 Wells REIT. If additional investments in Wells REIT are made, the investor agrees to notify 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 Wells REIT. The investor agrees to notify 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>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 Wells REIT.

**IF YOU NEED FURTHER ASSISTANCE IN COMPLETING THIS SUBSCRIPTION AGREEMENT SIGNATURE PAGE, PLEASE CALL 1-800-448-1010**

Table of Contents


# 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)**

Table of Contents

## 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 dividends be paid to me at my address listed under Section 4
- ☐ 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 |

## 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

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

Overnight address:
6200 The Corners Parkway, Suite 250
Atlanta, Georgia 30092-2295

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 , 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 , 2002**

## PART II

## INFORMATION NOT REQUIRED IN PROSPECTUS

**Item 31** ***Other Expenses of Issuance and Distribution***

Following is an itemized statement of the expenses of the offering and distribution of the securities to be registered, other than underwriting commissions:

| | Amount |
|---|---|
| SEC Registration Fee | $ 318,174 |
| NASD Filing Fee | 30,500 |
| Printing Expenses | 5,000,000 |
| Legal Fees and Expenses | 800,000 |
| Accounting Fees and Expenses | 500,000 |
| Blue Sky Fees and Expenses | 500,000 |
| Sales and Advertising Expenses | 6,000,000 |
| Educational Seminars and Conferences | 4,500,000 |
| Retail Seminars | 5,500,000 |
| Miscellaneous | 26,351,326 |
| Total* | $ 49,500,000 |

* Estimated.

**Item 32** ***Sales to Special Parties***

Not Applicable

**Item 33** ***Recent Sales of Unregistered Securities***

Not Applicable

**Item 34** ***Indemnification of the Officers and Directors***

The MCGL permits a Maryland corporation to include in its Articles of Incorporation a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgement as being material to the cause of action.

Subject to the conditions set forth below, the Articles of Incorporation provide that the company shall indemnify and hold harmless a Director, Advisor or Affiliate against any and all losses or liabilities reasonably incurred by such Director, Advisor or Affiliate in connection with or by reason of any act or omission performed or omitted to be performed on behalf of the Company in such capacity.

Under the Company's Articles of Incorporation, the Company shall not indemnify its Directors, Advisor or any Affiliate for any liability or loss suffered by the Directors, Advisors or Affiliates, nor shall

it provide that the Directors, Advisors or Affiliates be held harmless for any loss or liability suffered by the Company, unless all of the following conditions are met: (i) the Directors, Advisor or Affiliates have determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the Company; (ii) the Directors, Advisor or Affiliates were acting on behalf of or performing services of the Company (iii) such liability or loss was not the result of (A) negligence or misconduct by the Directors, excluding the Independent Directors, Advisors or Affiliates; or (B) gross negligence or willful misconduct by the Independent Directors; and (iv) such indemnification or agreement to hold harmless is recoverable only out of the company's net assets and not from Shareholders. Notwithstanding the foregoing, the Directors, Advisors or Affiliates and any persons acting as a broker-dealer shall not be indemnified by the Company for any losses, liability or expenses arising from or out of an alleged violation of federal or state securities laws by such party unless one or more of the following conditions are met: (i) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee; (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee; and (iii) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and the related costs shold be made, and the court considering the request for indemnification has been advised of he position of the SEC and of the published position of any state securities regulatory authority in which securities of the Company were offered or sold as to indemnification for violations of securities laws.

The Articles of Incorporation provide that the advancement of Company funds to the Directors, Advisors or Affiliates for legal expenses and other costs incurred as a result of any legal action for which indemnification is being sought is permissible only if all of the following conditions are satisfied: (i) the legal action relates to acts or omissions with respect to the performance of duties or services on behalf of the company; (ii) the legal action is initiated by a third party who is not a Shareholder or the legal action is initiated by a Shareholder acting in his or her capacity as such and a court of competent jurisdiction specifically approves such advancement; (iii) the Directors, Advisor or Affiliates undertake to repay the advanced funds to the Company together with the applicable legal rate of interest thereon, in cases in which such Directors, Advisor or Affiliates are found not to be entitled to indemnification.

The MGCL requires a Maryland corporation (unless its Articles of Incorporation provide otherwise, which the Company's Articles of Incorporation do not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made a party by reason of his service in that capacity. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgements, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under the MGCL a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, the MGCL permits a corporation to advance reasonable expenses to director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification by the Company as authorized by the Bylaws and (b) a written undertaking by or on his behalf to repay the amount paid or reimbursed by the Company if it shall ultimately be determined that the standard of conduct was not met. Indemnification under the provisions of the MGCL is not deemed exclusive of any other rights, by indemnification or otherwise, to which an officer or director may be

entitled under the Company's Articles of Incorporation or Bylaws, or under resolutions of stockholders or directors, contract or otherwise. It is the position of the Commission that indemnification of directors and officers for liabilities arising under the Securities Act is against public policy and is unenforceable pursuant to Section 14 of the Securities Act.

The Company also has purchased and maintains insurance on behalf of all of its Directors and executive officers against liability asserted against or incurred by them in their official capacities with the Company, whether or not the Company is required or has the power to indemnify them against the same liability.

**Item 35** ***Treatment of Proceeds from Stock Being Registered***

Not Applicable

**Item 36** ***Financial Statements and Exhibits.***

(a) *Financial Statements*:

The following financial statements of Wells Real Estate Investment Trust, Inc. 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 Marc9h 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

(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 |
| 3.3 | Form of 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 |
| 8.1 | Opinion of Holland & Knight LLP as to tax matters |
| 8.2 | Opinion of Holland & Knight LLP as to ERISA matters |
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |
| 10.66 | Purchase and Sale Agreement for the Experian/TRW Buildings (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) |
| 10.67 | Lease Agreement for the Experian/TRW Buildings (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) |
| 10.68 | Lease Amendment to Lease Agreement for the Experian/TRW Buildings (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) |
| 10.69 | Purchase and Sale Agreement and Escrow Instructions for the Agilent Boston Building (previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on June 10, 2002) |
| 10.70 | Lease Agreement for the Agilent Boston Building (previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on June 10, 2002) |
| 10.71 | Purchase and Sale Agreement for the TRW Denver Building |
| 10.72 | Lease Agreement for the TRW Denver Building |
| 10.73 | Purchase and Sale Agreement for the MFS Phoenix Building |
| 10.74 | Lease Agreement for the MFS Phoenix Building |
| 10.75 | Purchase and Sale Agreement for the ISS Atlanta Buildings |
| 10.76 | Lease Agreement for the ISS Atlanta Buildings |
| 10.77 | Amendment No. 5 to Lease Agreement for the ISS Atlanta Buildings |
| 10.78 | Ground Lease Agreement for ISS Atlanta Buildings |
| 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) |
| 24.1 | Power of Attorney |
| 24.2 | Power of Attorney of Michael R. Buchanan |

**Item 37** ***Undertakings***

(a) The Registrant undertakes to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933 (the "Act"); (ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement, including (but not limited to) any addition or deletion of a managing underwriter.

(b) The Registrant undertakes (i) that, for the purpose of determining any liability under the Act, each such post-effective amendment may be deemed to be a new Registration Statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof, (ii) that all post-effective amendments will comply with the applicable forms, rules and regulations of the Commission in effect at the time such post-effective amendments are filed, and (iii) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(c) The Registrant undertakes to send to each shareholder, at least on an annual basis, a detailed statement of any transactions with the Advisor or its affiliates, and of fees, commissions, compensation and other benefits paid, or accrued to the Advisor or its affiliates, for the fiscal year completed, showing the amount paid or accrued to each recipient and the services performed.

(d) To file a sticker supplement pursuant to Rule 424(c) under the Act during the distribution period describing each property not identified in the prospectus at such time as there arises a reasonable probability that such property will be acquired and to consolidate all such stickers into a post-effective amendment filed at least once every three months with the information contained in such amendment provided simultaneously to the existing shareholders; each sticker supplement should disclose all compensation and fees received by the Advisor and its affiliates in connection with any such acquisition; the post-effective amendment shall include audited financial statements meeting the requirements of Rule 3-14 of Regulation S-X only for properties acquired during the distribution period.

(e) To file, after the end of the distribution period, a current report on Form 8-K containing the financial statements and any additional information required by Rule 3-14 of Regulation S-X, to reflect each commitment (*i.e.*, the signing of a binding purchase agreement) made after the end of the distribution period involving the use of 10% or more (on a cumulative basis) of the net proceeds of the offering and to provide the information contained in such report to the shareholders at least once each quarter after the distribution period of the offering has ended.

(f) The Registrant undertakes to file the financial statements as required by Form 10-K for the first full fiscal year of operations and to provide each shareholder the financial statements required by Form 10-K for such year.

(g) The Registrant undertakes to distribute to each shareholder, within sixty (60) days after the close of each quarterly period, a copy of each report on Form 10-Q which is required to be filed with the Commission or a quarterly report containing at least as much information as the report on Form 10-Q.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

**TABLE VI**
**ACQUISITIONS OF PROPERTIES BY PROGRAMS**

The information contained on the following pages relates to acquisitions of properties within the past three years by the Wells REIT and prior programs with which Wells Capital, Inc., the Advisor to the Wells REIT, and its affiliates have been affiliated and which have substantially similar investment objectives to the Wells REIT. This table provides potential investors with information regarding the general nature and location of the properties and the manner in which the properties were acquired. None of the information in this Table VI has been audited.

**TABLE VI**

**Wells Funds XI, XII and REIT**

| | |
|---|---|
| Name of property | EYBL CarTex Building |
| Location of property | Fountain Inn, Greenville County, South Carolina |
| Type of property | Two-story manufacturing and office building |
| Size of parcel | 11.94 acres |
| Gross leasable space | 169,510 sq. feet |
| Date of commencement of operations[1] | Fund XI—March 3, 1998<br>Fund XII—June 1, 1999<br>REIT—June 5, 1998 |
| Date of purchase | May 18, 1999 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | $50,000 |
| Contract purchase price plus acquisition fee | $5,122,000 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | $225,540 |
| Total Acquisition Cost | $5,347,540 |

[1] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells Funds XI, XII and REIT**

| | |
|---|---|
| Name of property | Sprint Building |
| Location of property | Leawood, Kansas |
| Type of property | Three-story office building |
| Size of parcel | 7.12 acres |
| Gross leasable space | 68,900 sq. feet |
| Date of commencement of operations[2] | Fund XI—March 3, 1998<br>Fund XII—June 1, 1999<br>REIT—June 5, 1998 |
| Date of purchase | July 2, 1999 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | $1,000,000 |
| Contract purchase price plus acquisition fee | $9,546,210 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[3] | $398,299 |
| Total Acquisition Cost | $9,944,509 |

2 The date minimum offering proceeds were obtained and funds became available for investment in properties.
3 Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Alstom Power Richmond Building |
| Location of property | Midlothian, Chesterfield County, Virginia |
| Type of property | Four story office building |
| Size of parcel | 7.49 acres |
| Gross leasable space | 99,057 sq. feet |
| Date of commencement of operations[4] | June 5, 1998 |
| Date of purchase | July 22, 1999 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | $948,400 |
| Contract purchase price plus acquisition fee | $948,400 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[5] | $9,969,515 |
| Total Acquisition Cost | $10,917,915 |

[4] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[5] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells Funds XI, XII and REIT**

| | |
|---|---|
| Name of property | Johnson Matthey Building |
| Location of property | Tredyffrin Township, Chester County, Pennsylvania |
| Type of property | Research and development, office and warehouse building |
| Size of parcel | 10.0 acres |
| Gross leasable space | 130,000 sq. feet |
| Date of commencement of operations[6] | Fund XI—March 3, 1998<br>Fund XII—June 1, 1999<br>REIT—June 5, 1998 |
| Date of purchase | August 17, 1999 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | $200,000 |
| Contract purchase price plus acquisition fee | $8,050,000 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[7] | $342,077 |
| Total Acquisition Cost | $8,392,077 |

6 The date minimum offering proceeds were obtained and funds became available for investment in properties.
7 Includes the improvements made after acquisition through April 30, 2002

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Videojet Technologies Chicago |
| Location of property | Wood Dale, Illinois |
| Type of property | Two story office, assembly and manufacturing building |
| Size of parcel | 15.3 acres |
| Gross leasable space | 250,354 sq. feet |
| Date of commencement of operations[8] | June 5, 1998 |
| Date of purchase | September 10, 1999 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | $500,000 |
| Contract purchase price plus acquisition fee | $32,630,940 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[9] | $1,912,472 |
| Total Acquisition Cost | $34,543,412 |

[8] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[9] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells Funds XI, XII and REIT**

| | |
|---|---|
| Name of property | Gartner Building |
| Location of property | Fort Myers, Florida |
| Type of property | Two story office building |
| Size of parcel | 4.9 acres |
| Gross leasable space | 62,400 sq. feet |
| Date of commencement of operations[10] | Fund XI—March 3, 1998<br>Fund XII—June 1, 1999<br>REIT—June 5, 1998 |
| Date of purchase | September 20, 1999 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | $500,000 |
| Contract purchase price plus acquisition fee | $8,347,600 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures Capitalized[11] | $347,824 |
| Total Acquisition Cost | $8,695,424 |

[10] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[11] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Cinemark Building |
| Location of property | Plano, Collin County, Texas |
| Type of property | Five story office building |
| Size of parcel | 3.52 acres |
| Gross leasable space | 118,108 sq. feet |
| Date of commencement of operations[12] | June 5, 1998 |
| Date of purchase | December 21, 1999 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $21,826,900 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[13] | $920,379 |
| Total Acquisition Cost | $22,747,279 |

[12] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[13] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Metris Tulsa Building |
| Location of property | Tulsa, Tulsa County, Oklahoma |
| Type of property | Three story office building |
| Size of parcel | 14.6 acres |
| Gross leasable space | 101,100 sq. feet |
| Date of commencement of operations[14] | June 5, 1998 |
| Date of purchase | February 11, 2000 |
| Mortgage financing at date of purchase | 8,000,000 |
| Cash down payment | $4,740,000 |
| Contract purchase price plus acquisition fee | $12,740,000 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[15] | $521,072 |
| Total Acquisition Cost | $13,261,729 |

[14] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[15] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Dial Building |
| Location of property | Scottsdale, Maricopa County, Arizona |
| Type of property | Two story office building |
| Size of parcel | 8.8 acres (approximately) |
| Gross leasable space | 129,689 sq. feet |
| Date of commencement of operations[16] | June 5, 1998 |
| Date of purchase | March 29, 2000 |
| Mortgage financing at date of purchase | $14,289,309 |
| Cash down payment | $100,000 |
| Contract purchase price plus acquisition fee | $14,289,309 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[17] | $597,264 |
| Total Acquisition Cost | $14,886,573 |

[16] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[17] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | ASML Building |
| Location of property | Tempe, Maricopa County, Arizona |
| Type of property | Two story office and warehouse building |
| Size of parcel | 9.51 acres |
| Gross leasable space | 95,133 sq. feet |
| Date of commencement of operations[18] | June 5, 1998 |
| Date of purchase | March 29, 2000 |
| Mortgage financing at date of purchase | $17,397,133 |
| Cash down payment | $100,000 |
| Contract purchase price plus acquisition fee | $17,397,133 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[19] | $727,185 |
| Total Acquisition Cost | $18,124,318 |

[18] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[19] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Motorola Tempe Building |
| Location of property | Tempe, Maricopa County, Arizona |
| Type of property | Two story office building |
| Size of parcel | 12.44 acres |
| Gross leasable space | 133,225 sq. feet |
| Date of commencement of operations[20] | June 5, 1998 |
| Date of purchase | March 29, 2000 |
| Mortgage financing at date of purchase | $8,813,558 |
| Cash down payment | $100,000 |
| Contract purchase price plus acquisition fee | $16,036,219 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[21] | $669,639 |
| Total Acquisition Cost | $16,705,858 |

[20] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[21] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells Fund XII and REIT**

| | |
|---|---|
| Name of property | Siemens Building |
| Location of property | Troy, Oakland County, Michigan |
| Type of property | Three story office building |
| Size of parcel | 5.3 acres |
| Gross leasable space | 77,054 sq. feet |
| Date of commencement of operations[22] | Fund XII—June 1, 1999<br>REIT—June 5, 1998 |
| Date of purchase | May 10, 2000 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | $400,000 |
| Contract purchase price plus acquisition fee | $14,292,489 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[23] | $1,440,430 |
| Total Acquisition Cost | $12,852,059 |

[22] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[23] Includes improvements made after acquisitions through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Avnet Building |
| Location of property | Tempe, Maricopa County, Arizona |
| Type of property | Two story office building |
| Size of parcel | 9.63 acres |
| Gross leasable space | 132,070 sq. feet |
| Date of commencement of operations[24] | June 5, 1998 |
| Date of purchase | June 12, 2000 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | $100,000 |
| Contract purchase price plus acquisition fee | $13,269,502 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $13,269,502 |

[24] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Delphi Building |
| Location of property | Troy, Oakland County, Michigan |
| Type of property | Three story office building |
| Size of parcel | 5.52 acres |
| Gross leasable space | 107,193 sq. feet |
| Date of commencement of operations[25] | June 5, 1998 |
| Date of purchase | June 29, 2000 |
| Mortgage financing at date of purchase | $8,000,000 |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $19,921,332 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $19,921,332 |

[25] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Motorola Plainfield Building |
| Location of property | S. Plainfield, Middlesex County, New Jersey |
| Type of property | three-story office building |
| Size of parcel | 34.5 acres |
| Gross leasable space | 236,710 sq. feet |
| Date of commencement of operations[26] | June 5, 1998 |
| Date of purchase | November 1, 2000 |
| Mortgage financing at date of purchase | $23,000,000 |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $33,753,381 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[27] | $424,760 |
| Total Acquisition Cost | $34,178,141 |

[26] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[27] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Stone & Webster Building |
| Location of property | Houston, Texas |
| Type of property | six-story office building |
| Size of parcel | 9.96 acres |
| Gross leasable space | 312,564 sq. feet |
| Date of commencement of operations[28] | June 5, 1998 |
| Date of purchase | December 21, 2000 |
| Mortgage financing at date of purchase | $38,900,000 |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $45,014,954 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $45,014,954 |

[28] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Metris Minnesota Building |
| Location of property | Minnetonka, Minnesota |
| Type of property | nine-story office building |
| Size of parcel | 13.58 acres |
| Gross leasable space | 300,633 sq. feet |
| Date of commencement of operations[29] | June 5, 1998 |
| Date of purchase | December 21, 2000 |
| Mortgage financing at date of purchase | $52,800,000 |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $52,846,150 |
| Other cash expenditures expensed | $1,669 |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $52,847,819 |

[29] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells Fund XII and REIT**

| | |
|---|---|
| Name of property | AT&T Oklahoma Buildings |
| Location of property | Oklahoma City, Oklahoma |
| Type of property | one and two-story office buildings |
| Size of parcel | 11.34 acres |
| Gross leasable space | 128,500 sq. feet |
| Date of commencement of operations[30] | Fund XII—June 1, 1999<br>REIT—June 5, 1998 |
| Date of purchase | December 28, 2000 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $15,325,554 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $15,325,554 |

[30] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells Fund XII and REIT**

| | |
|---|---|
| Name of property | Comdata Building |
| Location of property | Brentwood, Tennessee |
| Type of property | three-story office building |
| Size of parcel | 12.3 acres |
| Gross leasable space | 201,237 sq. feet |
| Date of commencement of operations[31] | Fund XII—June 1, 1999<br>REIT—June 5, 1998 |
| Date of purchase | May 15, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $25,002,019 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $25,002,019 |

[31] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells Fund XIII and REIT**

| | |
|---|---|
| Name of property | AmeriCredit Building |
| Location of property | Orange Park, Florida |
| Type of property | two-story office building |
| Size of parcel | 12.33 acres |
| Gross leasable space | 85,000 sq. feet |
| Date of commencement of operations[32] | Fund XIII—June 14, 2001<br>REIT—June 5, 1998 |
| Date of purchase | July 16, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $12,540,693 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $12,540,693 |

[32] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | State Street Building |
| Location of property | Quincy, Massachusetts |
| Type of property | seven-story office building |
| Size of parcel | 11.22 acres |
| Gross leasable space | 234,668 sq. feet |
| Date of commencement of operations[33] | June 5, 1998 |
| Date of purchase | July 30, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $49,632,507 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[34] | $6,976 |
| Total Acquisition Cost | $49,639,483 |

[33] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[34] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | IKON Buildings |
| Location of property | Houston, Texas |
| Type of property | two one-story office buildings |
| Size of parcel | 15.69 acres |
| Gross leasable space | 157,790 sq. feet |
| Date of commencement of operations[35] | June 5, 1998 |
| Date of purchase | September 7, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $20,782,519 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $20,782,519 |

[35] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Nissan Property |
| Location of property | Irving, Texas |
| Type of property | three-story office building |
| Size of parcel | 14.873 acres |
| Gross leasable space | 268,290 sq. feet |
| Date of commencement of operations[36] | June 5, 1998 |
| Date of purchase | September 19, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $5,570,700 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $5,570,700 |

[36] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Ingram Micro Building |
| Location of property | Millington, Tennessee |
| Type of property | one-story distribution facility |
| Size of parcel | 39.223 acres |
| Gross leasable space | 701,819 sq. feet |
| Date of commencement of operations[37] | June 5, 1998 |
| Date of purchase[38] | September 27, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $21,055,184 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $21,055,184 |

[37] The date minimum offering proceeds were obtained and funds became available for investment in properties.

[38] On September 27, 2001, Wells OP acquired a leasehold interest in the Ingram Micro Building, with an option to purchase the property beginning in 2006.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Lucent Building |
| Location of property | Cary, North Carolina |
| Type of property | four-story office building |
| Size of parcel | 29.19 acres |
| Gross leasable space | 120,000 sq. feet |
| Date of commencement of operations[39] | June 5, 1998 |
| Date of purchase | September 28, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $18,022,771 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $18,022,771 |

[39] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells Fund XIII and REIT**

| | |
|---|---|
| Name of property | ADIC Buildings |
| Location of property | Parker, Colorado |
| Type of property | two one-story office buildings |
| Size of parcel | 11.78 acres |
| Gross leasable space | 148,204 sq. feet |
| Date of commencement of operations[40] | Fund XIII—June 14, 2001<br>REIT—June 5, 1998 |
| Date of purchase | December 21, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $13,169,835 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $13,169,835 |

[40] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Convergys Building |
| Location of property | Tamarac, Florida |
| Type of property | two-story office building |
| Size of parcel | 12.55 acres |
| Gross leasable space | 100,000 sq. feet |
| Date of commencement of operations[41] | June 5, 1998 |
| Date of purchase | December 21, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $13,497,360 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $13,497,360 |

[41] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Windy Point Buildings |
| Location of property | Schaumburg, Illinois |
| Type of property | seven and eleven-story office buildings |
| Size of parcel | 18.73 acres |
| Gross leasable space | 488,425 sq. feet |
| Date of commencement of operations[42] | June 5, 1998 |
| Date of purchase | December 31, 2001 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $89,443,176 |
| Other cash expenditures expensed | $1,927 |
| Other cash expenditures capitalized[43] | $28,417 |
| Total Acquisition Cost | $89,473,520 |

[42] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[43] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Arthur Andersen Building |
| Location of property | Sarasota, Florida |
| Type of property | three-story office building |
| Size of parcel | 9.8 acres |
| Gross leasable space | 157,700 sq. feet |
| Date of commencement of operations[44] | June 5, 1998 |
| Date of purchase | January 11, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $21,431,212 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[45] | $18,267 |
| Total Acquisition Cost | $21,449,479 |

[44] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[45] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Transocean Houston Building |
| Location of property | Houston, Texas |
| Type of property | six-story office building |
| Size of parcel | 3.88 acres |
| Gross leasable space | 155,991 sq. feet |
| Date of commencement of operations[46] | June 5, 1998 |
| Date of purchase | March 15, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $22,038,362 |
| Other cash expenditures expensed | $6,720 |
| Other cash expenditures capitalized[47] | $3,100 |
| Total Acquisition Cost | $22,048,182 |

[46] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[47] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Novartis Atlanta Building |
| Location of property | Duluth, Georgia |
| Type of property | four-story office building |
| Size of parcel | 7.57 acres |
| Gross leasable space | 100,087 sq. feet |
| Date of commencement of operations[48] | June 5, 1998 |
| Date of purchase | March 28, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $15,045,996 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[49] | $1,320 |
| Total Acquisition Cost | $15,047,316 |

[48] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[49] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Dana Corporation Buildings |
| Location of property | (a) Farmington Hills, Michigan<br>(b) Kalamazoo, Michigan |
| Type of property | (a) three-story office and research and development building<br>(b) two-story office and industrial building |
| Size of parcel | (a) 7.8 acres<br>(b) 27.5 acres |
| Gross leasable space | (a) 112,480 sq. feet<br>(b) 147,004 sq. feet |
| Date of commencement of operations[50] | June 5, 1998 |
| Date of purchase | March 29, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Aggregate contract purchase price plus acquisition fee | $42,812,669 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[51] | $500 |
| Total Acquisition Cost | $42,813,169 |

[50] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[51] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Travelers Express Denver Buildings |
| Location of property | Lakewood, Colorado |
| Type of property | two connected one-story office buildings |
| Size of parcel | 7.88 acres |
| Gross leasable space | 68,165 sq. feet |
| Date of commencement of operations[52] | June 5, 1998 |
| Date of purchase | April 10, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $10,555,448 |
| Other cash expenditures expensed | $33 |
| Other cash expenditures capitalized[53] | $7,967 |
| Total Acquisition Cost | $10,563,458 |

[52] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[53] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Agilent Atlanta Building |
| Location of property | Alpharetta, Georgia |
| Type of property | two-story office building |
| Size of parcel | 9.89 acres |
| Gross leasable space | 101,207 sq. feet |
| Date of commencement of operations[54] | June 5, 1998 |
| Date of purchase | April 18, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $15,151,643 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $15,151,643 |

[54] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | BellSouth Ft. Lauderdale Building |
| Location of property | Ft. Lauderdale, Florida |
| Type of property | one-story office building |
| Size of parcel | 4.27 acres |
| Gross leasable space | 47,400 sq. feet |
| Date of commencement of operations[55] | June 5, 1998 |
| Date of purchase | April 18, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $6,891,748 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $6,891,748 |

[55] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Experian/TRW Buildings |
| Location of property | Allen, Texas |
| Type of property | two two-story office buildings |
| Size of parcel | 26.53 acres |
| Gross leasable space | 292,700 sq. feet |
| Date of commencement of operations[56] | June 5, 1998 |
| Date of purchase | May 1, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $35,765,115 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $35,765,115 |

[56] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | Agilent Boston Building |
| Location of property | Boxborough, Massachusetts |
| Type of property | three-story office building |
| Size of parcel | 42.09 acres |
| Gross leasable space | 174,585 sq. feet |
| Date of commencement of operations[57] | June 5, 1998 |
| Date of purchase | May 3, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $31,843,732 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized[58] | $3,407,496 |
| Total Acquisition Cost | $35,251,228 |

[57] The date minimum offering proceeds were obtained and funds became available for investment in properties.
[58] Includes the improvements made after acquisition through April 30, 2002.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | TRW Denver Building |
| Location of property | Aurora, Colorado |
| Type of property | three-story office building |
| Size of parcel | 10.15 acres |
| Gross leasable space | 108,240 sq. feet |
| Date of commencement of operations[59] | June 5, 1998 |
| Date of purchase | May 29, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $21,104,734 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | $735 |
| Total Acquisition Cost | $21,105,469 |

[59] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | MFS Phoenix Building |
| Location of property | Phoenix, Arizona |
| Type of property | three-story office building |
| Size of parcel | 9.32 acres |
| Gross leasable space | 148,605 sq. feet |
| Date of commencement of operations[60] | June 5, 1998 |
| Date of purchase | June 5, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $25,881,252 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $25,881,252 |

[60] The date minimum offering proceeds were obtained and funds became available for investment in properties.

**TABLE VI (continued)**

**Wells REIT**

| | |
|---|---|
| Name of property | ISS Atlanta Buildings |
| Location of property | Atlanta, Georgia |
| Type of property | two five-story office buildings |
| Size of parcel | 4.82 acres |
| Gross leasable space | 238,600 sq. feet |
| Date of commencement of operations[61] | June 5, 1998 |
| Date of purchase[62] | July 1, 2002 |
| Mortgage financing at date of purchase | N/A |
| Cash down payment | N/A |
| Contract purchase price plus acquisition fee | $40,765,159 |
| Other cash expenditures expensed | N/A |
| Other cash expenditures capitalized | N/A |
| Total Acquisition Cost | $40,765,159 |

61 The date minimum offering proceeds were obtained and funds became available for investment in properties.

62 On July 1, 2002, Wells OP acquired a ground leasehold interest in the ISS Atlanta Buildings, and will purchase the property outright on or before December 1, 2015.

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 Amendment No. 2 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 15th day of July, 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 Amendment No. 2 to Registration Statement has been signed below on July 15, 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<br>(Principal Financial and Accounting Officer) |
| /S/ JOHN L. BELL*<br>**John L. Bell**<br>**(By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ MICHAEL R. BUCHANAN**<br>**Michael R. Buchanan**<br>**(By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ RICHARD W. CARPENTER*<br>**Richard W. Carpenter**<br>**(By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ BUD CARTER*<br>**Bud Carter**<br>**(By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ WILLIAM H. KEOGLER, JR.*<br>**William H. Keogler, Jr.**<br>**(By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ DONALD S. MOSS*<br>**Donald S. Moss**<br>**(By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ WALTER W. SESSOMS*<br>**Walter W. Sessoms**<br>**(By Douglas P. Williams, as Attorney-in-fact)** | Director |
| /S/ NEIL H. STRICKLAND*<br>**Neil H. Strickland**<br>**(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, filed herewith |
| 3.3 | Form of 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, filed herewith |
| 8.1 | Opinion of Holland & Knight LLP as to tax matters, filed herewith |
| 8.2 | Opinion of Holland & Knight LLP as to ERISA matters, filed herewith |
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |

| Exhibit No. | Description |
|---|---|
| 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) |
| 10.66 | Purchase and Sale Agreement for the Experian/TRW Buildings (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) |

| Exhibit No. | Description |
|---|---|
| 10.67 | Lease Agreement for the Experian/TRW Buildings (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) |
| 10.68 | Lease Amendment to Lease Agreement for the Experian/TRW Buildings (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) |
| 10.69 | Purchase and Sale Agreement and Escrow Instructions for the Agilent Boston Building(previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on June 10, 2002) |
| 10.70 | Lease Agreement for the Agilent Boston Building (previously filed in and incorporated by reference to Amendment No. 1 to Registrant's Registration Statement on Form S-11, Commission File No. 333-85848, filed on June 10, 2002) |
| 10.71 | Purchase and Sale Agreement for the TRW Denver Building, filed herewith |
| 10.72 | Lease Agreement for the TRW Denver Building, filed herewith |
| 10.73 | Purchase and Sale Agreement for the MFS Phoenix Building, filed herewith |
| 10.74 | Lease Agreement for the MFS Phoenix Building, filed herewith |
| 10.75 | Purchase and Sale Agreement for the ISS Atlanta Buildings, filed herewith |
| 10.76 | Lease Agreement for the ISS Atlanta Buildings, filed herewith |
| 10.77 | Amendment No. 5 to Lease Agreement for the ISS Atlanta Buildings, filed herewith |
| 10.78 | Ground Lease Agreement for the ISS Atlanta Buildings, 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) |
| 24.1 | Power of Attorney, filed herewith |
| 24.2 | Power of Attorney of Michael R. Buchanan, filed herewith |

**EXHIBIT 3.2**

**ARTICLES OF AMENDMENT TO AMENDED AND RESTATED ARTICLES OF INCORPORATION**

**ARTICLES OF AMENDMENT**
**TO AMENDED AND RESTATED ARTICLES OF INCORPORATION OF**
**WELLS REAL ESTATE INVESTMENT TRUST, INC.**

Wells Real Estate Investment Trust, Inc., a Maryland Corporation having its principal office in the State of Maryland at 300 East Lombard Street, Baltimore, Maryland 21202 (hereinafter, the "Company"), hereby certifies to the Department of Assessments and Taxation of the State of Maryland, that:

FIRST: The Amended and Restated Articles of Incorporation of the Company dated as of July 1, 2000 (the "Articles of Incorporation") are hereby amended as follows:

Section 1.2 of the Articles of Incorporation is hereby amended by adding the following sentence at the end of Section 1.2:

The address of the principal office of the Company in the State of Maryland is c/o The Corporation Trust Incorporated, 300 East Lombard Street, Baltimore, Maryland 21202.

Section 7.1 of the Articles of Incorporation is hereby amended by deleting Section 7.1 and inserting in lieu thereof the following:

SECTION 7.1 *AUTHORIZED SHARES*. The total number of shares of capital stock which the Company is authorized to issue is one billion (1,000,000,000), consisting of seven hundred fifty million (750,000,000) Common Shares (as defined in Section 7.2 hereof), one hundred million (100,000,000) Preferred Shares (as defined in Section 7.3 hereof) and one hundred fifty million (150,000,000) Shares-in-Trust (as defined in Section 7.8 hereof). All shares of capital stock shall be fully paid and nonassessable when issued. Shares may be issued for such consideration as the Directors determine, or, if issued as a result of a share dividend or share split, without any consideration. If shares of one class of stock are classified or reclassified into shares of another class of stock pursuant to Section 7.2(ii) or Section 7.3, the number of authorized shares of the former class shall be automatically decreased and the number of shares of the latter class shall be automatically increased, in each case by the number of shares so classified or reclassified, so that the number of aggregate shares of stock of all classes that the Company has authority to issue shall not be more than the total number of shares of stock set forth in the first sentence of this Section 7.1. To the extent permitted by the MGCL, the Board of Directors, without any action by the stockholders of the Company, may amend the Articles of Incorporation from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that the Company has authority to issue.

SECOND: The amendment of the Articles of Incorporation of the Company as hereinabove set forth has been duly advised by the Board of Directors and approved by the stockholders of the Company.

THIRD: The total number of shares of stock which the Company had authority to issue immediately prior to this amendment to the Articles of Incorporation were 500,000,000, consisting of 350,000,000 Common Shares, 50,000,000 Preferred Shares and 100,000,000 Shares-in-Trust. The aggregate par value of all shares of stock having par value was $3,500,000. The total number of shares of stock which the Company has authority to issue upon the filing and acceptance of this amendment to the Articles of Incorporation is 1,000,000,000, consisting of 750,000,000 Common Shares, 100,000,000

Preferred Shares and 150,000,000 Shares-in-Trust. The aggregate par value of all authorized shares of stock having par value is $7,500,000.

FOURTH: The undersigned President acknowledges these Articles of Amendment to be the corporate act of the Company and as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

IN WITNESS WHEREOF, the Company has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested to by its Secretary as of the 26th day of June, 2002.

ATTEST:

By: /s/ DOUGLAS P. WILLIAMS

**Douglas P. Williams**
**Secretary**

WELLS REAL ESTATE INVESTMENT TRUST, INC.

By: /s/ LEO F. WELLS, III (SEAL)

**Leo F. Wells, III**
**President**

**EXHIBIT 5.1**

**OPINION OF HOLLAND & KNIGHT LLP**
**AS TO LEGALITY OF SECURITIES**

**[LETTERHEAD OF HOLLAND & KNIGHT LLP]**

July 1, 2002

Wells Real Estate Investment Trust, Inc.
6200 The Corners Parkway, Suite 250
Atlanta, Georgia 30092

Re: Wells Real Estate Investment Trust, Inc.
Registration Statement on Form S-11
Registration No. 333-85848

Ladies and Gentlemen:

We have acted as counsel to Wells Real Estate Investment Trust, Inc. (the "Company"), a Maryland corporation, in connection with the public offering and sale (the "Offering") of up to 330,000,000 shares of common stock, par value $0.01 per share. The Shares are being registered with the Securities and Exchange Commission (the "Commission") pursuant to a Registration Statement on Form S-11 filed with the Commission on April 8, 2002 (as amended, the "Registration Statement"). We are familiar with the documents and materials relating to the Company relevant to this opinion.

In rendering our opinion, we have examined the following:

(i) Amended and Restated Articles of Incorporation of the Company dated as of July 1, 2000, as filed with the Department of Assessments and Taxation of the State of Maryland on August 16, 2000, as amended to date;

(ii) Bylaws of the Company, as amended to date;

(iii) Registration Statement, including the Prospectus contained therein as part of the Registration Statement;

(iv) Certificate of good standing for the Company dated June 20, 2002, issued by the Department of Assessments and Taxation of the State of Maryland; and

(v) Originals (or copies identified to our satisfaction) of such other documents and records of the Company, together with certificates of public officials and officers of the Company, and such other documents, certificates, records and papers as we have deemed necessary or appropriate for purposes of this opinion.

With respect to all of the foregoing documents, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to the originals of all documents submitted to us as certified or reproduced copies.

Assuming the foregoing, based on our review of the relevant documents and materials, and without further investigation, it is our opinion that:

1. The Company has been duly organized and is validly existing and in good standing under the laws of the State of Maryland.

2. At such time as (i) the Registration Statement has become effective with the Commission pursuant to the Securities Act of 1933, as amended, (ii) the Shares have been validly and properly issued by the Company pursuant to the Offering in the form and containing the terms described in the Registration Statement, and (iii) all legally required consents, approvals and authorizations of governmental regulatory authorities have been obtained, including without limitation, an appropriate order of effectiveness of the Commission, the Shares, when sold, will be legally issued, fully paid and non-assessable.

We hereby consent to the reference to our firm under the caption "Legal Opinions" in the Prospectus that forms a part of the Registration Statement and to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, however, we do not thereby admit that we are an "expert" within the meaning of the Securities Act of 1933, as amended, or that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules or regulations of the Commission promulgated thereunder.

We undertake no obligation to update the opinions expressed herein at any time after the date hereof. This opinion letter is solely for the information and use of the addressee, and it may not be distributed, relied upon for any purpose by any other person, quoted in whole or in part, or otherwise reproduced in any document, or filed with any governmental agency without our express written consent.

Sincerely yours,

/s/ HOLLAND & KNIGHT LLP

**Holland & Knight LLP**

**EXHIBIT 8.1**

**OPINION OF HOLLAND & KNIGHT LLP**
**AS TO TAX MATTERS**

**[LETTERHEAD OF HOLLAND & KNIGHT LLP]**

July 1, 2002

Wells Real Estate Investment Trust, Inc.
6200 The Corners Parkway, Suite 250
Atlanta, Georgia 30092

Re: Wells Real Estate Investment Trust, Inc.
Registration Statement on Form S-11
Registration No. 333-85848

Ladies and Gentlemen:

We have acted as counsel to Wells Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), in connection with the registration of 330,000,000 shares of its common stock with the Securities and Exchange Commission pursuant to a Registration Statement on Form S-11, Registration No. 333-85848 (as amended, the "Registration Statement"), which includes the Company's Prospectus (as amended, the "Prospectus"). In connection therewith, we have been asked to provide an opinion regarding certain federal income tax matters related to the Company. Capitalized terms used in this letter and not otherwise defined herein have the meaning set forth in the Prospectus.

The opinions set forth in this letter are based on relevant provisions of the Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations thereunder (including proposed and temporary Regulations), and interpretations of the foregoing as expressed in court decisions, legislative history, and existing administrative rulings, policies and practices of the Internal Revenue Service (the "Service"), including its practices and policies indicated in private letter rulings (which rulings are not binding on the Service except, in the case of each such ruling, with respect to the specific taxpayer that receives such ruling), all as of the date hereof. These provisions and interpretations are subject to change, which may or may not be retroactive in effect, which changes could adversely affect the opinions rendered herein and the tax consequences to the Company and investors in the Company's common stock.

In rendering this opinion, we have examined the following documents: (1) the Registration Statement and the facts and descriptions set forth therein of the Company and its investments, activities, operations and governance; (2) the Company's Articles of Incorporation and Bylaws, each as amended to date, and stock ownership information

provided by the Company; and (3) the Certificate of Limited Partnership and Agreement of Limited Partnership of Wells Operating Partnership, L.P., each as amended to date ("Wells OP"). The opinions set forth in this letter also are premised on certain additional information and representations through consultation with officers of the Company, including those contained in the Company's management representation certificate to us dated June 30, 2002 (the "Management Representation Certificate"), and the Company's accountants regarding certain facts and other matters (including among other things, representations as to the Company's stock ownership, assets, acquisitions, revenues, and distributions) as are germane to the determination that the Company has been and will be owned and operated in such a manner that the Company has and will continue to satisfy the requirements for qualification as a REIT under the Code.

We have made such factual and legal inquiries, including the procedures described above and examination of the documents set forth above, as we have deemed necessary or appropriate for purposes of our opinion. For purposes of rendering our opinion, however, we have not made an independent investigation or audit of the facts set forth in the above-referenced documents, including the Registration Statement and the Management Representation Certificate. We consequently have relied upon the representation in the Management Representation Certificate that the information presented therein and in other documents or otherwise furnished to us, is accurate.

In our review, we have assumed, with your consent, that all of the information representations and statements set forth in the documents that we reviewed (including, without limitation, the Management Representation Certificate) are accurate, true and correct, and each of the obligations imposed by any such document on the parties thereto, including obligations imposed under the Articles of Incorporation and Bylaws of the Company and the Wells OP Partnership Agreement, have been and will be performed or satisfied in accordance with their terms, except as specifically set forth otherwise in the Management Representation Certificate. Moreover, we have assumed that the Company and Wells OP have been and will continue to be operated in the manner described in the corporate or partnership organizational documents and in the Prospectus. We assume for the purposes of this opinion that each of the Company and Wells OP is validly organized and duly incorporated or organized under the laws of the jurisdiction of such incorporation or organization. We also have assumed the genuineness of all signatures, the proper execution of all documents, the authenticity of all documents submitted to us as originals, the conformity to originals of documents submitted to us as copies, and the authenticity of the originals from which any copies were made.

Based upon, subject to, and limited by the assumptions and qualifications set forth herein, in the discussion in the Prospectus under the caption "Federal Income Tax Considerations" (which is incorporated herein by reference), and the discussion herein, we are of the following opinions as of the date hereof:

1. It is more likely than not that the Company was organized and has operated in conformity with the requirements for qualification and taxation as a real estate investment trust ("REIT") pursuant to Sections 856 through 860 of the Code for its taxable year ended December 31, 2001, and the continued operation of the Company in a manner consistent with the statements made in the Management Representation Certificate and the requirements for REIT qualification as described in the Prospectus will more likely than not enable the Company to continue to meet the requirements for qualification and taxation as a REIT.

2. The descriptions of the law and the legal conclusions contained in the Prospectus under the caption "Federal Income Tax Considerations" are correct in all material respects, and the discussion thereunder fairly summarizes the federal income tax considerations that are likely to be considered material to a holder of the Company's common stock.

We assume no obligation to advise you of any changes in our opinion subsequent to the delivery of this opinion letter, and we do not undertake to update this opinion letter. The Company's qualification and taxation as a REIT depends upon the Company's ability to meet on a continuing basis, through actual annual operating and other results, the various requirements under the Code described in the Prospectus with regard to, among other things, the sources of its gross income, the composition of its assets, the level and timing of its distributions to stockholders and the diversity of its stock ownership. Holland & Knight LLP will not review the Company's compliance with these requirements on a continuing basis. Accordingly, no assurance can be given that the actual results of the operations of the Company and Wells OP, the sources of their income, the nature of their assets, the level and timing of the Company's distributions to stockholders and the diversity of its stock ownership for any given taxable year will satisfy the requirements under the Code for qualification and taxation of the Company as a REIT. In addition, as noted above, our opinions are based solely on the documents that we have examined, the additional information that we have obtained, and the representations that have been made to us, and cannot be relied upon if any of the facts contained in such documents or in such additional information is, or later becomes, inaccurate or if any of the representations made to us is, or later becomes, inaccurate.

We also note that an opinion of counsel merely represents counsel's best judgment with respect to the probable outcome on the merits and is not binding on the Service or the courts. In certain instances with respect to matters for which there is no relevant authority, including the effect of certain transfer restrictions on the ability of the Company to satisfy the requirement for REIT qualification that its shares be transferable, our opinion is based on authorities which we have considered to be analogous even though certain such authorities have been rendered obsolete for unrelated reasons by subsequent authorities. There can be

no assurance that positions contrary to our opinions will not be taken by the Service, or that a court considering the issues would not hold contrary to our opinions.

We undertake no obligation to update the opinions expressed herein at any time after the date hereof. This opinion letter has been prepared solely for your use in connection with the filing of the Registration Statement on the date of this opinion letter and should not be quoted in whole or in part or otherwise referred to, nor filed with or furnished to any governmental agency or other person or entity, without the prior written consent of this firm.

We hereby consent to the filing of our opinion as an exhibit to the Registration Statement and to the use of the name of our firm in the Registration Statement. In giving this consent, however, we do not thereby admit that we are an "expert" within the meaning of the Securities Act of 1933, as amended, or that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules or regulations of the Securities and Exchange Commission promulgated thereunder.

Sincerely yours,

/s/ HOLLAND & KNIGHT LLP

**Holland & Knight LLP**

**EXHIBIT 8.2**

**OPINION OF HOLLAND & KNIGHT LLP**
**AS TO ERISA MATTERS**

**[LETTERHEAD OF HOLLAND & KNIGHT LLP]**

July 1, 2002

Wells Real Estate Investment Trust, Inc.
6200 The Corners Parkway, Suite 250
Atlanta, Georgia 30092

Re: Wells Real Estate Investment Trust, Inc.
Registration Statement on Form S-11
Registration No. 333-85848

Ladies and Gentlemen:

We have acted as counsel to Wells Real Estate Investment Trust, Inc. (the "Company"), a Maryland corporation which has elected to be taxed as a real estate investment trust ("REIT") for federal income tax purposes, in connection with the registration of 330,000,000 shares of its common stock (the "Shares") with the Securities and Exchange Commission pursuant to a Registration Statement on Form S-11, Registration No. 333-85848 (as amended, the "Registration Statement") which includes the Company's Prospectus (as amended, the "Prospectus"). In connection therewith, we have been asked to provide an opinion as to whether, pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1001-1461 ("ERISA"), the assets of the Company will be treated as the assets of an employee benefit plan which purchases Shares.

In rendering this opinion, we have reviewed the Registration Statement and the Prospectus included therein and the Company's Articles of Incorporation and Bylaws, each as amended to date. We have assumed the authenticity of the documents provided and have not attempted to verify independently any factual information.

Based on and subject to the foregoing, we are of the following opinions as of the date hereof:

1. Assuming that the offering of Shares takes place as described in the Registration Statement, the Shares will more likely than not constitute "publicly-offered securities," as that term is used in regulations promulgated by the U.S. Department of Labor (the "Department") and codified at 29 C.F.R. §2510.3-101. Accordingly, pursuant to and based upon the authority of such regulations, and again assuming that the offering of the Shares takes place as described in the Registration Statement, it is our opinion that it is more likely than not that, for purposes of ERISA, the assets of the Company will not be considered to be assets of any employee benefit plan purchasing Shares.

2. The descriptions of the law and the legal conclusions contained in the Prospectus under captions "Risk Factors—Retirement Plan Risks" and "ERISA Considerations" are correct in all material respects, and the discussion thereunder fairly summarizes the state of relevant law currently in effect with respect to an investment in Shares by employee benefit plans.

These opinions are based on existing law which is, to a large extent, the result of regulations and administrative interpretations issued by the Department. No assurance can be given that Department opinions or judicial decisions will not be rendered in the future which would modify the conclusions expressed in this opinion letter. We assume no obligation to advise you of any changes in our opinions subsequent to the delivery of this opinion letter, and we do not undertake to update this opinion letter.

The Company's qualification for the "publicly-offered securities" exemption under the Department's regulations also depends upon the Company's ability to meet on a continuing basis the various requirements under the regulations described in the Prospectus. Holland & Knight LLP will not review the Company's compliance with these requirements on a continuing basis.

Accordingly, no assurance can be given that the actual ownership of the Company for any given year will satisfy the requirements under ERISA and the Department's regulations for qualification for the above exemption. In addition, as noted above, our opinions are based solely on the documents that we have examined, the additional information that we have obtained, and the representations that have been made to us, and cannot be relied upon if any of the facts contained in such documents or in such additional information is, or later becomes, inaccurate or if any of the representations made to us is, or later becomes, inaccurate.

Further, an opinion of counsel merely represents counsel's best judgment with respect to the probable outcome on the merits and is not binding on the Department or the courts. In certain instances with respect to matters for which there is no relevant authority, including the effect of certain transfer restrictions on the ability of the Company to satisfy the requirements for qualification that its shares be freely transferable, our opinion is based on authorities which we have considered to be analogous even though certain such authorities have been rendered obsolete for unrelated reasons by subsequent authorities. There can be no assurance that positions contrary to our opinions will not be taken by the Department, or that a court considering the issues would not hold contrary to our opinions.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of the name of our firm in the Registration Statement. In giving this consent, however, we do not thereby admit that we are an "expert" within the meaning of the Securities Act of 1933, as amended, or that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules or regulations of the Securities and Exchange Commission promulgated thereunder.

This opinion letter is solely for the information and use of the addressee, and it may not be distributed, relied upon for any other purpose by any other person, quoted in whole or in part, or otherwise reproduced in any document, or filed with any governmental agency without our express written consent.

Sincerely yours,

/s/ HOLLAND & KNIGHT LLP

**Holland & Knight LLP**

**EXHIBIT 10.71**

**PURCHASE AND SALE AGREEMENT FOR THE TRW DENVER BUILDING**

**AGREEMENT OF SALE AND PURCHASE**

THIS AGREEMENT OF SALE AND PURCHASE ("*Agreement*") made this 13th day of May, 2002 by and between MACK-CALI REALTY, L.P., a limited partnership organized under the laws of the State of Delaware having an address c/o Mack-Cali Realty Corporation, 11 Commerce Drive, Cranford, New Jersey 07016 ("*Seller*") and WELLS CAPITAL, INC., a corporation organized under the laws of the State of Georgia having an address at 6200 The Corners Parkway, Suite 250, Atlanta, Georgia 30092 ("*Purchaser*").

In consideration of the mutual promises, covenants, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

**ARTICLE I**
**DEFINITIONS**

SECTION 1.1 *Definitions*. For purposes of this Agreement, the following capitalized terms have the meanings set forth in this Section 1.1:

"*Assignment*" has the meaning ascribed to such term in Section 10.3(d) and shall be in the form attached hereto as *Exhibit A*.

"*Assignment of Leases*" has the meaning ascribed to such term in Section 10.3(c) and shall be in the form attached hereto as *Exhibit B*.

"*Authorities*" means the various governmental and quasi-governmental bodies or agencies having jurisdiction over the Real Property and Improvements, or any portion thereof.

"*Bill of Sale*" has the meaning ascribed to such term in Section 10.3(b) and shall be in the form attached hereto as *Exhibit C*.

"*Broker*" has the meaning ascribed to such term in Section 16.1.

"*Business Day*" means any day other than a Saturday, Sunday or a day on which national banking associations are authorized or required to close.

"*Certificate as to Foreign Status*" has the meaning ascribed to such term in Section 10.3(g) and shall be in the form attached as *Exhibit I.*

"*Certifying Person*" has the meaning ascribed to such term in Section 4.3(a).

"*Closing*" means the consummation of the purchase and sale of the Property contemplated by this Agreement, as provided for in Article X.

"*Closing Date*" means May 29, 2002.

"*Closing Statement*" has the meaning ascribed to such term in Section 10.4(a).

"*Closing Surviving Obligations*" means the rights, liabilities and obligations set forth in Sections 3.2, 3.4, 4.3, 5.4, 8.2, 8.3, 10.4, 10.6, 11.1, 11.2, 12.1, Article XIV, 15.1, 16.1, and Article XVIII, and any other provisions which pursuant to their terms survives the Closing hereunder.

"*Code*" has the meaning ascribed to such term in Section 4.3.

"*Deed*" has the meaning ascribed to such term in Section 10.3(a).

"*Delinquent Rental*" has the meaning ascribed to such term in Section 10.4(b).

"*Documents*" has the meaning ascribed to such term in Section 5.2(a).

"*Earnest Money Deposit*" has the meaning ascribed to such term in Section 4.1.

"*Effective Date*" means the latest date on which this Agreement has been executed by Seller or Purchaser, which date shall be set forth opposite such party's signature.

"*Environmental Laws*" means each and every federal, state, county and municipal statute, ordinance, rule, regulation, code, order, requirement, directive, binding written interpretation and binding written policy pertaining to Hazardous Substances issued by any Authorities and in effect as of the date of this Agreement with respect to or which otherwise pertains to or affects the Real Property or the Improvements, or any portion thereof, the use, ownership, occupancy or operation of the Real Property or the Improvements, or any portion thereof, and as same have been amended, modified or supplemented from time to time prior to the Effective Date, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) (the "Superfund Act"), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended by the Hazardous and Solid Wastes Amendments of 1984, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Water Act (33 U.S.C. § 1321 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), the National Environmental Policy Act (42 U.S.C. § 4321 et seq.), the Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.) and any statutes regarding environmental issues in effect in the State of Colorado (collectively, the "*Environmental Statutes*"), and any and all rules and regulations which have become effective prior to the date of this Agreement under any and all of the Environmental Statutes.

"*Escrow Agent*" means Commonwealth Title Insurance Company, having an address at 655 Third Avenue, New York, New York 10017.

"*Evaluation Period*" has the meaning ascribed to such term in Section 5.1.

"*Governmental Regulations*" means all statutes, ordinances, rules and regulations of the Authorities applicable to Seller or the use or operation of the Real Property or the Improvements or any portion thereof.

"*Hazardous Substances*" means (a) asbestos, radon gas and urea formaldehyde foam insulation, (b) any solid, liquid, gaseous or thermal contaminant, including smoke vapor, soot, fumes, acids, alkalis, chemicals, petroleum products or byproducts, PCBs, phosphates, lead or other heavy metals and chlorine, (c) any solid or liquid waste (including, without limitation, hazardous waste), hazardous air pollutant, hazardous substance, hazardous chemical substance and mixture, toxic substance, pollutant, pollution, regulated substance and contaminant, as such terms are defined in any of the Environmental Statutes as such Environmental Statutes have been amended and/or supplemented from time to time prior to the date of this Agreement, and any and all rules and regulations promulgated under any of the above, and (d) any other chemical, material or substance, the use or presence of which, or exposure to the use or presence of which, is prohibited, limited or regulated by any Environmental Statutes.

"*Improvements*" means all buildings, structures, fixtures, parking areas and other improvements located on the Real Property.

"*Lease*" means the lease with Tenant, together with all renewals and modifications thereof, if any, all guaranties thereof, if any.

"*Licensee Parties*" has the meaning ascribed to such term in Section 5.1.

"*Licenses and Permits*" means, collectively, all of Seller's right, title and interest, to the extent assignable, in and to licenses, permits, certificates of occupancy, approvals, dedications, zoning approvals, warranties, lien waivers, utility arrangements, subdivision maps and entitlements now or hereafter issued, approved or granted by the Authorities in connection with the Real Property and the Improvements, together with all renewals and modifications thereof.

"*Operating Expenses*" has the meaning ascribed to such term in Section 10.4(c).

"*Permitted Exceptions*" has the meaning ascribed to such term in Section 6.2(a).

"*Permitted Outside Parties*" has the meaning ascribed to such term in Section 5.2(b).

"*Personal Property*" means all of Seller's right, title and interest in and to all equipment, appliances, tools, supplies, machinery, artwork, furnishings and other tangible personal property attached to, appurtenant to, located in and used exclusively in connection with the ownership or operation of the Improvements and situated at the Property at the time of Closing including, without limitation, the personal property listed on Exhibit J.

"*Property*" has the meaning ascribed to such term in Section 2.1.

"*Proration Items*" has the meaning ascribed to such term in Section 10.4(a).

"*Purchase Price*" has the meaning ascribed to such term in Section 3.1.

"*Purchaser's Information*" has the meaning ascribed to such term in Section 5.3(c).

"*Real Property*" means that certain parcel or parcels of real property located at 750 South Richfield, Aurora, Colorado, as more particularly described on the legal description attached hereto and made a part hereof as *Exhibit D*, together with all of Seller's right, title and interest, if any, in and to the appurtenances pertaining thereto, including but not limited to Seller's right, title and interest in and to the adjacent streets, alleys and right-of-ways, and any easement rights, air rights, subsurface rights, development rights and water rights.

"*Rental*" has the meaning ascribed to such term in Section 10.4(b), and same are "Delinquent" in accordance with the meaning ascribed to such term in Section 10.4(b).

"*Security Deposits*" means all security deposits paid to Seller, as landlord (together with any interest which has accrued thereon, but only to the extent such interest has accrued for the account of the Tenant).

"*Significant Portion*" means, for purposes of the casualty provisions set forth in Article XI hereof, damage by fire or other casualty to the Real Property and the Improvements or a portion thereof, the cost of which to repair would exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate.

"*Survey Objection*" has the meaning ascribed to such term in Section 6.1.

"*Tenant*" means TRW, Inc.

"*Tenant Notice Letters*" has the meaning ascribed to such term in Section 10.2(e), and are to be delivered by Purchaser to Tenant pursuant to Section 10.6.

"*Termination Surviving Obligations*" means the rights, liabilities and obligations set forth in Sections 5.2, 5.3, 5.4, 12.1, Articles XIII, and XIV, Section 16.1, Article XVII, and Sections 18.2 and 18.8, and any other provisions which pursuant to their terms survive any termination of this Agreement.

"*Title Commitment*" has the meaning ascribed to such term in Section 6.2.

"*Title Company*" means Commonwealth Land Title Insurance Company.

"*Title and Survey Objections*" has the meaning ascribed to such term in Section 6.2.

"*Title Policy*" has the meaning ascribed to such term in Section 6.2.

"*To Seller's Knowledge*" means the present actual (as opposed to constructive or imputed) knowledge solely of James Clabby, as Senior Vice-President, or Terry Claussen, as Senior Director of Development of Mack-Cali Realty Corporation, without any independent investigation or inquiry whatsoever, except that the foregoing individual(s) have reviewed the terms of this Agreement and have undertaken a reasonable investigation of the facts or files in their possession necessary to support the terms and provisions of this Agreement and the definition of "To Seller's Knowledge" shall include the results of such review and investigations.

"*Updated Survey*" has the meaning ascribed to such term in Section 6.1.

SECTION 1.2 *References: Exhibits and Schedules*. Except as otherwise specifically indicated, all references in this Agreement to Articles or Sections refer to Articles or Sections of this Agreement, and all references to Exhibits or Schedules refer to Exhibits or Schedules attached hereto, all of which Exhibits and Schedules are incorporated into, and made a part of, this Agreement by reference. The words "herein," "hereof," "hereinafter" and words and phrases of similar import refer to this Agreement as a whole and not to any particular Section or Article.

## ARTICLE II
## AGREEMENT OF PURCHASE AND SALE

SECTION 2.1 *Agreement*. Seller hereby agrees to sell, convey and assign to Purchaser, and Purchaser hereby agrees to purchase and accept from Seller, on the Closing Date and subject to the terms and conditions of this Agreement, all of the following (collectively, the "*Property*"):

(a) the Real Property;

(b) the Improvements;

(c) the Personal Property;

(d) all of Seller's right, title and interest as lessor in and to the Lease and, subject to the terms of the Lease, the Security Deposits;

(e) to the extent assignable, all of Seller's right, title and interest in, to and under the Licenses and Permits; and

(f) all of Seller's right, title and interest, to the extent assignable or transferable, in and to all other intangible rights, titles, interests, privileges and appurtenances owned by Seller and related to or used exclusively in connection with the ownership, use or operation of the Real Property or the Improvements (the "Intangible Property")

SECTION 2.2 *Indivisible Economic Package*. Purchaser has no right to purchase, and Seller has no obligation to sell, less than all of the Property, it being the express agreement and understanding of Purchaser and Seller that, as a material inducement to Seller and Purchaser to enter into this Agreement, Purchaser has agreed to purchase, and Seller has agreed to sell, all of the Property, subject to and in accordance with the terms and conditions hereof.

## ARTICLE III
## CONSIDERATION

SECTION 3.1 *Purchase Price*. The purchase price for the Property (the "*Purchase Price*") shall be the sum of (a) Fifteen Million Eight Hundred Fifty Thousand Dollars ($15,850,000), plus (b) Five Million Two Hundred Ten Thousand Dollars ($5,210,000), all in lawful currency of the United States of America, payable as provided in Section 3.3 and subject to adjustments and credits as contemplated hereby. No portion of the Purchase Price shall be allocated to the Personal Property.

SECTION 3.2 *Assumption of Obligations*. As additional consideration for the purchase and sale of the Property, at Closing Purchaser will assume, to the extent assigned by Seller, all of the covenants and obligations of Seller pursuant to the Lease, Licenses and Permits and Intangible Property, which are to be performed subsequent to the Closing Date.

SECTION 3.3 *Method of Payment of Purchase Price*. No later than 10:00 a.m. Eastern time on the Closing Date, Purchaser shall pay to Seller the Purchase Price (less the Earnest Money Deposit), subject to adjustments and credits contemplated hereby, together with all other costs and amounts to be paid by Purchaser at the Closing pursuant to the terms of this Agreement ("**Purchaser's Costs**"), by Federal Reserve wire transfer of immediately available funds to the account of Escrow Agent. Escrow Agent, following authorization by the parties at Closing, shall (i) pay to Seller by Federal Reserve wire transfer of immediately available funds to an account designated by Seller, the Purchase Price, subject to adjustments and credits contemplated hereby and less any costs or other amounts to be paid by Seller at Closing pursuant to the terms of this Agreement, (ii) pay to the appropriate payees out of the proceeds of Closing payable to Seller all costs and amounts to be paid by Seller at Closing pursuant to the terms of this Agreement, and (iii) pay Purchaser's Costs to the appropriate payees at Closing pursuant to the terms of this Agreement.

## ARTICLE IV
## EARNEST MONEY DEPOSIT
## AND ESCROW INSTRUCTIONS

SECTION 4.1 *The Earnest Money Deposit*. Simultaneously with the execution and delivery of this Agreement by Purchaser, Purchaser shall deposit with the Escrow Agent, by Federal Reserve wire transfer of immediately available funds, the sum of Five Hundred Thousand Dollars ($500,000.00) as the earnest money deposit on account of the Purchase Price (the "*Earnest Money Deposit*").

SECTION 4.2 *Escrow Instructions*. The Earnest Money Deposit shall be held in escrow by the Escrow Agent in an interest-bearing account, in accordance with the provisions of Article XVII. In the event this Agreement is not terminated by Purchaser pursuant to the terms hereof by the end of the Evaluation Period in accordance with the provisions of Section 5.3(c) herein, the Earnest Money Deposit and the interest earned thereon shall become non-refundable to Purchaser except as otherwise set forth herein. In the event this Agreement is terminated by Purchaser prior to the expiration of the Evaluation Period, the Earnest Money Deposit, together with all interest earned thereon, shall be refunded to Purchaser.

SECTION 4.3 *Designation of Certifying Person*. In order to assure compliance with the requirements of Section 6045 of the Internal Revenue Code of 1986, as amended (the "*Code*"), and any related reporting requirements of the Code, the parties hereto agree as follows:

(a) Provided the Escrow Agent shall execute a statement in writing (in form and substance reasonably acceptable to the parties hereunder) pursuant to which it agrees to assume all responsibilities for information reporting required under Section 6045(e) of the Code, Seller and Purchaser shall designate the Escrow Agent as the person to be responsible for all information reporting under Section 6045(e) of the Code (the "*Certifying Person*"). If the Escrow Agent refuses to execute a statement pursuant to which it agrees to be the Certifying Person, Seller and Purchaser shall agree to appoint another third party as the Certifying Person.

(b) Seller and Purchaser each hereby agree:

(i) to provide to the Certifying Person all information and certifications regarding such party, as reasonably requested by the Certifying Person or otherwise required to be provided by a party to the transaction described herein under Section 6045 of the Code; and

(ii) to provide to the Certifying Person such party's taxpayer identification number and a statement (on Internal Revenue Service Form W-9 or an acceptable substitute form, or on any other form the applicable current or future Code sections and regulations might require and/or any form requested by the Certifying Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such party to the Certifying Person is correct.

## ARTICLE V
## INSPECTION OF PROPERTY

SECTION 5.1 *Evaluation Period*. For the period ending at 5:00 p.m. Eastern time on May 29, 2002 (the "*Evaluation Period*"), Purchaser and its authorized agents, partners, lenders, officers, employees, advisors, attorneys, accountants, architects, engineers and other representatives (for purposes of this Article V, the "*Licensee Parties*") shall have the right, subject to the interests of Tenant arising pursuant to the Lease, to enter upon the Real Property at all reasonable times during normal business hours to perform an inspection and evaluation of the Property. Purchaser will provide to Seller notice (for purposes of this Section 5.1(a), an "*Entry Notice*") of the intention of Purchaser or the other Licensee Parties to enter the Real Property at least 24 hours prior to such intended entry and specify the intended purpose therefor and the inspections and examinations contemplated to be made and with whom any Licensee Party will communicate. At Seller's option, Seller may be present for any such entry and inspection. Purchaser shall not communicate with or contact Tenant or any of the Authorities without the prior written consent of Seller. Seller agrees to coordinate a meeting between Purchaser and Tenant's representatives at a mutually convenient time during the Evaluation Period. Notwithstanding anything to the contrary contained herein, no invasive physical testing or invasive sampling shall be conducted during any such entry by Purchaser or any Licensee Party upon the Real Property without Seller's specific prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 5.2 *Document Review*.

(a) During the Evaluation Period, Purchaser and the Licensee Parties shall have the right to review and inspect, at Purchaser's sole cost and expense, all of the following which are in Seller's possession or control (collectively, the "*Documents*"): all existing environmental, engineering or consulting reports and studies of the Real Property (which Purchaser shall have the right to have updated at Purchaser's sole cost and expense), real estate tax bills, together with assessments (special or otherwise), ad valorem and personal property tax bills, covering the period of Seller's ownership of the Property; current operating statements; the Lease, lease files, Licenses and Permits, Intangible Property and such other documents, files and items as Purchaser shall reasonably request. Such inspections shall occur at a location

reasonably selected by Seller, which may be at the office of Seller, Seller's counsel, Seller's property manager, at the Real Property or any of them. Purchaser shall not have the right to review or inspect materials not directly related to the leasing, maintenance, operation, ownership and/or management of the Property, including, without limitation, all of Seller's internal memoranda, financial projections, appraisals, proposals for work not actually undertaken, and similar proprietary and confidential information.

(b) Purchaser acknowledges that any and all of the Documents may be proprietary and confidential in nature and have been provided to Purchaser solely to assist Purchaser in determining the desirability of purchasing the Property. Subject only to the provisions of Article XII, Purchaser agrees not to disclose the contents of the Documents or any of the provisions, terms or conditions contained therein, to any party outside of Purchaser's organization other than its attorneys, partners, accountants, lenders, investors or any other Licensee Parties (collectively, for purposes of this Section 5.2(b), the "*Permitted Outside Parties*"). Purchaser further agrees that within its organization, or as to the Permitted Outside Parties, the Documents will be disclosed and exhibited only to those persons within Purchaser's organization or to those Permitted Outside Parties who are responsible for determining the desirability of Purchaser's acquisition of the Property or otherwise involved in performing Purchaser's obligations under this Agreement. Purchaser further acknowledges that the Documents and other information relating to the leasing arrangements between Seller and Tenant are proprietary and confidential in nature. Purchaser agrees not to divulge the contents of such Documents and other information except in strict accordance with the confidentiality standards set forth in this Section 5.2 and Article XII. In permitting Purchaser and the Permitted Outside Parties to review the Documents and other information to assist Purchaser, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third party benefits or relationships of any kind, either express or implied, have been offered, intended or created by Seller, and any such claims are expressly rejected by Seller and waived by Purchaser and the Permitted Outside Parties, for whom, by its execution of this Agreement, Purchaser is acting as an agent with regard to such waiver.

(c) Purchaser acknowledges that some of the Documents may have been prepared by third parties and may have been prepared prior to Seller's ownership of the Property. **PURCHASER HEREBY ACKNOWLEDGES THAT, EXCEPT AS REPRESENTED IN SECTION 8.1(j), SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS OR THE SOURCES THEREOF. EXCEPT AS REPRESENTED IN SECTION 8.1(j), SELLER HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION AS TO THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS AND IS PROVIDING THE DOCUMENTS SOLELY AS AN ACCOMMODATION TO PURCHASER.**

SECTION 5.3 *Entry and Inspection Obligations; Termination of Agreement.*

(a) Purchaser agrees that in entering upon and inspecting or examining the Property, Purchaser and the other Licensee Parties will not: materially disturb the Tenant or materially interfere with the use of the Property pursuant to the Lease; interfere with the operation and maintenance of the Real Property or Improvements; damage any part of the Property or any personal property owned or held by Tenant or any other person or entity; injure or otherwise cause bodily harm to Seller or Tenant, or to any of their respective agents, guests,

invitees, contractors and employees, or to any other person or entity; permit any liens to attach to the Real Property by reason of the exercise of Purchaser's rights under this Article V; or reveal or disclose any information obtained concerning the Property and the Documents to anyone outside Purchaser's organization, except in accordance with the confidentiality standards set forth in Section 5.2(b) and Article XII. Purchaser will: (i) maintain (or cause the appropriate Licensee Parties to maintain) comprehensive general liability (occurrence) insurance in terms and amounts reasonably satisfactory to Seller and Workers' Compensation insurance in statutory limits, covering any accident or event arising in connection with the presence of Purchaser or the other Licensee Parties on the Real Property or Improvements, and deliver evidence of insurance verifying such coverage to Seller prior to entry upon the Real Property or Improvements; (ii) promptly pay when due the costs of all entry and inspections and examinations done with regard to the Property; (iii) cause any inspection to be conducted in accordance with standards customarily employed in the industry and in compliance with all Governmental Regulations; (iv) at Seller's request, furnish to Seller copies of any studies, reports or test results received by Purchaser regarding the Property, promptly after such receipt, in connection with such inspection; and (v) repair any damage to the Real Property and Improvements caused by any inspection or examination by Purchaser or its agents. Notwithstanding the foregoing or subsection (b) below to the contrary, Purchaser shall not be required to restore nor to be liable for any damage to the Property resulting from the actions or inactions of Seller or Tenant. In addition, Purchaser shall not be liable to restore any damage to the Real Property or the Improvements to the extent same is a result of any acts or omissions of the Seller or the Tenant to the extent of any losses incurred by Seller or otherwise relating to existing conditions at the Property which are revealed by Purchaser's investigations permitted hereunder.

(b) Except as stated to the contrary in the last sentence of (a) above, Purchaser hereby indemnifies, defends and holds Seller and its partners, agents, directors, officers, employees, successors and assigns harmless from and against any and all liens, claims, causes of action, damages, liabilities, demands, suits, obligations to third parties, together with all losses, penalties, costs and expenses relating to any of the foregoing (including but not limited to court costs and reasonable attorneys' fees, but specifically excluding any punitive damages) arising out of any inspections, investigations, examinations, sampling or tests conducted by Purchaser or any of the Licensee Parties, whether prior to or after the date hereof, with respect to the Property.

(c) In the event that Purchaser determines, in its sole and absolute discretion, that, for any reason, it is not satisfied with the results of its inspections and evaluations during the Evaluation Period, then Purchaser shall have the right to terminate this Agreement by providing written notice to Seller prior to the expiration of the Evaluation Period. In the event Purchaser terminates this Agreement in accordance with this Section 5.3(c), or under any other right of termination as set forth herein, Purchaser shall have the right to receive a refund of the Earnest Money Deposit, together with all interest which has accrued thereon, and except with respect to the Termination Surviving Obligations, this Agreement shall be null and void and the parties shall have no further obligation to each other. In the event this Agreement is terminated, Purchaser shall return to Seller all copies Purchaser has made of the Documents and all copies of any studies, reports or test results regarding any part of the Property obtained by Purchaser, before or after the execution of this Agreement, in connection with Purchaser's inspection of the Property (collectively, "*Purchaser's Information*") promptly following the time this Agreement is terminated for any reason.

SECTION 5.4 *Sale "As Is"* **THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN SELLER AND PURCHASER. THIS AGREEMENT REFLECTS THE MUTUAL AGREEMENT OF SELLER AND PURCHASER, AND PURCHASER HAS THE RIGHT TO CONDUCT ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY. OTHER THAN THE MATTERS REPRESENTED IN SECTION 8.1 HEREOF, BY WHICH ALL OF THE FOLLOWING PROVISIONS OF THIS SECTION 5.4 ARE MODIFIED AND LIMITED AS IF SUCH EXCEPTION WERE FULLY SET FORTH THEREIN IN EACH INSTANCE, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER'S AGENTS OR REPRESENTATIVES, AND PURCHASER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE.**

**SELLER SPECIFICALLY DISCLAIMS, AND NEITHER IT NOR ANY OF ITS AFFILIATES NOR ANY OTHER PERSON IS MAKING, ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO PURCHASER, AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY PURCHASER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (d) ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (e) ANY CLAIM BY PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, WITH RESPECT TO THE IMPROVEMENTS OR THE PERSONAL PROPERTY, (f) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY AND (g) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND PURCHASER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO PURCHASER IN ITS PRESENT CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS", WITH ALL FAULTS. PURCHASER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED AND SOPHISTICATED PURCHASER OF REAL ESTATE, AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF PURCHASER'S CONSULTANTS IN PURCHASING THE PROPERTY. PURCHASER HAS BEEN GIVEN A SUFFICIENT OPPORTUNITY HEREIN TO CONDUCT AND HAS CONDUCTED OR WILL CONDUCT SUCH INSPECTIONS, INVESTIGATIONS AND OTHER INDEPENDENT EXAMINATIONS OF THE PROPERTY AND RELATED MATTERS AS PURCHASER DEEMS NECESSARY, INCLUDING BUT NOT LIMITED TO THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND WILL RELY UPON SAME AND NOT UPON ANY STATEMENTS OF SELLER (EXCLUDING THE LIMITED MATTERS REPRESENTED BY SELLER IN SECTION 8.1 HEREOF) NOR OF ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT OR ATTORNEY OF SELLER. PURCHASER ACKNOWLEDGES THAT ALL INFORMATION OBTAINED BY PURCHASER WAS OBTAINED FROM A VARIETY OF SOURCES, AND SELLER**

**WILL NOT BE DEEMED TO HAVE REPRESENTED OR WARRANTED THE COMPLETENESS, TRUTH OR ACCURACY OF ANY OF THE DOCUMENTS OR OTHER SUCH INFORMATION HERETOFORE OR HEREAFTER FURNISHED TO PURCHASER. UPON CLOSING, PURCHASER WILL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER WILL SELL AND CONVEY TO PURCHASER, AND PURCHASER WILL ACCEPT THE PROPERTY, "AS IS, WHERE IS," WITH ALL FAULTS. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY, BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN. PURCHASER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE "AS IS, WHERE IS" NATURE OF THIS SALE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY. PURCHASER, WITH PURCHASER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THEIR SIGNIFICANCE AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO PURCHASER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SECTION 5.4 WILL EXPRESSLY SURVIVE THE CLOSING, WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND ARE HEREBY DEEMED INCORPORATED INTO THE DEED AS FULLY AS IF SET FORTH AT LENGTH THEREIN.**

**PURCHASER FURTHER COVENANTS AND AGREES NOT TO SUE SELLER, AND RELEASES SELLER OF AND FROM AND WAIVES ANY CLAIM OR CAUSE OF ACTION THAT PURCHASER MAY HAVE AGAINST SELLER UNDER ANY ENVIRONMENTAL LAW, NOW EXISTING OR HEREAFTER ENACTED OR PROMULGATED, RELATING TO ENVIRONMENTAL MATTERS OR ENVIRONMENTAL CONDITIONS EXISTING AS OF THE CLOSING (WHETHER KNOWN OR UNKNOWN) IN, ON, UNDER, ABOUT OR MIGRATING FROM OR ONTO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, OR BY VIRTUE OF ANY COMMON LAW RIGHT RELATED TO ENVIRONMENTAL CONDITIONS OR ENVIRONMENTAL MATTERS IN, ON, UNDER, ABOUT OR MIGRATING FROM OR ONTO THE PREMISES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OF TITLE TO THE PROPERTY OR THE TERMINATION OF THIS AGREEMENT, AS THE**

**CASE MAY BE. THE FOREGOING SENTENCE SHALL NOT RELIEVE SELLER OF ITS REPRESENTATION MADE UNDER SECTION 8.1(j).**

## ARTICLE VI
## TITLE AND SURVEY MATTERS

SECTION 6.1 *Survey*. Purchaser acknowledges receipt of a current ALTA survey for the Property. Such current survey is herein referred to as the "*Updated Survey*". Any matter revealed by the Updated Survey which Seller deems unacceptable shall constitute a "*Survey Objection*" under this Agreement.

SECTION 6.2 *Title Commitment.*

(a) Purchaser acknowledges receipt from the Title Company of a current title insurance commitment for the Property (the "*Title Commitment*"), together with copies of the title exceptions listed thereon and Seller's vesting deed. By the date (the "*Objection Date*") which is twenty (20) days after the Effective Date, Purchaser shall provide Seller with written notice of any Survey Objections or objection to matters disclosed by the Title Commitment if Purchaser deems same unacceptable (collectively, the "*Title and Survey Objections*"). In the event Seller does not receive the Title and Survey Objections by the Objection Date, Purchaser will be deemed to have accepted the exceptions to title set forth in the Title Commitment as Permitted Exceptions. Title and Survey Objections shall be handled in accordance with Section 6.3. The Title Commitment shall provide that the Title Company agrees to issue to Purchaser at Closing an owner's policy of title insurance (the "*Title Policy*") in the amount of the Purchase Price on the 1970 ALTA owner's form insuring Purchaser's fee simple title to the Real Property, with all requirements satisfied, subject to the terms of such policy and the exceptions described therein, specifically excluding the standard or general exceptions, and specifically excluding any Monetary Obligations (as hereinafter defined). All matters shown on the Existing Survey which are not removed by Seller pursuant to the provisions of Section 6.3 and the exceptions shown on *Exhibit G* which are not removed by Seller pursuant to the provisions of Section 6.3 will be referred to herein as the "*Permitted Exceptions*".

(b) All taxes, water rates or charges, sewer rents and assessments, plus interest and penalties thereon, which on the Closing Date are due and payable and/or are liens against the Real Property and which Seller is obligated to pay and discharge will be credited against the Purchase Price (subject to the provision for apportionment of taxes, water rates and sewer rents herein contained) and without the need for Purchaser to raise as a Title Objection.

(c) If on the Closing Date the Real Property shall be affected by any lien which, pursuant to the provisions of this Agreement, is required to be discharged or satisfied by Seller, Seller shall not be required to discharge or satisfy the same of record provided the money necessary to satisfy the lien is retained by the Title Company at Closing (with authority to pay in the event of enforcement of such lien), and the Title Company either omits the lien as an exception from the title insurance commitment or insures against collection thereof from or out of the Real Property and/or the Improvements, and a credit is given to Purchaser for the recording charges for a satisfaction or discharge of such lien.

(d) No franchise, transfer, inheritance, income, corporate or other tax open, levied or imposed against Seller or any former owner of the Property, that may be a lien against the Property on the Closing Date, shall be an objection to title if the Title Company insures against collection thereof from or out of the Real Property and/or the Improvements, and provided further that Seller deposits with the Title Company a sum reasonably sufficient to secure a release of the Real Property and/or Improvements from the lien thereof (with authority to pay in the event of enforcement of such lien). If a search of title discloses judgments, bankruptcies, or other returns against other persons having names the same as or similar to that of Seller, Seller will deliver to Purchaser an affidavit stating that such judgments, bankruptcies or other returns do not apply to Seller, and such search results shall not be deemed Title and Survey Objections.

(e) Notwithstanding anything to the contrary contained herein, Seller shall be obligated to cure and/or satisfy or cause to be deleted as an exception to title: (x) any standard exceptions (to the extent that the Title Company is willing to delete the same based upon receipt of the Updated Survey and an affidavit from Seller); (y) any of the following exceptions and encumbrances to the title to the Property as may be disclosed by the Title Commitment, all of which shall be referred to herein as "Monetary Objections": (i) any deed of trust, mortgage, or other security title, assignment of leases, negative pledge, financing statement or similar security instrument encumbering all or any portion of the Property; (ii) mechanics, materialmen, brokers or other similar liens affecting the Property (unless Tenant is obligated to remove the same pursuant to the provisions of the Lease); (iii) the lien of ad valorem taxes, and other similar items affecting the Property which are past due; (iv) any judgment or lis pendens of record against Seller in the county or other applicable jurisdiction in which the Property is located; and (z) any other encumbrance first appearing of record after the effective date of the Title Commitment. To the extent any Monetary Objection has not been cured or satisfied at or prior to Closing, Purchaser shall be entitled to apply a portion of the purchase proceeds to such satisfaction or cure (or withhold such portion as may be necessary to satisfy or cure such Monetary Objection) and Purchaser shall receive a credit against the Purchase Price for any such amounts so applied or withheld. Notwithstanding the foregoing to the contrary, if on the Closing Date there shall be security interests filed against the Real Property, such items shall not be Monetary Obligations if (i) the personal property covered by such security interests are no longer in or on the Real Property and will not be conveyed as part of the Personal Property hereunder, or (ii) such personal property is the property of Tenant, and Seller executes and delivers an affidavit to such effect, or the security interest was filed more than five (5) year prior to the Closing Date and was not renewed.

SECTION 6.3 *Title Defect*.

(a) In the event Seller receives any Survey Objection or Title Objection (collectively and individually, a "*Title Defect*") within the time periods required under Sections 6.1 and 6.2 above, Seller may elect (but shall not be obligated) to attempt remove, or cause to be removed at its expense, any such Title Defect, and shall provide Purchaser with notice, within five (5) days of its receipt of any such objection, of its intention to cure or not to cure such any such Title Defect. If Seller elects to attempt to cure any Title Defect, the Closing Date shall be extended, for a period not to exceed sixty (60) days, for the purpose of such removal. In the event that (i) Seller elects not to attempt to cure any such Title Defect, or (ii) Seller is unable to cure any such Title Defect within the period elected by Seller but not to exceed sixty (60) days from the Closing Date, Seller shall so advise Purchaser and Purchaser shall have the right to

terminate this Agreement and receive a refund of the Earnest Money Deposit, together with all interest which has accrued thereon, or to waive such Title Defect and proceed to the Closing. Purchaser shall make such election within five (5) days of receipt of Seller's notice. If Purchaser elects to proceed to the Closing, any Title Defects waived by Purchaser shall be deemed Permitted Exceptions. In any such event of termination, Purchaser shall promptly return Purchaser's Information to Seller, after which neither party shall have any further obligation to the other under this Agreement except for the Termination Surviving Obligations.

(b) Notwithstanding any provision of this Article VI to the contrary, Seller will be obligated to cure exceptions to title to the Property, in the manner described above, relating to liens and security interests securing any financings to Seller, and any mechanic's liens resulting from work at the Property commissioned by Seller.

(c) Notwithstanding the foregoing, in the event further updates are made to the Title Commitment or Updated Survey which reveal new matters not shown on the previous version of the Title Commitment or Updated Survey, Purchaser may give Seller notice of any additional Title and Survey Objections based upon such new matters. Purchaser must object in writing to any such new matters, if at all, before 5:00 p.m. (eastern standard time) on the second (2nd) business day after receipt of an such updated Title Commitment or Updated Survey first disclosing said new matters. In the event Purchaser so notices Seller, such items shall be deemed to be Title and Survey Objections and subject to the process for Title Defects set forth above.

## ARTICLE VII
## INTERIM OPERATING COVENANTS, ESTOPPELS, BOARD APPROVAL AND POST-CLOSING MANAGEMENT

SECTION 7.1 *Interim Operating Covenants*. Seller covenants to Purchaser that Seller will:

(a) *Operations*. From the Effective Date until Closing, continue to operate, manage and maintain the Improvements in the ordinary course of Seller's business and substantially in accordance with Seller's present practice, subject to ordinary wear and tear and further subject to Article XI of this Agreement.

(b) *Compliance with Governmental Regulations*. From the Effective Date until Closing, not knowingly take any action that Seller would result in a failure to comply in all material respects with all Governmental Regulations applicable to the Property and with all covenants, conditions, restrictions, encumbrances and other title exception documents affecting the Property, it being understood and agreed that prior to Closing, Seller will have the right to contest any such Governmental Regulations and any such title exception documents.

(c) *Service Contracts*. From the expiration of the Evaluation Period until Closing, not enter into any service contract, unless such service contract is terminable on thirty (30) days notice without penalty or unless Purchaser consents thereto in writing, which approval will not be unreasonably withheld, delayed or conditioned.

(d) *Notices*. To the extent received by Seller, from the Effective Date until Closing, promptly deliver to Purchaser copies of written default notices, notices of lawsuits and notices of violations affecting the Property.

(e) *Lease*. From the Effective Date until Closing, Seller shall not amend, modify, extend or terminate the Lease or enter into any other leases or occupancy agreements without the Purchaser's prior consent, which consent may be withheld in Purchaser's reasonable discretion. Seller will give prompt written notice to Purchaser of any amendments to the Lease prior to expiration of the Evaluation Period.

(f) *Standstill*. From the Effective Date until Closing, Seller shall not market the Property or any interest therein for sale or disposition to any other party, Seller shall not solicit, negotiate or accept offers or otherwise enter into any binding or non-binding agreement for a purchase, financing or joint venture involving the Property or any interest therein with any other person or entity and Seller shall not dispose of, convey, assign or pledge any interest in the Property or any interest therein or otherwise enter into any agreement affecting or encumbering or agreeing to dispose of, convey, assign or pledge any interest the Property or any interest therein, which agreement would be consummated prior to or otherwise the survive the Closing.

(f) *Further Encumbrances*. Seller shall not further alter or encumber in any way Seller's title to the Property after the date hereof without the prior written consent of Purchaser.

SECTION 7.2 *Estoppels*. It will be a condition to Closing that Seller obtain from Tenant (the "Estoppel Certificate") an executed estoppel certificate in the form required to be given pursuant to the Lease. Seller agrees to request an estoppel certificate from Tenant in the form attached as Exhibit L, and also a copy of Tenant's financial statements, but it shall only be condition to Closing that the Estoppel Certificate be in the form prescribed by the Lease. No later than five (5) Business Days after the Effective Date, Seller will request Tenant to execute such Estoppel Certificate, and use good faith efforts to obtain same. Seller shall not be in default of its obligations hereunder if Tenant fails to deliver the Estoppel Certificate, or delivers an Estoppel Certificate which is not in accordance with this Agreement.

SECTION 7.3 *Board Approval*. It will be a condition to Closing that Seller obtain approval from its Board of Directors to proceed to Closing. Seller shall solicit such approval from its Board of Directors within five (5) Business Days following the Effective Date. Failure by Seller to obtain said approval shall not be deemed a default hereunder. In the event Seller's Board of Directors denies approval to proceed to Closing, this Agreement shall be deemed terminated and of no further force and effect, except for the Termination Surviving Obligations, which shall survive any such termination, and the Earnest Money Deposit and interest earned thereon shall be returned to Purchaser. If Seller's Board of Directors denies approval, Seller agrees to reimburse Purchaser for its reasonable and actual out-of-pocket expenses, including reasonable attorneys' fees, incurred in connection with the negotiation of this Agreement and the performance of Purchaser's diligence inspections, provided, however, that in no event shall Seller be obligated to reimburse in excess of $50,000.

SECTION 7.4 *Right of First Offer*. It will be a condition to Closing that Seller obtain from Tenant a written waiver of its right of first offer contained in Section 9 of the Addendum to the Lease with respect the sale contemplated by this Agreement. No later than five (5) Business Days after the Effective Date, Seller will request Tenant to execute such waiver, and use good faith efforts to obtain same. If Tenant exercises its right of first offer, Seller agrees to reimburse

Purchaser for its reasonable and actual out-of-pocket expenses, including reasonable attorneys' fees, incurred in connection with the negotiation of this Agreement and the performance of Purchaser's diligence inspections, provided, however, that in no event shall Seller be obligated to reimburse in excess of $50,000.

## ARTICLE VIII
## REPRESENTATIONS AND WARRANTIES

SECTION 8.1 *Seller's Representations and Warranties*. Subject to the limitations set forth in Section 8.3 of this Agreement, Seller represents and warrants to Purchaser the following:

(a) *Status*. Seller is a limited partnership, duly organized and validly existing under the laws of the State of Delaware.

(b) *Authority*. Subject to Section 7.3 above, the execution and delivery of this Agreement and the performance of Seller's obligations hereunder have been duly authorized by all necessary action on the part of Seller, and this Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms. The person signing this Agreement on behalf of Seller has been duly authorized to sign and deliver this Agreement on behalf of Seller.

(c) *Non-Contravention*. The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority or conflict with, result in a breach of, or constitute a default under the organizational documents of Seller, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Seller is a party or by which it is bound.

(d) *Consents*. Subject to Section 7.3 above, no consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Seller or the performance by Seller of the transactions contemplated hereby.

(e) *Suits and Proceedings*. Except as listed in *Exhibit H*, there are no legal actions, suits or similar proceedings pending and served, or, to Seller's Knowledge, threatened in writing against Seller or the Property which (i) are not adequately covered by existing insurance and (ii) if adversely determined, would materially and adversely affect the value of the Property, the continued operations thereof, or Seller's ability to consummate the transactions contemplated hereby.

(f) *Non-Foreign Entity*. Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(g) *Tenant and Lease*. To Seller's Knowledge, as of the date of this Agreement, the only tenant with respect to the Property is TRW, Inc. The Documents made available to Purchaser pursuant to Section 5.2 hereof include true and correct copies of all of the leases affecting the Property. The Lease has not been amended except by Addendum dated December 10, 1996.

(h) *Service Contracts*. To Seller's Knowledge there are no service contracts, the terms of which will constitute an obligation upon Purchaser or the Property after the Closing.

(i) *Legal Compliance*. To Seller's Knowledge, Seller has not received any notices or citations of the violation of any zoning regulation or directive of any Authority having jurisdiction relating to the Property or any part thereof which would have a material adverse effect on a Property as currently owned and occupied. To Seller's knowledge, Seller has not received any written notification from any governmental or public authority that the Property is in violation of any applicable fire, health, building, use, occupancy or zoning laws where such violation remains outstanding and, if unaddressed, would have a material adverse effect on the use of the Property as currently owned and operated.

(j) *Environmental*. Except as may be disclosed in any environmental report provided as a Document, to Seller's Knowledge, Seller has not received any written notice of any violation of any Environmental Law, nor, to Seller's Knowledge, has Seller caused or asserted in writing that Tenant has caused any violation of any Environmental Law.

(j) *Due Diligence Materials*. All copies of the Documents and any other documents furnished or to be furnished to Purchaser by Seller or on its respective behalf in connection with the transaction contemplated hereby are true and complete copies of the originals, which, to Seller's Knowledge, have not been changed, modified or supplemented except as disclosed to Purchaser.

(k) *Condemnation*. To Seller's Knowledge, there are no pending or threatened condemnation proceedings which would affect the Property, or any part thereof, nor any pending or threatened planned public improvements, annexations, zoning or subdivision changes, or other adverse claims affecting the Property.

(l) *Bankruptcy*. Seller has not (A) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (B) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets, (C) made an assignment for the benefit of creditors.

(m) *To Seller's Knowledge*. Seller represents to Purchaser that the individuals identified in the definition of "To Seller's Knowledge" in Section 1.1 of this Agreement are the senior individuals employed by Mack Cali Realty most likely to have present actual knowledge of the representations and warranties made in this Agreement.

(n) *Taxes.* Except with respect to previous protests which are not currently under consideration, Seller has not filed, and has not retained anyone to file, notices of protests against, or to commence action to review, real property tax assessments against the Property.

(o) *Leasing Commissions; Personal Property*. The commission obligations, if any, listed in Section 15 of the Lease are the only commission agreements with

any brokers, agents or finders existing as of the Execution Date with respect to the Lease which will be binding upon Purchaser and/or the Property following the Closing Date. Neither Seller, nor to Seller's Knowledge, Pacifica Holding Company, LLC, entered into an agreement with Grubb & Ellis documenting the terms and conditions on which commissions would or would not be payable following the Closing Date, except as may be set forth in Section 15 of the Lease. Further, to Seller's Knowledge, Seller is not in possession of the "schedule of said Brokers in effect at the time of the execution of this Lease" referenced in Section 15 of the Lease as it pertains to Grubb & Ellis. None of the personal property located on the Property is leased by Seller and none of such property is security for any financing of Seller.

SECTION 8.2 *Purchaser's Representations and Warranties*. Purchaser represents and warrants to Seller the following:

(a) *Status*. Purchaser is a duly organized and validly existing under the laws of the State of *Georgia*.

(b) *Authority*. The execution and delivery of this Agreement and the performance of Purchaser's obligations hereunder have been duly authorized by all necessary action on the part of Purchaser and this Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms. The person signing this Agreement on behalf of Purchaser has been duly authorized to sign and deliver this Agreement on behalf of Purchaser.

(c) *Non-Contravention*. The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority or conflict with, result in a breach of or constitute a default under the organizational documents of Purchaser, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Purchaser is a party or by which it is bound.

(d) *Consents*. No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Purchaser or the performance by Purchaser of the transactions contemplated hereby.

SECTION 8.3 *Survival of Representations and Warranties*. The representations and warranties of Seller set forth in Sections 8.1(a)-8.1(d) and 8.1(o) shall survive the Closing indefinitely and shall not be subject to the floor or to the cap set forth below. The representations and warranties of Seller set forth in Section 8.1 (e)-8.1(n) and the covenants set forth in Section 7.1 will survive the Closing for a period of twelve (12) months. Purchaser will not have any right to bring any action against Seller as a result of any untruth or inaccuracy of such representations and warranties or any such breach, unless and until the aggregate amount of all liability and losses arising out of any such untruth or inaccuracy, or any such breach, exceeds Twenty-Five Thousand Dollars ($25,000); and then only to the extent of such excess. In addition, in no event will Seller's liability for all such breaches exceed, in the aggregate, the sum of Two Million Dollars ($2,000,000). Seller shall have no liability with respect to any of Seller's representations, warranties and covenants herein if, prior to the Closing, Purchaser has knowledge of any breach of a covenant of Seller herein, or Purchaser obtains knowledge (from

whatever source, including, without limitation, any tenant estoppel certificates, as a result of Purchaser's due diligence tests, investigations and inspections of the Property, or written disclosure by Seller or Seller's agents and employees) that contradicts any of Seller's representations and warranties set forth above, and Purchaser nevertheless consummates the transaction contemplated by this Agreement. The Closing Surviving Obligations and the Termination Surviving Obligations will survive Closing without limitation unless a specified period is otherwise provided in this Agreement. All other representations, warranties, covenants and agreements made or undertaken by Seller under this Agreement, unless otherwise specifically provided herein, will not survive the Closing Date but will be merged into the Deed and other Closing documents delivered at the Closing. Notwithstanding the foregoing or any other contrary provision of this Agreement, from and after the Closing Seller agrees to indemnify Purchaser and to hold Purchaser harmless from and against any and all damages, claims and expenses arising as a result of (a) any violation of the representation contained in Section 8.1(o) above, and (b) any claims made by Pacifica Holding Company for any brokerage fees due with respect to the extension of the term of the Lease or other commissionable events as set forth in Section 15 of the Lease (other than claims arising pursuant to agreements entered into hereafter by Purchaser or its successors). The agreement in the immediately preceding sentence shall survive the Closing indefinitely.

## ARTICLE IX
## CONDITIONS PRECEDENT TO CLOSING

SECTION 9.1 *Conditions Precedent to Obligation of Purchaser*. The obligation of Purchaser to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

(a) Seller shall have delivered to Purchaser all of the items required to be delivered to Purchaser pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 10.3.

(b) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all respects as of the date of Closing (with appropriate modifications permitted under this Agreement or not materially adverse to Purchaser).

(c) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date.

(d) Receipt of the Title Policy (or an irrevocable commitment to issue the same) in the form prescribed by Section 6.2 above, along with Seller's delivery of such evidence (including, owner's affidavits and gap indemnities) as the Title Company may reasonably require to issue the Title Policy in such required form.

(e) Receipt of the Tenant Estoppel Certificate

If, by the date and time of Closing, any of the foregoing conditions are not performed or satisfied for any reason whatsoever or, alternatively, are not expressly waived by Purchaser in writing, Purchaser shall, in addition to any other remedies it may be entitled to as set forth in

Section 13.1 below, have the right to terminate this Agreement, whereupon the Earnest Money shall be returned to Purchaser.

SECTION 9.2 *Conditions Precedent to Obligation to Seller*. The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Seller in it sole discretion:

(a) Seller shall have received the Purchase Price as adjusted pursuant to, and payable in the manner provided for, in this Agreement.

(b) Purchaser shall have delivered to Seller all of the items required to be delivered to Seller pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 10.2.

(c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all respects as of the date of Closing (with appropriate modifications permitted under this Agreement or not materially adverse to Seller).

(d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the Closing Date.

If by the date and time of Closing, any of the foregoing requirements or conditions are not fully performed or satisfied or, alternatively, are not expressly waived in writing, Seller shall, in addition to any other remedies it may be entitled to as set forth in Section 13.2 below, have the right to terminate this Agreement, whereupon the Earnest Money shall be returned to Purchaser.

## ARTICLE X
## CLOSING

SECTION 10.1 *Closing*. The consummation of the transaction contemplated by this Agreement by delivery of documents and payments of money shall take place at 10:00 a.m. Eastern Time on the Closing Date at the offices of the Escrow Agent. At Closing, the events set forth in this Article X will occur, it being understood that the performance or tender of performance of all matters set forth in this Article X are mutually concurrent conditions which may be waived by the party for whose benefit they are intended. The acceptance of the Deed by Purchaser shall be deemed to be full performance and discharge of each and every agreement and obligation on the part of the Seller to be performed hereunder unless otherwise specifically provided herein. The acceptance of the Purchase Price by Seller shall be deemed to be full performance and discharge of each and every agreement and obligation on the part of the Purchaser to be performed hereunder unless otherwise specifically provided herein. The parties agree to provide all of the documents required under Sections 10.2 and 10.3 to the Escrow Agent, in escrow, at least one day prior to the Closing Date.

SECTION 10.2 *Purchaser's Closing Obligations*. On the Closing Date, Purchaser, at its sole cost and expense, will deliver the following items to Seller at Closing as provided herein:

(a) The Purchase Price, after all adjustments are made as herein provided, by Federal Reserve wire transfer of immediately available funds, in accordance with the timing and other requirements of Section 3.3;

(b) A counterpart original of the Assignment of Leases, duly executed by Purchaser;

(c) A counterpart original of the Assignment, duly executed by Purchaser;

(d) Evidence reasonably satisfactory to Seller that the person executing the Assignment of Leases, the Assignment, and the Tenant Notice Letters on behalf of Purchaser has full right, power and authority to do so;

(e) Form of written notice executed by Purchaser and to be addressed and delivered to the Tenant by Purchaser in accordance with Section 10.6 herein, (i) acknowledging the sale of the Property to Purchaser, (ii) acknowledging that Purchaser has received and that Purchaser is responsible for the Security Deposit (specifying the exact amount of the Security Deposit) (iii) indicating that rent should thereafter be paid to Purchaser and giving instructions therefor, (iv) requesting Tenant to update its insurance to reflect Purchaser as an additional insured or loss payee, as applicable, and (v) providing Purchaser's address for notice purposes under the Lease (the "*Tenant Notice Letters*");

(f) A counterpart original of the Closing Statement, duly executed by Purchaser;

(g) A certificate, dated as of the date of Closing, stating that the representations and warranties of Purchaser contained in Section 8.2 are true and correct in all respects as of the Closing Date; and

(h) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transaction with is the subject of this Agreement.

SECTION 10.3 *Seller's Closing Obligations*. At the Closing, Seller will deliver to Purchaser the following documents:

(a) A special warranty deed (the "*Deed"*), in the form customarily delivered in commercial transactions involving the purchase and sale of real property located in the State of Colorado, duly executed and acknowledged by Seller, conveying to the Purchaser the Real Property and the Improvements subject only to the Permitted Exceptions;

(b) A blanket assignment and bill of sale in the form attached hereto as *Exhibit C* (the "*Bill of Sale*"), duly executed by Seller, assigning and conveying to Purchaser, without representation or warranty, title to the Personal Property;

(c) A counterpart original of an assignment and assumption of the Seller's interest, as lessor, in the Leases and Security Deposits in the form attached hereto as *Exhibit B* (the "*Assignment of Leases*"), duly executed by Seller, conveying and assigning to Purchaser all of Seller's right, title and interest, as sublessor, in the Lease and Security Deposits;

(d) A counterpart original of an assignment and assumption of Seller's interest in the Licenses and Permits and the Intangible Property in the form attached hereto as *Exhibit A* (the "*Assignment*"), duly executed by Seller, conveying and assigning to Purchaser all of Seller's right, title, and interest, if any, in the Licenses and Permits and the Intangible Property;

(e) The Tenant Notice Letters, duly executed by Seller;

(f) Evidence reasonably satisfactory to Purchaser and Title Company that the person executing the documents delivered by Seller pursuant to this Section 10.3 on behalf of Seller has full right, power, and authority to do so;

(g) A certificate in the form attached hereto as *Exhibit I* ("*Certificate as to Foreign Status*") certifying that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, as well as any form or other document required under applicable laws to be executed by Seller in connection with any transfer tax applicable to the transaction contemplated by this Agreement;

(h) To the extent in Seller's possession (and, if not, copies of), the original Lease, and all original Licenses and Permits and Intangible Property in Seller's control bearing on the Property;

(i) A counterpart original of the Closing Statement, duly executed by Seller;

(j) copies of any operating files maintained by Seller or its property manager in connection with the leasing, maintenance, and/or management of the Property, including, without limitation, operating agreements, insurance policies, bills, invoices, receipts, real estate tax records (including, without limitation copies of the tax statements on the Real Property, Improvements and Personal Property for the immediately preceding two (2) years) and information and other general records relating to the income and expenses of the Property.

(k) The Tenant Estoppel Certificate.

(l) A certificate, dated as of the date of Closing, stating that the representations and warranties of Seller contained in Section 8.1(a)-8.1(d), and 8.1(o) are true and correct in all respects as of the Closing Date. A certificate, dated as of the date of Closing, stating that the representations and warranties of Seller contained in Section 8.1 (f)-8.1(n) are true and correct in all respects as of the Closing Date (with appropriate modifications to reflect any changes therein) or identifying any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall Seller be liable to Purchaser for, or be deemed to be in default hereunder if any representation or warranty was true and correct as of the Effective Date but is not, as of the Closing Date and due to factors beyond Seller's control, true and correct in all respects; *provided*, *however*, that such event shall constitute the non-fulfillment of the condition set forth in Section 9.1(b). If such representations and warranties are not true and correct due to factors within Seller's control, Seller shall be deemed to be in default hereunder, entitling Purchaser to the remedies set forth in Section 13.1 hereof. If, despite changes or other matters described in such certificate, the Closing occurs, Seller's representations and warranties set forth in this Agreement shall be deemed to have been modified by all statements made in such certificate.

(m) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement.

SECTION 10.4 *Prorations.*

(a) Seller and Purchaser agree to adjust, as of 11:59 p.m. on the day preceding the Closing Date (the "*Proration Time*"), the following (collectively, the "*Proration Items*"):

(i) Rents, in accordance with Subsection 10.4(b) below.

(ii) Cash Security Deposits and any prepaid rents, together with interest required to be paid thereon.

(iii) Utility charges payable by Seller, including, without limitation, electricity, water charges and sewer charges. If there are meters on the Real Property, Seller will cause readings of all said meters to be performed not more than five (5) days prior to the Closing Date, and a per diem adjustment shall be made for the days between the meter reading date and the Closing Date based on the most recent meter reading.

(iv) Real estate taxes due and payable for the calendar year. If the Closing Date shall occur before the tax rate is fixed, the apportionment of real estate taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. If subsequent to the Closing Date, real estate taxes (by reason of change in either assessment or rate or for any other reason) for the Real Property should be determined to be higher or lower than those that are apportioned, a new computation shall be made, and Seller agrees to pay Purchaser any increase shown by such recomputation and vice versa.

(v) Such other items of income and expense as are typically prorated at closing similar to the transaction contemplated by this Agreement.

Seller will be charged and credited for the amounts of all of the Proration Items relating to the period up to and including the Proration Time, and Purchaser will be charged and credited for all of the Proration Items relating to the period after the Proration Time. The estimated Closing prorations shall be set forth on a preliminary closing statement to be prepared by Seller and submitted to Purchaser two (2) days prior to the Closing Date (the "*Closing Statement*"). The Closing Statement, once agreed upon, shall be signed by Purchaser and Seller. The proration shall be paid at Closing by Purchaser to Seller (if the prorations result in a net credit to Seller) or by Seller to Purchaser (if the prorations result in a net credit to Purchaser) by increasing or reducing the cash to be delivered by Purchaser in payment of the Purchase Price at the Closing. If the actual amounts of the Proration Items are not known as of the Closing Date, the prorations will be made at Closing on the basis of the best evidence then available; thereafter, when actual figures are received, re-prorations will be made on the basis of the actual figures, and a final cash settlement will be made between Seller and Purchaser. No prorations will be made in relation to insurance premiums, and Seller's insurance policies will not be assigned to Purchaser. Final readings and final billings for utilities will be made if possible as of the Closing Date, in which event no proration will be made at the Closing with respect to utility bills. Seller will be entitled to all deposits presently in effect with the utility providers, and Purchaser will be

obligated to make its own arrangements for any deposits with the utility providers, but Seller will, if necessary, maintain such deposits until such time as Purchaser can post its own deposits (but in no event longer than thirty (30) days after Closing) so that such utility service will not be discontinued to the Property. The provisions of this Section 10.4(a) will survive the Closing for twelve (12) months.

(b) Purchaser will receive a credit on the Closing Statement for the prorated amount (as of the Proration Time) of all Rental previously paid to or collected by Seller and attributable to any period following the Proration Time. After the Closing, Seller will cause to be paid or turned over to Purchaser all Rental, if any, received by Seller after Closing and attributable to any period following the Proration Time. "*Rental*" as used herein includes fixed monthly rentals, additional rentals, percentage rentals, escalation rentals (which include Tenant's share of building operation and maintenance costs and expenses as provided for under the Lease, to the extent the same exceeds any expense stop specified in such Lease), retroactive rentals, all administrative charges, utility charges, tenant or real property association dues, storage rentals, special event proceeds, temporary rents, telephone receipts, locker rentals, vending machine receipts and other sums and charges payable by Tenant under the Lease or from other occupants or users of the Property. Rental is "*Delinquent*" when it was due prior to the Closing Date, and payment thereof has not been made on or before the Proration Time. Delinquent Rental will not be prorated. Purchaser agrees to use good faith collection procedures with respect to the collection of any Delinquent Rental, but Purchaser will have no liability for the failure to collect any such amounts and will not be required to pursue legal action to enforce collection of any such amounts owed to Seller by Tenant. All sums collected by Purchaser from and after Closing from Tenant (excluding tenant specific billings for tenant work orders and other specific services as described in and governed by Section 10.4(d) below) will be applied first to current amounts owed by such Tenant to Purchaser and then to delinquencies owed by such Tenant to Seller. Any sums due Seller will be promptly remitted to Seller.

(c) At the Closing, Seller shall deliver to Purchaser a list of additional rent, however characterized, under the Lease, including without limitation, real estate taxes, electrical charges, utility costs and operating expenses (collectively, **"Operating Expenses"**) billed to Tenant for the calendar year in which the Closing occurs (both on a monthly basis and in the aggregate), the basis on which the monthly amounts are being billed and the amounts incurred by Seller on account of the components of Operating Expenses for such calendar year. Upon the reconciliation by Purchaser of the Operating Expenses billed to Tenant, and the amounts actually incurred for such calendar year, Seller and Purchaser shall be liable for overpayments of Operating Expenses, and shall be entitled to payments from Tenant, as the case may be, on a *pro-rata* basis based upon each party's period of ownership during such calendar year.

(d) With respect to specific tenant billings for work orders, special items performed or provided at the request of a Tenant or other specific services, which are collected by Purchaser after the Closing Date but relate to the foregoing specific services rendered by Seller prior to the Proration Time, then notwithstanding anything to the contrary contained herein, Purchaser shall cause the first amounts collected from Tenant specifically for such special services (as opposed to regular scheduled rental payments) to be paid to Seller on account thereof, so long as Seller identifies same prior to Closing.

(e) Notwithstanding any provision of this Section 10.4 to the contrary, Purchaser will be solely responsible for any leasing commissions, tenant improvement costs or

other expenditures due with respect to any amendments, renewals and/or expansions of the Lease first arising, accruing and payable following the Closing Date.

(f) Purchaser shall receive a credit for any taxes paid from Tenant for any real estate taxes paid in advance by Tenant to Seller pursuant to the operation of Section 10.1(b) of the Lease or otherwise.

SECTION 10.5 *Costs of Title Company and Closing Costs*. Costs of the Title Company and other Closing costs incurred in connection with the Closing will be allocated as follows:

(a) Seller shall pay Seller's attorney's fees and one-half (1/2) of escrow fees if any, will pay the base premium for the Title Policy, and the cost of the Updated Survey. In addition, Seller shall pay the commission to the Broker as set forth in Section 16.1 below.

(b) Purchaser shall pay (i) the costs of recording (including documentary fees) the Deed to the Property and all other documents; (ii) the cost of any additional coverage under the Title Policy or endorsements to the Title Policy that are desired by Purchaser; (iii) all premiums and other costs for any mortgagee policy of title insurance, if any, including but not limited to any endorsements or deletions; (iv) Purchaser's attorney's fees; and (v) one-half (1/2) of escrow fees, if any.

(c) Any other costs and expenses of Closing not provided for in this Section 10.5 shall be allocated between Purchaser and Seller in accordance with the custom in the area in which the Property is located.

SECTION 10.6 *Post-Closing Delivery of Tenant Notice Letters*. Immediately following Closing, Purchaser will deliver to Tenant a Tenant Notice Letter, as described in Section 10.2(e).

SECTION 10.7 *Like-Kind Exchange*. In the event that Seller shall elect to effectuate the Closing as a "like-kind" exchange under Section 1031 of the Code, Purchaser agrees to cooperate and assist Seller in all reasonable respects (at no cost to Purchaser other than incidental attorneys' fees and with no adjustment to the Evaluation Period or the Closing Date hereunder) in order that the exchange so qualifies as a "like-kind" exchange under Section 1031 of the Code and the Treasury Regulations promulgated, or to be promulgated, thereunder.

## ARTICLE XI
## CONDEMNATION AND CASUALTY

SECTION 11.1 *Casualty*. If, prior to the Closing Date, all or a Significant Portion of the Real Property and Improvements is destroyed or damaged by fire or other casualty, Seller will notify Purchaser of such casualty. Purchaser will have the option to terminate this Agreement upon notice to Seller given not later than fifteen (15) days after receipt of Seller's notice. If this Agreement is terminated, the Earnest Money Deposit and all interest accrued thereon will be returned to Purchaser and thereafter neither Seller nor Purchaser will have any further rights or obligations to the other hereunder except with respect to the Termination Surviving Obligations. If Purchaser does not elect to terminate this Agreement or less than a Significant Portion of the Real Property and Improvements is destroyed or damaged as aforesaid, Seller will not be obligated to repair such damage or destruction but (a) Seller will assign and turn over to Purchaser the insurance proceeds net of reasonable collection costs (or if such have not been

awarded, all of its right, title and interest therein) payable with respect to such fire or other casualty and (b) the parties will proceed to Closing pursuant to the terms hereof without abatement of the Purchase Price, except that Purchaser will receive credit for any insurance deductible amount. In the event Seller elects to perform any repairs as a result of a casualty which can be completed prior to Closing, Seller will be entitled to deduct its reasonable costs and expenses from any amount to which Purchaser is entitled under this Section 11.1, which right shall survive the Closing. Seller will have no right to elect to perform any repairs after the Closing.

SECTION 11.2 *Condemnation of Property.*

(a) In the event of (i) any condemnation or sale in lieu of condemnation of all of the Property; or (ii) any condemnation or sale in lieu of condemnation of greater than $500,000.00, Purchaser will have the option, to be exercised within fifteen (15) days after receipt of notice of such condemnation or sale, of terminating Purchaser's obligations under this Agreement, or electing to have this Agreement remain in full force and effect. In the event that either (i) any condemnation or sale in lieu of condemnation of the Property is for less than $500,000.00, or (ii) Purchaser does not terminate this Agreement pursuant to the preceding sentence, Seller will assign to Purchaser any and all claims for the proceeds of such condemnation or sale to the extent the same are applicable to the Property, and Purchaser will take title to the Property with the assignment of such proceeds and subject to such condemnation and without reduction of the Purchase Price. Should Purchaser elect to terminate Purchaser's obligations under this Agreement under the provisions of this Section 11.3, the Earnest Money Deposit and any interest thereon will be returned to Purchaser and neither Seller nor Purchaser will have any further obligation under this Agreement, except for the Termination Surviving Obligations. Notwithstanding anything to the contrary herein, if any eminent domain or condemnation proceeding is instituted (or notice of same is given) solely for the taking of any subsurface rights for utility easements or for any right-of-way easement, and the surface may, after such taking, be used in substantially the same manner as though such rights have not been taken, Purchaser will not be entitled to terminate this Agreement as to any part of the Property, but any award resulting therefrom will be assigned to Purchaser at Closing and will be the exclusive property of Purchaser upon Closing.

## ARTICLE XII
## CONFIDENTIALITY

SECTION 12.1 *Confidentiality*. Seller and Purchaser each expressly acknowledge and agree that the transactions contemplated by this Agreement and the terms, conditions, and negotiations concerning the same will be held in the strictest confidence by each of them and will not be disclosed by either of them except to their respective legal counsel, accountants, consultants, officers, partners, directors, and shareholders or as otherwise permitted hereunder, and except and only to the extent that such disclosure may be necessary or advisable for their respective performances hereunder. Purchaser further acknowledges and agrees that, unless and until the Closing occurs, all information obtained by Purchaser in connection with the Property will not be disclosed by Purchaser to any third persons (other than Licensee Parties) without the prior written consent of Seller, unless such disclosure is required by law, rule or regulation. Nothing contained in this Article XII will preclude or limit either party to this Agreement from disclosing or accessing any information otherwise deemed confidential under this Article XII or this Agreement in response to lawful process or subpoena or other valid or enforceable order of a

court of competent jurisdiction or any filings with governmental authorities required by reason of the transactions provided for herein pursuant to an opinion of counsel. In addition, prior to or as a part of the Closing, any release to the public of information with respect to the sale contemplated herein or any matters set forth in this Agreement will be made only in the form approved by Purchaser and Seller and their respective counsel, which approval shall not be unreasonably withheld or delayed. The provisions of this Article XII will survive the Closing or any termination of this Agreement.

## ARTICLE XIII
## REMEDIES

SECTION 13.1 *Default by Seller*. In the event the Closing and the transactions contemplated hereby do not occur as herein provided by reason of any default of Seller, Purchaser may, as Purchaser's sole and exclusive remedy, elect by notice to Seller within ten (10) Business Days following the Closing Date, either of the following: (a) terminate this Agreement, in which event Purchaser will receive from the Escrow Agent the Earnest Money Deposit, together with all interest accrued thereon, and Purchaser shall be entitled to obtain appropriate actual damages; or (b) obtain specific performance of this Agreement against Seller and recover from Seller the costs incurred by Purchaser in so obtaining such specific performance. Purchaser shall be deemed to have elected to terminate this Agreement and receive back the Earnest Money Deposit if Purchaser fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Property is located, on or before ninety (90) days following the Closing Date. Notwithstanding the foregoing, nothing contained in this Section 13.1 will limit Purchaser's remedies at law, in equity or as herein provided in pursuing remedies of a breach by Seller of any of the Termination Surviving Obligations. Purchaser specifically waives its rights to seek any punitive, speculative, or consequential damages.

SECTION 13.2 *Default by Purchaser*. In the event the Closing and the consummation of the transactions contemplated herein do not occur as provided herein by reason of any default of Purchaser, Purchaser and Seller agree it would be impractical and extremely difficult to fix the damages which Seller may suffer. Purchaser and Seller hereby agree that (a) an amount equal to the Earnest Money Deposit, together with all interest accrued thereon, is a reasonable estimate of the total net detriment Seller would suffer in the event Purchaser defaults and fails to complete the purchase of the Property, and (b) such amount will be the full, agreed and liquidated damages for Purchaser's default and failure to complete the purchase of the Property, and will be Seller's sole and exclusive remedy (whether at law or in equity) for any default of Purchaser resulting in the failure of consummation of the Closing, whereupon this Agreement will terminate and Seller and Purchaser will have no further rights or obligations hereunder, except with respect to the Termination Surviving Obligations. The payment of such amount as liquidated damages is not intended as a forfeiture or penalty but is intended to constitute liquidated damages to Seller. Notwithstanding the foregoing, nothing contained herein will limit Seller's remedies at law, in equity or as herein provided in the event of a breach by Purchaser of any of the Termination Surviving Obligations.

## ARTICLE XIV
## NOTICES

SECTION 14.1 *Notices*.

(a) All notices or other communications required or permitted hereunder shall be in writing, and shall be given by any nationally recognized overnight delivery service with proof of delivery, or by facsimile transmission (provided that such facsimile is confirmed by the sender by overnight delivery service in the manner previously described), sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee will have designated by written notice sent in accordance herewith. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement will be as follows:

If to Purchaser: Wells Capital, Inc.
6200 The Corners Parkway, Suite 250
Atlanta, Georgia 30092
Attn: Mr. L. Clay Adams, Jr.
(800) 448-1010 (tele.)
(770) 243-8199(fax)

with a copy to : Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Attn: William L. O'Callaghan, Esq.
(404) 881-7000 (tele.)
((404) 881-7777(fax)

If Seller: c/o Mack-Cali Realty Corporation
11 Commerce Drive
Cranford, New Jersey 07016

with separate notices to the attention of:

Mr. Mitchell E. Hersh
(908) 272-8000 (tele.)
(908) 272-6755 (fax)

and

Roger W. Thomas, Esq.
(908) 272-2612 (tele.)
(908) 497-0485 (fax)

With a copy to: Edward Barad, Esq.
Brownstein Hyatt & Farber, PC
410 17th Street, 22nd Floor
Denver, Colorado 80202
(303)223-1100 (tele.)
(303)223-1111 (fax)

If to Escrow Agent: Commonwealth Land Title Insurance Company
655 Third Avenue
New York, New York 10017
Attn: Asher Fried
(212) 949-0100 (tele.)
(212) 983-8430 (fax)

(b) Notices given by (i) overnight delivery service as aforesaid shall be deemed received and effective on the first business day following such dispatch and (ii) facsimile transmission as aforesaid shall be deemed given at the time and on the date of machine transmittal provided same is sent and confirmation of receipt is received by the sender prior to 5:00 p.m. (EST) on a Business Day (if sent later, then notice shall be deemed given on the next Business Day). Notices may be given by counsel for the parties described above, and such notices shall be deemed given by said party, for all purposes hereunder

**ARTICLE XV**
**ASSIGNMENT AND BINDING EFFECT**

SECTION 15.1 *Assignment: Binding Effect*. Except as set forth below, Purchaser will not have the right to assign this Agreement. Notwithstanding the foregoing to the contrary, Purchaser may assign all of its rights under this Agreement to an entity which directly or indirectly controls, is controlled by, or is under common control with, Purchaser, including, without limitation, a single purpose entity created by Purchaser for the purpose of holding title to the Property In the event of any such assignments, whether accomplished as a matter of right or upon the consent of the other party, the original parties to this Agreement shall not be released. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns.

**ARTICLE XVI**
**BROKERAGE**

SECTION 16.1 *Brokers*. Seller agrees to pay to Capital Development, LLC (the "*Broker*") a brokerage commission pursuant to a separate agreement by and between Seller and Broker. Purchaser and Seller represent that they have not dealt with any brokers, finders or salesmen, in connection with this transaction other than Broker, and agree to indemnify, defend and hold each other harmless from and against any and all loss, cost, damage, liability or expense, including reasonable attorneys' fees, which either party may sustain, incur or be exposed to by reason of any claim for fees or commissions made through the other party. The provisions of this Article XVI will survive any Closing or termination of this Agreement.

**ARTICLE XVII**
**ESCROW AGENT**

SECTION 17.1. *Escrow*.

(a) Escrow Agent will hold the Earnest Money Deposit in escrow in an interest bearing account of the type generally used by Escrow Agent for the holding of escrow funds until the earlier of (i) the Closing, or (ii) the termination of this Agreement in accordance with any right hereunder. In the event Purchaser has not terminated this Agreement by the end of

the Evaluation Period, the Earnest Money Deposit shall be non-refundable to Purchaser, except as otherwise set forth herein,, and shall be credited against the Purchase Price at the Closing. All interest earned on the Earnest Money Deposit shall be paid to the party entitled to the Earnest Money Deposit. In the event this Agreement is terminated prior to the expiration of the Evaluation Period, the Earnest Money Deposit and all interest accrued thereon will be returned by the Escrow Agent to the Purchaser. In the event the Closing occurs, the Earnest Money Deposit and all interest accrued thereon will be released to Seller, and Purchaser shall receive a credit against the Purchase Price in the amount of the Earnest Money Deposit, including the interest. In all other instances, Escrow Agent shall not release the Earnest Money Deposit to either party until Escrow Agent has been requested by Seller or Purchaser to release the Earnest Money Deposit and has given the other party five (5) Business Days to dispute the release of the Earnest Money Deposit. If no dispute is so delivered, Escrow Agent shall disburse the Earnest Money Deposit as directed. Purchaser represents that its tax identification number, for purposes of reporting the interest earnings, is 58-2368838. Seller represents that its tax identification number, for purposes of reporting the interest earnings, is 22-3623386.

(b) Escrow Agent shall not be liable to any party for any act or omission, except for bad faith, gross negligence or willful misconduct, and the parties agree to indemnify Escrow Agent and hold Escrow Agent harmless from any and all claims, damages, losses or expenses arising in connection herewith. The parties acknowledge that Escrow Agent is acting solely as stakeholder for their mutual convenience. In the event Escrow Agent receives written notice of a dispute between the parties with respect to the Earnest Money Deposit and the interest earned thereon (the **"Escrowed Funds"**), Escrow Agent shall not be bound to release and deliver the Escrowed Funds to either party but may either (i) continue to hold the Escrowed Funds until otherwise directed in a writing signed by all parties hereto or (ii) deposit the Escrowed Funds with the clerk of any court of competent jurisdiction. Upon such deposit, Escrow Agent will be released from all duties and responsibilities hereunder. Escrow Agent shall have the right to consult with separate counsel of its own choosing (if it deems such consultation advisable) and shall not be liable for any action taken, suffered or omitted by it in accordance with the advice of such counsel.

(c) Escrow Agent shall not be required to defend any legal proceeding which may be instituted against it with respect to the Escrowed Funds, the Property or the subject matter of this Agreement unless requested to do so by Purchaser or Seller and is indemnified to its satisfaction against the cost and expense of such defense. Escrow Agent shall not be required to institute legal proceedings of any kind and shall have no responsibility for the genuineness or validity of any document or other item deposited with it or the collectibility of any check delivered in connection with this Agreement. Escrow Agent shall be fully protected in acting in accordance with any written instructions given to it hereunder and believed by it to have been signed by the proper parties.

## ARTICLE XVIII
## MISCELLANEOUS

SECTION 18.1 *Waivers*. No waiver of any breach of any covenant or provisions contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.

SECTION 18.2 *Recovery of Certain Fees*. In the event a party hereto files any action or suit against another party hereto by reason of any breach of any of the covenants, agreements or provisions contained in this Agreement, then in that event the prevailing party will be entitled to have and recover certain fees from the other party including all reasonable attorneys' fees and costs resulting therefrom. For purposes of this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photoscopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 18.2 shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

SECTION 18.3 *Construction*. Headings at the beginning of each article and section are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular will include the plural and the masculine will include the feminine and vice versa. This Agreement will not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. All exhibits and schedules referred to in this Agreement are attached and incorporated by this reference, and any capitalized term used in any exhibit or schedule which is not defined in such exhibit or schedule will have the meaning attributable to such term in the body of this Agreement. In the event the date on which Purchaser or Seller is required to take any action under the terms of this Agreement is not a Business Day, the action will be taken on the next succeeding Business Day.

SECTION 18.4 *Counterparts*. This Agreement may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed original. All such fully executed original counterparts will collectively constitute a single agreement.

SECTION 18.5 *Severability*. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all of the other conditions and provisions of this Agreement will nevertheless remain in full force and effect, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to either party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to reflect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 18.6 *Entire Agreement*. This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof, and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument, signed by the party to be charged or by its agent duly authorized in writing, or as otherwise expressly permitted herein.

SECTION 18.7 *Governing Law*. THIS AGREEMENT WILL BE CONSTRUED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE IN

WHICH THE PROPERTY IS LOCATED. SELLER AND PURCHASER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE IN WHICH THE PROPERTY IS LOCATED IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN A STATE OR FEDERAL COURT SITTING IN THE STATE IN WHICH THE PROPERTY IS LOCATED.

SECTION 18.8 *No Recording*. The parties hereto agree that neither this Agreement nor any affidavit or memorandum concerning it will be recorded and any recording of this Agreement or any such affidavit or memorandum by Purchaser will be deemed a default by Purchaser hereunder.

SECTION 18.9 *Further Actions*. The parties agree to execute such instructions to the Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

SECTION 18.10 *Exhibits*. The following sets forth a list of Exhibits to the Agreement:

Exhibit A — Assignment

Exhibit B — Assignment of Leases

Exhibit C — Bill of Sale

Exhibit D — Legal Description of Real Property

Exhibit E — Intentionally Deleted

Exhibit F — Intentionally Deleted

Exhibit G — Exceptions to Seller's Title

Exhibit H — Suits and Proceedings

Exhibit I — Certificate as to Foreign Status

Exhibit J — List of Personal Property

Exhibit K — Intentionally Deleted

Exhibit L — Form of Tenant Estoppel Certificate

SECTION 18.11 *No Partnership*. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, it being the intention of the parties to merely create the relationship of Seller and Purchaser with respect to the Property to be conveyed as contemplated hereby.

SECTION 18.12 *Limitations on Benefits*. It is the explicit intention of Purchaser and Seller that no person or entity other than Purchaser and Seller and their permitted successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, Purchaser and Seller or their respective successors and assigns as permitted hereunder. Nothing contained in this Agreement shall under any circumstances whatsoever be deemed or construed, or be interpreted, as making any third party (including, without limitation, Broker) a beneficiary of any term or provision of this Agreement or any instrument or document delivered pursuant hereto, and Purchaser and Seller expressly reject any such intent, construction or interpretation of this Agreement.

SECTION 18.13 *Remedies Cumulative*. Except as provided in Section 13 above, all rights, powers and privileges conferred hereunder upon the parties in any specific Section shall be cumulative but not restrictive of those given in other Sections of this Agreement and by law.

SECTION 18.14 *Time of Essence*. Time is of the essence in complying with the terms, conditions and agreements of this Agreement.

SECTION 18.15 *Further Assurances*. At and after Closing, the parties shall deliver to each other any additional materials and documents which are necessary or appropriate to further assure, complete and document the consummation of the purchase and sale contemplated herein on the terms described herein. From and after Closing, each party shall afford to the other reasonable access to any information in its possession concerning the operations of the Property (including the right to copy the same at the expense of the party desiring the copy) for purposes of ascertaining post-Closing adjustments, tax examinations or audits, or other similar purposes.

SECTION 18.16 *Cooperation*. Seller acknowledges that Purchaser may be required by the Securities and Exchange Commission to file audited financial statement for one to three years with regard to the Property. At no cost or liability to Seller, Seller shall cooperate with Purchaser, its counsel, accountants, agents and representatives, provide them with access to Seller's books and record with respect to the ownership, management, maintenance and operation of the Property for the applicable period, and permit them to copy same. Purchaser agrees to deliver to Seller a commercially reasonable confidentiality agreement in connection with the foregoing.

**IN WITNESS WHEREOF**, Seller and Purchaser have respectively executed this Agreement as of the Effective Date.

Date Executed:

May 13, 2002

May 14, 2002

May 14, 2002

**PURCHASER:**

WELLS CAPITAL, INC., a Georgia corporation

By: /s/ DOUGLAS P. WILLIAMS

**Douglas P. Williams**
**Senior Vice President**

**SELLER:**

MACK-CALI REALTY, L.P., a Delaware limited partnership

By: MACK-CALI REALTY CORPORATION, L.P., a Delaware corporation, general partner

/s/ ROGER W. THOMAS

**Roger W. Thomas**
**Executive Vice President &**
**General Counsel**

**As to Article XVII only:**
**ESCROW AGENT:**

COMMONWEALTH LAND TITLE INSURANCE COMPANY

By: /s/ ASHER FRIED

**Asher Fried**

**EXHIBIT 10.72**

**LEASE AGREEMENT FOR THE TRW DENVER BUILDING**

**Exhibit A**

**AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION**

**STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE**

**(Do not use this form for Multi-Tenant Property)**

**1.** ***Basic provisions ("Basic Provisions")***

1.1 *Parties:* This Lease ("Lease"), dated for reference purposes only, November, 1996, is made by and between Pacifica Holding Company, LLC, a Colorado limited liability company ("Lessor") and TRW, Inc., an Ohio corporation ("Lessee") (collectively the "Parties," or individually as "Party").

1.2 *Premises:* That certain real Property, including all Improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known by the street address of N/A , located in the County of Arapahoe , State of Colorado , and generally described as (describe briefly the nature of the property) Lot 2, Block 1, Tollgate Business Park Subdivision, Filing No. 1 ("Premises"). (See Paragraph 2 for further provisions.)

1.3 *Term:* ten (10) years and zero (0) months ("Original Term") commencing *See Addendum attached hereto* ("Commencement Date") and ending *see Addendum* ("Expiration Date"). (See Paragraph 3 for further provisions.) (See Paragraphs 3.2 and 3.3 for further provisions.)

1.4 *Early Possession:* N/A ("Early Possession Date").

1.5 *Base Rent:* $*See Addendum* per month ("Base Rent"), payable on the first (1st) day of each month commencing *see addendum.* (See Paragraph 4 for further provisions.)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 *Base Rent paid upon Execution:* $*see Addendum* as Base Rent for the period .

1.7 *Security Deposit:* $ N/A ("Security Deposit"). (See Paragraph 5 for further provisions.)

1.8 *Permitted Use:* General offices, software development and computer assembly. (See Paragraph 6 for further provisions.)

1.9 *Insuring Party:* Lessor is the "Insuring Party" unless otherwise stated herein. (See Paragraph 8 for further provisions.)

1.10 *Real Estate Brokers:* The following real estate brokers (collectively, the "Brokers") and brokerage relationships exist in this transaction and are consented to by the Parties (check applicable boxes): *Pacifica Holding Company* represents ☒Lessor exclusively ("Lessor's Broker") Grubb & Ellis; [ ]both Lessee and Lessor. (See Paragraph 15 for further provisions.)

1.11 *Guarantor.* The obligations of the Lessee under this Lease are to be guaranteed by ("Guarantor"). (See Paragraph 37 for further provisions.)

1.12 *Addenda.* Attached hereto is an Addendum or Addenda consisting of Paragraphs through and Exhibits , all of which constitute a part of this Lease.

**2.** ***Premises.***

2.1 *Letting.* Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease, o that may have been used in calculating rental, is an approximation which Lessor and Lessee agree is reasonable and the rental based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 *Condition.* Lessor shall deliver the Premises to Lessee clean and free of debris on the Commencement Date and warrants to Lessee that the existing plumbing, fire sprinkler system, lighting, air conditioning, heating, and loading doors, if any, in the Premises, other than those constructed by Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and within thirty (30) days after the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.

2.3 *Compliance with Covenants, Restrictions and Building Code.* Lessor warrants to lessee that the improvements on the Premises comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date. Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within six (6) months following the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.

2.4 *Acceptance of Premises.* Lessee hereby acknowledges: (a) that it has been advised by the Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical and fire sprinkler systems, security, environmental aspects, compliance with Applicable Law, as defined in Paragraph 6.3) and the present and future suitability of the Premises for Lessee's intended use, (b) that Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to Lessee's occupancy of the Premises and/or the term of this Lease, and (c) that neither Lessor, nor any of Lessor's agents, has made any oral or written representations or warranties with respect to the said matters other than as set forth in this Lease.

2.5 *Lessee Prior Owner/Occupant.* The warranties made by Lessor in this Paragraph 2 shall be of no force or effect if immediately prior to the date set forth in Paragraph 1.1 Lessee was the owner or occupant of the Premises. In such event, Lessee shall, at Lessee's sole cost and expense, correct any non-compliance of the Premises with said warranties.

**3. *Term.***

3.1 *Term.* The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.3 *Early Possession.* If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease, however (including but not limited to the obligations to pay Real Property Taxes and Insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect nor advance the Expiration Date of the Original Term.

3.3 *Delay in Possession.* If for any reason lessor cannot deliver possession of the Premises to Lessee as agreed herein by the Early Possession if one is specified in Paragraph 1.4, or if no Early Possession Date is specified, by the Commencement Date, Lessor shall not be subject to any therefor, nor shall such failure affect the validity of this Lease, or the obligations of Lessee hereunder, or extend the term hereof, but in such case, shall not, except as otherwise provided herein, be obligated to pay rent or perform any other obligation of Lessee under the terms of this Lease until delivers possession of the Premises to Lessee. If possession of the Premises is not delivered to Lessee within sixty (60) days after the Commencement Date, Lessee may, at its option, by notice in writing to Lessor within ten (1) days thereafter, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder; provided, however, that if such written notice by Lessee is not received by Lessor within said ten (10) day period, 's right to cancel this Lease shall terminate and be of no further force or effect. Except as may be otherwise provided, and regardless of whom the period free of the obligation to pay Base Rent, if any, that Lessee would otherwise have enjoyed shall run from the date of delivery of possession continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the changes or omissions of lessee.

**4. *Rent.***

4.1 *Base Rent.* Lessee shall cause payment of Base Rent and other rent or charges, as the same may be adjusted from time to time, to be received(?) by Lessor in lawful money of the United States, without offset or deduction, on or before the day on which it is due under the terms of this Lease. Base Rent and all other rent and charges for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of the calendar month involved. Payment of Base Rent and other charges shall be made to Lessor at its address stated herein(?) or to such other persons or at such other addresses as lessor may from time to time designate in writing to Lessee.

**6.** ***Use.***

6.1 *Use.* Lessee shall use and occupy the premises only for the purposes set forth in Paragraph 1.8, or any other use which is comparable thereto and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that creates waste or a nuisance, or that disturbs owner and/or occupants of, or causes damage to, neighboring premises or properties.

6.2 *Hazardous Substances.*

(a) *Reportable Uses Require Consent.* The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in, on or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Lessor and compliance in a timely manner (at Lessee's sole cost and expense) with all Applicable Law (as defined in Paragraph 6.3). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority. Reportable Use shall also include Lessee's being responsible for the presence in, on or about the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may, without Lessor's prior consent, but in compliance with all Applicable Law, use any ordinary and customary materials reasonably required to be used by Lessee in the normal course of Lessee's business permitted on the Premises so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may (but without any obligation to do so) condition its consent to the use or presence of any Hazardous substance, activity or storage tank by Lessee upon Lessee's giving Lessor such additional assurances as Lessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefrom or therefor, including, but not limited to, the installation (and removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit under Paragraph 5 hereof.

(b) *Duty to inform Lessor* If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance, or a condition involving or resulting from same, has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party, or persons entering or occupying the Premises, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on, or about the Premises, including but not limited to all such documents as may be involved in any Reportable Uses involving the Premises.

(c) *Indemnification.* Lessee shall indemnify, protect, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, and the premises harmless from and against any and all loss of rents and/or damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorney's and consultant's fees arising out of or involving any Hazardous Substance or storage tank brought onto the Premises by or for Lessee or under Lessee's control. Lessee's obligations under this Paragraph 6 shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation (including consultant's and attorney's fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances or storage tanks, unless specifically so agreed by Lessor in writing at the time of such agreement.

6.3 *Lessee's Compliance with Law.* Except as otherwise provided in this Lease, Lessee shall, at lessee's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable law," which term is used in this Lease to include all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of records, permits, the requirements of any applicable fire insurance underwriter or railing bureau, and the recommendations of lessor's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance or storage tank), now in effect or which may hereafter come into effect, and whether or not reflecting a change in policy from any previously existing policy. Lessee shall, within five (5) days after receipt of lessor's written request, provide Lessor with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Lessee's compliance with any Applicable Law specified by Lessor, and shall immediately

upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Lessee or the Premises to comply with any Applicable Law.

6.4 *Inspection; Compliance.* Lessor and Lessor's Lender(s) (as defined in Paragraph 8.3(a)) shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease and all Applicable Laws (as defined in Paragraph 6.3), and to employ experts and/or consultants in connection therewith; and/or to advise Lessor with respect to Lessee's activities, including but not limited to the installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance or storage tank on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a Default or Breach of this Lease, violation of Applicable Law, or a contamination caused or materially contributed to by Lessee is found to exist or be imminent, or unless the inspection is requested or ordered by a governmental authority as the results of any such existing or imminent violation or contamination. In any such case, Lessee shall upon request reimburse Lessor or Lessor's Lender, as the case may be for the costs and expenses of such inspections.

**7. *Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.***

(a) Subject to the provisions of Paragraphs 2.2 (Lessor's warranty as to condition), 2.3 (Lessor's warranty as to compliance with covenants, etc.), 7.2 (Lessor's obligations to repair), 9 (damage and destruction), and 14 (condemnation), Lessee shall, at Lessee's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair, structural and non-structural (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, without limiting the generality of the foregoing all equipment or facilities serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, including fire alarm and/or smoke detection systems and equipment, fire hydrants, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, about, or adjacent to the Premises. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/ore remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of, the Premises, the elements surrounding same, or neighboring properties that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance and/or storage tank brought onto the premises by or for lessee or under its control. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Promises and all improvements thereon or a part thereof in good order, condition and state of repair. If Lessee occupies the Premises for seven (7) years or more, lessor may require Lessee to repaint the exterior of the buildings on the Premises as reasonably required, but not more frequently than once every seven (7) years.

(b) Lessee shall, at Lessee's sole cost and expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in, the inspection, maintenance and service of the following equipment and improvements, if any, located on the Premises: (i) heating, air conditioning and ventilation equipment, (ii) boiler, fired or unfired pressure vessels, (iii) fire sprinkler and/or standpipe and hose or other automatic fire extinguishing systems, including fire alarm and/or smoke detection. (iv) landscaping and irrigation systems, (v) roof covering and drain maintenance and (vi) asphalt and parking lot maintenance.

7.2 *Lessor's Obligations.* Except for the warranties and agreements of Lessor contained in Paragraphs 2.2 (relating to condition of the Premises), 2.3 (relating to compliance with covenants, restrictions and building code)(, 9 (relating to destruction of the Premises) and 14 (relating to condemnation of the premises), it is intended by the Parties hereto that lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, the improvements located thereon, or the equipment therein, whether structural or non-structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises. Lessee and Lessor expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease with respect to, or which affords Lessee the right to make repairs at the expense of Lessor or to terminate this Lease by reason of, any needed repairs.

7.3 *Utility Installations; Trade Fixtures; Alterations.*

(a) *Definitions; Consent Required.* The term "Utility Installations" is used in this Lease to refer to all carpeting, window coverings, air lines, power panels, electrical distribution, security, fire protection systems, communication systems, lighting fixtures, heating, ventilating, and air conditioning equipment, plumbing, and fencing in, on or about the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material

damage to the Premises. The term "Alterations" shall mean any modification of the improvements on the Premises from that which are provided by lessor under the terms of this Lease, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor as defined in Paragraph 7.4(a). Lessee shall not make any Alterations or Utility Installations in, on, under or about the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof), as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, and the cumulative costs thereof during the terms of this Lease as extended does not exceed $25,000.

(b) *Consent.* Any Alterations or Utility Installations that lessee shall desire to make and which require the consent of the lessor shall be presented to lessor in written form with proposed detailed plans. All consents given by Lessor, whether by virtue of Paragraph 7.3(a) or by subsequent specific consent, shall be deemed conditioned upon: (i) Lessee's acquiring all applicable permits required by governmental authorities, (ii) the furnishings of copies of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to lessor prior to commencement of the work thereon, and (iii) the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner. Any Alterations or Utility Installations by Lessee during the terms of this Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and in compliance with all Applicable Law. Lessee shall promptly upon completion thereof furnish Lessor with as-built plans and specifications therefor. Lessor may (but without obligation to do so) condition its consent to any requested Alteration or Utility Installation that costs $10,000 or more upon lessee's providing Lessor with a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor under Paragraph 36 hereof.

(c) *Indemnification.* Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for lessee at or for use on the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give lessor not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises. If Lessor shall require, Lessee shall furnish to lessor a surety bond satisfactory to Lessor in an amount equal to one and one-half times the amount of such contested lien claim or demand, indemnifying Lessor against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay lessor's attorney's fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

7.4 *Ownership; Removal; Surrender; and Restoration.*

(a) *Ownership.* Subject to Lessor's right to require their removal or become the owner thereof as hereinafter provided in this Paragraph 7.4, all Alterations and Utility Additions made to the Premises by lessee shall be the property of and owned by Lessee, but considered a part of the Premises. Lessor may, at any time and at its option, elect in writing to Lessee to be the owner of all or any specified part of the lessee Owned Alterations, and Utility Additions made to the Premises by Lessee shall be the property of an owned by Lessee, but considered a part of the Premises. Lessor may, at any time and at its option, elect in writing to Lessee to be the owner of all or any specified part of the Lessee Owned Alterations, and Utility Installations. Unless otherwise instructed per subparagraph 7.4(b) hereof, all lessee Owned Alterations and Utility Installations shall, at the expiration or earlier termination of this Lease, become the property of Lessor and remain upon and be surrendered by lessee with the Premises.

(b) *Removal.* Unless otherwise agreed in writing, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding their installation may have been consented to by Lessor. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent of lessor.

(c) *Surrender/Restoration.* Lessee shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice or by lessee performing all of its obligations under this Lease. Except as otherwise agreed or specified in writing by Lessor, the Premises, as surrendered, shall include the Utility Installations. The obligation of lessee shall include the repair of any damage occasioned by the installation, maintenance or removal of Lessee's Trade Fixtures, furnishings, equipment, and Alterations and/or Utility Installations, as well as the removal of any storage tank installed by of for Lessee, and the removal, replacement or remediation of any soil, material or ground water contaminated by Lessee, all as may then be required by Applicable Law and/or good practice. Lessee's Trade

Fixtures shall remain the property of Lessee and shall be removed by Lessee subject to its obligation in repair and restore the Premises per this Lease.

**8.** ***Insurance; Indemnity.***

8.1 *Payment for Insurance.* Regardless of whether the Lessor or Lessee is the Insuring Party, Lessee shall pay for all insurance required under this Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor in excess of $1,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within ten (10) days following receipt of an invoice for any amount due.

8.2 *Liability Insurance.*

(a) *Carried by Lessee.* Lessee shall obtain and keep in force during the terms of this Lease a Commercial General Liability policy of insurance protecting Lessee and lessor (as an additional insured) against claims for bodily injury, personal injury and properly damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an "Additional Insured-Managers or Lessors of Premises" Endorsement and contain the "Amendment of the Pollution Exclusion" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance required by this lease or as carried by Lessee shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) *Carried by Lessor.* In the event Lessor is the Insuring Party, Lessor shall also maintain liability insurance described in Paragraph 8.2(a), above, in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 *Property Insurance—building, Improvements and Rental Value.*

(a) *Building and Improvements.* The Insuring Party shall obtain and keep in force during the terms of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and to the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lender(s)"), insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by Lenders, but in no event more than the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost. If Lessor is the Insuring Party, however, Lessee Owned Alterations and Utility Installations shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered cause of loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss, as defined in Paragraph 9.1(c).

(b) *Rental Value.* The Insuring Party shall, in addition, obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and Lendor(s), Insuring the loss of the full rental and other charges payable by Lessee to Lessor under this Lease for one (1) year (including all real estate taxes, insurance costs, and any scheduled rental increases). Said insurance shall provide that in the vent the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of rental revenues from the date of any such loss. Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected rental income property taxes, insurance premium costs and other expense, if any, otherwise payable by Lessee, for the next twelve (12) months period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) *Adjacent Premises.* If the Premises are part of a larger building, or if the Premises are part of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) *Tenant's Improvements.* If the Lessor is the Insuring Party, the Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease. If Lessee is the Insuring Party, the policy carried by Lessee under this Paragraph 8.3 shall insure Lessee Owned Alterations and Utility Installations.

8.4 *Lessee's Property Insurance.* Subject to the requirements of Paragraph 8.5, Lessee at its cost shall either by separate policy or, at Lessor's option, by endorsement to a policy already carried, maintain insurance coverage on all of Lessee's personal property. Lessee Owned Alterations and Utility Installations in, on, or about the Premises similar in coverage to that carried by the Insuring Party under Paragraph 8.3. Such Insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of person property or the restoration of Lessee Owned Alterations and Utility Installations. Lessee shall be the Insuring Party with respect to the insurance required by this Paragraph 8.4 and shall provide Lessor with written evidence that such insurance is in force.

8.5 *Insurance Policies.* Insurance required hereunder shall be in companies duly licensed to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, or such other rating as may be required by a Lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Paragraph 8. If Lessee is the Insuring Party, Lessee shall cause to be delivered to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insureds and loss payable clauses as required by the Lease. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to Lessor. Lessee thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. If the insuring Party shall fail to procure and maintain the insurance required to be carried by the Insuring Party under this Paragraph 8, the other Party may, but shall not be required to, procure and maintain the same, but at Lessee's expense.

8.6 *Waiver of Subrogation.* Without affecting any other rights or remedies, Lessee and Lessor ("Waiving Party") each hereby release and relieve the other, and waive their entire right to recover damages (whether in contract or in tort) against the other, for loss of or damage to the Waiving Party's property arising out of or incident to the perils required to be insured against under Paragraph 8. The effect of such releases and waivers of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

8.7 *Indemnity.* Except for Lessor's negligence and/or breach of express warranties, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against and an all claims, loss of rents and/or damages, costs, liens, judgments, penalties, permits, attorney's and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with the occupancy of the Premises by Lessee, the conduct of Lessee's business, any act, omission or neglect of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Lessor by reason of any of the foregoing matters, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be so indemnified.

8.8 *Exemption of Lessor from Liability.* Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not, Lessor shall not be liable for any damages arising from any act of neglect of any other tenant of Lessor. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

**9. *Damage or Destruction.***

9.1 *Definitions.*

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility installations, the repair cost of which damage or destruction is less than 50% of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility installations.

(b) "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations the repair cost of which damage or destruction is 50% or more of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility Installations.

(c) "Insured Loss' shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility installations, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or law, and not without deduction for depreciation.

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

9.2 *Partial Damage-Insured Loss.* If a Premises Partial Damage that is an insured Loss Occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make the insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, fi the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee'' responsibility) as and when required to complete said repairs. In the event, however, the shortage in proceeds was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. IF Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within said period, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect. If in such case Lessor does not so elect, then this Lease shall terminate sixty (60) days following the occurrence of the damage or destruction. Unless otherwise agreed, Lessee shall in no event have any right to reimbursement from Lessor for any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3 rather than Paragraph 9.2, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 *Partial Damage-Uninsured Loss.* If a Premises Partial Damage that is not an insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 13), Lessor may at Lessor's option, either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect; or (ii) give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage of Lessor's desire to terminate this Lease as of the date sixty (60) days following the giving of such notice. In the event notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage totally at Lessee's expense and without reimbursement from Lessor, Lessee shall provide Lessor with the required funds or satisfactory assurance thereof within thirty (30) days following Lessee's said commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible and the required funds are available. If Lessee does not give such notice and provide the funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

9.4 *Total Destruction.* Notwithstanding any other provision hereof, if a Premises Total Destruction occurs (including any destruction required by any authorized public authority), this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction, whether or not the damage or destruction is an insured Loss or was caused by a negligent or willful act of Lessee. In the event, however, that the damage or destruction was caused by Lessee, Lessor shall have the right to recover Lessor's damages from Lessee except as released and waived in Paragraph 8.6.

9.5 *Damage Near End of Term.* If at any time during the last six (6) months of the term of this Lease there is damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an insured Loss, Lessor may, at Lessor's option, terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within thirty (30) days after the date of occurrence of such damage. Provided, however, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, within twenty (20) days following the occurrence of the damage, or before the expiration of the time provided in such option for its exercise, whichever is earlier ("Exercise Period"), (i) exercising such option and (ii) providing Lessor with any shortage in insurance proceeds (or adequate insurance thereof) needed to make the repairs. If Lessee duly exercises such option during said Exercise Period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's expense repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. IF Lessee fails to exercise such option and provide such funds or assurance during said Exercise Period, then Lessor may at Lessor's option terminate this Lease as of the expiration of said sixty (60) day period following the occurrence of damage by giving written notice to Lessee of Lessor's election to do so within ten (10) days after the expiration of the Exercise Period, notwithstanding any term or provision in the grant of option to the contrary.

9.6 *Abatement of Rent; Lessee's Remedies.*

(a) In the event of damage described in Paragraph 9.2 (Partial Damage-Insured), whether or not Lessor or Lessee repairs or restores the Premises, the Base Rent, Real Property Taxes, insurance premiums, and other charges, if any, payable by Lessee hereunder for the period during which such damage, its repair or the restoration continues (not to exceed the period for which rental value insurance is required under Paragraph 8.3(b), shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of Base Rent, Real Property Taxes, insurance premiums, and other charges, if any, as aforesaid, all other obligations of Lessee hereunder shall be performed by Lessee, and Lessee shall have no claim against Lessor for any damage suffered by reason of any such repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence, in a substantial and meaningful way, the repair or restoration of the Premises within ninety (90) days after such obligations shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice to Lessor and such Lenders and such repair or restoration is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If Lessor or a Lender commences the repair or restoration of the Premises within thirty (30) days after receipt of such notice, this Lease shall continue in full force and effect. "Commence" as used in this Paragraph shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 *Hazardous Substance Conditions.* If a Hazardous Substance Condition occurs, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by Applicable Law and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 13), Lessor may at Lessor's option either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to investigate and remediate such condition exceeds twelve (12) times the then monthly Base Rent or $1000,000, whichever is greater, give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition of Lessor's desire to terminate this Lease as of the date sixty (60) days following the giving of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the investigation and remediation of such Hazardous Substance Condition totally at Lessee's expense and without reimbursement from Lessor except to the extent of an amount equal to twelve (12) times the then monthly Base Rent or $1000,000, whichever is greater. Lessee shall provide Lessor with the funds required of Lessee or satisfactory assurance thereof within thirty (30) days following Lessee's said commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such investigation and remediation as soon as reasonably possible and the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination. If a Hazardous Substance Condition occurs for which Lessee is not legally responsible, there shall be abatement of Lessee's obligations under this Lease to the same extent as provided in Paragraph 9.6(a) for a period of not to exceed twelve months.

9.8 *Termination-Advance Payments.* Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor under the terms of this Lease.

9.9 *Waive Statutes.* Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

**10. *Real Property Taxes.***

10.1 (a) *Payment of Taxes.* Lessee shall pay the Real Property Taxes, as defined in Paragraph 10.2, applicable to the Premises during the term of this Lease. Subject to Paragraph 10.1(b), all such payments shall be made at least ten (10) days prior to the delinquency date of the applicable installment. Lessee shall promptly furnish Lessor with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Lessee shall cover any period of time prior to or after the expiration or earlier termination of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment after such proration. If Lessee shall fail to pay any Real Property Taxes required by this Lease to be paid by Lessee, Lessor shall have the right to pay the same, and Lessee shall reimburse Lessor therefor upon demand.

(b) *Advance Payment.* In order to insure payment when due and before delinquency of any or all Real Property Taxes, Lessor reserves the right, at Lessor's option, to estimate the current Real Property Taxes applicable to the Premises, and to require such current year's Real Property Taxes to be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the installment due, at least twenty (20) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be that equal monthly amount which, over the number of months remaining before the month in which the applicable tax installment would become delinquent (and without interest thereon), would provide a fund large enough to fully discharge before delinquency the estimated installment of taxes to be paid. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payment shall be adjusted as required to provide the fund needed to pay the applicable taxes before delinquency. If the amounts paid to Lessor by Lessee under the provisions of this Paragraph are insufficient to discharge the obligations of Lessee to pay such Real Property Taxes as the same become due, Lessee shall pay to Lessor, upon Lessor's demand, such additional sums as are necessary to pay such obligations. All moneys paid to Lessor under this Paragraph may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of the obligations of Lessee under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, subject to proration as provided in Paragraph 10.1(a), at the option of Lessor, be treated as an additional Security Deposit under Paragraph 5.

10.2 *Definition of "Real Property Taxes."* As used herein, the term "Real Property Taxes" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the Premises by any authority having the direct or indirect power to tax, including any city, state, or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, levied against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, Lessor's right to rent or other income therefrom, and/or Lessor's business of leasing the Premises. The term "Real Property Taxes" shall also include any tax, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in applicable law taking effect, during the term of this Lease, including but not limited to a change in the ownership of the Premises or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties.

10.3 *Joint Assessment.* If the Premises are not separately assessed, Lessee's ability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included with the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work schools or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.4 *Personal Property Taxes.* Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause its Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property or, at Lessor's option, as provided in Paragraph 10.1(b).

**11. *Utilities.*** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered with other premises.

**12. *Assignment and Subletting.***

12.1 Lessor's Consent Required.

(a) Lessor shall not voluntarily or by operation of law assign, transfer, mortgage, or otherwise transfer or encumber (collectively, "assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent given under and subject to the terms of Paragraph 36.

(b) A change in the control of Lessee shall constitute an assignment required Lessor's consent. The transfer, on a cumulative basis, of twenty-five (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, refinancing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee, as hereinafter defined, by an amount equal to or greater than twenty-five percent (25%) of such Net Worth of Lessee as it was represented to Lessor at the time of the execution by Lessor of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transaction constituting such reduction, at whichever time said Net Worth of Lessee as it was represented to Lessor at the time of the execution by Lessor of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, at whichever time said Net Worth of Lessee was or is greater, shall be considered an assignment of this Lease by Lessee to which Lessor may reasonably withhold its consent. "Net Worth of Lessee" for purposes of this Lease shall be the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles consistently applied.

(d) An assignment or subletting of Lessee's interest in this Lease without Lessor's specific prior written consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unconsented to assignment or subletting as a noncurable Breach, Lessor shall have the right to either: (i) terminate this Lease, or (ii) upon thirty (30) days written notice ("Lessor's Notice"), increase the monthly Base Rent to fair market value, if disputed by Lessee, Lessee shall pay the amount set forth in Lessor's Notice, with any overpayment credit against the next installment(s) of Base Rent coming due, and any underpayment for the period retroactively to the effective date of the adjustment being due and payable immediately upon the determination thereof. Further, in the event of such Breach and market value adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment in the then fair market value (without the Lease being considered an encumbrance or any deduction for depreciation or obsolescence, and considering the Premises at its highest and best use and in good condition), or one hundred ten percent (110%) of the price previously in effect, whichever is greater, (ii) any index-oriented rental or price adjustment formulas contained in this Lease shall be adjusted to require that the base index be determined with reference to the index applicable to the time of such adjustment, and (iii) any fixed rental adjustments scheduled during the remainder of the Lease term shall be increased in the same ratio as the new market rental bears to the Base Rent in effect immediately prior to the market value adjustment.

12.2 Terms and Conditions Applicable to Assignment and Subletting:

(a) Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublease of the obligations of Lessor under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) after the primary liability of Lessee for the payment of Base Rent and other sums due Lessor hereunder or for the performance of any other obligations to be performed by Lessee under this Lease.

(b) Lessor may accept any rent or performance of Lessee's obligation from any person other than Lessee pending approval or disapproval of an assignment, neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for the Default or Breach by Lessee of any of the terms, covenants or conditions of this Lease.

(c) The consent of Lessor to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Lessee or to any subsequent or successive assignment or subletting by the sublessee. However, Lessor may consent to subsequent sublettings and assignments of the sublease or any amendments or modification thereto without notifying Lessee or anyone else liable on the Lease or sublease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease or sublease.

(d) In the event of any Default or Breach of Lessee's obligations under this Lease, Lessor may proceed directly against Lessee, any Guarantors or any one else responsible for the performance of the Lessee's obligations under this Lease, including the sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor or Lessee.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises. If any, together with a non-refundable deposit of $1,000 or ten percent (10%) of the current monthly Base Rent, whichever is greater, as reasonable consideration for Lessor's considering and processing the request for consent. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested by Lessor.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Lessor, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented in writing.

(g) The occurrence of a transaction described in Paragraph 12.1(c) shall give Lessor the right (but not the obligation) to require that the Security Deposit be increased to an amount equal to six (6) times the then monthly Base Rent, and Lessor may make the actual receipt by Lessor of the amount required to establish such Security Deposit a condition to Lessor's consent to such transaction.

(h) Lessor, as a condition to giving its consent to any assignment or subletting, may require that the amount and adjustment structure of the rent payable under this Lease be adjusted to what is then the market value and/or adjustment structure for property similar to the Premises as then constituted.

12.3 *Additional Terms and Conditions Applicable to Subletting*. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all rentals and income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Lessee, and Lessor may collect such rent and income and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach (as defined in Paragraph 13.1) shall occur in the performance of Lessee's obligations under this Lease, of this or any other assignment of such sublease to Lessor, nor by reason of the collection of the rents from a sublessee, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee under such sublease. Sublessee shall rely upon any such statement and request from Lessor and shall pay such rents and other charges to Lessor without any obligation or right to inquire as to whether such Breach exists and notwithstanding any notice from or claim from Lessee to the contrary, Lessee shall have no right or claim against said sublessee, or, until the Breach has been cured, against Lessor, for any such rents and other charges so paid by said sublessee to Lessor.

(b) In the event of a Breach by Lessee in the performance of its obligations under this Lease, at its option and without any obligation to do so, may require any sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provide, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any other prior Defaults or Breaches of such sublessor under such sublease.

(c) Any matter or thing requiring the consent of the sublessor under a sublease shall also require the consent of Lessor herein.

(d) No sublessee shall further reassign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

**13.** ***Default; Breach; Remedies.***

13.1 *Default; Breach*. Lessor and Lessee agree that if any attorney is consulted by Lessor in connection with a Lessee Default or Breach (as hereinafter defined), $350.00 is a reasonable minimum sum per such occurrence for legal services and costs in the preparation and service of a notice of Default, and that Lessor may include the cost of such services and costs in said notice as rent due an payable to cure said Default. A "Default" is defined as a failure by the Lessee to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to Lessee under this Lease. A "Breach" is defined as the occurrence of any one or more of the following Defaults and, where a grace period for cure after notice is specified herein, the failure by Lessee

to cure such Default prior to the expiration of the applicable grace period, and shall entitle Lessor to pursue the remedies set forth in Paragraphs 13.2 and/or 13.3:

(a) The vacating of the Premises without the intention to reoccupy the same, or the abandonment of the Premises .

(b) Except as expressly otherwise provide in this Lease, the failure by to make any payment of Base Rent or any other monetary payment required to be made by Lessee hereunder, whether to Lessor or to a third party within ten (10) business days after receiving written notice of the failure by Lessee to provide Lessor with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Lessee to any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.

(c) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duplicate executed original form, if applicable) of (i) compliance with applicable law per Paragraph 6.8, (ii) the inspection, maintenance and service contract required under Paragraph 7.1(b), (iii) the recission of an unauthorized assignment or subletting per paragraph 12.1(b), (iv) a Tenancy Statement provided in Paragraphs 16 or 37, (v) the subordination or non-subordination of this Lease per Paragraph 30, (v) the guaranty of the performance of Lessee obligations under this Lease if required under Paragraphs 1.11 and 37, (vii) the execution of any document requested under Paragraph 42 (easements or (viii) any other documentation or information which Lessor may reasonably require of Lessee under this the terms of this Lease, where any such failure continues for a period of ten business (10) days following written notice by or on behalf of Lessor to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof that are to be observed, complied with or performed by Lessee, other than those described in subparagraphs (a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of Lessor to Lessee; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by Lessee if Lessor commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee's becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at he Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph (a) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery by Lessor that any financial statement given to Lessor or any Guarantor of Lessee's obligations hereunder was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a guarantor, (ii) the termination of a guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a guarantor's refusal to honor the guaranty, or (v) a guarantor's breach of its guaranty obligation on an anticipatory breach basis, and Lessee's failure, within sixty (60) days following written notice by or on behalf of Lessor to Lessee of any such event, to provide Lessor with written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the guarantors at the time of execution of this Lease.

13.2 *Remedies*. If Lessee fails to perform any affirmative duty or obligation of Lessee under this Lease, within ten (10) business days after written notice to Lessee (or in case of an emergency, without notice), Lessor may at its option (but without obligation to do so), perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made under this Lease by Lessee to be made only by cashier's check. In the event of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such a Breach, Lessor may:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event, Lessor shall

be entitled to recover from Lessee: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligation under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorney's fees, and that portion of the leasing commission paid by Lessor applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the prior sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus, one percent. Efforts by Lessor to mitigate damages caused by Lessee's Default or Breach of this Lease shall not waive Lessor's right to recover damage under this Paragraph. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover such proceeding the unpaid rent and damages as are recoverable therein, or Lessor may reserve therein the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under subparagraphs 13.1(b), (c) or (d) was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Lessee under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by subparagraphs 13.1(b), (c) or (d). In such case, the applicable grace period under subparagraphs 13.1(b), (c) or (d) and under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Lessee to cure the Default within the greater of two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession in effect (in California Civil Code Section 1951.4) after Lessee's Breach and abandonment and recover the rent as it becomes due, provided Lessee has the right to sublet or assign, subject only to reasonable limitations. See Paragraphs 12 and 36 for the limitations on assignment and subletting which limitations Lessee and Lessor agree are reasonable. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver to protect the Lessor's interest under the Lease, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located.

(d) The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 *Inducement Recapture in Event of Breach*. Any agreement by Lessor for free or abated rent or other charges applicable to the Premises, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease to be performed or observed by Lessee during the term hereof as the same may be extended. Upon the occurrence of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, any such inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an inducement Provision shall be immediately due and payable by Lessee to Lessor, and recoverable by Lessor as additional rent due under this Lease, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this Paragraph shall not be deemed a waiver by Lessor of the provisions of this Paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 *Late Charges*. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any ground lease, mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) business days after receiving written notice, Lessee shall pay to Lessor a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, no prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive

installments of Base Rent, then notwithstanding Paragraph 4.1 of any other provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

*Breach by Lessor.* Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph 13.5, a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor, and by the holders of any ground lease, mortgage or deed of trust covering the Premises whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying where such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, then Lessor shall not be in breach of this Lease if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

14. *Condemnation.* If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the land area not occupied by any building, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the rentable floor area of the building located on the Premises. No reduction of Base Rent shall occur if the only portion of the Premises taken is land on which there is no building. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any compensation, separately awarded to Lessee or Lessee's relocation expenses and/or loss of Lessee's Trade Fixtures. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of its net severance damages received, over and above the legal and other expenses incurred by Lessor in the condemnation matter, repair any damage to the Premises caused by such condemnation, except to the extent that Lessee has been reimbursed therefor by the condemning authority, Lessee shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

**15. *Broker's Fee.***

15.1 The Brokers named in Paragraph 1.10 are the procuring causes of this Lease.

15.2 Upon execution of this Lease by both Parties, Lessor shall pay to said Brokers jointly, or in such separate shares as they may mutually designate in writing, a fee as set forth in a separate written agreement between Lessor and said Broker (or in this event there is no separate written agreement in writing, a fee as set forth in a separate written agreement between Lessor and said Brokers s, the sum of $ N/A ) for brokerage services rendered by said Brokers to Lessor in this transaction.

15.3 Unless Lessor and Brokers have otherwise agreed in writing, Lessor further agrees that ??? if Lessee exercises any Option (as defined in Paragraph 39.1) or any Option subsequently granted which is substantially similar to an Option granted to Lessee in this Lease, or (B) if Lessee acquires any right to the Premises or other premises described in this Lease which are substantially similar to what Lessee would have acquired had an Option herein granted to Lessee been exercised, or (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of the term of this Lease after having failed to exercise an Option, or (d) if said Brokers are the procuring cause of any other lease or sale entered into between the Parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, or (e) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then as to any of said transactions, Lessor shall pay said Brokers a fee in accordance with the schedule of said Brokers in effect at the time of the execution of this Lease.

15.4 Any buyer or transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this Paragraph 15. Each Broker shall be a third party beneficiary of the provisions of this Paragraph 15 to the extent of its interest in any commission arising from this Lease and may enforce that right directly against Lessor and its successors.

15.5 Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any named in Paragraph 1.10) in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity other than said named Brokers is entitled to any commission or finder's fee in connection with said transaction, Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges

which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

15.6 Lessor and Lessee hereby consent to and approve all agency relationships, including any dual agencies, indicated in Paragraph 1.10.

**16.** ***Tenancy Statement.***

16.1 Each Party (as "Responding Party") shall within ten (10) business days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

16.2 If Lessor desires to finance, refinance, or sell the Premises, any part thereof, or the building of which the Premises are a part, Lessee and all Guarantors of Lessee's performance hereunder shall deliver to any potential lender or purchaser designated by Lessor such financial statements of Lessee and Such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. *Lessor's Liability*. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or in this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor at the time of such transfer or assignment. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, s aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. *Severability*. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. *Interest on Past-Due Obligations*. Any monetary payment due Lessor hereunder, other than late charges not received by Lessor within thirty (30) days following the date on which it was due, shall bear interest form the thirty-first (31st) day after it was due at the rate of 12% per annum, but not exceeding the maximum rate allowed by law, in addition to the late charge provided for in Paragraph 13.4.

20. *Time of Essence*. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

21. *Rent Defined*. All monetary obligations of Lessee to Lessor under the terms of this Lease are deemed to be rent.

22. *No Prior or Other Agreements; Broker Disclaimer*. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the nature, quality and character of the Premises. Brokers have no responsibility with respect or with respect to any default or breach hereof by either Party.

**23.** ***Notices.***

23.1 All notices required or permitted by this Lease shall be in writing and may be delivered in person by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for the purpose of mailing or delivering notices to Lessee. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such address as Lessor may from time to time hereafter designate by written notice to Lessee.

23.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. IF sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone confirmation of receipt of the transmission thereof, provided a copy is also delivered via delivery or mail. If notice is received on a Sunday or legal holiday, it shall be deemed receive on the next business day.

24. *Waivers*. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Lessor's knowledge of a Default or Breach at the time of accepting rent, the acceptance of rent by Lessor shall not be a waiver of any preceding Default or Breach by Lessee of any provision hereof, other than the failure of Lessor to pay the particular rent so accepted. Any payment given Lessor by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. *Recording*. Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees or taxes applicable thereto.

26. *No Right to Holdover*. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease.

27. *Cumulative Remedies*. No remedy or election shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. *Covenants and Conditions*. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions.

29. *Binding Effect; Choice of Law*. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

**30. *Subordination; Attornment; Non-Disturbance.***

30.1 *Subordination*. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed by Lessor upon the real property of which the Premises are part, to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements, and extensions thereto. Lessee agrees that the Lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Lessor under this Lease, but that in the event of Lessor's default with respect to any such obligation, Lessee will give any Lender whose name and address have been furnished Lessee in writing for such purpose notice of Lessor's default and allow such Lender thirty (30) days following receipt of such notice to Lessor the cure of said default before invoking any remedies. Lessee may have be reason thereof. If any Lender shall elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 *Attornment*. Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor, or (iii) be bound by prepayment of more than one month's rent.

30.3 *Non-Disturbance*. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving assurance (a "non-disturbance agreement") from the Lender that

Lessee's possession and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises.

30.4 *self-Executing*. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein.

31. *Attorney's Fees*. If any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) or Broker in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defaults the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred. Lessor shall be entitled to attorney's fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach.

32. *Lessor's Access; Showing Premises; Repairs.* Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part, as Lessor may reasonably deem necessary. Lessor may at any time place on or about the Premises or building any ordinary "For Sale" signs and Lessor may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Lessor shall be without abatement or rent or liability to Lessee.

33. *Auctions*. Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.

34. *Signs*. Lessee shall not place any sign upon the Premises, except that Lessee may, with Lessor's prior written consent, install (but not on the roof) such signs as are reasonably required to advertise Lessee's own business. The installation of any sign on the Premises by or for Lessee shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations). Unless otherwise expressly agreed upon herein, Lessor reserves all rights to the use of the roof and the right to install, and all revenues from the installation of, such advertising signs on the Premises, including the roof, as do not unreasonably interfere with the conduct of Lessee's business.

35. *Termination; Merger*. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or in termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, Lessor shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies. Lessor's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lessor interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

**36. *Consents.***

(a) Except for Paragraph 33 hereof (Auctions) or as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including, but not limited to architects' attorneys' engineers' or other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent pertaining to this Lease or the Premises, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, practice or storage tank, shall be paid by Lessee to Lessor upon receipt of an invoice and supporting documentation therefor. Subject to Paragraph 12.2(a) (applicable to assignment or subletting), Lessor may, as a condition to considering any such request by Lessee, require that Lessee deposit with Lessor an amount of money (in addition to the Security Deposit held under Paragraph reasonably calculated by Lessor to represent the cost Lessor will incur in considering and responding to Lessee's request. Except as otherwise provided, any unused portion of said deposit shall be refunded to Lessee without interest. Lessor's consent to any act, assignment or this Lease and subletting of the Premises by Lessee shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing Lessor at the time of such consent.

(b) All conditions to Lessor's consent authorized by this Lease are acknowledged by Lessee as being reasonable. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given.

**37. *Guarantor.***

37.1 If there are to be any Guarantors of this Lease per Paragraph 1.11, the term of the guaranty to be executed by each such Guarantor shall be in the form most recently published by the American Industrial Real Estate Association, and each said Guarantor shall have the same obligations as Lessee under this Lease, including but not limited to the obligation to provide the Tenancy Statement and information called for by Paragraph 16.

37.2 It shall constitute a Default of the Lessee under this Lease if any such Guarantor fails or refuses, upon reasonable request by Lessor to give: (a) evidence of the due execution of the guaranty called for by this Lease, including the authority of the Guarantor (and of the party signing on Guarantor's behalf) to obligate such Guarantor on said guaranty, and including in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, together with a certificate of incumbency showing the signature of the persons authorized to sign on its behalf, (b) current financial statements of Guarantor as may from time to time be requested by Lender, (c) a Tenancy Statement, or (d) written confirmation that the guaranty is still in effect.

38. *Quiet Possession*. Upon payment by Lessee of the rent for the Premises and the observance and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

**39. *Options.***

39.1 *Definition*. As used in this Paragraph 39 the word "Option" has the following meaning: (a) the right to extend the term of this Lease or to renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal to lease the Premises or the right of first refusal to lease other property of Lessor or the right of first offer to lease other property of Lessor; (c) the right to purchase the Premises, or the right of first refusal to purchase the Premises, or the right of first offer to purchase the Premises, or the right to purchase other property of Lessor, or the right of first refusal to purchase other property of Lessor, or the right of first offer to purchase other property of Lessor.

39.2 *Options Personal to Original Lessee*. Each Option granted to Lessee in this Lease is personal to the original Lessee named in Paragraph 1.1 hereof, and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original Lessee while the original Lessee is in full and actual possession of the Premises and without the intention of thereafter assigning or subletting. The Options, if any, herein granted to Lessee are not assignable, either as a part of an assignment of this Lease or separately or apart therefrom, and no Option may be separated from this Lease in any manner, by reservation or otherwise.

39.3 *Multiple Options*. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options to extend or renew this Lease have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision in the grant of Option to the contrary: (i) during the period commencing with the giving of any notice of Default under Paragraph 13.1 and continuing until the noticed Default is cured, or (ii) during the period of time any monetary obligation due Lessor from Lessee is unpaid (without regard to whether notice thereof is given Lessee), or (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that lessor has given to Lessee three (3) or more notices of Default under Paragraph 13.1, whether or not the Defaults are cured, during the twelve (12) month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise any Option because of the provisions of Paragraph 39.4(a).

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of thirty (30) days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessor gives to lessee three or more notices of Default

under Paragraph 13.1 during any twelve-month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. *Multiple Buildings*. If the Premises are part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which lessor may make from tie to time for the management, safety, care and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of such other buildings and their invitees, and that lessee will pay its fair share of common expenses incurred in connection therewith.

41. *Security Measures*. Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. *Performance Under Protest*. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against who the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this lease.

44. *Authority*. If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after request by Lessor, deliver to Lessor evidence satisfactory to Lessor of such authority.

45. *Conflict*. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. *Offer*. Preparation of this lease by Lessor or Lessor's agent and submission of same to Lessee shall not be deemed an offer to lease to Lessee. This Lease is not intended to be binding until executed by all Parties hereto.

47. *Amendments*. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification. The Parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent or other rent payable under this Lease. As long as they do not materially change lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by an institutional, insurance company, or pension plan Lender in connection with the obtaining of normal financing or refinancing of the property of which the Premises are a part.

48. *Multiple Parties*. Except as otherwise provided herein, if more than one person or entity is named herein as either Lessor or Lessee, the obligations of such multiple parties shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN, IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. FURTHER, EXPERTS SHOULD BE CONSULTED TO EVALUATE THE CONDITION OF THE PROPERTY AS TO THE POSSIBLE PRESENCE OF ASBESTOS, STORAGE TANKS ON HAZARDOUS SUBSTANCES. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION

OR BY THE REAL ESTATE BROKER(S) OR THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE ON THE TRANSACTION TO WHICH IT RELATES; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE. IF THE SUBJECT PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, AN ATTORNEY FROM THE STATE WHERE THE PROPERTY IS LOCATED SHOULD BE CONSULTED.

The parties hereto have executed this Lease at the place on the dates specified above to their respective signatures

Executed at _____
On _____
By LESSOR:

PACIFICA HOLDING COMPANY, LLC, A COLORADO LIMITED LIABILITY COMPANY

By: /s/ Steve Leonard

Name Printed: ____ Steve Leonard_____
Title: _____ Manager_____

By:_____
Name Printed: _____
Title: _____

Address: ____ 5350 S. Roslyn Street, Suite 240 Englewood, CO 80111

Tel. No. (303) 721-7600 Fax No. (303) 220-5585

Executed at _____
On _____
By LESSEE:
TRW, INC AN OHIO CORPORATION

By: /s/ M.A. Klontz

Name Printed: ____ M.A. KLONTZ_____
Title: _____ ASSISTANT SECRETARY_____

By: _____
Name Printed: _____
Title: _____

Address: Real Estate Operations 2073, One Space Park, Redondo Beach, CA 90278

Tel. No. (__) _____ Fax No. (__) _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: American Industrial Real Estate Association, 345 South Figueroa Street, Suite M-1, Los Angeles, CA 90071. (213) 687-6777, Fax No. (213) 687-8616.

**ADDENDUM**

THIS ADDENDUM is to that certain Standard Industrial/Commercial Single-Lessee Lease – Net (the "Lease") by and between Pacifica holding Company, LLC, a Colorado limited liability company ("Lessor"), and TRW Inc., an Ohio corporation ("Lessee"), with respect to that certain property in Arapahoe County, Colorado. In the event of any conflict between the terms and provisions of the Lease and the terms and provisions of this Addendum, the terms and provisions of this Addendum shall control.

1. *Real Property*. The real property on which the building will be constructed will be as described on Exhibit A, attached hereto and incorporated herein by this reference (the "Real Property").

2. *Construction of Improvements*. Lessor agrees that Building shall be constructed by Lessor in a manner which is reasonably consistent with the design development plans to be agreed upon in writing by Lessor and Lessee (the "Plans"), subject to compliance with applicable laws, rules and regulations concerning such Building, including the same applicable to zoning. In the event that Lessor and Lessee cannot agree upon the Plans, as determined in each party's sole and absolute discretion, then this Lease may be terminated by either party upon written notice to the other, in which event Lessee shall pay Lessor upon demand the Project Costs incurred by Lessor through the date of termination reduced by the amount of prepaid rent (excluding prepaid rent attributable to the $25,000 earnest money deposit for the Shell purchase) and Lessor shall simultaneously transfer fee title to the Premises to Lessee.

Lessor shall commence construction of Building promptly following its receipt of all governmental approvals and the parties' approval of the Plans. The Building will be approximately 100,000 square feet of rentable area. The parties shall use their best efforts to agree upon the Plans within thirty (30) days following the mutual execution of this lease. Lessee shall thereafter prosecute the completion of such Building in a diligent manner. Lessor's obligations hereunder are subject to matters outside of Lessor's reasonable control, including delays attributable to compliance with applicable laws and delays in issuance of permits by the respective regulatory authority. For purposes hereof, Lessor shall be deemed to have commenced construction of the Building upon commencement grading of the Real Property.

3. *Cost of Improvements*. The total costs incurred by Lessor in connection with its purchase of the Real Property and construction of the improvements thereon in accordance with the Plan shall be equal to the "Project Cost." Said Project Cost shall include without limitation, land costs, closing costs, interest on lessor's equity (at the interest rate for lessor's debt) and debt occurred prior to the Commencement Date, legal costs, commissions, building permits, tap fees, recording costs, engineering fees, costs of on-site and off-site improvements required by governmental authorities, and development fees, all as shown on the preliminary budget attached hereto and incorporated herein by this reference as Exhibit B. Project Costs between $115.00 per square foot of rentable area of the Premises and $200.00 per square foot of rentable area of the Premises shall be determined Special Improvements. The costs of Special Improvements shall be amortized over the Original Term at 10.5% and paid in monthly installments as part of Base Rent (the "Special Improvement Rent"). In the event that the Project Costs exceed or are projected to exceed $200 per square foot of rentable area of the Premises, Lessor and Lessee shall cooperate to attempt to increase Lessor's construction loan. In the event that lessor's lender is unable to increase said loan pursuant to terms acceptable to Lessor as determined in its sole and absolute discretion, then (i) Lessee shall alter the Plans to reduce the Project Costs below $200 per square foot of rentable area, or (ii) Lessee shall pay said amount to Lessor upon demand, after the date said expenses are actually incurred by Lessor.

4. *Commencement Date*. The Commencement Date will be upon substantial completion of the facility in accordance with the plans and receipt by Lessor of a certificate of occupancy. Lessor and Lessee will execute a memorandum of commencement date when said date has been determined.

5. *Base Rent*. The annual Base Rent shall be calculated in the following manner: the Project Cost, less the cost of Special Improvements, shall be multiplied by the following factors in the following respective years:

| | |
|---|---|
| Years 1 – 3 | 10.30% |
| Years 4 – 6 | 11.26% |
| Years 7 – 9 | 12.30% |
| Year 10 | 13.40% |

Said amount shall be added to the amortized Special Improvement Rent pursuant to Section 3 above.

Upon the determination of the final Project Cost, the parties will enter into a memorandum of lease rates setting forth the actual dollar amounts of rent to be paid by Lessee hereunder. For example, if the actual project cost is $22,000,000 ($220 psf), Special Improvements are $8,500,000 ($ 5 psf), then the annual Base Rent for year one will be equal to the product of $13,500,000 multiplied by 10.3%, which equals $1,390-,500, plus the amortized Special Improvement Rent, which equals $1,376,377. Consequently, lessee would owe $2,766,837 per year for years one through three of the term, payable in monthly installments of $230,570. Additionally, lessee would owe the Project Costs in excess of $200 per square foot of rentable area of $2,000,000 to Lessor upon demand.

6. *Improvements to premises*. The last phrase in Section 7.3(a) of the Lease, which reads "and the cumulative cost thereof during the term of this lease thereof during any consecutive twelve (12) month period during the term of this Lease as extended does not exceed $20,000." Where Lessor's consent is required to approve of Alterations, said consent shall not be unreasonably withheld. Lessee shall not be required to remove Alterations, the installation of which Lessor has given written approval; however, the parties understand and agree that Landlord may reasonably withhold its approval of Alterations that (i) will be more expense to remove than typical standard office building improvements in the greater Denver area, or (ii) are not typical standard office building improvements.

7. *Option to Extend*. As additional consideration for the covenants of Lessee hereunder, Lessor hereby grants unto Lessee for two (2) additional terms of five (5) years (the "Option Term(s)"). The Option shall apply only to the original space leased hereunder and shall be on the following terms and conditions:

A. Written notice of Lessee's interest in exercising the Option shall be given to lessor no earlier than twelve (12) months and no later than six (6) months prior to the expiration of the Original Term or First Option Term, as applicable ("Lessee's Notice"). Not later than thirty (30) days after receiving Lessee's Notice, Lessor shall give to Lessee notice of the terms, conditions and rental rate applicable during the Option Term, in accordance with subparagraph E below ("Lessor's Notice").

B. Lessee shall have fifteen (15) days following lessee's receipt of lessor's Notice within which to exercise the Option by delivering written notice of such exercise to Lessor under the terms, conditions and rental rate set forth in Lessor's Notice. If Lessee timely exercises the Option, the Lease shall be deemed extended and thereafter the parties shall execute an amendment to the Lease setting forth the terms of the extension.

C. Unless Lessor is timely notified by Lessee in accordance with subparagraphs A and B above, it shall be conclusively deemed that lessee does not desire to exercise the Option, and the Lease shall expire in accordance with its terms, at the end of the Original Term or current Option Term, as applicable.

D. Lessee's right to exercise its Option shall be conditioned on: (i) lessee not being in default under the Lease at the time of exercise of the Option or at the time of the commencement of the Option Term; and (ii) Lessee not having subleased more that twenty-five percent (25%) of the Premises or assigned its interest under the Lease as of the commencement of the Option Term or having vacated more than twenty-five percent (25%) of the Premises.

E. The Option granted hereunder shall be upon the terms and conditions contained in the Lease except that the rental to be paid by lessee to Lessor during the Option Term shall be 95% of the rate which Lessor would quote to third parties for the Premises, if it were to become available for leasing, for a lease term scheduled to commence at the time of commencement of the Option Term, but in no event shall the rental rate be less than the rent which Lessee is paying immediately prior to the commencement of the respective Option Term, exclusive of any Special Improvement Rent. Such rental rate may include escalations and pass-throughs. If Lessee, by written notice delivered no later than five (5) business days after the date lessor notifies Lessee of the Base Rent, objects to the Base Rent determined by Lessor and elects to submit the rate determination to appraisal, then, within seven (7) days of the later of the date of lessee's objection or the expiration of the five (5) day period, each party shall appoint a real estate office broker that has at least five (5) years' full-time commercial office experience to determine the Market Base Rent, such process to be completed within twenty (20) days after the date of the appointment of the last broker. If a party does not appoint a qualified broker within five (5) days after the other party has given notice of the name of the broker, then the single broker shall be the sole broker and shall set the Market Base Rent. The brokers appointed by the parties shall meet promptly and attempt to set the Market Base Rent. If they are unable to agree on the Market Base Rent within twenty (20) days after the date the second broker has been appointed, they shall elect a third broker meeting the qualifications stated in this paragraph within seven (7) days after the last day the two (2) brokers are to set the Market Base Rent. If the brokers are unable to agree on the third broker, either of the parties to this Lease, after giving five (5) days' prior written notice to the other party, may apply to the then president of the real estate board of Denver, Colorado for the selection of a third broker who meets the qualifications stated in this Article, which selection shall be made within three (3) days. Each of the parties shall pay for the broker appointed by it and shall bear one-half of the cost of appointing the third broker and of paying the third broker's fee. The third broker, however selected, shall be a person who has not previously acted in any capacity for either party. The brokers shall be instructed to consider the criteria above stated in determining the Market Base Rent.

Within twenty (20) days after the selection of the third broker, a majority of the brokers shall set the Market Base Rent. If a majority of the brokers are unable to agree on the market Base Rent within the stipulated period of time, the average of the three brokers shall be the applicable Market Base Rent.

Within three (3) business days after receipt of the Market Base Rent, lessee may reject the Base Rent determination. Said rejection shall be in writing. In the event that lessee rejects said determination, then Lessee shall surrender the Premises in accordance with the terms of the Lease at the expiration of the Term and, notwithstanding anything hereinabove to the contrary, pay, upon demand, the costs of all brokers engaged in connection with the market rate determination.

F. After exercise of the Options above described, there shall be no further rights on the part of Lessee to extend the term of the Lease.

8. *Termination Right*. Provided Lessee is not in default hereinunder, has no sublet or assigned its Premises and has otherwise kept and performed all obligations of lessee on its part to be performed, lessor hereby agrees that lessee may elect to terminate the Lease pursuant to the following terms and conditions:

A. After the expiration of the seventh ($7^{th}$) year of the Lease Term (the "*Termination Date*"), Lessee may terminate this Lease.

B. Lessee shall provide lessor with written notice of its intent to terminate (the "*Termination Notice*") no later than 180 days prior to Lessee's desired Termination Date (the "*Termination Notice Date*").

C. lessee shall surrender the Premises on or before the Termination Date in accordance with the terms of the Lease.

D. Lessee shall pay to lessor a cancellation fee (the "*Cancellation Fee*") equal to the sum of the following items: (i) the present value of all Base Rent payments due and payable under the Lease as it may have been extended, discounted at 8.0%, (ii) the unamortized Special Improvement Rent, amortized at 10.5%, (iii) the unamortized legal fees and brokerage commissions paid by lessor in connection with this Lease, which shall be paid to lessor within thirty (30) days of Lessor's notice to Lessee of the amount of the Cancellation Fee.

E. Any notice or payment to be given by Lessee hereunder not given in accordance herewith, time being of the essence, shall render the option to terminate, at lessor's option, void and of no further force and effect.

F. Provided that all terms and conditions hereof and of the Lease have been performed by Lessee as of the Termination Date, then this Lease shall be deemed terminated subject to Lessee's obligation to surrender the Premises in accordance with the terms of the Lease, the survival of lessee's obligation to pay adjustments in Operating Expenses, the survival of any indemnities given hereunder, and Lessee's obligation to remove the accessway described in Section 18 of this Addendum.

9. *Right of First Offer*.

A. In the event Lessor desires to sell the Premises after the expiration of the first ninety (90) days of the Lease Term, then, provided Lessee is not in default under the Lease, Lessor shall give written notice thereof to Lessee (hereinafter referred to as the "Offering Notice").

B. Lessor will afford lessee thirty (30) days from the delivery of the Offering Notice within which to negotiate the terms and conditions of a contract of sale acceptable to Lessor and Lessee as determined in their sole and absolute discretion.

C. During said thirty (30) day period, Lessor will not negotiate any agreements for sale with any third parties.

D. After the expiration of said thirty (30) day period, in the event that a contract for sale has not been executed by both Lessor and Lessee, for any reason, then this right of first offer shall automatically terminate and be of no force or effect as if it never existed, unless lessor does not sell the Property within twelve (12) months after the expiration of said thirty (30) day period in which event Lessor shall reoffer the Property to Lessee in accordance with this Section 9 prior to any sale. Upon five (5) day's request from lessor, lessee will deliver any evidence of the termination of said right of first offer reasonably requested by Lessor. Lessee's failure to so deliver said evidence shall be a default under the Lease and shall additionally be evidence that said Right of First Offer's expiration and termination.

10. *Assignment/Subletting*.

Notwithstanding anything to the contrary contained in Section 12 of the Lease, Lessee shall have the right, without obtaining lessor's prior written consent, to assign or sublet the Lease to the following parties on the following conditions:

A. The successor of lessee to the contract pursuant to which Lessee shall be initially improving and occupying the Building, which is known as the Diamond Contract;

B. Any corporation into which Lessee may be merged or consolidated or which purchases all or substantially all of the assets or stock of Lessee; provided that the resulting corporation has a net worth at least equal to lessee's net worth as of the date hereof;

And provided that:

(i) The assignee and/or sublessee has a net worth at least equal to Lessee's net worth as of the date hereof;

(ii) Any such sublessee and/or assignee shall assume and be bound by all obligations of Lessee for payment of all amounts of rental and other sums and the performance of all covenants required by Lessee pursuant to this Agreement;

(iii) Any such sublessee and/or assignee intends to operate the Premises in accordance with the usage restrictions of this Lease and under the same name as lessee; and

(iv) Not less than thirty (30) days prior to the effective date of such transaction, Lessee provides lessor with copies of the documents evidencing such transaction and such evidence as Lessor may reasonably required to establish that such transaction and such evidence as Lessor may reasonably require to establish that such transaction falls within the terms and provisions of this paragraph 8.

Subject to the terms and conditions of Section 12 of the Lease, lessor's consent to any subletting requested by Lessee shall not be unreasonably withheld, provided (i) Lessee is not in default and has not defaulted under the terms of the Lease; (ii) the proposed sublessee or assignee is engaged in a business and the Premises will be used in a manner which is in keeping with the then standards of the Building; and (iii) the proposed sublessee or assignee has reasonably financial worth in light of the responsibilities involved and Lessee shall have provided Lessor with reasonable evidence thereof.

11. *Purchase of Property*. Lessor' obligations under this Lease, are contingent upon its purchase or the Real Property on or before the expiration of one hundred eighty days after the mutual execution hereof. In the event that lessor does not ;purchase the Real Property for any reason on or before said date, then this Lease shall automatically terminate and be of no force or effect as if it were never entered into and lessee shall pay Lessor upon demand the Project Costs incurred by lessor through the date of termination reduced by the amount of prepaid rent (excluding prepaid rent attributable to the $25,000 earnest money deposit for the Shell purchase).

12. *First Month's Rent Payment*. Simultaneously with the execution hereof Lessee has deposited with Lessor the sum of $171,667 which shall be applied to the first month's Base Rent as same becomes due and payable. Prior to the application of said payment in the event that Lessee defaults in its performance of any of the terms and conditions hereunder Lessee hereby agrees that the rent prepayment shall be treated as a security deposit and lessor may use, apply or retain said sum in accordance with Article 5 of the Lease. Notwithstanding the foregoing, Lessee shall receive a credit against the first month's Base Rent payment obligation specified above of $25,000 for its security deposit under the Shell purchase and sale agreement, which agreement and deposit shall be transferred to Lessor simultaneous with the mutual execution hereof.

13. *Title Documents*. Lessee's use and occupancy of the Premises shall be subject and subordinate to all documents recorded in the real property records in the County of Arapahoe, State of Colorado affecting the Real Property (the "Underlying Documents"). In the event of any conflict between this Lease and the Underlying Documents, the Underlying Documents shall prevail; and any failure of lessee to comply with the terms of the Underlying Documents shall be a default hereunder. All sums owed by Lessor under the Underlying Documents, shall be paid by Lessee as directed under the Underlying Documents, as additional rent, on or before the date due thereunder.

14. *Compliance with Applicable Laws*. Lessor shall only have the right to require Lessee to provide evidence of its compliance with Applicable Laws in accordance with the terms of Section 6.3 of the Lease in the event that Lessor reasonably suspects that Lessee is in violation of an Applicable Law.

15. *Vacation of the Premises*. Notwithstanding the terms of Section 13.1 of the Lease to the contrary, Lessee shall not be in Default of the Lease if it abandons the Premises, provided that Lessee provides Lessor with 30 days' advance written notice of its intent to abandon the Premises, Lessee otherwise complies with all of the other terms, conditions and obligations under the Lease, and Lessee engages in a security and periodic inspection program, which program shall be subject to Lessor's written approval prior to the date of Lessee's vacation of the Premises.

16. *Building Permit*. In the event that Lessor is unable to obtain a building permit after exercising commercially reasonable efforts for a period of six (6) months after the formal submittal for a building permit, then this Lease may be terminated by Lessor or lessee upon written notice to the other, in which event Lessee shall pay Lessor upon demand the Project Costs incurred by Lessor through the date of termination reduced by the amount of prepaid rent (excluding prepared rent attributable to the $25,000 earnest money deposit for the Shell purchase) and Lessor shall simultaneously transfer fee title to the Premises to Lessee.

17. *Accessway to Adjoining Property*. The parties acknowledge and agree that lessee desires that the Building be connected via a covered accessway to lessee's premises adjacent the land. Provided that lessor is able to negotiate an easement and maintenance agreement with the adjoining land owner, which is acceptable to Lessor, Lessor shall use commercially reasonable efforts to allow said accessway to be incorporated into the Plans and the Project Cost. Lessee acknowledges that the accessway shall be considered part of the Premises. On or before the expiration or termination of the Lease, Lessee shall remove the accessway at its sole cost and expense and repair any damage to the Building and close any openings in the Building resulting from said removal, all to Lessor's reasonable satisfaction.

18. *Repair and Maintenance.*

A. Notwithstanding anything in the Lease to the contrary, Lessor shall be responsible for the cost of performing repairs to the following structural items: the foundation, structural components of exterior walls, structural defects in the floor of the Building, roof replacement (Lessee shall be responsible for roof repairs other than roof replacement, which repairs shall be accomplished in accordance with the terms and conditions of lessor's roof warranty so as not to invalidate or compromise said warranty), and Major Repairs/Replacements to the heating, ventilating and air conditioning, electrical or plumbing systems serving the Building (collectively, "Structural Repairs"). "Major Repairs/Replacements" shall mean any single repair or replacement costing in excess of $5,000.

B. Notwithstanding anything in the Lease to the contrary, lessor shall be additionally responsible for the cost of painting the exterior of the Building when commercially necessary and replacing the carpet and painting the painted surfaces of the interior of the Building in the event that lessee elects to exercise any option to extend the term of the Lease as provided in Section 7 of this Addendum (the "Added Repairs").

C. Lessee shall be responsible for performing the Major Repairs and Added Repairs in accordance with Section 7.3(b) and (c) of the Lease. Furthermore, Lessee shall obtain three competitive bids for each item of Major Repair or Added Repair that lessee desires to perform, which bids and the selection of the winning bid shall be subject to Lessor's review and written approval. All Major Repairs and Added Repairs shall be subject to Lessor's prior review and written approval and lessee shall submit all pertinent information to lessor for its review, including, without limitation plans and specifications of said repairs, evidence of the need for same, and repair contracts.

D. All of lessor's costs and expenses incurred in connection with a Major Repair or an Added Repair shall be amortized at 10.5% per annum over the shorter of (i) the useful life of said repair, or (ii) the remaining term of the lease, as it may be extended, and paid by Lessee in monthly installments with and in the manner as Basic Rent is paid. Said payments shall be considered additional rent under the Lease.

19. *Hazardous Substances*. Lessor warrants to Lessee that to Lessor's actual knowledge, without investigation, the Premises and property are as of the date of the Lease free from contamination from any Hazardous Substances. In the event that Hazardous Substances are later discovered to be present in, on or below the Premises or property which is required by any governmental agency to be abated or removed, the cost of abatement or removal thereof shall not be lessee's except as otherwise set forth in the Lease.

20. *Indemnification*. Lessor shall indemnify, defend and hold Lessee harmless from all costs, damages, claims, liabilities and expenses (including reasonable attorneys' fees), losses and court costs for personal injury or arising from incidents occurring in or about the Premises or Building and caused by the gross negligence or willful misconduct of Lessor, its agents or employees, not covered by lessee's liability insurance required to be carried under this Lease.

IN WITNESS WHEREOF, this Addendum is executed as of , 200 .

PACIFICA HOLDING COMPANY, LLC,
A Colorado limited liability company

By: /s/ STEVE LEONARD

**Steve Leonard**
***Manager***

TRW INC., AN OHIO CORPORATION

By: /s/ M. A. KLONTZ

**M. A. Klontz**
***Assistant Secretary***

**EXHIBIT 10.73**

**PURCHASE AND SALE AGREEMENT FOR THE MFS PHOENIX BUILDING**

**AGREEMENT FOR THE PURCHASE AND SALE OF PROPERTY**

THIS AGREEMENT FOR THE PURCHASE AND SALE OF PROPERTY (the "Agreement"), is made and entered into as of the 25th day of February, 2002, by and between NBS PHOENIX III, L.L.C., a Delaware limited liability company ("Seller") and WELLS CAPITAL, INC., a Georgia corporation ("Purchaser").

**WITNESSETH:**

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property (as hereinafter defined) subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, the mutual agreements contained herein, the sum of Ten Dollars ($10.00) in hand paid by Purchaser to Seller at and before the sealing and delivery of these presents and for other good and valuable consideration, the receipt, adequacy, and sufficiency which are hereby expressly acknowledged by the parties hereto, the parties hereto do hereby covenant and agree as follows:

1. *Purchase and Sale of Property*. Subject to and in accordance with the terms and provisions of this Agreement, Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller, the Property, which term "Property" shall mean and include the following:

(a) all that tract or parcel of land (the "Land") located in Maricopa County, Arizona, containing approximately *9.3175* acres, having an address of 2411 West Peoria Avenue, Phoenix, Arizona, and being more particularly described on *Exhibit "A"* hereto; and

(b) all rights, privileges, and easements appurtenant to the Land, including all water rights, mineral rights, reversions, or other appurtenances to said Land, and all right, title, and interest of Seller, if any, in and to any land lying in the bed of any street, road, alley, or right-of-way, open or proposed, adjacent to or abutting the Land; and

(c) all buildings, structures, and improvements situated on the Land, including, without limitation, that certain one story training center containing approximately 148,605 square feet of rentable space, the parking areas containing approximately 891 parking spaces and other amenities located on the Land, and all apparatus, built-in appliances, equipment, pumps, machinery, plumbing, heating, air conditioning, electrical and other fixtures located on the Land and owned by Seller (all of which are herein collectively referred to as the "Improvements"); and

(d) all personal property now owned by Seller and located on or to be located on or in, or used in connection with, the Land and Improvements ("Personal Property"); and

(e) all of Seller's right, title, and interest, as landlord or lessor, in and to that certain Lease with Massachusetts Financial Services Company, a Delaware corporation (the "Tenant"), dated May 31, 2000, (the "Lease"); and

(f) all of Seller's right, title, and interest in and to the plans and specifications with respect to the Improvements and any guarantees, trademarks, rights of copyright, warranties, or other rights related to the ownership of or use and operation of the Land, Personal Property, or Improvements, all governmental licenses and permits, and all intangibles associated with the Land, Personal Property, and Improvements, including the name of the Improvements and the logo therefor, if any.

2. *Earnest Money*. Within two (2) business days after the full execution of this Agreement, Purchaser shall deliver to Fidelity National Title Insurance Company of New York ("Escrow Agent"), whose offices are at 200 Galleria Parkway, Suite 1695, Atlanta, Georgia 30339, Purchaser's check, payable to Escrow Agent, in the amount of $150,000 (the "Earnest Money"), which Earnest Money shall be held and disbursed by Escrow Agent in accordance with this Agreement. The Earnest Money shall be paid by Escrow Agent to Seller at Closing (as hereinafter defined) and shall be applied as a credit to the Purchase Price (as hereinafter defined), or shall otherwise be paid to Seller or refunded to Purchaser in accordance with the terms of this Agreement. All interest and other income from time to time earned on the Earnest Money shall belong to Purchaser and shall be disbursed to Purchaser at any time or from time to time as Purchaser shall direct Escrow Agent. In no event shall any such interest or other income be deemed a part of the Earnest Money.

3. *Purchase Price*. Subject to adjustment and credits as otherwise specified in this Agreement, the purchase price (the "Purchase Price") to be paid by Purchaser to Seller for the Property shall be $25,800,000.00. The Purchase Price shall be paid by Purchaser to Seller at the Closing (as hereinafter defined) by cashier's check or by wire transfer of immediately available federal funds, less the amount of Earnest Money and subject to prorations, adjustments and credits as otherwise specified in this Agreement.

4. *Purchaser's Inspection and Review Rights*. Subject to the rights of the Tenant, Purchaser and its agents, engineers, or representatives, with Seller's reasonable, good faith cooperation, shall have the privilege of going upon the Property as needed to inspect, examine, test, and survey the Property at all reasonable times and from time to time. Seller shall have the right to be present at any meetings with Tenant. Purchaser hereby agrees to hold Seller harmless from any liens, claims, liabilities, and damages incurred through the exercise of such privilege, and Purchaser further agrees to repair any damage to the Property caused by the exercise of such privilege. Prior to entry on the Property for the purpose of performing any testing, Purchaser shall maintain and/or insure that Purchaser's consultants and contractors maintain public liability insurance and property damage insurance in an amount not less than Two Million Dollars ($2,000,000) and in form and substance adequate to insure against all liability of Purchaser and its consultants and contractors, respectively, and each of their respective agents, employees and contractors, arising out of inspections and testing of the Property or any part thereof made on Purchaser's behalf, and, at Seller's request, Purchaser shall furnish Sellers with appropriate certificates and endorsements reflecting Seller as an additional insured under any such insurance. At all reasonable times prior to the Closing (as hereinafter defined), Seller shall make available to Purchaser, or Purchaser's agents and representatives, for review and copying, all books, records, and files in Seller's possession relating to the ownership and operation of the Property, including, without limitation, title matters, surveys, tenant files, service and maintenance agreements, and other contracts, books, records, operating statements, and other information relating to the Property. Seller further agrees to in good faith assist and cooperate with Purchaser in coming to a thorough understanding of the books, records, and files relating to the Property, but not including records relating to the cost of construction or financing. Seller further agrees to provide to Purchaser (to the extent the same have not previously been provided to Purchaser) prior to the date which is five (5) days after the effective date of this Agreement the most current boundary and "as-built" surveys of the Land and Improvements and any title insurance policies, occupancy permits, building inspection reports and environmental reports relating thereto and in the possession or under the control of Seller. 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, Seller shall (i) cooperate with Purchaser, its counsel, accountants, agents, and representatives, provide them with access to Seller's books and records with respect to the ownership, management, maintenance, and operation of the Property for the applicable period, and permit them to copy the same, (ii) execute a form of "rep" letter in form and substance reasonably satisfactory to Seller, and (iii) furnish Purchaser with such additional information concerning the same as Purchaser shall reasonably request. Purchaser will pay the costs associated with any such audit.

5. *Special Condition to Closing*. Purchaser shall have forty-five (45) days from the effective date of this Agreement (the "Inspection Period") to make investigations, examinations, inspections, market studies, feasibility studies, lease reviews, and tests relating to the Property and the operation thereof in order to determine, in Purchaser's sole opinion and discretion, the suitability of the Property for acquisition by Purchaser. Purchaser shall have the right to terminate this Agreement at any time prior to the expiration of the Inspection Period by giving written notice to Seller of such election to terminate. In the event Purchaser so elects to terminate this Agreement, Seller shall be entitled to receive and retain the sum of Twenty-Five Dollars ($25.00) of the Earnest Money, and the balance of the Earnest Money shall be promptly refunded by Escrow Agent to Purchaser, whereupon, except as expressly provided to the contrary in this Agreement, no party hereto shall have any other or further rights or obligations under this Agreement. Seller acknowledges that the sum of $25.00 is good and adequate consideration for the termination rights granted to Purchaser hereunder. In addition, Purchaser shall return to Seller all documentation provided by Seller relating to the Property, and at Seller's request copies of studies and tests conducted by or for Purchaser.

6. *General Conditions Precedent to Purchaser's Obligations Regarding the Closing*. In addition to the conditions to Purchaser's obligations set forth in Paragraph 5 above, the obligations and liabilities of Purchaser hereunder shall in all respects be conditioned upon the satisfaction of each of the following conditions, any of which may be waived by written notice from Purchaser to Seller:

(a) Seller shall have complied in all material respects with and otherwise performed in all

material respects each of the covenants and obligations of Seller set forth in this Agreement, as of the date of Closing (as hereinafter defined).

(b) All representations and warranties of Seller as set forth in this Agreement shall be true and correct in all material respects as of the date of Closing.

(c) There shall have been no material adverse change to the title to the Property which has not been cured and the Title Company (as hereinafter defined) shall have issued the Title Commitment (as hereinafter defined) on the Land and Improvements without exceptions other than as described in paragraph 7 and the Title Company shall be prepared to issue to Purchaser upon the Closing a leasehold owner's title insurance policy on the Land and Improvements pursuant to such Title Commitment.

(d) Purchaser shall have received the Tenant Estoppel Certificate referred to in Paragraph 9(c) hereof, duly executed by the Tenant at least five (5) days prior to the end of the Inspection Period. Seller shall not be required to obtain a subordination, non-disturbance and attornment agreement ("SNDA") from Tenant.

7. *Title and Survey*. On or before ten (10) business days after the Effective Date, Purchaser shall obtain through Escrow Agent (hereinafter sometimes called "Title Company") a commitment (herein referred to as the "Title Commitment") to issue to Purchaser, upon the recording of the Deed (as hereinafter defined), the payment of the Purchase Price, and the payment to the Title Company of the policy premium therefor, an owner's policy of title insurance, in the amount of the Purchase Price, insuring good and marketable record title to the Property to be in Purchaser subject only to the Permitted Exceptions (as hereinafter defined), with affirmative coverage over any mechanic's, materialman's and subcontractor's liens and with full extended coverage over all general exceptions, and containing the following endorsements: zoning (including affirmative coverage against any violations of recorded covenants and restrictions), survey, and access. Such Title Commitment shall not contain any exception for rights of parties in possession other than an exception for the right of the Tenant under the Lease. Seller has delivered to Purchaser a copy of that certain ALTA/ACSM Land Title Survey of Lot 3, Desert Canyon Corporate Campus, prepared by Wood/Patel Civil Engineers, dated July 16, 2001 (the "As-Built Survey"). Not less than ten (10) days prior to the expiration of the Inspection Period, Seller shall deliver to Purchaser an updated As-Built Survey certified to Purchaser and to the Title Company and updated to reference the Title Commitment and show any additional items reflected in the Title Commitment which are not presently shown on the As-Built Survey. Purchaser, upon receipt of the Title Commitment and the copies of the documents and instruments referred to therein and the recertified and updated As-built Survey, shall then have ten (10) days (but not later than the expiration of the Inspection Period) during which to examine the same, after which Purchaser shall notify Seller of any defects or objections affecting the title to the Property. Seller shall then have until the Closing to cure such defects and objections and shall, in good faith, exercise reasonable diligence to cure such defects and objections.

8. *Representations and Warranties of Seller*. Seller hereby makes the following representations and warranties to Purchaser, each of which shall be deemed material:

(a) *Lease*. Seller has delivered to Purchaser a true, correct and complete copy of the Lease, together with all modifications and amendments thereto herein referred. Seller is the "landlord" under the Lease and owns unencumbered legal and beneficial title to the Lease and the rents and other income thereunder, subject only to the collateral assignment of the Lease and the rents thereunder in favor of the holder of an existing mortgage or deed of trust encumbering the Property, which mortgage or deed of trust shall be canceled and satisfied by Seller at the Closing. The Tenant leases and occupies 100% of the rentable area of the Improvements.

(b) *Lease—Assignment*. To the best of Seller's knowledge, the Tenant has not assigned its interest in the Lease or sublet any portion of the premises leased to the Tenant under the Lease.

(c) *Lease—Default*. (i) Seller has not received any notice of termination or default under the Lease, (ii) there are no existing or uncured defaults by Seller or to the best of Seller's knowledge, by the Tenant under the Lease, (iii) to the best of Seller's knowledge, there are no events which with the passage of time or notice, or both, would constitute a default by Seller or by the Tenant, and Seller has complied with each and every undertaking, covenant, and obligation of Seller under the Lease, and (iv) Tenant has not asserted any defense, set-off, or counterclaim with respect to its tenancy or its obligation to pay rent,

additional rent, or other charges pursuant to the Lease, other than completion by Seller of any outstanding punch list items for tenant improvements ("Punch List Items") which Seller represents and warrants that it will complete in a timely and workmanlike manner.

(d) *Lease—Rents and Special Consideration*. Tenant: (i) has not prepaid rent for more than the current month under the Lease, (ii) has not received and is not entitled to receive any rent concession in connection with its tenancy under the Lease other than as described in the Lease, (iii) is not entitled to any special work (not yet performed), or consideration (not yet given) in connection with its tenancy under the Lease, and (iv) does not have any deed, option, or other evidence of any right or interest in or to the Property, except as set forth in Section 39 of the Lease.

(e) *Lease—Commissions*. No rental, lease, or other commissions with respect to the Lease are payable to Seller, any partner of Seller, any party affiliated with or related to Seller or any partner of Seller or any third party whatsoever. All commissions payable under, relating to, or as a result of the Lease have been cashed-out and paid and satisfied in full by Seller or by Seller's predecessor in title to the Property.

(f) *Lease—Acceptance of Premises*. (i) Tenant has accepted its leased premises located within the Property, including any and all work performed therein or thereon pursuant to the Lease, (ii) Tenant is in full and complete possession of its premises under the Lease, and (iii) Seller has not received notice from the Tenant that the Tenant's premises are not in full compliance with the terms and provisions of Tenant's Lease or are not satisfactory for Tenant's purposes, except for Punch List Items.

(g) *No Other Agreements*. Other than the Lease and the Permitted Exceptions, except as set forth in Schedule 8(g) hereto, there are no leases, service contracts, management agreements, or other agreements or instruments in force and effect, oral or written, to which Seller is a party and that grant to any person whomsoever or any entity whatsoever any right, title, interest or benefit in or to all or any part of the Property or any rights relating to the use, operation, management, maintenance, or repair of all or any part of the Property, which will survive Closing.

(h) *No Litigation*. There are no actions, suits, or proceedings pending, or, to the best of Seller's knowledge, threatened by any organization, person, individual, or governmental agency against Seller with respect to the Property or against the Property, nor does Seller know of any basis for such action, other than a pending claim for lien by Wilson Electric Company, which lien shall be released or insured over by Seller at or prior to Closing. Seller has no knowledge of any pending or threatened application for changes in the zoning applicable to the Property or any portion thereof.

(i) *Condemnation*. No condemnation or other taking by eminent domain of the Property or any portion thereof has been instituted and, to the best of Seller's knowledge, there are no pending or threatened condemnation or eminent domain proceedings (or proceedings in the nature or in lieu thereof) affecting the Property or any portion thereof or its use.

(j) *Proceedings Affecting Access*. The Property is served by curb cuts for direct vehicular access to and from 23rd Avenue and Peoria Avenue adjoining the Property. Said streets are public streets. There are no pending or, to the best of Seller's knowledge, threatened proceedings that could have the effect of impairing or restricting access between the Property and such adjacent public roads.

(k) *No Assessments.* To the best of Seller's knowledge, no assessments have been made against the Property that are unpaid, whether or not they have become liens.

(l) *Condition of Improvements*. Seller is not aware of any structural or other defects, in the Improvements. The heating, ventilating, air conditioning, electrical, plumbing, water, roofing, storm drainage and sanitary sewer systems at or servicing the Land and Improvements are, to the best of the Seller's knowledge, in good condition and working order and Seller is not aware of any defects or deficiencies, latent or otherwise, therein. The Improvements have been constructed in compliance with applicable provisions of the Lease, governmental building regulations, and any recorded covenants, conditions and restrictions.

(m) *Certificates*. To the best of Seller's knowledge, there will, at closing, be in effect certificates of occupancy, licenses, and permits as may be required for the Property, and the present use and occupation of the Property is in compliance and conformity with the certificates of occupancy and all

licenses and permits. There has been no 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.

(n) *Violations*. To the best of Seller's knowledge, (i) there are no violations of law, municipal or county ordinances, or other legal requirements with respect to the Property, and the Improvements thereon comply with all applicable legal requirements with respect to the use, occupancy, and construction thereof; (ii) the Property is zoned in a classification which permits the use thereof in the present manner; and (iii) the Property is not located in a flood hazard area.

(o) *Intentionally Omitted.*

(p) *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.

(q) *Pre-existing Right to Acquire*. Except for the rights of Tenant under Section 39 of the Lease, no person or entity has any right or option to acquire the Property or any portion thereof which will have any force or effect after the execution of this Agreement, other than Purchaser.

(r) *Effect of Certification*. To the best of Seller's knowledge, neither this Agreement nor the transactions contemplated herein will constitute a breach or violation of, or default under, or will be modified, restricted, or precluded by the Lease or the Permitted Exceptions.

(s) *Authorization*. Seller is a duly organized and validly existing limited liability company under the laws of the State of Delaware, and is qualified to do business in Arizona. This Agreement has been duly authorized and executed on behalf of Seller and constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms, and all necessary action on the part of Seller to authorize the transactions herein contemplated has been taken, and no further action is necessary for such purpose.

(t) *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.

(u) *Hazardous Substances*. Seller hereby warrants and represents, to the best of Seller's knowledge, and except as otherwise disclosed in two Phase I Environmental Assessments and a NESHAP Building Inspection, prepared by Foree & Vann, Inc., and dated March 25, 1998, February 18, 2000, and March 20, 2000, respectively, that (i) no "hazardous substances", as that term is defined 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*., and the rules and regulations promulgated pursuant to these acts, any so-called "super-fund" or "super-lien" laws or any applicable state or local laws, nor any other pollutants, toxic materials, or contaminants have been or shall prior to Closing be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape on the Property, (ii) no asbestos or asbestos containing materials have been installed, used, incorporated into, or disposed of on the Property, (iii) no polychlorinated biphenyls are located on or in the Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form, (iv) no underground storage tanks are located on the Property or were located on the Property and subsequently removed or filled, (v) no investigation, administrative order, consent order and agreement, litigation, or settlement with respect to Hazardous Substances is proposed, threatened, anticipated or in existence with respect to the Property, and (vi) the Property has not previously been used as a landfill, cemetery, or as a dump for garbage or refuse. Seller hereby indemnifies Purchaser and holds Purchaser harmless from and against any loss, cost, damage, liability or expense due to or arising out of the breach of any representation or warranty contained in this Paragraph.

EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY HEREIN, PURCHASER IS ACQUIRING THE PROPERTY IN ITS "AS IS" CONDITION AS OF THE DATE OF THE CLOSING.

9. *Seller's Additional Covenants*. Seller does hereby further covenant and agree as follows:

(a) *Operation of Property*. Seller hereby covenants that, from the date of this Agreement up to and including the date of Closing, Seller shall: (i) not negotiate with any third party respecting the sale of the Property or any interest therein, (ii) not modify, amend, or terminate the Lease, or enter into any new lease, contract, or other agreement respecting the Property without the consent of Purchaser, (iii) not grant or otherwise create or consent to the creation of any easement, restriction, lien, assessment, or encumbrance respecting the Property, and (iv) cause the Property to be operated, maintained, and repaired in the same manner as the Property is currently being operated, maintained, and repaired.

(b) *Preservation of Lease*. Seller shall, from and after the date of this Agreement to the date of Closing, use its good faith efforts to perform and discharge all of the duties and obligations and shall otherwise comply with every covenant and agreement of the landlord under the Lease, at Seller's expense, in the manner and within the time limits required thereunder. Furthermore, Seller shall, for the same period of time, use diligent and good faith efforts to cause the Tenant under the Lease to perform all of its duties and obligations and otherwise comply with each and every one of its covenants and agreements under such Lease and shall take such actions as are reasonably necessary to enforce the terms and provisions of the Lease.

(c) *Tenant Estoppel Certificate*. At least five (5) days prior to expiration of the Inspection Period, Seller shall obtain and deliver to Purchaser a fully completed estoppel certificate with respect to the Lease in substantially the form of *Exhibit "B"* (the "Tenant Estoppel Certificate"), duly executed by the Tenant thereunder. The Tenant Estoppel Certificate shall be executed as of a date not more than thirty (30) days prior to Closing.

(d) *Intentionally Omitted.*

(e) *Association Certificate(s) Regarding Covenants*. Seller shall use commercially reasonable efforts to obtain from the governing body having control over the covenants and restrictions set forth in instruments recorded as documents 99-1087418 and 00-0521839, Official Records of Maricopa County, Arizona, a statement or statements acknowledging the sale of the Property to Purchaser and reciting that to the best of its knowledge that Seller and the Property are in compliance with the requirements of said covenants, that there are no defaults thereunder and stating the amount of assessments which may be due and owing.

(f) *Insurance*. From and after the date of this Agreement to the date and time of Closing, Seller shall, at its expense, continue to maintain the all risk fire and extended coverage insurance policy covering the Property which is currently in force and effect.

10. *Closing*. Provided that all of the conditions set forth in this Agreement are theretofore fully satisfied or performed, it being fully understood and agreed, however, that Purchaser may expressly waive in writing, at or prior to Closing, any conditions that are unsatisfied or unperformed at such time, the consummation of the sale by Seller and purchase by Purchaser of the Property (herein referred to as the "Closing") shall be held at 12:00 noon, local time, on the first business day which is at least seven (7) business days after the end of the Inspection Period, at the offices of Escrow Agent, or at such earlier time as shall be designated by Purchaser in a written notice to Seller not less than two (2) business days prior to Closing. The target Closing Date is March 25, 2002. In the event Seller's funds are not received by Escrow Agent by 12:00 noon on the day of Closing and Escrow Agent is not able to deliver funds to Seller's mortgagee on the day of Closing, the parties agree to prorate as of the first business day following delivery of the funds to Escrow Agent.

11. *Seller's Closing Documents*. For and in consideration of, and as a condition precedent to, Purchaser's delivery to Seller of the Purchase Price described in Paragraph 3 hereof, Seller shall obtain or execute, at Seller's expense, and deliver to Purchaser at Closing the following documents (all of which shall be duly executed, acknowledged, and notarized where required and shall survive the Closing):

(a) *Special Warranty Deed*. A Special Warranty Deed (the"Deed") in substantially the form of *Exhibit "D*";

(b) *Bill of Sale*. A Bill of Sale conveying to Purchaser marketable title to the Personal Property in the form and substance of *Exhibit "E"*;

(c) *Blanket Transfer*. A Blanket Transfer and Assignment in the form and substance of *Exhibit "F*";

(d) *Assignment and Assumption of Lease*. An Assignment and Assumption of Lease in the form and substance of *Exhibit "G"*, assigning to Purchaser all of Seller's right, title, and interest in and to the Lease and the rents thereunder (and which shall provide among other things that Seller shall remain liable for its environmental indemnity to Tenant under the Lease);

(e) *Seller's Affidavit*. A customary seller's affidavit in the form required by the Title Company to satisfy the requirements of its commitment and the endorsements contemplated by paragraph 7 hereof;

(f) *FIRPTA Certificate*. A FIRPTA Certificate in such form as Purchaser shall reasonably approve;

(g) *Certificates of Occupancy*. The original Certificates of occupancy for all space within the Improvements to the extent the same are obtainable by Seller with commercially reasonable effort;

(h) *Keys and Records*. All of the keys to any doors or locks on the Property and the original tenant files and other books and records relating to the Property in Seller's possession except for any such items which are in the possession of the Property Manager, as hereinafter defined;

(i) *Tenant Notice*. Notice from Seller to the Tenant of the sale of the Property to Purchaser in such form as Purchaser shall reasonably approve;

(j) *Settlement Statement*. A settlement statement setting forth the amounts paid by or on behalf of and/or credited to each of Purchaser and Seller pursuant to this Agreement;

(k) *Other Documents*. Such other documents as shall be reasonably required by Purchaser's counsel.

12. *Purchaser's Closing Documents*. Purchaser shall obtain or execute and deliver to Seller at Closing the following documents, all of which shall be duly executed and acknowledged where required and shall survive the Closing:

(a) *Intentionally Omitted*.

(b) *Blanket Transfer*. The Blanket Transfer and Assignment;

(c) *Assignment and Assumption of Lease*. The Assignment and Assumption of Lease;

(d) *Settlement Statement*. A settlement statement setting forth the amounts paid by or on behalf of and/or credited to each of Purchaser and Seller pursuant to this Agreement; and

(e) *Other Documents*. Such other documents as shall be reasonably required by Seller's counsel.

13. *Closing Costs*. Seller shall pay the cost of the cost of any transfer or documentary tax imposed by any jurisdiction in which the Property is located, the base premium for the title policy, the updated survey, the attorneys' fees of Seller, and all other costs and expenses incurred by Seller in closing and consummating the purchase and sale of the Property pursuant hereto. Purchaser shall pay the cost of any endorsements to the title

policy and the attorneys' fees of Purchaser, and all other costs and expenses incurred by Purchaser in closing and consummating the purchase and sale of the Property pursuant hereto. Each party shall pay one-half of any escrow fees.

14. *Prorations*. The following items shall be prorated and/or credited between Seller and Purchaser as of Midnight preceding the date of Closing:

(a) *Rents*. Rents, additional rents, and other income of the Property (other than security deposits, which shall be assigned and paid over to Purchaser) collected by Seller from Tenant for the month of Closing. Purchaser shall also receive a credit against the Purchase Price payable by Purchaser to Seller at Closing for any rents or other sums (not including security deposits) prepaid by Tenant for any period following the month of Closing, or otherwise.

(b) *Taxes and Operating Costs*. Tenant is responsible under the Lease for Taxes and Operating Costs, as said terms are defined in the Lease. Seller shall pay to Purchaser at Closing any payments received from Tenant for Taxes and Operating Costs to the extent the same have not been previously applied. In addition, Seller shall reimburse Purchaser for any such items relating to the period prior to Closing which are not due and payable under the Lease. This agreement shall expressly survive the Closing.

15. *Purchaser's Default*. In the event of default by Purchaser under the terms of this Agreement (other than the Indemnity of Purchaser set forth in Section 4 hereof), Seller's sole and exclusive remedy shall be to receive the Earnest Money as liquidated damages and thereafter the parties hereto shall have no further rights or obligations hereunder whatsoever. It is hereby agreed that Seller's damages will be difficult to ascertain and that the Earnest Money constitutes a reasonable liquidation thereof and is intended not as a penalty, but as fully liquidated damages. Seller agrees that in the event of default by Purchaser, it shall not initiate any proceeding to recover damages from Purchaser, but shall limit its recovery to the retention of the Earnest Money.

Seller's Initial [illegible] Purchaser's Initials DPW

16. *Seller's Default*. In the event of default by Seller under the terms of this Agreement, including, without limitation, the failure of Seller to cure any title defects or objections, except as otherwise specifically set forth herein, at Purchaser's option: (i) if any such defects or objections arose by, through, or under Seller or if any such defects or objections consist of taxes, mortgages, deeds of trust, deeds to secure debt, mechanic's or materialman's liens, or other such monetary encumbrances, Purchaser shall have the right to cure such defects or objections, in which event the Purchase Price shall be reduced by an amount equal to the costs and expenses incurred by Purchaser in connection with the curing of such defects or objections, and upon such curing, the Closing hereof shall proceed in accordance with the terms of this Agreement; or (ii) Purchaser shall have the right to terminate this Agreement by giving written notice of such termination to Seller, whereupon Escrow Agent shall promptly refund all Earnest Money to Purchaser, and Purchaser and Seller shall have no further rights, obligations, or liabilities hereunder, except as may be expressly provided to the contrary herein; or (iii) Purchaser shall have the right to accept title to the Property subject to such defects and objections with no reduction in the Purchase Price, in which event such defects and objections shall be deemed "Permitted Exceptions"; or (iv) Purchaser may elect to seek specific performance of this Agreement.

17. *Condemnation*. If, prior to the Closing, all or any part of the Property is subjected to a bona fide threat of condemnation by a body having the power of eminent domain or is taken by eminent domain or condemnation (or sale in lieu thereof), or if Seller has received notice that any condemnation action or proceeding with respect to the Property is contemplated by a body having the power of eminent domain, Seller shall give Purchaser immediate written notice of such threatened or contemplated condemnation or of such taking or sale, and Purchaser may by written notice to Seller given within thirty (30) days of the receipt of such notice from Seller, elect to cancel this Agreement. If Purchaser chooses to cancel this Agreement in accordance with this Paragraph 17, then the Earnest Money shall be returned immediately to Purchaser by Escrow Agent and the rights, duties, obligations, and liabilities of the parties hereunder shall immediately terminate and be of no further force and effect. If Purchaser does not elect to cancel this Agreement in accordance herewith, this Agreement shall remain in full force and effect and the sale of the Property contemplated by this Agreement, less any interest taken by eminent domain or condemnation, or sale in lieu thereof, shall be effected with no further adjustment and without reduction of the

Purchase Price, and at the Closing, 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.

18. *Damage or Destruction*. If any of the Improvements shall be destroyed or damaged prior to the Closing, and the estimated cost of repair or replacement exceeds $250,000.00 or if the Lease shall terminate as a result of such damage, Purchaser may, by written notice given to Seller within twenty (20) days after receipt of written notice from Seller of such damage or destruction, elect to terminate this Agreement, in which event the Earnest Money shall immediately be returned by Escrow Agent to Purchaser and except as expressly provided herein to the contrary, the rights, duties, obligations, and liabilities of all parties hereunder shall immediately terminate and be of no further force or effect. If Purchaser does not elect to terminate this Agreement pursuant to this Paragraph 18, or has no right to terminate this Agreement (because the damage or destruction does not exceed $250,000.00 and the Lease remains in full force and effect), and the sale of the Property is consummated, Purchaser shall be entitled to receive all insurance proceeds paid or payable to Seller by reason of such destruction or damage under the insurance required to be maintained by Seller pursuant to Paragraph 9(d) hereof (less amounts of insurance theretofore received and applied by Seller to restoration). If the amount of said casualty or rent loss insurance proceeds is not settled by the date of Closing, Seller shall execute at Closing all proofs of loss, assignments of claim, and other similar instruments to ensure that Purchaser shall receive all of Seller's right, title, and interest in and under said insurance proceeds.

19. *Assignment*. Purchaser's rights and duties under this Agreement shall not be assignable except to an affiliate of Purchaser without the consent of Seller which consent shall not be unreasonably withheld.

20. *No Brokers*. Purchaser and Seller hereby represent each to the other that they have not discussed this Agreement or the subject matter hereof with any real estate broker or agent so as to create any legal right in any such broker or agent to claim a real estate commission with respect to the conveyance of the Property contemplated by this Agreement. Seller shall and does hereby indemnify and hold harmless Purchaser from and against any claim, whether or not meritorious, for any real estate sales commission, finder's fees, or like compensation in connection with the sale contemplated hereby and arising out of any act or agreement of Seller. Likewise, Purchaser shall and does hereby indemnify and hold harmless Seller from and against any claim, whether or not meritorious, for any real estate sales commission, finder's fees, or like compensation in connection with the sale contemplated hereby and arising out of any act or agreement of Purchaser. This Paragraph 20 shall survive the Closing or any termination of this Agreement.

21. *Notices*. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by telecopy, overnight courier, by hand, or sent by U.S. registered or certified mail, return receipt requested, postage prepaid, to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

PURCHASER: c/o Wells Capital, Inc.
6200 The Corners Parkway, Suite 250
Norcross, Georgia 30092
Attn: Mr. Michael C. Berndt
Fax: 770.200.8510

with a copy to: O'Callaghan & Stumm LLP
127 Peachtree Street, N. E., Suite 1330
Atlanta, Georgia 30303
Attn: William L. O'Callaghan, Esq.
Fax: 404.522.3080

SELLER: c/o The Alter Group, Ltd.
5500 West Howard Street
Skokie, IL 60077
Attn: Mr. Ronald F. Siegel
Fax: 847.676.4318

Alter Asset Management, L.L.C.
980 Springer Drive
Lombard, IL 60148
Attn: Mr. Samuel F. Gould
Fax: 630.620.3606

with a copy to : Ash, Anos, Freedman & Logan, L.L.C.
77 West Washington St., Suite 1211
Chicago, IL 60602
Attn: Lawrence M. Freedman, Esq.
Fax: 312.346.7847

Any notice or other communication mailed as herein above provided shall be deemed effectively given or received on the date of delivery, if delivered by telecopy, hand or by overnight courier, or otherwise on the third (3rd) business day following the postmark date of such notice or other communication.

22. *Possession*. Possession of the Property shall be granted by Seller to Purchaser on the date of Closing, subject only to the Lease and the Permitted Exceptions.

23. *Time Periods*. If the time period by which any right, option, or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday, or holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

24. *Survival of Provisions*. All covenants, warranties, and agreements set forth in this Agreement shall survive the execution or delivery of any and all deeds and other documents at any time executed or delivered under, pursuant to, or by reason of this Agreement, and shall survive the payment of all monies made under, pursuant to, or by reason of this Agreement for a period of one year from Closing except with respect to paragraph 8(u) which shall survive for two years and paragraph 20 which shall survive for an unlimited time.

25. *Severability*. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall, for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

26. *Authorization*. Purchaser represents to Seller that this Agreement has been duly authorized and executed on behalf of Purchaser and constitutes the valid and binding agreement of Purchaser, enforceable in accordance with its terms, and all necessary action on the part of Purchaser to authorize the transactions herein contemplated has been taken, and no further action is necessary for such purpose.

27. *General Provisions*. No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon the parties hereto unless such amendment is in writing and executed by all parties hereto. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns. Time is of the essence of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. This Agreement shall be construed and interpreted under the laws of the State of Arizona. Except as otherwise provided herein, all rights, powers, and privileges conferred hereunder upon the parties shall be cumulative but not restrictive to those given by law. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender shall include all genders, and all references herein to the singular shall include the plural and vice versa.

28. *Intentionally Omitted.*

29. *Effective Date*. The "effective date" of this Agreement shall be deemed to be the date this Agreement is fully executed by both Purchaser and Seller and a fully executed original counterpart of this Agreement has been received by both Purchaser and Seller.

30. *Contingency Regarding Other Contracts*. Contemporaneously with the execution hereof, the parties have entered or will enter into other purchase agreements which are listed on Exhibit "H" hereto, and it shall be a condition of the parties obligations hereunder that the closings with respect to the properties described therein shall occur simultaneously with the closing herein.

31. *Duties as Escrow Agent*. In performing its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence or willful misconduct, and it shall accordingly not incur any such liability with respect to any action taken or omitted in good faith upon advice of its counsel or in reliance upon any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provision, but also as to the truth and accuracy of any information contained therein that Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person and to conform to the provisions of this Agreement. Seller and Purchaser hereby agree to indemnify and hold harmless Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation and legal fees and disbursements, that may be imposed upon Escrow Agent or incurred by Escrow Agent in connection with its acceptance or performance of its duties hereunder as escrow agent, including without limitation, any litigation arising out of this Agreement. If any dispute shall arise between Seller and Purchaser sufficient in the discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender into the registry or custody of the clerk of the Court for the county in which the Property is located or the clerk for the United States District Court having jurisdiction over the county in which the Property is located, any or all money (less any sums required to pay Escrow Agent's attorneys' fees in filing such action), property or documents in its hands relating to this Agreement, together with such pleadings as it shall deem appropriate, and thereupon be discharged from all further duties under this Agreement. Seller and Purchaser shall bear all costs and expenses of any such legal proceedings. Seller and Purchaser agree to execute and deliver such additional documentation as may reasonably be requested by Escrow Agent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day, month and year first above written.

"SELLER":

NBS PHOENIX III, L.L.C., a Delaware limited liability company

By: 18-CHAI CORP., an Illinois corporation, as Manager

By: /s/ [ILLEGIBLE]

**Vice President**

"PURCHASER":

WELLS CAPITAL, INC., a Georgia corporation

By: /s/ DOUGLAS P. WILLIAMS

**Douglas P. Williams**
**Senior Vice President**

"ESCROW AGENT":

FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW YORK

By: /s/ SALLY FRENCH TYLER

**Sally French Tyler**
**Vice President/NTS**
**Fidelity National Title Insurance Co.**

**SCHEDULE OF EXHIBITS**

| | | |
|---|---|---|
| Exhibit “A” | — | Description of Land |
| Schedule 8(g) | — | Surviving Agreements |
| Exhibit “B” | — | Tenant Estoppel Certificate Form |
| Exhibit “C” | — | Not used |
| Exhibit “D” | — | Special Warranty Deed |
| Exhibit “E” | — | Bill of Sale Form |
| Exhibit “F” | — | Blanket Transfer and Assignment Form |
| Exhibit “G” | — | Assignment and Assumption of Lease Form |
| Exhibit “H” | — | Description of Purchase Agreements |

**EXHIBIT 10.74**

**LEASE AGREEMENT FOR THE MFS PHOENIX BUILDING**

## LEASE SCHEDULE

| | | |
|---|---|---|
| 1. | Date of Lease: | May 31, 2000 |
| 2. | Landlord: | NBS Phoenix III, L.L.C., a Delaware limited liability company |
| 3. | Tenant: | Massachusetts Financial Services Company, a Delaware corporation |
| 4. | Property Address: | 2411 West Peoria Avenue, Phoenix, Arizona |
| 5. | Premises: | 3-story building ("Building") of approximately 148,605 rentable square feet as described in **Appendix "B"** attached hereto to be constructed on approximately 9.3175 acres of land (the "Land"). The Land is described onAppendix "A" attached hereto and is located in Desert Canyon Corporate Campus, an office park located onapproximately 20.15 acres of land, which will comprise three (3) office buildings, parking and landscaping (the "Park"), the common areas of which, namely landscaping, decorative masonry wall, lighting, signage, andirrigation ("Park Common Areas"), shall be maintained pursuant to the Declaration as hereinafter described in Section 4.C.(i) hereof. Common areas serving the Building ("Common Areas") include landscaping, monument sign, lighting, irrigation and nine hundred (900) parking spaces, eight hundred seventy (870) of which shall be installed on or before the CommencementDate and thirty (30) of which shall be installed within thirty (30) days thereafter. Thirty percent (30%) of said parking spaces shall be covered as provided in **Appendix "D"**. The Land, the Building and the Common Areas comprise "the Property".<br><br>"Landlord's Work" shall have the meaning set forth in the Workletter attached hereto and incorporated herein by reference.<br><br>"Tenant's Work" shall have the meaning set forth in the Workletter attached hereto and incorporated herein by reference. |

6. Purpose: Mutual Fund operations, mutual fund transfer operations, and/or general offices, and such uses as are generally ancillary thereto, including mailroom, publication and distribution of printed materials, computer facilities, and such cafeteria uses ancillary thereto.

7. Lease Term: Ten (10) years and three (3) months. The Lease Term shall commence upon substantial completion, as more fully described in Section 3.C. hereof, but not prior to April 1, 2001 ("Commencement Date")

Options: (A) 2 five (5) year options to extend the Lease Term; and

(B) Right of first refusal to purchase the Property.

8. Area of Premises in rentable square feet ("r.s.f."): Approximately 148,605 (measured from glass line to glass line, less any vertical penetrations). Tenant shall have the right to measure the Premises within thirty (30) days of the completion of the steel erection of the Building in order to verify the rentable square feet of the Premises, and to the extent it differs from that set forth herein, the Base Rent shall be amended accordingly.

9. Jurisdiction in which the property is located: City of Phoenix, County of Maricopa, State of Arizona

10. Monthly Base Rent:

| Months | Annual Base Rent/r.s.f. | Base Rent/Month |
|---|---|---|
| 1-3 | 0 | None |
| 4-63 | $15.80 | $195,663.25 |
| 64-123 | $17.38 | $215,229.58 |

11. Addresses for Purpose of Notice:

Landlord: c/o The Alter Group, Ltd.
7303 North Cicero Avenue
Lincolnwood, IL 60646
Attention: Mr. Ronald Siegel
Fax No. (847) 676-4303

With a copy to:

Lawrence M. Freedman, Esquire
Ash, Anos, Freedman & Logan, L.L.C.
77 West Washington Street, Suite 1211
Chicago, IL 60602
Fax No.: (312) 346-7847; and

Samuel F. Gould
Alter Asset Management, L.L.C.
1980 Springer Drive
Lombard, IL 60148
Fax No.: (630) 620-3606

Tenant:

Massachusetts Financial Services Company
500 Boylston Street
Boston, Massachusetts 02116
Attention: General Counsel

**Prior to the Commencement Date** any notice to Tenant shall also be sent to the foregoing address:

Massachusetts Financial Services Company
500 Boylston Street
Boston, Massachusetts 02116
Attention James F. Bailey, Senior Vice
President and Director of Corporate
Services

as well as to:

Michael W. Bozarth, President
Bozarth C.M.
2525 East Camelback Road, Suite 730
Phoenix, Arizona 85016

as well as any other Tenant representative designated in writing by Tenant.

12. Brokers: The Alter Group, Ltd., Cushman & Wakefield of Arizona, Inc., McCall & Almy, Inc., and Insignia/ESG, Inc.

13. Schedule of Appendices: (Which appendices are attached hereto and made a part hereof).

*APPENDIX "G"*

Subordination, Non-disturbance and Attornment Agreement

*APPENDIX "H"*

Janitorial Specifications

*APPEDIX "I"*

Schedule of Title Encumbrances

*APPENDIX "A"*

Legal Description of Land

*APPENDIX "B"*

Site Plan (including depiction of Common Areas)
Floor Plans
Elevations
Permit Set Plans

*APPENDIX "C"*

Workletter

| | |
|---|---|
| Attachment A | Tenant Work—Plans and Specifications |
| Attachment B | Tenant Information Manual |
| Attachment C | General Conditions of the Tenant Work and Fee |
| Attachment D | Certificate of Substantial Completion and Certificate of Final Completion |
| Attachment E | Construction Completion Guaranty of General Contractor |

*APPENDIX "D"*

Specifications

Multi-Story Office Building Outline Performance Specifications
I. Project Overview (p. 1)
II. General Requirements (p. 2)
III. Site Preparation and Improvements (p. 5)
IV. Base Building Shell (p. 8)
V. Base Building Interiors (p. 14)
VI. Exclusions (p. 19)
Addendum No. 1—Desert Canyon 300—Building "B"—Drawings dated March 22, 2002
Addendum Service Sheet No. AD1-1.0—First Floor Plan
Addendum Service Sheet No. AD1-1.1—Exterior CMU Wall Footing
Addendum Service Sheet No. AD1-2.0—Exit Corridor
Addendum Service Sheet No. AD1-3.0—Toilet Core Floor Plan
Addendum Service Sheet No. AD1-4.0—Loading Dock Plan
Addendum Service Sheet No. AD1-4.1—Dock DTL and Dock Pit Section

*APPENDIX "E"*

MFS—Final Desert Canyon 300, Phoenix, AZ Construction Schedule

*APPENDIX "F"*

Declaration of Easements and Protective Covenants for Desert Canyon Corporate Campus, as amended, Survey Depicting other Restrictions of Record, and Plan Depicting Park Common Areas

**TABLE OF CONTENTS**

**L E A S E**

THIS LEASE MADE and entered into as of the date set forth on the Lease Schedule as Date of Lease, which Lease Schedule is appended to this Lease and is specifically incorporated by reference herein, by and between the Landlord and Tenant as set forth in the Lease Schedule.

**W I T N E S S E T H :**

**Demise**

A. (1) Subject to and with the benefit of the provisions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord, the Premises, also described herein as the Building.

(2) Tenant shall have, as appurtenant to the Premises, the exclusive right to use the Common Areas shown on **Appendix "B"**.

(3) Tenant shall have, as appurtenant to the Premises, the right to use in common with others entitled thereto, subject to reasonable rules of general applicability to all tenants in the Park and shown on **Appendix "F"**: (a) the Park Common Areas; (b) all rights to access all service areas and drainage of surface water runoff, including, without limitation, storm drainage systems and detention areas; (c) all grades driveways, roadways, sidewalks and footways, lighting systems and traffic flow patterns; (d) all rights appurtenant to the Premises and the Property; (e) all means of access and egress to and from the Building to the Park Common Areas and/or the Common Areas, including, without limitation, all sidewalks, roads, driveways and the like; and (f) all utility lines and/or easements for electricity, water and sewage disposal.

B. Such letting and hiring is upon and subject to the terms, covenants and conditions herein set forth and Tenant and Landlord covenant as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by them to be kept and performed and that this Lease is made upon the condition of such performance.

**1. Purpose**

The Premises are to be used for the Purpose set forth in the Lease Schedule and for no other purpose without the prior written consent of the Landlord, not to be unreasonably withheld, delayed or conditioned.

**2. Term**

The Lease Term shall be as set forth in the Lease Schedule except as otherwise expressly provided in this Lease.

**3. Possession**

A. If Landlord cannot deliver possession of the Premises and Common Areas to the Tenant on the Commencement Date of the Term, this Lease shall not be void or voidable, nor shall the Landlord be liable to Tenant for any loss or damage resulting therefrom. Under such circumstances, all rent (including without limitation utilities, Taxes and Operating Costs) provided for herein shall not commence until the Premises and Common Areas have been delivered to Tenant and no such failure to deliver on the commencement Date of the Term shall affect the validity of this Lease or the obligations of the Tenant hereunder, and the Term shall be extended accordingly, provided however if the Premises and Common Areas have not been substantially completed on or before April 1, 2001, then in such event, Tenant shall be entitled to a credit equal to two (2) days rent for each day until substantial completion and delivery of the Premises and Common Areas. Notwithstanding anything to the contrary contained herein, the parties hereby agree and acknowledge that Landlord shall not be obligated to deliver thirty (30) of the nine hundred (900) parking spaces on the Commencement Date, it being agreed and understood that Landlord shall deliver said thirty (30) parking spaces within thirty (30) days after the Commencement Date.

B. Notwithstanding the provisions of Section 3.A hereof, in the event of any of the following:

(i) Landlord fails to close its construction loan in the amount of $21,469,000 with Bank of America within sixty (60) days of the date hereof; Landlord hereby agreeing to deliver evidence of the same to Tenant within sixty-five (65) days of the date hereof; or

(ii) Landlord fails to obtain any necessary federal, state and local licenses, permits, and approvals, including without limitation the issuance of a building permit allowing commencement of construction of the Building from the City of Phoenix on or before June 9, 2000 and the issuance of a building permit allowing construction of that portion of the parking areas serving the Building located on the Additional City of Phoenix Land (as hereinafter defined) from the City of Phoenix on or before June 30, 2000. Landlord represents that as of the date of execution hereof, the only license, permit or approvals required to commence construction of the Building and Common Areas are two (2) building permits from the City of Phoenix, Landlord represents, warrants and covenants that it shall obtain the building permit for the Building no later than June 9, 2000 and agrees to deliver a copy of said building permit to Tenant no later than June 10, 2000. Landlord further agrees on or before June 30, 2000 to obtain the building permit required to perform work on the additional parcel of Land ("Additional City of Phoenix Land") acquired by Landlord from the City of Phoenix on June 30, 2000 (which Additional City of Phoenix Land is included within the Land described on **Appendix "A"** attached hereto) and to obtain an amendment to its site plan on or before June 30, 2000 and to deliver a copy of the building permit for the Additional City of Phoenix Land and the site plan approval to Tenant on or before July 10, 2000; or

(iii) Landlord fails to commence steel erection on or before June 30, 2000; or

(iv) Landlord fails to substantially complete construction of the Building and Common Areas and deliver possession thereof on or before September 1, 2001;

then in the event of any of the foregoing events, Tenant may elect to terminate this Lease on written notice to Landlord in which case the

parties hereto shall have no further obligations hereunder, provided however to the extent of any Tenant Delay (as defined in the Workletter), the foregoing time periods shall be extended accordingly. Any Force Majeure Event as provided in Section 26 hereof shall not delay or extend any of the foregoing dates. Notwithstanding the immediately preceding sentences, any Force Majeure Event as provided in Section 26 hereof shall extend the dates set forth in subsections (iii) and (iv) only for a period not to exceed thirty (30) days thereafter.

C. The Premises and Common Areas shall be substantially complete only if and when the following have occurred:

(i) (a) The Landlord's Work together with the Common Areas and (b) the Tenant's Work are substantially complete and so certified by the Landlord's architect in the form of AIA Certificate of Substantial Completion No. G704 and by Landlord's general contractor, and verified by Tenant's architect, with the exception of Punch List Work (as defined in the Workletter), which Punch List work may include but is not limited to the monument signage and minor portions of the landscaping, which Punch List Work shall be fully completed by Landlord within thirty (30) days without material interference to Tenant, provided however that to the extent that any item of Punch List Work cannot be completed within thirty (30) days despite Landlord's diligent efforts, as a result of matters outside Landlord's reasonable control, such as long lead times or back ordered materials for example, said thirty (30) day period shall be reasonably extended; and

(ii) the premises are broom clean and free of debris; and

(iii) a temporary or permanent certificate of occupancy has been issued from the Jurisdiction in which the Property is located, provided that in the case of a temporary certificate, Tenant's right to occupancy shall not be revocable as a result in delay or failure to satisfy the conditions necessary to cause the issuance of a permanent certificate of occupancy; and

(iv) all utilities required for use of the Premises have been brought by Landlord to the utility switching points; and

(v) all Common Areas and Park Common Areas serving the Building, including without limitation the parking and landscaping, have been substantially completed except for minor items of Punch List Work, which shall be fully completed by Landlord as provided in Section 3.(c).(i) hereof.

It is further understood that within 48 hours prior to initial occupancy, the parties shall jointly inspect the Premises and Common Areas and prepare a list of Punch List work to be completed by Landlord as heretofore provided. Tenant agrees to provide a supplemental list of Punch List Work within one hundred twenty (120) days after occupancy encompassing all items not then completed except for latent defects. Landlord further agrees to obtain a permanent certificate of occupancy as soon as reasonably possible and in no event prior to expiration of the temporary certificate of occupancy.

D. Landlord hereby warrants and guaranties at its sole cost and expense that the Landlord's Work and the Tenant's Work shall be free from defects for a period of one (1) year after the Commencement Date or such later date that all of the foregoing work has been completed. In addition, Landlord agrees to provide Tenant prior to the Commencement Date with copies of all contractors', suppliers' and manufacturers' warranties and to enforce all contractors', suppliers' and manufacturers' warranties for the benefit of Tenant for the entire length of the warranty period. The enforcement of said warranties during the aforesaid one (1) year period shall be at Landlord's sole cost and expense. In addition, Landlord agrees to repair at its sole cost and expense any latent defects in any of the foregoing work promptly after receipt of notice from Tenant, provided such notice is received from Tenant within three (3) years of the Commencement Date or such later date that all the work has been completed.

E. If the Commencement Date is delayed beyond April 1, 2001, if the measurement of the Premises results in a change in the rentable square feet, or if the amount of the Base Rent is changed due to a change in the rentable square feet as otherwise specifically provided herein, the parties agree to execute a certificate memorializing the same. Prior to the Commencement Date, the parties shall jointly execute a certificate setting forth the Commencement Date, the rentable square feet of the Premises and the Base Rent. Tenant shall have the right to measure the Premises within thirty (30) days of the completion of the steel erection in order to verify the measurement of the Premises.

F. In order to guarantee Landlord's obligations to construct the Landlord's Work and Tenant's Work and to perform all of its construction obligations described in Section 3 of this Lese and the Workletter attached hereto as **Appendix "C"**, Landlord hereby acknowledges and agrees to furnish to Tenant concurrently with the execution of this Lease, a construction completion guaranty in the form attached hereto as **Attachment "E"** to the Workletter from Alter Design Builders, L.L.C. for all work performed or to be performed by Landlord and Alter Design Builders, L.L.C., pursuant to the terms and provisions of Section 3 hereof, including, without limitation, the warranties set forth in Section 3 hereof and the Workletter.

G. All Tenant's Work including, but not limited to, areas of raised computer flooring and underfloor cabling, electrical distribution and ductwork shall be part of the Premises (and shall remain therein at the end of the Term), except for Tenant's business fixtures, equipment and personal property (which such personal property shall include, without limitation, telephone and computer systems), all of which business fixtures, equipment and personal property shall remain the property of the Tenant and shall be removed at the expiration of the Term. Tenant's Plans shall have the meaning set forth in the Workletter attached hereto and incorporated herein by reference.

**4. Definitions As Used In This Lease**

A. The term "Commencement Date" is the date of the beginning of the Lease as set forth in Section 3 hereof.

B. The term "Taxes" means any and all taxes of every kind and nature whatsoever which Landlord shall pay or become obligated to pay during a calendar year during the Lease Term (regardless of whether such taxes were assessed or became a lien during, prior or subsequent to the calendar year of payment) because of or in connection with the ownership, leasing and operation of the Property including without limitation, real estate taxes, personal property taxes, sewer rents, water rents, special assessments (amortized over the number of years constituting the Lease Term regardless of when assessed, it being understood that Tenant shall only be responsible for amortized installments due during the Lease Term), reasonable and documented legal fees and court costs charged for the protest or reduction of property taxes and/or assessments or an increase therein in connection with the Premises including the Building, any tax or excise on rent or any other tax (however described) on account of rental received for use and occupancy of any or all of the Building and/or the Premises whether any such taxes are imposed by the United States, the state or other local governmental municipality, authority or agency or any political subdivision of any thereof in the Jurisdiction in which the Property is located. Taxes shall not include any net income, capital stock, estate or inheritance taxes. Tenant may apply for or cause Landlord to apply for any protest, abatement of, or otherwise contest any Taxes or assessment. If there is abatement or a refund of Taxes, for a period for which Taxes were paid by Tenant, the abatement or refund of such Taxes shall be paid directly to Tenant. Nothing contained in this Lease shall, however, require Tenant to pay any income taxes; excess profit taxes; excise taxes; franchise taxes; any taxes or assessments with respect to other buildings leased or available for lease (including the parcels of land upon which such buildings are situated) other than the Building and the Property; estate, succession, inheritance or transfer taxes. In clarification of the foregoing and by way of example, with respect to any special assessments, if there is a special

assessment imposed during the first month of the ninth year of the Lease Term, the cost of such special assessment shall be amortized over a period of 123 months and Tenant shall be responsible for only that portion of the special assessment for the fourteen (14) months remaining in the Lease Term. The amortization of the special assessment shall be made whether or not the authority which has imposed the special assessment allows the Landlord to amortize the payment of such special assessment. Landlord shall make all payments of special assessments directly to the assessing authority and Tenant shall pay its share of the special assessment as additional rent directly to Landlord on the first day of each month during the Term. This provision shall survive termination or expiration of the Lease Term.

C. (i) The term "Operating Costs" means any and all reasonable expenses, costs and disbursements (other than Taxes as defined in Section 4(B) of every kind and nature whatsoever incurred by Landlord in connection with the ownership, management, maintenance, operation and repair of the Property (including but not limited to the cost of electricity, steam, water, gas, fuel, heating, lighting and air conditioning, all to the extent not separately metered), Common Area expenses, and Park Common Area expenses pursuant to the Declaration (as hereinafter defined), including but not limited to landscaping and other maintenance of properties which benefit the Property, usual and customary property management fees not to exceed three (3%) percent of net rents per year (which fee shall include the cost of any full or part-time property manager engaged to provide services to the Property), insurance costs (including but not limited to fire and property, elevator, liability, and workers' compensation insurance, as well as all commercially reasonable deductibles paid by Landlord for damages and injuries covered by policies of insurance maintained for the Property) and routine repairs, maintenance and interior and/or exterior decorating, wages, salaries, and benefits (including but not limited to, so-called fringe benefits, such as social security taxes, unemployment insurance taxes, costs for providing coverage for disability benefits, costs of any pensions, hospitalization, welfare or retirement plans, or any other similar or like expenses or any other cost or expense which Landlord pays or incurs to provide benefits for employees engaged in the maintenance or repair of the Property) of employees working at the Property on a full or part-time basis, uniforms, supplies, sundries, sales or use taxes on supplies or services, snow removal, parking lot repairs, legal and accounting costs and expenses, janitorial or cleaning expenses and/or supplies, roof repairs, exterminating, elevator maintenance, HVAC system maintenance, security services, security systems maintenance, overhead doors maintenance, or other expenses which Landlord shall be or become obligated to pay in respect of a calendar year

(regardless of when such Operating Costs were incurred provided that such Operating Costs were not incurred more than one (1) year prior thereto) or any other expense or charge whether or not hereinbefore mentioned which in accordance with generally accepted accounting principles respecting first class buildings in the Jurisdiction in which the Property is located would be considered as an expense of owning, managing, operating, maintaining or repairing the Property. For purposes of this subparagraph "the development in which the Property is located" shall be deemed to refer to Desert Canyon Corporate Campus, and the Declaration shall be the Declaration of Easements and Protective Covenants for Desert Canyon Corporate Campus encompassing same, recorded with Maricopa County Recorders Office as Document No. 99-1087148) and amended by First Amendment to Declaration dated May , 2000 to be recorded with Maricopa County Recorders Office.

(ii) Operating Costs shall not include:

(a) The cost of: (1) alterations, improvements, equipment replacements, and other items which under generally accepted accounting principles are properly classified as capital expenditures; as well as (2) repairs to any one Building system in excess of TWENTY-FIVE THOUSAND ($25,000.00) DOLLARS in a single year.

(b) Expenses incurred for business interruption or rental value insurance.

(c) Leasing commissions and/or expenses and advertising and promotional expenses.

(d) Legal fees or other professional or consulting fees in connection with the negotiation of this lease.

(e) Repairs required to cure violations of laws enacted prior to the date of the Lease.

(f) The cost of repairs or replacements incurred by reason of fire or other casualty or condemnation to the extent that either (1) Landlord is compensated therefor through proceeds of insurance or condemnation awards; (2) Landlord failed to obtain insurance against such fire or casualty, if insurance was available at a commercially reasonable rate, against a risk of such nature at the time of same; or (3) Landlord is not fully compensated therefor due to the coinsurance provisions of its

insurance policies on account of Landlord's failure obtain a sufficient amount of coverage against such risk.

(g) Damage and repairs necessitated by the negligence or willful misconduct of Landlord, Landlord's employees, agents.

(h) Compensation paid to officers or executives of the Landlord above the level of building or property manager.

(i) That portion of salaries of service personnel to the extent such salaries are applicable and relate to performance of services by such personnel other than in connection with the management, operation, repair, or maintenance of the Building.

(j) The cost of incremental expense to Landlord incurred by Landlord in curing its defaults.

(k) Legal fees, accounting fees, and other expenses incurred specifically in connection with the defense of Landlord title or interest in the Building or any part thereof.

(l) Interest and principal payments on mortgages and ground lease payments, if any.

(m) Depreciation.

(n) Property management fees paid for any month in excess of three (3%) percent of all net rent.

(o) Rental and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, except (i) when such equipment is used in providing janitorial and maintenance services and is not permanently affixed to the Building, and (ii) when such equipment is rented on a temporary basis for repairs or maintenance.

(p) Any cost or expense to the extent to which Landlord is paid or reimbursed (other than as a payment for Operating Costs), including but not necessarily limited to, (1) work or service performed for any tenant (including Tenant) at such tenant's cost, (2) the cost of

any item for which Landlord is paid or reimbursed by insurance, warranties, service contracts, condemnation proceeds, insurance reimbursements or otherwise, and (3) the cost of any HVAC, janitorial or other services provided to tenants on an extra-cost basis after regular business hours.

(q) The cost of installing, operating and maintaining any special service, such as an observatory, broadcasting facilities, luncheon club, athletic or recreation club.

(r) The cost of correcting defects in the design, construction or equipment of the Building or any latent defect in any of the foregoing discovered during the first three (3) years of the Term or of any other work which Landlord is obligated to perform pursuant to this Lease (unless such defect is attributable to any act or omission of Tenant).

(s) Salaries and bonuses of officers, executives of Landlord and administrative employees above the grade of property manager or building supervisor, and if a property manager or building supervisor or any personnel below such grades are shared with other buildings or has other duties not related to the Building, only the allocable portion of such person or persons salary shall be included in Operating Costs.

(t) The cost of any work or services performed for any facility other than the Building.

(u) The cost, including increased real estate taxes and other operating expenses, related to any additions (as opposed to renovations) to the Building after the original construction.

(v) Any cost included in Operating Costs representing an amount paid to a person, firm, corporation or other entity related to Landlord which is in excess of the amount which would have been paid on an arms length basis in the absence of such relationship except for property management fees as heretofore provided.

(w) Any cost or expense which is applicable to or incurred for any parking garage or any costs of personnel used to

park cars, collect money or provide special security, and garage management fees.

(x) Landlord's general overhead.

(y) The cost of initial cleaning of, and rubbish removal from, the Building to be performed prior to final completion of the base Building or to the completion of any tenant's space including Tenant's.

(z) Lease payments for rental equipment, which would constitute a major capital expenditure if the equipment were purchased; cost of temporary rentals for maintenance, repairs or for use during repairs are an operating expense.

(aa) The cost of advertising or promotion for the Building.

(bb) Accounting and bookkeeping services except to the extent included in the management fee permitted hereby.

(cc) Any compensation paid to personnel in retail concessions operated by Landlord.

(dd) Charitable contributions.

(ee) Any offsite traffic mitigation requirements including traffic lights.

(ff) Any charge for Landlord's income taxes or a corporate excise tax, excess profit taxes or franchise taxes.

(gg) Cost of sculpture, paintings and art.

(hh) Replacement/contingency reserves.

(ii) Legal/professional fees related to leasing, financing, and lease disputes.

(jj) Repaving and/or resurfacing of all parking areas excepting, however, the patching of and the application of seal protection to parking areas.

(iii) Provided, however:

(a) Landlord shall not collect in excess of one hundred (100%) percent of Operating Costs and shall not recover any items of cost more than once; and

(b) The costs of any capital improvements to the Building made after the Commencement Date of this Lease which are required under any governmental laws, regulations, or ordinances which were not applicable to the Building as of the Commencement Date, shall be amortized on a level pay debt service basis over fifteen (15) years, with interest at ten (10%) percent per annum shall be included in Operating Costs.

**5. Base Rent**

A. Except as otherwise provided herein, Tenant shall pay as Base Rent to Landlord the Base Rent as set forth in the Lease Schedule in equal monthly installments as set forth as the Monthly Base Rent in the Lease Schedule in advance on the first day of the first full calendar month and on the first day of each calendar month thereafter during the Term, and at the same rate for fractions of a month if the Term shall begin on any day except the first day or shall end on any day except the last day of a calendar month. So long as there is no uncured Event of Default hereunder, all Rent for the first three (3) months of the Term shall abate. Base Rent shall include all rental obligations for the Common Areas specifically including without limitation the parking spaces.

B. Any rent (whether Base Rent or additional rent) or other amount due from Tenant to Landlord under this Lease not paid within ten (10) days after it becomes due (and Tenant has received notice of the same) shall incur a late fee equal to the greater of: (a) Twenty-Five ($25.00) Dollars; or (b) interest from the date ten (10) days after due until the date paid at the annual rate of Two (2%) Percent above the prime rate as set forth as the Base Rate on Corporate Loans published by the Wall Street Journal from time to time, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease. The covenants herein to pay rent (both Base Rent and additional rent) shall be independent of any other covenant set forth in this Lease.

C. Except as otherwise provided herein, Base Rent and all of the rent provided herein shall be paid without deduction or off-set in lawful money of the United States of America to Alter Asset Management, L. L. C., a Delaware limited liability company, 1980 Springer Drive, Lombard, IL 60148 (“the Rent Agent”) or

as designated from time to time by written notice from Landlord. The Rent Agent has full and complete authority to act on behalf of Landlord in connection with all dealings with Tenant, provided however, that the Rent Agent shall not have the power to amend or modify the terms of the within Lease.

**6. Taxes and Operating Cost Obligations**

A. Tenant shall have the right from time to time during the Term of this Lease to competitively bid and award the management contract for the Building, to self-manage the Building or to have Landlord manage the Building (in which case all Landlord management fees shall be capped as set forth herein). As of the Commencement Date, Tenant hereby undertakes the responsibility to generally operate, manage, maintain and repair the Property in the normal course of business, except as otherwise provided herein. In conjunction therewith, Tenant shall be responsible for, and shall pay the applicable material or service provider directly for all Taxes and Operating Costs (except as otherwise described herein), payable during the Term of this Lease. Landlord shall pay and be responsible for all costs of maintaining, repairing, operating and owning the Property other than (i) Operating Costs; and (ii) Taxes.

In clarification of the foregoing, and regardless of whether Tenant is managing the Building or Landlord is managing the Building, Landlord shall always be exclusively responsible at its sole cost and expense (without any ability to pass along any costs incurred to Tenant as Operating Expenses) for the following:

1. All capital improvements; all capital equipment; the structure, foundation and roof of the Building; all individual repairs to the Building and/or any systems serving the Building in excess of $25,000 and all replacements of any system serving the Building including without limitation mechanical systems, electrical systems and elevators of the Building; the repaving and resurfacing of all parking areas; and all expenses associated with the acquisition of the additional City of Phoenix land. To the extent that Tenant self-manages or causes a third party (exclusive of Landlord) to manage the Building, and notwithstanding any other provision of the Lease to the contrary, the only Operating Expenses which Landlord shall pass through to Tenant shall be for costs incurred for the insurance as set forth in Sections 17.E and

17.F hereof and Tenant's share of the costs under the Declaration attributable to the Building.

2. Enforcement by Landlord on behalf of and for the benefit of Tenant the Declaration.

3. The completion of all Punch List Work, the repair of latent defects and the enforcement of all construction warranties and guaranties under Section 3 hereof.

The foregoing services set forth in Section 6(a)(1), (2) and (3) are referred to collectively hereinafter as the "Services".

Landlord shall perform the foregoing Landlord Services in a good and workmanlike manner and in a timely manner to preserve the first-class condition of the Building and the Property.

B. Landlord shall furnish Tenant within ten (10) days of receipt thereof copies of all tax bills and notices of assessments received Landlord with respect to the Property. Tenant shall pay the Taxes directly to the taxing authority on or before the due date thereof. Tenant shall provide Landlord with evidence of payment of all Taxes within ten (10) days after payment thereof. To the extent that Landlord's mortgagee maintains any tax escrow as provided in Section 7. A. hereof, Tenant shall be entitled to use the funds in such escrow toward such payment, it being agreed that Landlord shall direct any mortgagee which holds any such tax escrow to release the funds to Tenant.

C. Tenant shall maintain complete and accurate books and records detailing all Taxes and Operating Costs paid by it as well as maintenance and repair logs for not less than the preceding three (3) calendar years. Such books and records shall be kept in accordance with generally accepted accounting principles consistently applied. Tenant shall make such books and records available at the Premises at Landlord's sole cost and expense Landlord and its representatives shall have the right to examine, audit and copy, during normal business hours, Tenant's books and records pertaining to the Taxes and Operating Costs for the preceding twelve (12) month period to enable it to verify the accuracy thereof. Any and all information obtained through the Landlord's inspection respect to financial matters (including, without limitation, costs, expenses, income) and any and all other matters pertaining to the Tenant and/or the Property as well as any compromise, settlement,

or adjustment reached between Landlord and Tenant relative to the results of any such inspection shall be held in strict confidence by the Landlord and its officers, agents, and employees; and Landlord shall cause its accountant and any of its officers, agents, and employees to be similarly bound. If Landlord fails to exercise such inspection rights within the period of twelve (12) months after the preceding calendar year, Landlord shall have waived its inspection rights for such preceding year.

D. Tenant acknowledges that the Property is to be operated and/or managed in a professional and competent manner. If Landlord reasonably determines that the Property is not being professionally and competently operated and/or managed, Landlord shall notify Tenant with specificity of the deficiency in such management, and Landlord, Tenant and the manager, if any, shall work to rectify the deficiency within sixty (60) days or such longer period as may be necessary to cure the deficiency so long as Tenant and/or its manager is diligently pursuing the same. If the deficiency has not been rectified to Landlord's reasonable satisfaction within such sixty (60) day period or such longer period as may be necessary to cure the deficiency so long as Tenant and/or its manager is diligently pursuing the same, Landlord may require Tenant to engage Landlord or a third party selected by Landlord and reasonably acceptable to Tenant to manage the Property.

E. The parties will cooperate so that all warranties, guaranties and other protections available from Landlord's contractors; subcontractors and material suppliers shall remain in force. Prior to the Commencement Date, or as soon thereafter as reasonably available, but not later than thirty (30) days after the Commencement Date, Landlord shall provide Tenant with copies of all warranties, guaranties, and other protection available from Landlord's contractors, subcontractors and suppliers in connection with the Landlord's Work and Tenant's Work. Tenant agrees to take no action which would obviate the enforcement of any such warranty (so long as the same has been provided to Tenant), including, without-limitation, any warranty pertaining to the Building roof, without Landlord's consent.

**7. Rent Adjustment Payment**

A. At lease execution, Landlord shall deliver to Tenant a written statement setting forth Landlord's good faith estimate of Taxes and Operating

Costs (a "Taxes and Operating Cost Statement") for the calendar year in which the Term commences. Thereafter, not later than November 1 of each subsequent calendar year, and from time to time during each subsequent calendar year, Landlord shall deliver an estimated Taxes and Operating Cost Statement pertaining to each such forthcoming calendar year. Commencing on the first full calendar month of the Term and on the first day of each calendar month thereafter during the Term, Tenant shall pay one-twelfth (1/12th) of Taxes (only to the extent a reserve for Taxes is required by Landlord's mortgagee) and one twelfth (1/12th) of Operating Costs as estimated by Landlord. Not less than on or before the first day of May of each calendar year after the initial year of the Term, Landlord shall furnish to Tenant a written statement certified by an officer of Landlord showing in reasonable detail actual Operating Costs and Taxes for the preceding year for which such statement is furnished and showing the amount, if any, of rental adjustment due for such preceding year (the "Annual Statement").

B. On the monthly rental payment date (the "adjustment date") next following Tenant's receipt of each such Annual Statement (but in all cases not less than thirty (30) days after receipt), Tenant shall pay to Landlord as additional rent an amount equal to the difference between the amount shown on each such Annual Statement less the amount, if any, of the total additional rent with respect to Taxes and Operating Costs paid by Tenant during the preceding calendar year.

C. In the event that any such settlement required above indicates that the total additional rent paid by Tenant during the preceding calendar year exceeds the amount shown on such Annual Statement, for such calendar year, Landlord shall apply such excess to any amounts of additional rent next falling due under this Lease as long as there is no monetary Event of Default. In the event of any monetary Event of Default, Landlord may apply such excess against all Rent due and owing under the terms of this Lease. After any such monetary Event of Default is cured, Landlord shall immediately return the remaining excess to Tenant. If the Term of this Lease has expired, Landlord shall return such excess to Tenant within thirty (30) days after delivery of the annual statement. This provision shall survive termination or expiration of the Lease.

D. The Annual Statement shall be prepared in accordance with generally accepted accounting principles. Tenant using either its own employee or its accountant shall have the right to examine, copy and audit at reasonable times and in a reasonable manner, at the Landlord's office in Phoenix, such of the Landlord's books of account and records as pertain to or contain information concerning the Operating Costs and Taxes in order to verify the amounts thereof. Any and all information obtained through the Tenant's inspection with respect to financial matters (including, without limitation, costs, expenses, income) and any and all other matters pertaining to the Landlord and/or the Property as well as any compromise, settlement, or adjustment reached between Landlord and Tenant relative to the results of any such inspection shall be held in strict

confidence by the Tenant and its officers, agents, and employees; and Tenant shall cause its accountant and any of its officers, agents, and employees to be similarly bound. If Tenant shall dispute any item or items included in the Operating Costs or Taxes and such dispute is not resolved by the parties within ninety (90) days after Tenant renders to Landlord its audit results, then either party may at its sole expense, within thirty (30) days thereafter, request that a firm of independent certified public accountants mutually selected by Landlord and Tenant ("Independent Review") render to the parties an opinion as to whether or not the disputed item or items should have been included in the Operating Costs and/or Taxes for such year; and the opinion of such firm on such matter shall be conclusive and binding upon both parties, provided however, it shall be a further condition of Tenant's right to conduct an Independent Review that the firm conducting the Independent Review shall not be retained upon the basis of all or a portion of its fees being contingent based upon the results of the Independent Review. Landlord and Tenant agree that the firm's opinion shall be confidential and shall not be disclosed to any other party whatsoever. In the event such Independent Review discloses that the amount due from Tenant was overstated in excess of three (3%) percent on an annualized basis, Landlord shall bear the reasonable cost of such Independent Review. In all other cases, Tenant shall bear the cost of such Independent Review. Tenant employee(s) or accountants may examine the records of Landlord supporting the estimated Taxes and Operating Cost Statement and the Annual Statement at Landlord's or the Rent Agent's office during normal business hours. Unless Tenant takes written exception to any item(s) on the Annual Statement within three (3) years (if Landlord is managing the Property) after the furnishing of the Annual Statement, or unless Tenant takes written exception to any item(s) on the Annual Statement within one (1) year (if Landlord is not managing the Property) after the furnishing of the Annual Statement, Tenant shall have waived its audit rights for such preceding time periods. If any such audit and/or Independent Review finds that Landlord has overstated any amounts, Landlord shall within thirty (30) days after such audit and/or Independent Review remit such overstated amount to Tenant and if any such audit and/or Independent Review finds that there is an underpayment by Tenant, Tenant shall tender payment for any disputed items within thirty (30) days after such audit and/or Independent Review. Notwithstanding anything to the contrary contained herein, Tenant may disclose the results of any such audit to its counsel and may use such audit results in the event of any disputes with Landlord and in the event of any litigation.

To the extent Landlord is not managing the Property, the Annual Statement shall be limited to those expenses permitted by this Lease to be charged to Tenant during those periods Landlord is not managing the Property.

E. In the event of the termination of this Lease by expiration of the stated term or for any other cause or reason whatsoever prior to the determination of rental adjustment as hereinabove set forth, Tenant's agreement to pay additional rental accrued up to the time of termination and Landlord's

agreement to pay or refund any excess amounts to Tenant shall survive the expiration or termination of the Lease.

F. From time to time and as may be requested by Tenant, Landlord agrees to use best efforts to audit the costs assessed under the Declaration. Should Landlord fail to conduct any such audit as requested by Tenant, Tenant shall have no further obligation to pay any Operating Expenses with respect to the Declaration until any such audit is completed. Landlord hereby certifies and shall certify again on the Commencement Date that all expenses due and owing by Landlord under the Declaration with respect to the Building and the Property have been paid.

**8. Holding Over**

Should Tenant hold over after the termination of this Lease, by lapse of time or otherwise, Tenant shall become a tenant from month to month only upon each and all of the terms herein provided as may be applicable to such month to month tenancy and any such holding over shall not constitute an extension of this Lease; provided, however, during such holding over, Tenant shall pay as Landlord's sole remedy Base Rent at One Hundred Twenty-Five (125%) Percent of the rate payable for the month immediately preceding said holding over for the first ninety (90) days of such holdover, which shall be increased to one hundred fifty (150%) percent thereafter. The provisions of this paragraph do not exclude the Landlord's rights of re-entry or any other right hereunder.

**9. Building Services**

A. On the Commencement Date, Landlord shall deliver the Building with HVAC systems and utilities in conformance with the specifications attached hereto as **Appendix "D".**

B. During Tenant's business hours, in the event Landlord manages the Property as provided in Section 6. D hereof, Landlord shall furnish and maintain the following:

1. HVAC systems to provide a temperature condition as provided in the specifications attached to **Appendix "D";**

2. Passenger elevator service. Operatorless automatic passenger and freight elevator service shall be deemed "elevator service" within the meaning of this subsection;

3. Janitor and cleaning services in and about the Premises in accordance with **Appendix "H"**, Saturdays, Sundays and Holidays (Thanksgiving, Christmas, New Years, Memorial Day, Labor Day, and Independence Day) excepted; and

4. Window washing of all windows (inside and out) in the Premises, at such times as shall be reasonably required, provided however, that the inside and outside windows shall be washed no less than four (4) times per year, weather permitting.

5. Maintenance of all Common Areas; maintenance and repair responsibilities for the roof, exterior walls, exterior windows and waterproofing, floor slabs, and all other structural components of the Building; and maintenance of all parking areas, walks, landscaping and all other Common Areas, all as may be necessary to keep them in a first-class, good, serviceable and neat condition; and compliance with all laws affecting the Premises, and the Common Areas, the cost of which, only to the extent applicable, shall be included in Operating Costs.

6. Landlord agrees to provide all utilities to the Premises as provided in the specifications attached to **Appendix "D"**.

Notwithstanding anything in this Lease to the contrary, if by reason of Landlord's failure to provide the services herein covenanted to be provided by Landlord, or by reason of any other failure by Landlord to perform its obligation hereunder, with respect to any matter under Landlord's reasonable control, reason of any Force Majeure event described in Section 26 hereof, any part of the Premises is rendered untenantable, then Tenant shall be entitled, if such failure continues for three (3) or more consecutive days, to an equitable abatement against the rent due hereunder to the extent of such untenantability from the date of interruption of services through restoration of services. To the extent that such condition continues for thirty (30) days or more, Tenant shall, after thirty (30) days prior written notice to Landlord and Landlord's mortgagee of Tenant has notice (which time period shall be reduced in the event of an emergency) have the right to exercise self-help as flier described in Section 28 hereof. In connection with exercising such self-help right, Tenant may enter in and upon all portions of the Premises and Common Areas to make repairs, improvements, and alterations (collectively, "Repairs") as Tenant reasonably deems necessary to correct such failure, all at the reasonable cost and expense of Landlord. Tenant shall be entitled to a credit against the rent due hereunder for all amounts incurred by it in connection with exercising such self-help rights, together with interest thereon at the rate set forth in Section 5-B hereof from the

date incurred until the date paid by Landlord or credited against rent. If such untenantability continues for one hundred and twenty (120) consecutive days, Tenant may elect to terminate this Lease.

C. Electricity shall not be furnished by Landlord, but except as otherwise hereinafter provided, shall be furnished by the electric utility company serving the area ("Electric Service Provider"). Landlord shall deliver the Premises so that the Tenant shall receive such service as well as all other utility services, directly from the applicable public utility company. The electricity used during the performance of janitorial service, the making of alterations or repairs in the Premises (other than Tenant's Work) and for the operation of the Premises' air conditioning system at times other than as provided herein; or the operation of any special air conditioning systems which may be required for data processing equipment or for other special equipment or machinery installed by Tenant, shall be paid for by Tenant. Tenant shall make no material alterations or additions to the electric equipment without the prior written consent of the Landlord in each instance, which consent shall not be unreasonably withheld, delayed or conditioned. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of the feeders to the Building or the risers or wiring installed thereon.

D. Landlord shall deliver the Building on the Commencement Date with all utilities separately metered and Tenant shall pay directly to the proper authorities charged with the collection thereof all charges for water, sewer, gas, electricity, telephone and other utilities used or consumed on the Premises.

E. To the extent permitted by law, Tenant shall have the right at any time and from time to time during the Term to contract for or purchase utility services from any company or third party, including without limitation, electricity, steam, chilled water and natural gas.

F. Tenant shall be allowed twenty-four (24) hour, seven (7) day a week access to the Building and shall be able to request all services of Landlord outside of normal business hours, provided Tenant pays all Landlord's actual documented overtime costs.

**10. Condition of the Premises**

A. Subject to Landlord's obligation to complete the Punch List Work and to repair latent defects and subject to Landlord's warranty of construction, all as set forth in Section 3 hereof, by taking possession of the Premises, Tenant shall be deemed to have agreed that the Premises were as of the date of taking possession, in good order, repair and condition. No promises of the Landlord to

alter, remodel, decorate, clean or improve the Premises or the Building and no representation or warranty expressed or implied, respecting the condition of the Premises or the Building has been made by the Landlord to Tenant, unless the same is contained herein or made a part hereof.

B. Except as otherwise provided herein, Tenant shall, at its own expense, keep the Premises in good repair and tenantable condition, and shall promptly and adequately repair all damages to the Premises (subject to the approval of Landlord and within a reasonable period of time as specified by Landlord), loss by ordinary wear and tear, fire and other casualty, condemnation and damage by Landlord excepted. If Tenant does not do so promptly and adequately repair any such damage, Landlord may, but need not, make such repairs and Tenant shall pay Landlord for such repairs thirty (30) days after request by Landlord and receipt of documented expenses subject to and in accordance with the provisions of Section 28 hereof.

C. The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. 12 10 1 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements under Title III of the ADA (" Title III") pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Premises and the Building depending on, among other things: (1) whether Tenant's business operations are deemed a "place of public accommodation" or a "commercial facility," (2) whether compliance with such requirements is "readily achievable" or "technically infeasible," and (3) whether a given alteration affects a "primary function area" or triggers so-called "path of travel" requirements. Landlord represents that the Building, as of the Commencement Date, shall comply with the ADA. Tenant shall be responsible for all Title III compliance and costs in connection with the Premises (including structural work, if any, and including leasehold improvements or other work to be performed in the Premises under or in connection with this Lease) if used for other than the permitted purposes or resulting from Alterations (as hereinafter defined) to the Premises made by Tenant after the Commencement Date.

D. (1) Landlord represents and warrants to Tenant that: (a) Landlord has not, nor is aware of anyone who has, at any time used or permitted the use of any portion of the Property to be used in violation of or in a manner which would create any liability under any federal, state or local environmental statutes, regulations, ordinances or orders (collectively "Environmental Laws") relating to environmental conditions on, under or about the Property including violations of or liabilities arising under Environmental Laws relating to the presence of Hazardous Materials (defined below) at or under the Property; and (b) (i) to the best of Landlord's knowledge and

belief after due diligence and due inquiry, there does not exist (and will not exist as of the date of substantial completion of the Premises and Common Areas) any leak, spill, release, discharge, emissions or disposal of Hazardous Materials on or from the Property (including the Building to be located thereon) and (ii) and the Property and the Premises do not (and will not as of the date of substantial completion of the Premises and Common Areas) contain, or have present, any Hazardous Materials. In the event that any such leak, spill, release, discharge, emission or disposal of Hazardous Materials shall occur at the Property, Landlord shall take any and all actions necessary to bring the Property, including the Building, into compliance with Environmental Laws (including the elimination of prospective liabilities to Tenant arising under Environmental Laws which liabilities are caused by Landlord) and other governmental requirements relating thereto. Landlord agrees to notify Tenant immediately upon discovery of any Hazardous Materials on the Property or in the Park, and subject to and in accordance with Section 17.K hereof, to indemnify, defend and hold harmless Tenant and its employees and agents from and against any claims, judgments, damages, administrative or judicial penalties, fines, costs, liabilities or loss (including without limitation reasonable attorneys' fees) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials at the Building or the Property. In no event shall Landlord be obligated to indemnify Tenant for any Hazardous Materials which are generated or released at the Property, as a result of the negligent or willful acts or gross misconduct of Tenant, its employees, agents, contractors or licensees. The covenants and indemnifications set forth in this Section 10. D.(l) and (2) shall survive the expiration or earlier termination of this Lease.

(2) Subject to and in accordance with Section 17.K hereof, Landlord shall defend, indemnify and hold Tenant harmless for and against any and all losses, costs (including reasonable attorney's fees) liabilities and claims arising from Landlord's violation of any Environmental Laws (or liabilities to Tenant arising under Environmental Laws which liabilities are caused by Landlord) which may affect the Property and the Premises and shall assume full responsibility and cost to remedy such violations or liabilities caused by Landlord, provided that the violations or liabilities are not caused solely by Tenant.

(3) Neither Landlord nor Tenant shall at any time use, generate, store or dispose of on, under or about the Premises or transport to or from the same any Hazardous Materials or permit or allow any third party to do so, absent compliance with Environmental Laws except for customary cleaning supplies and storage of diesel fuel. For the purposes of this Lease, the term "Hazardous Materials" shall include without limitation any oil, petroleum product, asbestos, any flammable, explosive or radioactive material, medical wastes or any oil, any hazardous or toxic waste, substance or material, including without limitation substances defined as "hazardous substances," "hazardous waste," "solid waste" or "toxic substances" under any Environmental Laws relating to any of the foregoing, air pollution (including noise and odors) soil, surface water or groundwater contamination, liquid and solid waste, pesticides, community and employee health, environmental land use management, storm water, sediment control, nuisances, radiation, wetlands, endangered species, environmental permitting) which laws may include, but not be limited to; the Toxic Substance Control Act; the Clean Water Act; the National Environmental Policy Act, as amended; the Solid Waste Disposal Act, as amended; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Material Transportation Act, as amended; the Resource Conservation and Recovery Act, as amended, the Clean Air Act, as amended; the Emergency Planning and Community Right-To-Know Act, as amended; the Occupational Safety and Health Act, as amended; comparable Arizona state and local environmental laws and/or ordinances; and all rules and regulations promulgated pursuant to such laws and ordinances.

(4) In the event of a release or threatened release of Hazardous Materials to the environment resulting from Tenant's activities at the Property or in the event any claim, demand, action or notice is made against the Tenant regarding Tenant's failure to comply with Environmental Laws, Tenant shall immediately notify the Landlord in writing and shall give to Landlord copies of any written claims, demands or actions, or notices so made against or known to Tenant.

(5) Upon termination of the Lease or upon Tenant's abandonment of the leasehold, the Tenant shall, at its sole expense, remove any equipment which may cause contamination at or from the

Property, and shall clean up any existing contamination caused by Tenant in compliance with all applicable Environmental Laws governing Hazardous Materials or in accordance with orders of any governmental regulatory authority.

E. Landlord hereby covenants and agrees to maintain the Building and the Property in a first-class manner, to make all repairs, alterations, additions or replacements to the Property required by any law, ordinance or order or regulation of any public authority, including repairs, alterations, additions or replacements to the foundations and structural elements of the Building; to keep the Building equipped with all safety appliances so required; and to comply with the orders and regulations of all governmental authorities with respect to zoning, building, fire, health codes, regulations, ordinances or laws applicable to the Property and the Premises, including the ADA requirements set forth above, and any Environmental Laws relating to Hazardous Materials, provided however, only to the extent applicable and provided herein, the cost of same may be included in Operating Costs.

F. Landlord agrees to take all reasonable action available to Landlord to cause the Association, as defined in the Declaration, to comply with and enforce the terms and provisions of the Declaration, including but not limited to maintenance of insurance and the maintenance of the Park Common Areas, for the, benefit of the Property, as may be reasonably requested by Tenant. Notwithstanding the foregoing, if Landlord shall fail, having used good faith efforts, to cause the Association to cure such default (or if Such dispute shall not be resolved) within a reasonable period of time, then following thirty (30) days notice from Tenant to Landlord, Tenant shall have the right, at its sole cost and in the name of Landlord, to file any such protest and/or to make demand or institute any appropriate action or proceeding against Association for the enforcement of its obligations. Landlord agrees that it shall sign such demands, pleadings and/or other papers, and shall otherwise cooperate with Tenant, as may be reasonably required or necessary to enable Tenant to enforce the obligations of Landlord against the Association.

**11. Uses Prohibited**

Tenant shall not use, or permit the Premises or any part thereof to be used, for any purpose or purposes other than as specified in the Lease Schedule. No use shall be made or permitted to be made of the Premises, nor acts done, which will cause a cancellation of any insurance policy covering the Premises, or any part thereof, nor shall Tenant sell, or permit to be kept, used or sold, in or about the Premises, any article which may be prohibited by Landlord's insurance

policies (to extent Tenant is notified of such policies). Tenant shall not commit or suffer to be committed, any waste upon the Premises, or any public or private nuisance, nor, without limiting the generality of the foregoing, shall Tenant allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, which specifically exclude the Permitted Uses. Tenant agrees at all times to cause its business within the Premises to be operated in compliance with all federal, state, local or municipal laws, statutes, ordinances, and rules and regulations, including but not limited to those relating to environmental protection, health, and safety. Tenant further agrees to promptly cure any such violation at its own expense, and shall, subject to and in accordance with Section 17.K hereof, defend and indemnify Landlord, mortgagees, and officers, agents, and employees thereof respectively, for any and all liability, loss, costs (including reasonable attorneys' fees and expenses) damages, responsibilities or obligations incurred as a result of any violation of any of the foregoing. Tenant shall within ten (10) business days after request of Landlord certify in writing that it is in compliance with Environmental Laws applicable to the operation of its business within the Premises or the preceding year. At the request of the Landlord, Tenant shall submit to the Landlord, or shall make available for inspection and copying upon reasonable notice and at reasonable times, any or all of the documents and materials prepared by or for Tenant pursuant to Environmental Laws or submitted to any governmental regulatory agency in conjunction therewith. Landlord shall have reasonable access to the Premises to inspect the same to confirm that the Tenant is using the Premises in accordance with Environmental Laws upon reasonable advance notice to Tenant, accompanied by Tenant and without interference with Tenant's business operations. The provisions within this paragraph shall survive termination of this Lease and shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns, and mortgagees thereof.

**12. Compliance With Law**

A. Tenant shall not use the Premises or permit anything to be done in or about the Premises which in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Except as otherwise provided herein, Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting Tenant's business operations within the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts and further excluding those matters for which Landlord is responsible pursuant to Sections 6.A and 10.E hereof.

B. Tenant may, at its expense (and if necessary, in the name of but without expense to Landlord) contest, by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Prelaw or requirement of public authority, and Landlord shall cooperate with Tenant in such proceedings, provided that Landlord shall not be subject to criminal penalty or to prosecution for a crime, nor shall the Premises or any part be subject to the imposition of any lien or be condemned or vacated, by reason of non-compliance or otherwise by reason by such contest.

**13. Alterations and Repairs**

A. Tenant shall, subsequent to the installation of the Tenant's not make any alterations in or additions, changes or repairs to the Premises without the Landlord's prior written approval in each and every instance, such consent not to be unreasonably withheld, delayed or conditioned provided however Tenant may make alterations without Landlord's consent said alterations do not adversely affect roof, structure, or building system void any warranties with respect thereto (only if Tenant has received copies of any such warranties); (2) Landlord is given prior notice thereof; and (3) the cost of any such requested alteration does not exceed SEVENTY-FIVE THOUSAND ($75,000.00) DOLLARS. It shall not be unreasonable for Landlord to withhold approval of any alteration or addition which adversely impacts the Building or any Building system, or which would otherwise result in additional improvements to the Premises (unless Tenant agrees at its sole cost to install such additional improvements). In the event Landlord grants the requested approval, Tenant shall be responsible for the cost of any such alteration or additions, as well as the cost of any improvements to the required as the result thereof. Any such approval shall further be subject to the terms and conditions hereinafter set forth.

B. In order to obtain such consent, as required in Section 13. A above, Tenant shall furnish Landlord: (i) plans and specifications for the Alterations (which Tenant warrants are in conformance with all applicable laws and consistent in all respects with the aesthetics and the following "Systems Building: electrical, heating, ventilating, air-cooling, plumbing/fire and structural) prepared at the expense of Tenant, by engineers acceptable to Landlord not to be unreasonably withheld, delayed or conditioned, (ii) names and addresses of contractors ("Contractors") and to the extent available subcontractors ("Subcontractors") and (iii) copies of contracts with and, to the extent available, Subcontractors which contracts shall provide, among other things, that no changes, amendments, extras or additional work are permitted without the consent of Landlord, not to be unreasonably withheld, delayed or conditioned. Landlord reserves the right to deny any Contractor or

Subcontractor entry to the Building only for cause, but the failure of Landlord to exercise this right shall not be deemed an approval of either the financial stability or quality of workmanship of any such Contractor or Subcontractor. If Landlord shall fail to deliver its consent within ten (10) business days after request, Landlord's approval shall be deemed given.

C. If Landlord grants such consent, all Alterations shall be performed at the sole expense of Tenant, in a workmanlike manner and materials furnished shall be of a like quality to those in the Building. Landlord may elect to observe and inspect such work provided Tenant is not unreasonably delayed and Tenant agrees to reasonably cooperate in conjunction therewith. Subsequent to the granting of the consent by Landlord but before the commencement of the Alterations or delivery of any materials onto the Premises or into the Building, Tenant shall furnish Landlord, to the extent applicable and available: (i) necessary permits, (ii) to the extent necessary to obtain title insurance coverage over liens, sworn Contractor affidavits, as may be commercially reasonable, in the form provided by a nationally recognized title company, listing all subcontracts with suppliers of materials and/or labor, with whom Contractors have contractual relations for the Alterations, and setting forth a summary of such contractual relationships, (iii) to the extent necessary to obtain title insurance coverage over liens, subcontractor affidavits, as may be commercially reasonable, in the form provided by a nationally recognized title company, and (iv) certificates of insurance from all Contractors and Subcontractors performing labor or furnishing materials, insuring against any and all claims, costs, damages, liabilities and expenses which may be reasonably requested by Landlord. The certificates of insurance required, in addition to any other requirements of Landlord, must evidence coverage in amounts and from companies reasonably satisfactory to Landlord and may be cancelable only with ten (10) days advance notice to Landlord. If Landlord consents or supervises, such shall not be deemed a warranty as to the adequacy of the design or workmanship or quality of the materials and Landlord hereby disavows any responsibility and/or liability for such. Additionally, under no circumstances shall Landlord have any responsibility to repair or maintain any portion of the Alterations which either does not function or ceases to function.

D. Tenant shall procure, or cause to be procured, and pay for all permits, licenses, approvals, certificates and authorizations necessary for the prosecution and completion of the Alterations. All Alterations shall be done in strict accordance with all laws, ordinances, rules, regulations and requirements of any applicable board of underwriters or fire rating bureau and all municipal, state, federal and other authorities having jurisdiction. Where drawings and specifications conflict with the law, the law is to be followed. Tenant shall promptly notify the respective departments or official bodies when the Alterations are ready for inspection and shall, at once, do all work required to remove any violations or to comply with such inspections, without additional charge to Landlord. Tenant shall perform, or cause to be performed, all work necessary to

obtain approvals from authorities mentioned above without additional cost to Landlord.

E. Tenant agrees to reimburse Landlord for reasonable and actual out of pocket sums expended for examination and approval of the architectural and mechanical plans and specifications. Such reimbursement shall include the usual customary, and documented costs of any of Landlord's local employees, or "third-party" consultants, architects, engineers, attorneys, or other consultants.

F. Tenant agrees that the Alterations shall be performed so as not to cause or create any jurisdictional or other labor disputes, and in the event such disputes occur, Tenant shall immediately do whatever is necessary to resolve such disputes, at no expense to Landlord.

G. Subject to and pursuant to the provisions of Section 17.K. hereof, Tenant hereby agrees to indemnify and hold Landlord, mortgagees of whom Tenant has notice, and their respective agents and employees harmless from any and all liabilities of every kind and description, including reasonable attorneys' fees which may arise out of or be connected in any way with Tenant's construction of the Alterations. Any mechanic's lien filed against the Premises, or the Property, for the Alterations or materials claimed to have been furnished to Tenant shall be discharged of record (or paid if a notice be serviced) by Tenant within thirty (30) days after filing (or service) at the expense of Tenant, unless (i) Tenant has deposited or deposits with Landlord one hundred fifty (150%) percent of the lien in cash; (ii) (a) Tenant has purchased or caused the purchase of a payment bond pursuant to A. R. S. §33-1003 or (b) Tenant has recorded or caused the recording of a surety bond as required by A. R. S. §33-1004; or (iii) subject to and pursuant to the provisions of Section 17.K hereof, Tenant may contest any such lien so long as Tenant diligently prosecutes such lien and holds Landlord harmless from any claims arising from Tenant's failure to discharge any such lien of record.

H. All additions, fixtures, hardware, and all improvements, in or upon the Premises, whether placed there by Tenant or Landlord, as well as all wiring, cables, risers, and similar installations appurtenant thereto installed by Tenant or Landlord for the benefit of Tenant in the Building ("Wiring") shall, unless Landlord requests their removal prior to installation, become the property of Landlord and shall remain upon the Premises at the termination of this Lease by lapse of time or otherwise without compensation, allowance or credit to Tenant. If, at the expiration of the Term, Tenant does not remove said additions, fixtures, hardware, and improvements (which were required to be removed by Landlord at the time of installation) Landlord may remove them and Tenant shall pay the reasonable expense of such removal to Landlord within thirty (30) days after demand. All of Tenant's trade futures, equipment and personal property may be removed upon the expiration or termination of this Lease, provided however, that Tenant shall be responsible for the restoration of the Premises to the condition in

which they existed at the Commencement Date, reasonable wear and tear and damage by fire or other casualty, condemnation, or Landlord default excepted. Upon approval of the Alterations, Landlord shall notify Tenant whether Landlord will require that Tenant remove, at the termination of this Lease, such Alterations or any particular portion thereof and Landlord shall notify Tenant on or before it approves such plans as to whether or not it will require removal.

I. Tenant shall, at the termination of this Lease, surrender the Premises to Landlord in as good condition and repair as reasonable, and proper use thereof will permit, loss by ordinary wear and tear, fire or other casualty, condemnation or damage by Landlord excepted.

J. The terms and provisions of this Article 13 shall be inapplicable to the Tenant's Work.

**14. Abandonment**

Any personal property belonging to Tenant and left on the Premises at the end of the stated Term or otherwise upon vacation of the Premises shall be deemed abandoned, at the option of the Landlord.

**15. Assignment and Subletting**

A. Notwithstanding anything to the contrary contained herein, Landlord's consent shall not be required for an assignment of the Lease or sublease of the Premises (or any portion thereof) to (i) affiliates or subsidiaries of Tenant; (ii) successors by merger, acquisition or consolidation; (iii) any entity under common control with, controlled by, or controlling Tenant; or (iv) successor in interest to all or a major portion of Tenant's business, assets and/or stock ((i) through (iv) being a "Permitted Transfer" and any such entity being referred to as a "Permitted Transferee") so long as: (x) the use of the Premises does not change; and (y) Landlord is given prior notice thereof; and (z) unless Tenant evidences to Landlord's reasonable satisfaction that the assignee or sublessee has the same investment rating (as stated by Moody's or S&P or imputed to have same rating as Moody's or S&P) as Tenant on the date of the Permitted Transfer, Tenant is not relieved of any of its liabilities or responsibilities hereunder.

B. Tenant shall not assign this Lease, or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person to occupy or use the Premises, or any portion

thereof, without the written consent of Landlord first had and obtained, which consent shall not be unreasonably withheld or delayed. Provided there is no Event of Default hereunder, Landlord will not unreasonably withhold its consent to Tenant's assignment of the Lease or subletting all or a portion of the Premises, provided; (i) in case of subleases of more than one floor, Landlord, in its discretion reasonably exercised, determines, that the proposed use of the Premises is acceptable (only if such use is different than a Purpose specified in the Lease Schedule) and that the financial responsibility of the proposed sublessee or occupant, as the case may be, is adequate to pay the Rent; (ii) any assignee or subtenant shall expressly assume all the obligations of this Lease on Tenant's part to be performed; (iii) such consent, if given, shall not release Tenant of any of its obligations (including, without limitation, its obligation to pay rent) under this Lease; and (iv) a consent to one assignment, sublease or occupancy agreement shall be limited to such particular assignment, sublease or occupancy agreement and shall not be deemed to constitute Landlord's consent to any further assignment or sublease or occupancy agreement. Any such assignment or sublease without such consent shall be void and shall, at the option of Landlord, constitute a default under this Lease. Tenant will pay all of Landlord's reasonable and documented costs associated with any such assignment or subletting including but not limited to reasonable legal fees not to exceed ONE THOUSAND ($1,000.00) DOLLARS. Notwithstanding anything to the contrary contained herein, if Landlord fails to approve the proposed assignment or sublease within ten (10) business days after receipt of the information required hereunder, Landlord's failure to approve the proposed assignment or sublease within such ten (10) business day period shall be deemed an approval.

C. Except for a Permitted Transfer under Section 15.A, Tenant shall pay to Landlord fifty (50%) percent of the Profits (as hereafter defined) if any, from any sublease, and Tenant shall retain fifty (50%) percent of the Profits, if any, from such sublease. "Profits" shall be determined (1) by deducting from the rent or other consideration received by Tenant in connection with any sublease, the rent (including without limitation Base Rent, Operating Expenses and Taxes) payable hereunder (or the allocable portion thereof) for the subleased space, and (2) only after first deducting in full (without any requirement that the costs be amortized over the term of the sublease or assignment) all of (a) the amounts incurred by Tenant for alterations installed solely for sublease purposes, and (b) reasonable out-of-pocket subletting costs incurred by Tenant, including, without limitation, subtenant cash inducements, improvement allowances, brokerage commissions and attorneys' fees. Tenant shall pay to Landlord its share of such Profits, if any, within thirty (30) days after receipt from time to time of such Profits.

## 16. Signs

For purposes of this Lease, "signs" shall include all signs, designs, monuments, logos, banners, projected images, pennants, decals, advertisements, pictures, notices, lettering, numerals, graphics, or decorations. Tenant shall not place or affix any exterior or interior signs visible from the outside of the Premises, provided however Tenant shall have the right to request Landlord to install a monument sign at the entrance to the Desert Canyon Corporate Campus in which the Property is located, as well as an exclusive monument sign in the front of the Building, subject to: (a) Landlord's reasonable approval of the plans therefor; (b) compliance with all laws and covenants of record; and (c) Tenant paying the cost thereof. Nothing herein shall restrict Tenant's right to install a lobby directory and other signs throughout the Building. With respect to all monument signage, Landlord's approval shall not be unreasonably withheld or delayed and Landlord shall assist Tenant in the securing of all licenses and permits necessary for the erection of such monument signage without any cost to Landlord.

## 17. Damage to Property—Injury to Persons

A. Tenant, as a material part of the consideration to be rendered to Landlord under this Lease, to the extent permitted by law, hereby waives all claims against Landlord except claims caused by or resulting from the non-performance of the Landlord, intentional, willful or negligent acts or omissions of Landlord, its agents, servants or employees and claims for injuries to persons in, upon or about the Premises or the Property from any cause whatsoever.

Tenant will hold Landlord, its agents, servants, and employees exempt and harmless subject to the terms and provisions of Section 17.K from and on account of any damage or injury to any person, or to the goods, wares, and merchandise of any person, arising from the negligent uses of the Premises by Tenant or arising from the failure of Tenant to keep the Premises in good condition as herein provided if non-performance by the Landlord or negligence of the Landlord, its agents, servants or employees does not contribute thereto. Neither Landlord nor its agents, servants, employees shall be liable to Tenant for any damage by or from any act or negligence of any co-tenant or other occupant of the same Building, or by any owner or occupant of adjoining or contiguous property, provided however, that the provisions of this paragraph shall not apply to negligent or willful acts or omissions of Landlord, its agents, servants or employees. Neither Tenant nor its agents, servants, employees shall be liable to Landlord for any damage by or from any act or negligence of any other occupant of the same Building, or by any owner or occupant of adjoining or contiguous property, provided however, that the provisions of this paragraph shall not apply to negligent or willful acts or omissions of Tenant, its agents, servants or

employees. Except as otherwise provided herein, Tenant agrees to pay for all damage to the Building or the Premises, as well as all damage to tenants or occupants thereof caused by Tenant's misuse or neglect of the Premises, its apparatus or appurtenances or caused by any licensee, contractor, agent or employees of Tenant. Notwithstanding anything to the contrary contained in Sections 17.A and 17.C hereof, Tenant does not waive any obligation of Landlord to correct any latent defects in the Building, complete the Punch List Work and/or enforce construction warranties.

B. Landlord covenants and agrees, subject to the terms and provisions of Section 17.K, to defend, save harmless and indemnify Tenant from any liability for injury, loss, accident or damage to any person or property within or about the Property and from any claims, actions, proceedings and reasonable expenses and costs in connection therewith (including, without limitation, reasonable counsel fees) arising from the nonperformance, acts, misconduct or negligence of Landlord including Landlord's employees, agents, contractors or licensees.

C. All personal property belonging to Tenant that is in the Building or the Premises shall be there at the risk of Tenant or other person only, and Landlord or its agent, servants, or employees (except in case of non-performance by the Landlord or negligent or willful acts or omissions of Landlord or its agents, servants, employees) shall not be liable for: damage to or theft of or misappropriation of such personal property; nor for the loss of or damage to any personal property by theft or otherwise, by any means whatsoever, nor for any injury or damage to personal property resulting from fire, explosion, falling plaster, steam, gas, electricity, snow, water or rain which may leak from any part of the Building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place or resulting from dampness or any other cause whatsoever. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Premises of defects therein or in the fixtures or equipment. Landlord represents that the Property (including the Premises) is not located in a flood zone.

D. Tenant shall maintain or cause to be maintained in full force and effect during the Term of this Lease (including any period prior to the beginning of the Term during which Tenant has taken possession and including also any period of extension of the Term in which Tenant obtains possession) (i) "all risks" property insurance covering all Tenant's personal property in, on or about the Premises in an amount equal to the full replacement cost of such personal property, and (ii) commercial general liability insurance including products and completed operations insuring Tenant against all claims, demands or action for

bodily injury and property damage with limits of not less than TWO MILLION ($2,000,000.00) DOLLARS each occurrence and THREE MILLION ($3,000,000.00) DOLLARS in the aggregate or such other commercially reasonable amounts as Landlord may reasonably require from time to time (provided such increases are consistent with similar buildings) and (iii) rental insurance equal to one year's rent insurance naming Landlord as loss payee. All liability policies shall cover the entire Premises. The certificate for Tenant's insurance shall indicate that the Tenant's insurance is primary, with any other insurance available to Landlord or any other named insured being excess.

E. Landlord shall maintain a policy or policies of insurance with the premiums thereon fully paid in advance insuring the Building (including without limitation Tenant's Work and Alterations) against loss or damage by fire or other insurable hazards and contingencies (including vandalism, sprinkler leakage and malicious mischief) as are covered in a standard "all risks" property insurance policy for the full replacement cost thereof, including Tenant's Work and Alterations (unless Landlord is notified of Alterations performed by Tenant, [he foregoing shall only be applicable to the Tenant's Work). If the Property is located in a flood zone, Landlord shall also maintain flood coverage insuring the Building and the Property. During construction of the Building, including the Tenant's Work, Landlord shall maintain at its sole cost and expense (and without passing such cost along to Tenant as an Operating Cost or as a cost of the Landlord's Work or Tenant's Work) a builder's risk policy (against loss or damage by fire and other similarly insured risks covered by extended coverage endorsements) and provide certificates evidencing such builder's risk coverage to Tenant upon Lease execution.

F. Landlord shall maintain (whether by Landlord or its parent company) with respect to the Building and Property, a policy or policies of commercial general liability insurance with the premiums therefor fully paid in advance, issued by and binding upon an insurance company of good financial standing, such insurance to afford minimum protection of not less than FIVE MILLION ($5,000,000.00) DOLLARS for bodily injury or death in any one occurrence and of not less than THREE MILLION ($3,000,000.00) DOLLARS for property damage in any one occurrence. If Landlord's insurance contains a general aggregate limit, it shall apply separately to this Lease or be no less than two times the occurrence limit. The coverages required to be carried shall be extended to include blanket contractual liability, personal injury liability (libel, slander, false arrest and wrongful eviction) and broad form property damage liability, which may be maintained in umbrella coverage. During the Term of this Lease, Landlord, if Landlord has employees, shall also maintain workers' compensation insurance with statutory limits, and employees liability insurance with limits of not less than ONE MILLION ($1,000,000.00) DOLLARS for each accident. Landlord shall provide reasonable evidence as set forth below, that the insurance required to be maintained hereunder is in full force and effect. The premiums for insurance (specifically excluding the builder's risk insurance)

provided by Landlord shall be included in Operating Costs. Tenant shall have the right to approve from time to time under the Term of this Lease the scope, amount and adequacy of Landlord's insurance and to require Landlord to increase Landlord's insurance requirements set forth herein, the cost of which increased insurance shall be included in the Operating Costs.

Landlord shall use its best efforts to cause the Association during the Term of the Lease to maintain all insurance required to be maintained under the Declaration and shall provide Tenant with evidence of the same at the commencement of each calendar year hereunder.

If Landlord fails to maintain the insurance set forth herein, and does not respond to Tenant within three (3) business days after notice, Tenant may, subject to the terms of Section 28 hereof, elect to purchase the insurance required to be maintained by Landlord hereunder.

The obligations of Landlord set forth in Section 17 hereof shall be continuous throughout the Term of this Lease regardless of whether Landlord or Tenant is managing the Property.

G. Anything in this Lease to the contrary notwithstanding, to the extent any such claim is covered by insurance, or would be covered by any required insurance, Landlord and Tenant each waive all rights of recovery, claim, action or cause of action against the other, its agents (including-partners, both general and limited) officers, directors, shareholders or employees, for any loss or damage that may occur to the Premises, or any improvements thereto, to the Building or to any personal property of such party therein, by reason of fire, the elements, or any other cause which are required to be insured against under the terms of the "all risks" property insurance policies obtained pursuant to this Lease, or any other peril which is in fact insured, regardless of cause or origin, including negligence of the other party hereto, its agents, officers or employees; and each party covenants that no insurer shall hold any right of subrogation against such other party. Each party shall advise insurers of the foregoing and such waiver shall be a part of each policy maintained by such party which applies to the Premises, any part of the Building or Tenant's use and occupancy of any part thereof. It shall be a condition precedent to the effectiveness of this Lease that each party shall be responsible for maintaining the waiver of subrogation endorsement as part of its respective insurance policy.

H. Tenant shall have the right to provide required insurance by blanket policies, or subject to Landlord's reasonable approval, to self-insure.

I. All such policies required to be carried by Tenant and Landlord hereunder and all evidence of insurance provided to the other (i) shall be issued by responsible, financially sound companies qualified to do business and in good standing in the State of Arizona and with a Best rating of A. XII or better; (ii) shall

(a) with respect to Tenant's policies, contain an endorsement showing that Landlord, its agents, and mortgagees, are included as an additional insureds (except as to workers' compensation insurance) as their respective interests may appear, and with respect to Landlord's policies, contain an endorsement showing that Tenant is included as an additional insured (except as to workers' compensation insurance) and (b) contain an endorsement whereby the insurer agrees not to cancel or alter the policy without not less than thirty (30) days prior written notice to all named insureds. Tenant and Landlord shall, on or prior to the Commencement Date, deposit with the other party certificates of such insurance, and thereafter, on or prior to fifteen (15) days before the expiration date of any coverage thereunder, shall deposit with the other party the other certificates evidencing the renewal of such policies.

J. Failure of Tenant to provide the insurance coverage heretofore set forth shall entitle Landlord to either (a) treat said failure as a default after notice to Tenant and an opportunity to cure and/or (b) obtain such insurance and charge Tenant the premiums therefor as Additional Rent. Tenant shall not violate or permit a violation of any of the conditions or terms of any such insurance policies and shall perform and satisfy all reasonable requirements of the insurance company issuing such policies of which Tenant has notice.

K. Promptly upon receipt by either party (the "Indemnified Party") of a notice of a claim, suit or action by a third party for which the Indemnified Party is entitled to indemnification by the other party (the "Indemnifying Party") under this Lease, the Indemnified Party shall give the Indemnifying Party written notice thereof, together with copies of all documents received by the Indemnified Party in connection therewith. The Indemnified Party shall, at the Indemnifying Party's request, tender to the Indemnifying Party control of the defense (and settlement) thereof and shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall have the right to engage counsel of the Indemnifying Party's choice reasonably acceptable to the Indemnified Party. Until the Indemnifying Party accepts the control of the defense of such claim, the Indemnified Party shall have the right to employ the Indemnified Party's own counsel, reasonably acceptable to the Indemnifying Party and the Indemnified Party shall promptly continue to provide the Indemnifying Party with copies of all relevant documents and notices in connection therewith. In the event that the Indemnified Party believes that it needs its own independent counsel, the costs and expenses thereof shall be for the Indemnified Party's own account and the Indemnified Party shall not have a claim hereunder for reimbursement therefor. The giving of notice including the delivery of all documents and, if requested, tendering defense of claims, required by this paragraph are conditions precedent to the Indemnifying Party's indemnification obligations under this Article 17 or elsewhere under this Lease, as the case may be. The Indemnified Party shall have no claim for indemnification for any settlement of any claim unless written notice of such settlement shall have been first furnished to the Indemnifying

Party in accordance with the provisions of this paragraph, and the Indemnifying Party shall have consented, in writing, to such settlement.

**18. Damage or Destruction**

A. If all or a portion of the Building is damaged by fire or other casualty, Landlord shall give Tenant written notice ("Landlord's Repair Notice") of the time which will be needed to repair such damage, as determined by Landlord. Such notice shall be given on or before the 45th day (the "Notice Date") after the fire or other insured casualty. If Landlord fails to give Tenant Landlord's Repair Notice within forty-five (45) days after the fire or other insured casualty, Tenant may notify Landlord that Landlord's Repair Notice has not been given and that Tenant may terminate this Lease if Landlord fails to give Landlord's Repair Notice with ten (10) days after this reminder notice is received by Landlord.

B. If all or a portion of the Building is damaged by fire or other insured casualty to an extent which may be repaired within one hundred eighty (180) days after the Notice Date, as reasonably determined by Landlord, provided insurance proceeds have been or will be made available for restoration by Landlord's mortgagees, Landlord shall promptly begin to repair, in a good, first class and workmanlike manner, the damage after the Notice Date, and will diligently pursue the completion of such repair. In that event, this Lease will continue in full force and effect. To the extent not reimbursed by rent insurance proceeds, Base Rent and Additional Rent will be abated on a pro rata basis from the date of the damage until the date of the substantial completion of such repairs (the "Repair Period") plus a reasonable period of time, not to exceed thirty (30) days, for Tenant to move in and re-install any of Tenant's personal property damaged by such casualty. The parties agree to reasonably cooperate with each other to coordinate the restoration of the Tenant's Work and Alterations by Landlord and the re-installation of Tenant's personal property by Tenant so as to restore the affected portion of the Building as soon as practicable. Notwithstanding the forgoing, if a repair which Landlord determined could be made within one hundred eighty (180) days after the Notice Date is not substantially completed within said one hundred eighty (180) day period, Tenant may terminate this Lease, upon notice given at any time after the expiration of said one hundred eighty (180) day period, but before the repair is substantially completed; provided, however, that Landlord may nullify Tenant's termination if Landlord substantially completes the repair within thirty (30) days after receipt of Tenant's termination notice.

C. If: (1) all or a portion of the Premises is damaged by fire or other insured casualty to an extent that it may not be repaired within one hundred eighty (180) days after the Notice Date, as reasonably determined by Landlord,

and the damage impairs Tenant's use of any portion of the Building or interferes with Tenant's business operations; or (2) all or two full floors or more of the Premises are damaged during the last eighteen (18) months of the Term; then (a) Landlord may cancel this Lease by written notice given to Tenant on or before the Notice Date; or (b) Tenant may cancel this Lease by written notice given to Landlord within thirty (30) days after Landlord's delivery of a written notice that the repairs cannot be made within such one hundred eighty (180) day period. If either party cancels this Lease in accordance with the preceding sentence, this Lease shall terminate thirty (30) days after the date of the cancellation notice. If neither party cancels the Lease as provided in this Section 18. C, Base Rent and Additional Rent will be abated on a pro rata basis during the Repair Period plus a reasonable period of time, not to exceed thirty (30) days, for Tenant to move in and re-install any of Tenant's personal property damaged by such casualty. Notwithstanding the foregoing, in the case of a termination by Landlord as set forth above: (v) Tenant may continue to lawfully occupy the undamaged portion of the Premises in accordance with all applicable building codes and other legal requirements notwithstanding such casualty, if Tenant elects, by notice to Landlord given within sixty (60) days after the date that Landlord gives such termination notice, to extend such effective termination date as to all or any portion of the entire undamaged portion of the Premises; and/or (w) if Tenant then has an outstanding right to extend the Term under Article 39 and Landlord exercises its termination right as set forth above, Tenant may irrevocably exercise its extension option to renew under Article 38, by written notice delivered to Landlord within sixty (60) days after receipt of Landlord's termination notice, in which event (x) such termination notice shall be deemed to have been rescinded and (y) the Base Rent for the extended term shall be determined at the time and in the manner set forth in Section 38.

D. If neither Landlord nor Tenant so elects to terminate this Lease as set forth in the immediately preceding paragraphs, Landlord shall diligently proceed to repair the Premises, including all Tenant's Work and Alterations, in a good and first class and workmanlike manner, and the Base Rent and Additional Rent will be abated on a pro rata basis during the Repair Period plus a reasonable period of time, not to exceed thirty (30) days, for Tenant to move in and reinstall Tenant's personal property damaged by such casualty. Notwithstanding the foregoing, if a repair to be made in accordance herewith is not substantially completed within the period as is specified in Landlord's Repair Notice, Tenant may terminate this Lease upon notice given within five (5) business days after the expiration of said period (or the expiration of such longer time period as is specified in Landlord's Repair Notice) but before the repair is substantially completed; provided, however, that Landlord may nullify Tenant's termination if Landlord delivers within three (3) business days thereafter a notice of its intention to substantially complete the repair within thirty (30) days after receipt of Tenant's termination notice and Landlord substantially completes the repair within thirty (30) days after receipt of Tenant's termination notice.

E. Tenant shall be responsible for the repair or replacement of all Tenant's personal property which is damaged or destroyed.

F. All times set forth in this Section 18 shall be of the essence and shall not be delayed on account of any Force Majeure events as described in Section 26 hereof.

G. All determinations of Landlord with respect to the length of the restoration period shall be supported by the opinion of an independent professional engineer, architect or contractor.

H. The proceeds from any insurance paid by reason of damage to or destruction of the Building or any part thereof, the Landlord's Work, the Work, Alterations, and any other element, component or property insured by Landlord shall belong to and be paid to Landlord, subject to the rights of Tenant described herein. Notwithstanding the foregoing, if this Lease is terminated under this Section 18, then (i) the proceeds of the property insurance that are attributable to the Tenant's Work in the Premises shall belong to and be paid to Landlord in an amount equal to the Standard Tenant Build-out Amount, and (ii) Tenant shall be entitled to any balance of such proceeds for the Tenant's and Alteration. For purposes of this paragraph, the "Standard Tenant Build-Amount" shall mean $29.00 per rentable square foot of the Premises (as increased by the percentage increase in the Index between the execution date of this Lease and the effective date of the termination of the Lease).

I. "Index" shall mean the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Urban Consumers, All Items, 1967 equals 100) for the Metropolitan Area or Region of which Phoenix, Arizona, is a part. If such Index is discontinued or revised, the percentage increase in question shall be determined by reference to the index designated as the successor or substitute index by the government of the United States.

**19. Entry by Landlord**

Landlord and its agents shall have the right to enter the Premises at all reasonable times (upon prior reasonable notice except in cases of emergency) and in the presence of a Tenant representative to supply janitorial services and any other service if and to the extent to be provided by Landlord to Tenant hereunder; to make such alterations, repairs, improvements, or additions, whether structural or otherwise, to the Premises or to the Building as Landlord may deem necessary pursuant to the terms of this Lease; and to show the same to (a) prospective purchasers and (b) tenants (during last year of the Term only) of the Building. In the event Landlord is managing the Property, Landlord may enter by

means of a master key without liability to Tenant except as otherwise provided herein and except for any failure to exercise due care for Tenant's property. Landlord shall use reasonable efforts on any such entry not to unreasonably interrupt or interfere with Tenant's use and occupancy of the Premises.

**20. Default**

A. If any of the following events of default ("Events of Default") shall occur, to wit:

(i) Tenant defaults for more than ten (10) days after written notice of default after the due date therefor in the payment of rent (whether Base Rent or additional rent) or any other sum required to be paid hereunder, or any part thereof, or

(ii) Tenant defaults in the prompt and full performance of any other (i.e., other than payment of rent or any other sum) covenant, agreement or condition of this Lease and such other default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (unless such other default involves a hazardous condition, in which event it shall be cured in time periods required by law) provided however in the event such default cannot be cured within a period of thirty (30) days and Tenant is diligently attempting to cure such default, the time period to cure same shall be reasonably extended but in no event for a period of more than ninety (90) days, or

(iii) The leasehold interest of Tenant be levied upon under execution or be attached by process of law and not dismissed within thirty (30) days, or

(iv) Bankruptcy or insolvency of Tenant or assignment for the benefit of creditors by Tenant, unless in the case of a bankruptcy the petition therefor is dismissed within sixty (60) days and unless in the case of a receivership of Tenant's interest hereunder such receivership is discharged within ninety (90) days.

then in any such event, Landlord, in addition to other rights or remedies at law and in equity, it may have, shall have the immediate right of re-entry and may remove all persons and personal property from the Premises; such personal property may be removed and stored in any other place in the

Building in which the Premises are situated, or in any other place, for the account of and at the expense and at the risk of Tenant.

B. Tenant hereby waives all claims for damages which may be caused by the re-entry of Landlord and taking possession of the Premises or removing or storing the personal property as herein provided, and no such re-entry shall be considered or construed to be a forcible entry.

C. Should Landlord elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law; it may either terminate this Lease or it may from time to time, without terminating this Lease, re-let the Premises or any part thereof for such terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises.

D. Landlord may elect to apply rentals received by it (i) to the payment of any indebtedness, other than rent, due hereunder from Tenant to Landlord; (ii) to the payment of any reasonable cost of such re-letting including but not limited to any broker's commissions or fees in connection therewith; (iii) to the payment of the reasonable cost of any alterations and repairs to the Premises; (iv) to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should such rentals received from such re-letting after application by Landlord to the payments described in foregoing clauses (i) through (iv) during any month be less than that agreed to be paid during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly on demand by Landlord.

E. In lieu of electing to receive and apply rentals as provided in the immediately preceding paragraph, Landlord may elect to receive from Tenant as and for Landlord's liquidated damages for Tenant's default, an amount equal to the present value of the entire amount of Base Rent provided for in this Lease for the remainder of the Term, less fair market rental value thereof, which amount shall be forthwith due and payable by Tenant upon its being advised of such election by Landlord.

F. No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of same is given to Tenant or unless the termination thereof be decreed by a court of competent Jurisdiction. Notwithstanding any such re-letting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

G. Nothing herein contained shall limit or prejudice the right of Landlord to provide for and obtain as damages by reason of any such termination

of this Lease or of possession an amount equal to the maximum allowed by any statute or rule of law in effect at the time when such termination takes place, whether or not such amount be greater, equal to or less than the amounts of damages which Landlord may elect to receive as set forth above.

H. Landlord agrees to reasonably mitigate its damages in the Event of a Default.

**21. Rules and Regulations**

If the Building shall at anytime be occupied by more than one tenant, Landlord shall have the right from time to time to adopt such reasonable rules and regulations for the safety, care and cleanliness of the Building. Landlord hereby agrees to provide Tenant reasonable advance notice of the adoption of such rules and regulations. Such reasonable rules and regulations as may be hereafter adopted by Landlord for the safety, care and cleanliness of the Building and the preservation of good order thereon, are hereby expressly made a part hereof, and Tenant agrees to comply with all such rules and regulations. The violation of any such rules and regulations by Tenant shall be deemed a default under this Lease by Tenant after written notice and expiration of all grace periods, affording Landlord all those remedies set out in the Lease. In the event a conflict between the rules and regulations and this Lease occurs, the Lease shall control, provided, however, that the lack of a provision in this Lease covering the subject matter of the rule or regulation shall not be deemed a "conflict" for purposes of this sentence. Such rules and regulations shall not interfere with Tenant's right of use and enjoyment of the Property; shall not increase the Operating Costs set forth herein; and shall not derogate or increase the obligations of Tenant hereunder.

**22. Non Real Estate Taxes**

During the term hereof, Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises, and, to the extent possible, Tenant shall cause said trade fixtures, furnishing, equipment and other personal property to be assessed and billed separately from the real property of Landlord. In the event any or all of the Tenant's trade fixtures, furnishings, equipment and other personal property shall be assessed and taxed with the Landlord's real property, Tenant shall pay to Landlord its share of such taxes within thirty (30) days after delivery to Tenant by Landlord of a statement in

writing setting forth the amount of such taxes applicable to the Tenant's personal property (and evidence of such allocation of non-real estate taxes).

**23. Eminent Domain**

A. A taking of all or any part of the Premises under the exercise of the right of condemnation or eminent domain is referred to hereafter as a "Taking". The date upon which the condemnation authority takes possession of the portion of the Premises Taken is referred to hereafter as the "Taking Date". In this Article, the word, "Taken" means that the Premises have been subject to a Taking.

B. If all of the Premises are Taken, this Lease shall terminate on the Taking Date, and all rent and other charges payable by Tenant hereunder shall be apportioned and paid to the Taking Date.

C. If (i) more than twenty-five (25%) percent of the rentable area of the Premises is Taken; (ii) more than ten (10%) percent of the parking spaces in the Common Area is Taken; or (iii) access to the Premises is substantially impaired because of a Taking without providing substitute comparable access, which is acceptable to Tenant in its reasonable discretion, then Landlord or Tenant may terminate this Lease by written notice to other party given within thirty (30) days after the Taking Date. If either party elects to terminate this Lease in accordance with the preceding sentence, all rent and other charges payable by Tenant hereunder shall be apportioned and paid to the Taking Date.

D. If a Taking occurs and this Lease is not terminated, this Lease shall continue unaffected, except that (i) the Base Rent shall be reduced as of the Taking Date equitably to reflect that portion of the Premises so Taken (taking into account loss of any Common Areas); (ii) Tenant shall continue to pay all Additional Rent due with respect to the remaining Premises; (iii) Landlord and Tenant shall make any adjustments needed between them as a result of any overpayment or underpayment of Additional Rent and Base Rent with respect to the portion of the Premises (taking into account loss of Common Areas) which has been Taken; and (iv) Landlord shall make appropriate alterations to the Property to restore them as nearly as practicable to their condition before the Taking, but Landlord shall only be required to expend for this purpose any condemnation proceeds which Landlord receives.

E. Tenant shall have the right to assert a claim against the condemning authority in a separate action for Tenant's moving expenses, personal property, trade fixtures and equipment, tenant improvements (over the standard tenant build-out amount of TWENTY-NINE ($29.00) DOLLARS per rentable square foot

of the Premises (as increased by the percentage increase in the Index between the execution date of this Lease and the effective date of the termination of the Lease) ) and any alterations paid for by Tenant.

F. If Landlord becomes aware of a condemnation proceeding pertaining to the Premises, Landlord shall promptly give notice thereof to Tenant.

**24. Subordination**

A. Landlord represents and warrants that as of the date hereof there is no mortgagee who has an interest in the Property, the Building, the Premises or the Park except for Bank One Illinois who holds a mortgage in the amount of $1,825,982 secured by the Property (the "Property Mortgage").

B. Landlord represents to Tenant that it will secure a construction loan in the amount of $21,469,000 from Bank of America within sixty (60) days of the date hereof. In connection with said construction loan, Landlord shall deliver to Tenant no later than the sixty fifth (65th) day after the execution hereof (i) the Subordination, Non-Disturbance and Attornment Agreement attached hereto as **Appendix "G"** which has been executed by Bank of America and Landlord and (ii) a certified copy and/or documentation reasonably acceptable to Tenant from the Maricopa County Recorders Office evidencing the partial release or discharge of the Property Mortgage releasing all right, title and interest of Bank One Illinois in the Property (the "Discharge"). Upon execution of the Subordination, Non-Disturbance and Attornment Agreement by Tenant, Landlord will cause the recordation of same with the Maricopa County Recorders Office. The execution, delivery and recordation of (i) the Subordination, Non-Disturbance and Attornment Agreement and (ii) the Discharge are a condition precedent to the effectiveness of this Lease and the failure of the Landlord to arrange for the execution, delivery and recordation of the same on the terms and conditions set forth herein shall be a breach of this Lease. In the case of any such breach, Tenant shall have the right to terminate this Lease in which case the Lease shall end on the effective date of Tenant's termination and the parties shall have no further obligations hereunder.

C. Notwithstanding anything to the contrary herein contained, it is understood that the form of Subordination, Non-Disturbance and Attornment Agreement hereto as **Appendix "G"** and specifically incorporated by reference herein is acceptable to Tenant and will be executed by Tenant within ten (10) business days after the request of Landlord. Landlord may hereafter from time to time execute and deliver mortgages or trust deeds in the nature of a mortgage, both referred to herein as "Mortgages" against the Premises, or any interest therein. If requested by the Mortgagee or trustee under any Mortgage, Tenant

will either (a) subordinate its interest in this Lease to said Mortgages, and to any and all advances made thereunder and to the interest thereon, and to all renewals, replacements, modifications and extensions thereof, or (b) make Tenant's interest in this Lease inferior thereto; and Tenant will promptly execute and deliver such reasonable agreement or agreements acceptable to Tenant, as may be reasonably required by such mortgagee or trustee under any mortgage, provided however that any such subordination shall provide that so long as there is no Event of Default hereunder, Tenant's possession and tenancy shall not be disturbed, it being agreed that any such mortgagee or trustee shall recognize this Lease.

D. It is further agreed that if any mortgage shall be foreclosed (a) the liability of the mortgagee or trustee thereunder or purchaser at such foreclosure sale or the liability of a subsequent owner designated as Landlord under this Lease shall exist only so long as such trustee, mortgagee, purchaser or owner is in possession or the owner of the Premises and such liability shall not continue or survive after further transfer of ownership, provided the transferee assumes all obligations and liabilities of Landlord under this Lease, for matters arising before and after the date of such sale or transfer; and (b) upon request of the mortgagee or trustee, Tenant will attorn, provided Tenant's lease is recognized by such mortgagee or purchaser, as Tenant under this Lease, to the purchaser at any foreclosure sale under any mortgage, except as required by law, and Tenant will execute such instruments reasonably acceptable to Tenant as may be necessary or appropriate to evidence such attornment. It is understood that Tenant's tenancy shall not be disturbed so long as Tenant is not in default under this Lease after expiration of all cure periods.

**25. Waiver**

The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The acceptance of rent hereunder shall not be construed to be a waiver of any breach by Tenant of any term, covenant or condition of this Lease. It is understood and agreed that the remedies herein given shall be cumulative, and the exercise of any one remedy shall not be to the exclusion of any other remedy. It is also agreed that after the service of notice or the commencement of a suit or judgment for possession of the Premises, Landlord may collect and receive any monies due, and the payment of said monies shall not waive or affect said notice, suit or judgment.

## 26. Force Majeure

"Force Majeure" event shall mean any reasonable circumstance beyond the reasonable control of Landlord or Tenant, as follows: acts of God; acts of the public enemy; governmental interference; court orders, requisition or orders of governmental bodies or authorities, requirements under any statute, law, rule, regulation or similar requirement of a governmental authority which shall be enacted or shall arise following the Commencement Date; casualties, strikes, insurrection, riot, civil commotion, lock-out or any other unforeseeable event (other than the inability to obtain financing) the occurrence of which would prevent or preclude Landlord or Tenant from fully completely carrying out and performing its obligations under this Lease, provided however, Force Majeure shall not apply to any obligation which is solely the payment of money. In the event of Force Majeure, either Landlord or Tenant, as the case may be, shall have its time for performance extended accordingly.

## 27. Sale by Landlord

In the event of a sale or conveyance by Landlord of the Building containing the Premises, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease. Notwithstanding the foregoing, Landlord hereby agrees it shall not transfer or assign, in whole or in part, the Property, the Building or the Premises or any interest in Landlord (other than transfers to entities owned or controlled by the principals of Landlord) until after the Term Commencement Date and the delivery of the Premises (including all Common Areas) to Tenant in accordance with the terms hereof without the consent of Tenant. If Landlord shall transfer, sell or convey the Property, after the Term Commencement Date, the transferee landlord shall be deemed to have assumed all liabilities and obligations of Landlord under this Lease, for matters arising before and after the date of such sale or transfer. The foregoing provisions of assumption shall be self-operative upon the occurrence of any such sale or transfer, without the need for any separate instrument, but in confirmation thereof, upon the request of Tenant, the transferee landlord shall execute and deliver to Tenant an agreement confirming such assumption.

**28. Rights of Landlord and Tenant To Perform**

If there is an Event of Default hereunder on the part of Tenant, Landlord, after thirty (30) days' written notice to Tenant, may (but shall not be required to) perform the same or make any payment on Tenant's part to be made or performed. Tenant shall, within thirty (30) days of Landlord's demand therefor, reimburse Landlord for all costs and expenses incurred by Landlord, with interest at the interest rate set forth in Section 5. B hereof from the date of payment by Landlord to the date of reimbursement by Tenant. Notwithstanding the foregoing, such thirty (30) day period shall be shortened in the event of an emergency in which event no written notice is required. In the event of an emergency, Landlord shall give Tenant prompt notice of any action taken by Landlord and shall incur only such costs and expenses as are necessary to meet the emergency.

If Landlord shall fail to timely perform any of its obligations under this Lease, Tenant, after thirty (30) days' written notice to Landlord and any mortgagee of Landlord of which Tenant has knowledge, may (but shall not be required to) perform the same or make any payment on Landlord's part to be made or performed. Landlord shall; within thirty (30) days of Tenant's demand therefor, reimburse Tenant for all costs and expenses incurred by Tenant, with interest at the interest rate set forth in Section 5. B hereof from the date of payment by Tenant to the date of reimbursement by Landlord. If Landlord shall not timely make such reimbursement, Tenant may offset the cost of the same against the rent due hereunder. Notwithstanding the foregoing, such thirty (30) day period shall be shortened in the event of an emergency, in the case of Landlord's failure to obtain insurance as set forth herein, and in the case of the failure of any escrow agent to release the money for the payment of Taxes as set forth herein. In the event of an emergency, Tenant shall give Landlord prompt written notice of any action taken by Tenant and shall incur only such costs and expenses as are necessary to meet the emergency.

**29. Attorneys' Fees**

In the event of any litigation between Tenant and Landlord to enforce any provision of this Lease, or any right of either party hereto, the unsuccessful party of such litigation, shall pay to the prevailing party all reasonable costs and expenses, including reasonable attorneys' fees, incurred therein.

**30. Estoppel Certificate**

Either party shall at any time and from time to time upon not less than fifteen (15) business days' prior written notice from the other execute, acknowledge and deliver to the requesting party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of the modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid and acknowledging that there are not, to such certifying party's knowledge, any uncured defaults on the part of the other party hereunder or specifying such defaults if any are claimed, as well as any other reasonable information requested by Landlord. In the case of a statement made by Tenant, it is expressly understood and agreed that any such statement may be relied upon by any prospective purchaser or lender for all or any portion of the Premises.

**31. Preparation**

Landlord agrees to cause and diligently prosecute construction and completion of the Building and the Common Areas in accordance with the terms, conditions, and provisions in **Appendix "C", Appendix "D"** and in **Appendix "E"** which are attached hereto and made a part of this Lease.

**32. Notices**

Any notice from Landlord to Tenant or from Tenant to Landlord may be served personally, by registered or certified mail, or by overnight delivery. If served by mail, notice shall be deemed served on the third day after mailing by registered or certified mail, addressed to Tenant at the address set forth in the Lease Schedule for Tenant Notice or to Landlord at the place from time to time established for the payment of rent and a copy thereof shall until further notice, be served on Landlord at the address shown for service of notice at the address set forth for service of notice in the Lease Schedule. If served personally, notice shall be deemed served on the day actually received. If served by overnight delivery, notice shall be deemed served on the day after deposit with the overnight delivery service according to their records.

**33. Rights Reserved**

Landlord reserves the following rights, exercisable with notice and without liability to Tenant for damage or injury to property (except for Landlord's negligence and except as otherwise provided herein) person or business and without effecting an eviction, constructive or actual or disturbance of Tenant's use of possession or giving rise to any claim for set-off or abatement of rent:

(a) To change the Building's street address;

(b) To retain at all times, and to use in appropriate instances, keys and/or keycards, to all doors within and into the Premises to the extent Landlord is responsible for the management of the Building. No locks or bolts shall be altered, changed or added without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed, or conditioned;

(c) To approve the weight, size and location of safes and other heavy equipment and articles in and about the Premises in excess of those contemplated by the specifications attached hereto in **Appendix "D".** Movements of Tenant's property into or out of the Premises and within the Premises are entirely at the risk and responsibility of Tenant.

**34. Real Estate Broker**

Each party represents that it has dealt with only with the brokers set forth in the Lease Schedule as brokers in connection with this Lease and each party subject to and in accordance with the provisions of Section 17.K hereof agrees to indemnify and hold the other harmless from all claims or demands of any other broker or brokers for any commission alleged to be due such broker or brokers in connection with its participating in the negotiation with such indemnifying party with respect to this Lease. Landlord agrees to pay all commissions due Brokers set forth in the Lease Schedule as per Landlord's separate agreements therewith.

**35. Miscellaneous Provisions**

A. Time is of the essence of this Lease and each and all of its provisions.

B. Submission of this instrument for examination or signature by Tenant does not constitute a reservation or offer or option for lease, and it is not effective as a lease or otherwise so as to incur the least inconvenience to Tenant. The parties each acknowledge and agree that, except as may be specifically set forth elsewhere in this Lease or any Appendices hereto, neither party, nor any employee thereof, nor other party claiming to act on either party's behalf, has made any representations, warranties, estimations, or promises of any kind or nature whatsoever relating to the physical condition of the Premises, or the Common Areas, including by way of example only, the fitness of the Premises for Tenant's intended use or the actual dimensions of the Premises; and

C. If any term, covenant, use restriction or condition of this Lease or its application to any person or circumstances shall be held to be invalid or unenforceable, such term, covenant, use restriction or condition of this Lease shall no longer be deemed a part of this Lease. However, the remainder of this Lease or the application of such terms or provisions to other persons or circumstances shall not be affected, and each term hereof shall be valid and enforceable to the fullest extent permitted by law.

D. This Lease shall be governed by and construed pursuant to the laws of the jurisdiction in which the Property is located.

E. Unless Tenant is a publicly held company, with respect to any proposed sale or refinancing by Landlord, Tenant agrees to provide to Landlord, upon request, a current financial statement of Tenant certified by an authorized representative of Tenant to be true and correct, provided that the recipients thereof execute a confidentially agreement reasonable to Tenant and further provided that the recipient is not an Operator as identified in Section 40 hereof.

F. All rights and remedies of Landlord under this Lease, or that may be provided by law, may be exercised by Landlord in its own name individually, or in its name by its Rent Agent, and all legal proceedings for the enforcement of any such rights or remedies, including distress for rent, forcible detainer, and any other legal or equitable proceedings, may be commenced and prosecuted to final judgment and execution by Landlord in its own name individually or in its name or by its agent. Landlord represents that Landlord has full power and authority to execute this Lease and to make and perform the agreements herein contained and shall deliver evidence of the same acceptable to Tenant prior to Lease

execution. Tenant expressly stipulates that any rights or remedies available to Landlord either by the provision of this Lease or otherwise may be enforced by Landlord in its own name individually or in its name by agent or principal.

G. The marginal headings and titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

H. Any and all Exhibits or Appendices attached hereto are expressly made a part of this Lease.

I. This is a commercial lease and has been entered into by both parties in reliance upon the economic and legal bargains contained herein, and both parties agree and represent each to the other that they have had the opportunity to obtain counsel of their own choice to represent them in the negotiation and execution of this Lease, whether or not either or both have elected to avail themselves of such opportunity. This Lease shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party.

J. *WAIVER OF RIGHT TO TRIAL BY JURY*. Landlord and Tenant hereby waive any right to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Lease. This waiver is knowingly, intentionally, and voluntarily made by each of parties hereto and each party acknowledges to the other that neither the other party nor any person acting on its respective behalf has made any representations to induce this waiver of trial by jury or in any way to modify or nullify its effect. The parties acknowledge that they have read and understand the meaning and ramifications of this waiver provision and have elected same of their own free will.

K. Landlord hereby covenants that so long as there is no Event of Default hereunder, Tenant shall quietly and peaceably have, hold, occupy and enjoy the Building together with all Common Areas and Park Common Areas serving the Building including parking areas as described herein during the Term of this Lease from and against the claims of all persons.

L. Tenant shall have the right to name the Building with Tenant name.

M. Landlord represents and warrants that as of the date of execution hereof, there are no outstanding obligations with respect to the Property which are due and payable, including without limitation, all obligations under the Declaration.

N. Landlord represents and warrants that it has good, clear, record and marketable title to the Property, subject only to those encumbrances set the Schedule of Title Encumbrances attached hereto as **Appendix "I",** which encumbrances do not prevent Landlord from entering into this performing its obligations hereunder.

O. To the extent that the provisions of this Lease are inconsistent with those contained in the Workletter attached hereto **Appendix** as **"C"** or any other Appendices, the Lease shall control. To the extent any Appendices to Lease and/or the Workletter, are inconsistent with the terms o f the Workletter shall control.

P. Landlord represents that the Property is zoned A-l, Light Industrial, which permits office uses as proposed herein.

Q. The Building (including all common areas, entrances, restrooms, elevators, water fountains and signage) the parking areas and the Property will, upon substantial completion and issuance of all necessary permits and required to be obtained from any all and necessary governmental agencies prior to occupancy of the Premises by Tenant, including without limitation a certificate of occupancy from the City of Phoenix which allows Tenant to use occupy the Building for the permitted uses, comply with all dimensional parking, loading and other zoning requirements of the City of Phoenix, and applicable building codes and govern mental requirements, including limitation the regulations of the ADA.

**36. Authority**

Each party represents and warrants that this Lease has been duly authorized, executed and delivered by and on its respective behalf and that it constitutes its valid and binding agreement in accordance with the terms hereof.

**37. Cellular, Radio, Microwave and Other Electronic Transmission**

Tenant may use the Premises for any lawful activity, including without limitation, the transmission and the reception of radio, microwave, electronic communication signals on various frequencies of service. Landlord agrees to cooperate with Tenant in making applications for and obtaining all licenses, permits and any and all other necessary approvals that may be for this aspect of Tenant's intended use of the Premises, all of which shall be at

Tenant's sole cost and expense. At all times during the term of the Lease (Landlord hereby agreeing to cooperate in obtaining and maintaining all such licenses and approvals without cost to Landlord) Tenant will be responsible for obtaining and maintaining any licenses or approvals that may be required from any governmental body of competent jurisdiction for this aspect of its intended use of the Premises. Failure to obtain any such required licenses or approvals shall not invalidate any portion of the Lease other than those provisions contained within this Section 37. If requested by Landlord, Tenant shall provide copies of all such licenses or approvals, including copies of any forms used in making application for same.

After approval of Tenant's specific plans by Landlord which approval shall not be unreasonably withheld or delayed, Tenant, at its sole cost and expense, shall have the right to erect, maintain and operate radio, microwave or other electronic communications facilities, including radio transmitting and receiving antennas, towers, microwave dishes and supporting structures thereto ("Tenant's Facilities"). In connection therewith and after Landlord's approval of Tenant's specific plans not to be unreasonably withheld, delayed, or conditioned, Tenant shall have the right to install transmission lines connecting Tenant's Facilities to the Building. Tenant's installation, construction and ongoing maintenance shall be performed in a workman like manner, and any damage to the Building, Premises or Property done by Tenant and Tenant's suppliers and/or subcontractors shall be reported to Landlord and shall be repaired by Tenant at its sole cost and expense. Any Tenant Facilities installed hereunder shall meet all applicable city, county, state or other applicable ordinances and/or codes. Tenant shall use reasonable efforts to not interfere with the reception of television, radio or other electronic signals or the operation of any equipment used by owners or tenants of surrounding properties and/or buildings. Tenant has the right to remove all Tenant Facilities at its sole cost and expense on or before expiration of the Lease Term, provided that Tenant shall be responsible for repairing any damage to the Building or the Property resulting from said removal to the reasonable satisfaction of Landlord.

Tenant shall at all times use reasonable efforts to operate Tenant Facilities in a manner that Tenant's transmission will not cause interference with television, radio or other electronic signals to owners, tenants or occupants of surrounding properties lawfully and in compliance with all regulations or requirements of Federal Communications Commission or any other governmental agency of competent jurisdiction. In accordance with and subject to the terms and provisions of Section 17.K. hereof, Tenant shall hold Landlord and Landlord's agents harmless from any and all liabilities arising out of the installation, maintenance or operation of the Tenant Facilities, whether such liabilities arise (i) from interference with radio, television and other electronic reception within the Building; (ii) from interference with the business operation or radio, television or other electronic reception in buildings surrounding or adjoining the Property; (iii) from tower or equipment breakage, collapse or failure;

and (iv) or from any other cause resulting from Tenant's use, maintenance, installation and/or operation of the Tenant Facilities.

**38. Renewal Option**

A. So long as there is no Event of Default hereunder, Tenant shall have two (2) options to renew the terms and conditions of the within Lease for all or any portion of the Premises (provided that such portion of the Premises is not less than two (2) contiguous floors) for two (2) five (5) year periods upon the same terms and conditions contained herein except for the Base Rent (each five year term being referred to as an "extended term"). Said options shall be exercised in writing not less than twelve (12) months prior to the expiration of the initial term hereof or the expiration of the first extended term, as the case may be. In the event of such exercise, the Base Rent for each of said extended terms shall be equal to ninety-five (95%) percent of the Fair Market Rent (as hereinafter defined) as hereinafter defined, provided however in no event shall the annual rent for the first extended term be greater than $20.59/r. s. f. Failure to exercise either or both of said options in the manner and time aforesaid shall render same null and void and of no further or effect. Failure to exercise the first option for the extended term shall render the second option for the extended term null and void and of no further force or effect.

B. In the event the parties are unable after the exercise of good faith efforts to agree upon the Fair Market Rent within thirty (30) days of Tenant's exercise, then Tenant's rights to extend shall be of no further force or effect whatsoever, unless Tenant elects to invoke the three (3) broker method of determining the Fair Market Rent for the applicable extended term. If Tenant invokes such three (3) broker method by written notice to Landlord, the procedure shall be as follows: within ten (10) days after the expiration of the thirty (30) day period during which Landlord and Tenant fail to reach agreement, Tenant must give Landlord written irrevocable notice to exercise the three (3) broker method herein set forth. Within thirty (30) days after notice is received by Landlord, Landlord and Tenant shall each appoint a Qualified Broker as hereinafter defined, who shall be licensed in the State of Arizona and specializes in the evaluation of commercial real estate and office rents in the Phoenix metropolitan area for property of similar age, size, and location and shall have at least ten (10) years experience. Such two (2) Qualified Brokers shall each determine within twenty (20) days after their appointment the Fair Market Rent for the extended term. If the two (2) Qualified Brokers chosen by the parties are unable to agree on the Fair Market Rent, then the two (2) Qualified Brokers, shall, within five (5) days after the conclusion of the twenty (20) day period, in which they were to have reached agreement together appoint a third similarly Qualified Broker. If the parties do not so agree within such five (5) day period,

then either party, on behalf of both, may request appointment of such a Qualified Broker by an officer of the American Arbitration Association in Phoenix (or any successor organization). The third Qualified Broker shall, without being informed of the determinations of the two (2) Qualified Brokers, within ten (10) days after his or her appointment, conduct an independent evaluation of the Premises, and make an independent determination of the Fair Market Rent for the extended term. After completion of its determination of Fair Market Rent for the Premises, the third Qualified Broker shall meet with the other two Qualified Brokers, Landlord and Tenant, and there shall be a simultaneous exchange of the determinations of each Qualified Broker. The annual base rent for each applicable extended period shall equal ninety-five (95%) percent of the average the two (2) determinations that are closest together and such annual Base Rent determined in accordance with the foregoing procedure shall be final, binding, and conclusive on the parties hereto. Landlord and Tenant shall execute an amendment to this lease incorporating such terms. Landlord and Tenant shall each bear the cost of its Qualified Broker and shall equally share the cost of the third Qualified Broker. All of the terms and conditions set forth herein shall be the same during the extended term except for Base Rent.

C. "Fair Market Rent', shall mean the annual fair market rental value (i.e., net of Operating Costs and Taxes) for the Premises for a term coterminous with the time period for which such Fair Market Rent is to be effective, upon all of the other terms of this Lease. In determining such Fair Market Rent, if reference is made to other lease transactions for comparable space, taking into consideration all relevant factors, such comparable space shall be for leases in Class A midrise office buildings in the I-17 corridor, with appropriate adjustments for the rental rates in such transactions to take into consideration differences in any relevant factors, which may include, without limitation, differences in buildings, views, relative floor plan efficiency, tenant improvements (specifically excluding all contributions made by Tenant toward Tenant's and Alterations) the build out period, proposed term of lease, extent of services provided or to be provided, commissions (if not paid) the time the particular rate under consideration became or is to become effective, and any other relevant terms or conditions.

D. In no event shall the Base Rent during either of the extended terms be a minimum rent or "floor rent".

**39. Right of First Refusal**

As long as Tenant is not in default beyond any notice and cure period, Tenant shall have the right of first refusal throughout the Term of this Lease,

including any extensions thereof, to purchase the Property, including the Building, upon the same terms and conditions under which Landlord is willing to sell same to a bona fide third party purchaser. Landlord agrees upon receiving a bona fide third party offer ("offer") to purchase the Property to notify Tenant of the terms thereof and Tenant shall have fifteen (15) business days from receipt of such notice and a certified copy of such offer in which to elect to purchase the Property upon the same terms and conditions as contained in such offer, provided however Tenant shall execute a confidentiality agreement in commercially reasonable form and substance as a condition of receiving a copy of such offer. Should Tenant elect to purchase the Property, Landlord and Tenant agree to execute a commercially reasonable purchase and sale agreement within thirty (30) days after Tenant's election and agree to close on the date set forth in said offer, but no sooner than 120 days after Tenant's election and no later than 180 days after Tenant's election. Failure of Tenant to elect in writing to purchase the Property on such terms and conditions within said fifteen (15) business days shall render the option hereunder null and void and of no further force or effect. If Landlord does not then sell the Property on the same terms (excepting, however, a variation in the purchase price in favor of the purchaser which is not greater than five (5%) percent) and close on the sale with the purchaser identified in the offer within one hundred eighty (180) days of the date of Landlord's receipt of the offer from such purchaser, Tenant's right set forth herein shall continue. It is understood that the rights granted in this Section 39 shall not apply to transfers of title to affiliates of Landlord (i.e., entities owned or controlled by principals of Landlord or its members) or Landlord's principals. In the case of a transfer to an affiliate of Landlord or Landlord's principal, Tenant's rights hereunder shall continue in effect and shall be applicable to any sale of the Property by such affiliate or principal. The rights of Tenant set forth herein may be made in the name of Tenant, its nominee or a Permitted Transferee.

**40. Landlord Restrictions**

Landlord agrees not to enter into any lease in the Building for more than 20,000 rentable square feet to any party whose business includes mutual fund operations or mutual fund transfer operations. As of the date hereof, Tenant has advised Landlord that the following companies engage in such operations: Vanguard, Putnam, Alliance, Janus, Fidelity, and AIM, including their respective successors and assigns (collectively, the "Operators"). Tenant shall have the right throughout the Term of this Lease to amend the foregoing list of Operators to include successors (including those by merger or acquisition) to the foregoing entities and upon such notification, Landlord agrees that it will not enter into any lease within the Building for more than 20,000 rentable square feet to any' Operators identified by Tenant in this Lease or in any notices from time to time. Notwithstanding the foregoing, Tenant is under no obligation to notify Landlord

of (a) any minor name changes, mergers or acquisitions regarding the Operators or (b) those name changes, mergers or acquisitions of Competitors generally known to the public, it being understood that Landlord shall continue to recognize such entities identified in (a) and (b) hereof as Operators hereunder. In addition, this covenant of Landlord (i) shall run with all the land which comprises the Property, (ii) shall be memorialized in a recordable covenant acceptable to Tenant binding all owners of the land within the Property, including their successors and assigns, and (iii) shall be recorded prior to execution of the Lease. The terms and provisions of this Section 40 shall not apply to any other entities except as specifically identified in this Section 40.

**41. Landlord's Lien**

Landlord agrees that any landlord's lien, created by law or otherwise that Landlord may have against Tenant's equipment and/or property located on the Premises shall be subordinate to any purchase money financing Tenant may obtain to acquire such equipment and/or property. Landlord will, within ten (10) days after a request from Tenant, execute and deliver a document in form and substance reasonably acceptable to Landlord, Tenant and Tenant's lender pursuant to which Landlord will subordinate its landlord's lien to such lender's purchase money financing regarding equipment and/or property acquired by Tenant for use on the Premises.

**42. Successors and Assigns**

The covenants and conditions herein contained shall apply to and bind the respective heirs, successors, executors, administrators, and assigns of the parties hereto. The terms "Landlord" and "Tenant" shall include the successors and assigns of either such party.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Lease the day and year first above written.

LANDLORD:

NBS Phoenix III, L. L. C. a Delaware limited liability company,

BY: 18-Chai Corp., an Illinois corporation, its manager

By: /s/ [ILLEGIBLE]

**Vice President**

Hereunto duly authorized

TENANT:

Massachusetts Financial Services Company, a Delaware corporation

By: /s/ JAMES F. BAILEY

**Senior Vice President**

Hereunto duly authorized

**EXHIBIT 10.75**

**PURCHASE AND SALE AGREEMENT FOR THE ISS ATLANTA BUILDINGS**

**AGREEMENT FOR THE PURCHASE AND SALE OF PROPERTY**

THIS AGREEMENT FOR THE PURCHASE AND SALE OF PROPERTY (the "Agreement"), is made and entered into as of the 16th day of May, 2002, by and between MOUNT VERNON PLACE PARTNERS, LLC, a Georgia limited liability company (hereinafter referred to as "Seller") and WELLS CAPITAL, INC., a Georgia corporation (hereinafter referred to as "Purchaser").

**W I T N E S S E T H:**

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property (as hereinafter defined) subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, the mutual agreements contained herein, the sum of Ten and No/100 Dollars ($10.00) in hand paid by Purchaser to Seller at and before the sealing and delivery of these presents and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by the parties hereto, the parties hereto do hereby covenant and agree as follows:

1. *Definitions and Meanings*. In addition to any other terms whose definitions are fixed and defined by this Agreement, each of the following defined terms, when used in this Agreement with an initial capital letter or letters, shall have the meaning ascribed thereto in this Paragraph 1:

"Actual Remaining Space Rent Credit" means an amount equal to the Base Monthly Rental and additional rental (attributable to "Operating Expense Differential") that would be due and payable by Subtenant with respect to the Remaining Space under the Sublease for the period from the date of Closing through July 31, 2002, computed as if the "actual fourth target Commencement Date" under the Sublease occurred on the date of Closing instead of August 1, 2002, but taking into account that certain of the Operating Expenses would not be incurred with respect to the Remaining Space if and to the extent the Remaining Space is not occupied prior to July 31, 2002. Purchaser and Seller acknowledge that the Actual Remaining Space Rent Credit will not be known until the actual "Operating Expenses" under the Sublease for 2002 are determined by Purchaser and Purchaser delivers the "Statement of Actual Adjustment" as required by Section 8 of the Sublease.

"Agreement" means this Agreement for the Purchase and Sale of Property, together with all exhibits attached hereto and made a part hereof.

"Architect" means Warner, Summers, Ditzel, Benefield, Ward & Associates, Inc.

"As-Built Survey" has the meaning ascribed thereto in Paragraph 10(m) of this Agreement.

"Bond Purchase Agreement" means that certain Bond Purchase Agreement between Issuer and Seller dated as of September 1, 2000, relating to Taxable Revenue Bonds (Internet Security Systems, Inc. Project), Series 2000A.

"Bond Transfer Opinion" means an opinion from Seller's counsel authorized to practice law in the State of Georgia and addressed to SunTrust Bank, as trustee under the Indenture, to the effect that neither the sale nor the transfer of the Series 2000A Bonds to Purchaser pursuant to this Agreement will result in a violation of the Securities Act of 1933 or other applicable securities laws.

"Boundary Line Agreement" means that certain Boundary Line Agreement among Issuer, Seller and Spring Creek Partners, LLC and joined in by Subtenant, Guarantor, Trustee and the holder of any deed to secure debt with respect to the Real Estate and the 6405 Property in the form attached hereto as *Exhibit "BB"* and by reference made a part hereof.

"Broker" means L. J. Melody & Company.

"Building 3 Lease" means that certain Mount Vernon Place (Building 3) Lease Agreement between Spring Creek Partners, LLC, as landlord, and Subtenant, as tenant, dated as of , 2001 (undated).

"Business Days" means each day Monday through Friday, exclusive of any recognized United States holiday or a day on which banks in New York, New York are permitted or required to be closed for business.

"Earnest Money" means the amounts deposited by the Purchaser with the Escrow Agent as Earnest Money as provided in Paragraph 3 hereof.

"Effective Date" means the date on which this Agreement is duly executed by both Seller and Purchaser and a fully executed original counterpart of this Agreement has been received by both Seller and Purchaser, and said date shall be inserted in the first paragraph on page 1 hereof.

"Environmental Laws" means the following, as the same may have been amended: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq*.; the Resource Conservation Act of 1976, 42 U.S.C. § 6921, *et seq*.; the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq*.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq*.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq*.; the Federal Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq*.; the Clean Air Act, 42 U.S.C. § 7401, *et seq*.; and any other legislation or ordinance of any Governmental Authority identified by its terms as pertaining to hazardous substances or waste.

"Environmental Report" means the Report of Phase I Environmental Site Assessment prepared for The Griffin Company by Nova Engineering and Environmental, Inc. dated May 21, 1999.

"Escrow Agent" means First American Title Insurance Company.

"Estimated Remaining Space Rent Credit" means an amount equal to $1,264.14 for each day from and after the date of Closing through and including July 31, 2002.

"Existing Loan Documents" means the documents and instruments evidencing or securing the construction loan made to Seller by First Union National Bank with respect to the Property.

"Fifth Sublease Amendment" means that certain Fifth Amendment to Lease Agreement to be executed by Seller and Subtenant with respect to the Sublease, as provided in Paragraph 7(h) hereof, such amendment to be in the form attached hereto as *Exhibit "F"* and incorporated herein by this reference.

"Governmental Authority" means any federal, state, or municipal government, branch, authority, district, agency, court, tribunal, department, officer, official, board, commission or other instrumentality having jurisdiction with respect to the Property or the matter in issue, as the case may be.

"Guarantor" means Internet Security Systems, Inc., a Delaware corporation, formerly known as ISS Group, Inc.

"Guarantor Estoppel Certificate" means that certain Estoppel Certificate from Guarantor in the form attached hereto as *Exhibit "H"* and by this reference made a part hereof.

"Hazardous Substances" means petroleum, including crude oil or any fraction thereof, asbestos, polychlorinated biphenyls, and any other substance identified as hazardous substances or hazardous materials in the Environmental Laws.

"Home Office Payment Agreement" means that certain Home Office Payment Agreement by and among SunTrust Bank, Issuer and Seller dated as of September 1, 2000.

"Improvements" means all buildings, structures, and improvements situated on the Land, including, without limitation, those certain two (2) class A office buildings containing approximately 238,600 square feet of rentable floor area and connected by an elevated 2-story bridge, all parking areas and other amenities located on the Land, and all apparatus, elevators, built–in appliances, equipment, pumps, machinery, plumbing, heating, air conditioning, and electrical and other fixtures located on the Land (but excluding any such apparatus, equipment and machinery owned by the Issuer or the Subtenant).

"Indenture" means that certain Indenture of Trust between the Issuer and SunTrust Bank and dated as of September 1, 2000.

"Insignia Commission Agreement" means that certain Registration and Commission Agreement between Seller and Insignia/ESG, Inc. dated November 29, 1999.

"Inspection Period" means the period from the Effective Date through the date which is thirty (30) days after the Effective Date.

"Intangible Personal Property" means all intangible personal property owned by Seller and relating to or used in connection with the Property, including, without limitation, all (i) tradenames, (ii) logos, (iii) warranties and guaranties given in connection with the construction and repair of the Improvements or the purchase of any Personal Property, and (iv) certificates of occupancy (or the local equivalents), permits, licenses, approvals and authorizations issued by any Governmental Authority, and also including the Plans and Specifications, irrespective of whether same are considered "intangible" property.

"Issuer" means the Development Authority of Fulton County.

"Land" means that certain tract or parcel of land containing approximately 3.9 acres, located in Land Lot 35 of the 17th District of Fulton County, Georgia, and being described in *Exhibit "A"* attached hereto and by this reference made a part hereof, together with all rights, privileges and easements appurtenant to such tract or parcel of land, including all water rights, mineral rights, development rights, air rights, reversions or other appurtenances, and all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road, alley or right-of-way, open or proposed, adjacent to or abutting such tract or parcel of land.

"Lease" means that certain Lease Agreement between Issuer and Seller dated as of September 1, 2000, filed for record on December 14, 2000, recorded in Deed Book 29773, page 621, Fulton County, Georgia records, as amended by Amendment to Lease Agreement between Issuer and Seller dated as of December 20, 2001.

"Leasehold Estate" means that certain Leasehold Estate in and to the Land and Improvements created and established by the Lease.

"Leasing Agents" means Insignia/ESG, Inc. and The Griffin Company.

"Letter of Credit" shall mean that certain Letter of Credit issued by Wachovia Bank, N.A. in the original stated amount of $10,000,000.00 and deposited by Subtenant with First Union National Bank, as the beneficiary thereof.

"Minimum Survey Requirements" means the "minimum standard detail requirements for ALTA/ACSM land title surveys" jointly established and adopted by ALTA, ACSM and NSPS in 1999 and the "accuracy standards for land title surveys" (as adopted by ALTA, ACSM and NSPS) of an urban survey.

"Payment and Indemnity Agreement" means that certain Payment and Indemnity Agreement by and among Issuer, SunTrust Bank, Seller and Subtenant dated as of September 1, 2000, relating to Taxable Revenue Bonds (Internet Security Systems, Inc. Project).

"Permitted Exceptions" means the exceptions listed on *Exhibit "J"* attached hereto and by reference made a part hereof, the Boundary Line Agreement, the Reciprocal Easement Agreement, and any Title Objections to which Purchaser fails to object or which Purchaser waives pursuant to Paragraph 8 hereof.

"Personal Property" means all tangible personal property owned by Seller and now, or hereafter, located upon the Land or used in connection with the ownership, operation, management or maintenance of the Property, including, without limitation, all machinery, apparatus, equipment, engines, motors, appliances, office equipment, screens, art, furniture, coverings, blinds, curtains, vehicles, accessories, and the property described on *Exhibit "B"* attached hereto and by reference made a part hereof.

"Plans and Specifications" means those certain working drawings, plans and specification described on *Exhibit "K"* attached hereto and by reference made a part hereof.

"Project Architect Certificate" means that certain Project Architect Certificate in the form attached hereto as *Exhibit "I"* and incorporated herein by reference.

"Property" means, collectively, the Leasehold Estate, the Personal Property, the Intangible Personal Property, and all of Seller's right, title and interest in and to the Sublease, the Fifth Sublease Amendment, the Sublease Guaranty, the Series 2000A Bonds, the Bond Purchase Agreement, the Payment and Indemnity Agreement, and the Home Office Payment Agreement.

"Purchase Price" means the amount which Purchaser shall pay to consummate the purchase and sale of the Property as provided in Paragraph 4 of this Agreement.

"Real Estate" means, collectively, the Land and Improvements.

"Reciprocal Easement Agreement" means the Reciprocal Easement Agreement among Seller, Issuer, Spring Creek Partners, LLC and joined in by Trustee, Tenant, Guarantor and the holders of any deeds to secure debt with respect to the Real Estate and the 6405 Property in form and substance as mutually agreed upon by Seller and Purchaser prior to the expiration of the Inspection Period.

"Remaining Space" means that certain rentable area on the fifth (5th) floor of the "Phase II Building" (as defined in the Sublease) comprising 23,100 rentable square feet as to which Subtenant is not obligated to pay full Base Monthly Rental at the rates set forth on *Exhibit "L"* attached hereto until the actual fourth target Commencement Date under the Sublease, which date has been represented by Seller to Purchaser to be August 1, 2002.

"Second Lease Amendment" means that certain Second Amendment to Lease Agreement to be executed by Issuer and Seller with respect to the Lease, as provided in Paragraph 7(g) hereof, such amendment to be in the form attached hereto as *Exhibit "O"* and incorporated herein by reference.

"Series 2000A Bonds" means, collectively, (i) that certain Development Authority of Fulton County Taxable Revenue Bond (Internet Security Systems, Inc. Project), Series 2000A, issued by Issuer, dated as of September 14, 2000, Numbered AR-1, in the stated amount of Twenty-Six Million and No/100 Dollars ($26,000,000.00), and (ii) that certain Development Authority of Fulton County Taxable Revenue Bond (Internet Security Systems, Inc. Project), Series 2000A, issued by Issuer, dated as of December 20, 2001, Numbered AR-2, in the stated amount of Six Million Five Hundred Thousand and No/100 Dollars ($6,500,000.00).

"Service Contracts" means the contracts entered into by or on behalf of Seller for the maintenance and operation of the Property, as listed on *Exhibit "M"* attached hereto and by reference made a part hereof.

"6405 Property" means that certain real property described in *Exhibit "N"* attached hereto and by reference made a part hereof and being known as 6405 Barfield Road, Atlanta, Georgia, together with the improvements situated thereon and all appurtenances thereto.

"Sublease" means that certain Lease Agreement between Seller and Subtenant dated as of November 8, 1999, as amended by First Amendment to Lease Agreement between Seller and Subtenant, dated December 7, 1999, as further amended by Second Amendment to Lease Agreement between Seller and Subtenant, dated as of November 27, 2000, as further amended by Third Amendment to Lease Agreement between Seller and Subtenant, dated February , 2001, and as further amended by Fourth Amendment to Lease Agreement between Seller and Subtenant, dated August 17, 2001.

"Sublease Guaranty" means that certain Guaranty Agreement executed by Guarantor in favor of Seller as "Landlord" under the Sublease, dated November 8, 1999, as reaffirmed by Guarantor's joinder in that certain First Amendment to Lease Agreement dated December 7, 1999, as further reaffirmed by Guarantor's joinder in that certain Second Amendment to Lease Agreement dated as of November 27, 2000, as further reaffirmed by Guarantor's joinder in that certain Third Amendment to Lease Agreement dated as of February , 2001, and as further reaffirmed by Guarantor's joinder in that certain Fourth Amendment to Lease Agreement dated as of August 17, 2001.

"Subtenant" means Internet Security Systems, Inc., a Georgia corporation.

"Subtenant Estoppel Certificate" means that certain Estoppel Certificate with respect to the Sublease in the form attached hereto as *Exhibit "G"* and by this reference made a part hereof.

"Survey Requirements" means the Minimum Survey Requirements, plus the following items, whether or not covered by the Minimum Survey Requirements:

(i) The political subdivision, county, and such other notations as will accurately describe the property surveyed shall be shown.

(ii) All courses and distances of the boundaries of the Land shall be shown.

(iii) The location of all Improvements (including measured dimensions) on the Land with the dimensions in relation to lot and building lines shall be shown. If any applicable restrictions, recorded plats, or zoning ordinances require a building to be set back specified distances from streets or property lines, the As–Built Survey must show measured distances from said building to said streets or lines.

(iv) The location of all rights–of–way, water courses, drains, sewers, utility easements, driveways, or roads which serve the Real Estate or to which the Real Estate is subject shall be shown.

(v) The names and widths of streets with the distance from the nearest corner to the beginning point of Land surveyed shall be shown.

(vi) The total acreage or square foot area of the Land and the location and number of paved parking spaces shall be shown.

(vii) The names of adjoining owners on all sides of the Land shall be shown.

(viii) The surveyor shall certify that the real property, as shown and described in the As–Built Survey, does not constitute an illegal subdivision of land under applicable county or city ordinances.

(ix) The surveyor shall certify as to whether or not the Land lies within a flood zone as determined by the United States Department of Housing and Urban Development. If the Land lies within a flood zone, the certification should reflect the flood zone classification

"Tenant Improvements" means all improvements constructed and to be constructed by the "Landlord" under the Sublease on or within the Building or on the Land (including without limitation, emergency generators as required by the Sublease) for use or operation by the Subtenant under or pursuant to the Sublease.

"Title Company" means First American Title Insurance Company.

"Title Objection" and "Title Objections" mean any mortgages, deeds of trust, deeds to secure debt, liens, financing statements, security interests, easements, leases, restrictive covenants, agreements, options, claims, clouds, encroachments, rights, taxes, assessments, mechanics' or materialmen's liens (inchoate or perfected), liens for federal or state estate or inheritance taxes and other encumbrances of any nature whatsoever, whether existing of record or otherwise, together with any and all matters of any kind or description, including, without limitation, matters of survey and any litigation or other proceedings affecting Seller and which affect title to the Real Estate or the Leasehold Estate or the right, power and authority of the Seller to convey good and marketable title to the Leasehold Estate to Purchaser in accordance with the terms of this Agreement, other than the Permitted Exceptions listed on *Exhibit "J"* attached hereto and by reference made a part hereof.

"Trustee" means SunTrust Bank.

"Warranties" means all warranties and guaranties relating to the construction, operation, maintenance, repair, and use of the Improvements and Personal Property.

2. *Purchase and Sale of Property*. Subject to and in accordance with the terms and provisions of this Agreement, Seller hereby agrees to sell the Property to Purchaser and Purchaser hereby agrees to purchase the Property from Seller.

3. *Earnest Money*. Within two (2) business days after the full execution of this Agreement, Purchaser shall deliver to Escrow Agent, whose offices are at 5775 Glenridge Drive, N.E., Suite A-240, Atlanta, Georgia 30308, either by Purchaser's check, payable to Escrow Agent, or by wire transfer of federal funds to Escrow Agent's account, the sum of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) (the "Earnest Money"), which Earnest Money shall be held and disbursed by Escrow Agent pursuant to a written Escrow Agreement, the form of which is attached hereto as *Exhibit "C"* and by this reference made a part hereof. The Earnest Money shall be paid by Escrow Agent to Seller at Closing and shall be applied as a credit to the Purchase Price. All interest and other income from time to time earned on the Earnest Money shall be deemed a part of the Earnest Money for all purposes of this Agreement.

4. *Purchase Price*. Subject to adjustment and credits as otherwise specified in this Agreement, the purchase price (the "Purchase Price") to be paid by Purchaser to Seller for the Property shall be Forty Million Five Hundred Thousand and No/100 Dollars ($40,500,000.00). The Purchase Price shall be paid by Purchaser to Seller at the Closing by cashier's check or by wire transfer of immediately available federal funds, less the amount of Earnest Money and subject to prorations, adjustments, and credits as otherwise specified in this Agreement.

The amount of the Purchase Price has been determined by Seller and Purchaser based upon (i) the accuracy of the representations and warranties of Seller set forth in Paragraph 9(f) hereof and (ii) the assumption that the annual Base Monthly Rental (as defined in the Lease) and the Net Rental (as defined in the Lease) payable by the Subtenant under the Sublease from the date of the Closing and thereafter during the initial term of the Sublease shall be in the amounts set forth on *Exhibit "L"* attached hereto and by reference made a part hereof. Seller has advised Purchaser that

Subtenant is not obligated to pay full Base Monthly Rental at the rates set forth on *Exhibit "L"* attached hereto with respect to the Remaining Space until August 1, 2002. Accordingly, Seller and Purchaser have made provision for the payment by Seller to Purchaser of an amount equal to the Actual Remaining Space Rent Credit as hereinafter provided.

The amount of the Purchase Price has also been determined based on the assumption that the entire "Landlord's Allowance for Tenant Costs" (as defined in the Sublease) has been fully funded by Seller, that all of Landlord's obligations with respect to the construction and installation of the Tenant Improvements have been fully performed, and that all of the Tenant Improvements which Landlord is required to construct and install under the Sublease have been completed in accordance with the approved Drawings and Specifications with respect thereto and accepted by Subtenant, as evidenced by the execution and delivery of a Tenant Acceptance Agreement with respect thereto as provided in the Sublease, and a permanent certificate of occupancy or its equivalent has been issued by the applicable governmental authority with respect to the applicable such space in which Tenant Improvements have been constructed and installed, and that Landlord has received all Warranties issued and to be issued with respect to such Tenant Improvements and a final contractor's affidavit and lien waiver from all contractors and subcontractors performing work or supplying labor or materials with respect to such Tenant Improvements. If (and only if) all of the foregoing conditions have not been satisfied and/or completed as of the date of Closing, (i) Seller shall deposit with Title Company in escrow, such portion of the Purchase Price equal to one hundred fifty percent (150%) of the costs and expenses reasonably estimated by Seller and Purchaser of satisfying and/or completing such conditions, and (ii) Seller and Purchaser shall enter into a construction management agreement at Closing pursuant to which Seller shall agree to construct, install and complete all such Tenant Improvements after the Closing to the full extent of the obligations and responsibilities of the Landlord under the Sublease with respect to such Tenant Improvements. The amount of the Purchase Price paid by Seller into escrow at Closing shall be paid to Seller by the Title Company upon the satisfaction and completion of the foregoing conditions. The form of the escrow agreement and construction management agreement described in this paragraph shall be mutually agreed upon by Seller and Purchaser prior to the expiration of the Inspection Period.

5. *Purchaser's Inspection and Review Rights.* Commencing on the Effective Date of this Agreement and subject to the rights of the Subtenant, upon giving at least three (3) Business Days advance notice to Seller's property manager, Purchaser and its agents, engineers, or representatives, with Seller's reasonable, good faith cooperation, shall have the privilege of going upon the Real Estate as needed to inspect, examine, test, and survey the Real Estate at all reasonable times and from time to time. Such privilege shall include the right to make borings and other tests in specific locations reasonably approved by Seller to obtain information necessary to determine surface and subsurface conditions, provided that such activities do not materially interfere with the rights of the Subtenant or the ongoing operation of the Real Estate. Purchaser shall maintain at all times during its entry upon the Real Estate, commercial general liability insurance with limits of not less than Five Million and No/100 Dollars ($5,000,000.00) per occurrence, combined single limit. Such policy of insurance shall name Seller as an additional insured and such policy shall be primary with respect to the activities of Purchaser and its agents, engineers or representatives at the Real Estate, whether or not Seller holds other policies of

insurance. A certificate issued by the insurance carrier of such policy shall be delivered to Seller prior to entry upon the Real Estate by Purchaser or its agents, engineers or representatives, for the purpose of performing any tests or inspections. Purchaser hereby agrees to hold Seller harmless from any liens, claims, liabilities, and damages incurred through the exercise of such privilege (but excluding any liability arising out of the existing environmental condition of the Real Estate or the presence of Hazardous Substances thereon and excluding any claims arising out of a release of existing or in-place Hazardous Substances on or under the Real Estate), and Purchaser further agrees to repair any damage to the Real Estate caused by the exercise of such privilege (excluding any damage arising out of a release of existing or in-place Hazardous Substances on or under the Real Estate). The obligations of Purchaser under the preceding sentence shall survive the Closing or any termination of this Agreement.

Seller has heretofore provided to Purchaser true and complete copies of the Lease, the Sublease, the Sublease Guaranty, the Series 2000A Bonds, the Bond Purchase Agreement, the Payment and Indemnity Agreement, the Home Office Payment Agreement, and the reports, documents and instruments described on *Exhibit "D"* attached hereto and by reference made a part hereof. Within two (2) business days after the effective date of this Agreement, Seller shall deliver to Purchaser true and complete copies of the reports, documents and instruments relating to the Property of the nature described on *Exhibit "E"* attached hereto and by reference made a part hereof. In addition to the foregoing, at all reasonable times prior to the Closing, Seller shall make available to Purchaser, or Purchaser's agents and representatives, at Seller's office in Atlanta, Georgia, and for copying at Purchaser's expense, all other books, records, and files relating to the ownership and operation of the Property in the possession or control of Seller or Seller's managing agent. Seller further agrees to assist and cooperate with Purchaser in good faith in coming to a thorough understanding of the books, records, and files relating to the Property.

6. *Special Condition to Closing*. Subject to the requirements, obligations and limitations set forth in Paragraph 5 hereof, Purchaser shall have until and through the expiration of the Inspection Period to make investigations, examinations, inspections, market studies, feasibility studies, lease reviews, and tests relating to the Property and the operation thereof in order to determine, in Purchaser's sole opinion and discretion, the suitability of the Property for acquisition by Purchaser. Purchaser shall have the right to terminate this Agreement at any time prior to the expiration of the Inspection Period by giving written notice to Seller of such election to terminate. In the event Purchaser so elects to terminate this Agreement, Escrow Agent shall pay to Seller from the Earnest Money the sum of Twenty–Five Dollars ($25.00) and the balance of the Earnest Money shall be refunded by Escrow Agent to Purchaser, whereupon, except as expressly provided to the contrary in this Agreement, no party hereto shall have any other or further rights or obligations under this Agreement. Seller acknowledges that the sum of $25.00 is good and adequate consideration for the termination rights granted to Purchaser hereunder.

If the purchase and sale of the Property contemplated in this Agreement fails to close for any reason whatsoever, Purchaser agrees to return to Seller all reports regarding the physical condition of the Real Estate, including the mechanical systems thereof, the plans and specifications with respect to the Improvements, and all reports regarding the environmental condition of the Real Estate, furnished to Purchaser by Seller or its agents or representatives. Furthermore, if the

purchase and sale of the Property contemplated in this Agreement fails to close for any reason other than the default by Seller hereunder, Purchaser shall also deliver to Seller copies of all reports and surveys relating to the physical and environmental condition of the Property furnished to Purchaser by third parties; provided, however, that delivery of such copies shall be without warranty or representation whatsoever, express or implied, including, without limitation, any warranty or representation as to ownership, accuracy, adequacy or completeness thereof or otherwise.

7. *General Conditions Precedent to Purchaser's Obligations Regarding the Closing*. In addition to the conditions to Purchaser's obligations set forth in Paragraph 5 above, the obligations and liabilities of Purchaser hereunder shall in all respects be conditioned upon the satisfaction of each of the following conditions prior to or simultaneously with the Closing, any of which may be waived by written notice from Purchaser to Seller:

(a) Seller has complied with and otherwise performed each of the covenants and obligations of Seller set forth in this Agreement.

(b) All representations and warranties of Seller as set forth in this Agreement shall be in all respects true and correct as of the date made and as of Closing (and as if made without limitation or qualification as to Seller's knowledge).

(c) Except for the Boundary Line Agreement, the Second Lease Amendment, the Fifth Sublease Amendment, and the Reciprocal Easement Agreement, there has been no adverse change to the title to the Property after the Effective Date of this Agreement which has not been cured and the Title Company is prepared to issue to Purchaser upon the Closing a leasehold title insurance policy with respect to the Leasehold Estate which shall include in Schedule B thereof only the Permitted Exceptions (as hereinafter defined).

(d) The Subtenant shall not be in material default (without regard to the expiration of any applicable cure period provided in the Sublease with Subtenant) under the terms of the Sublease as of the date of Closing.

(e) Seller shall obtain and deliver to Purchaser prior to Closing a fully completed Subtenant Estoppel Certificate with respect to the Sublease duly executed by the Subtenant thereunder. The Subtenant Estoppel Certificate shall be executed as of a date not more than fifteen (15) days prior to Closing.

(f) Seller shall obtain and deliver to Purchaser prior to Closing a fully completed Guarantor Estoppel Certificate duly executed by Guarantor. The Guarantor Estoppel Certificate shall be executed as of a date not more than fifteen (15) days prior to Closing.

(g) Seller shall, prior to Closing, cause to be duly and fully executed by all parties thereto and rush recorded in the Office of the Clerk of the Superior Court of Fulton County, Georgia, the Boundary Line Agreement and the Second Lease Amendment, and

shall prior to Closing deliver to Purchaser a photocopy of the rush recorded originals showing the recording information.

(h) Seller shall, prior to Closing, obtain an amendment to the Sublease substantially in the form attached hereto as *Exhibit "F"* and by reference made a part hereof, (i.e., the Fifth Sublease Amendment) duly executed by Seller, Subtenant and Guarantor.

(i) Seller shall, prior to Closing, obtain an amendment and restatement to the Agreement Regarding Letter of Credit substantially in the form of the Assignment, Assumption, Amendment and Restatement of Agreement Regarding Letter of Credit attached hereto as *Exhibit "W"* and by reference made a part hereof.

(j) Seller shall, prior to Closing, cause to be fully executed and rush recorded in the Office of the Clerk of the Superior Court of Fulton County, Georgia, that certain Reciprocal Easement Agreement in the form attached hereto as *Exhibit "I"* and by reference made a part hereof, and shall prior to Closing deliver to Purchaser a photocopy of the rush recorded original showing the recording information.

(k) Seller shall, prior to Closing, obtain a certificate from the Architect substantially in the form attached hereto as *Exhibit "I"* and incorporated herein by reference.

(l) Seller shall, prior to Closing, obtain an amendment to the Building 3 Lease substantially in the form attached hereto as *Exhibit "CC"* and by reference made a part hereof, duly executed by Spring Creek Partners, LLC (the owner of the 6405 Property), Subtenant and Guarantor.

(m) Seller shall, prior to Closing, cause to be fully executed and rush recorded in the Office of the Clerk of the Superior Court of Fulton County, a right-of-way deed from the Development Authority of Fulton County to Fulton County, Georgia, and joined in by Seller as the holder of the Leasehold Estate under the Lease, establishing the western boundary line of the Land as being located and described along the easterly new right-of-way line of Barfield Road as described in *Exhibit "A"* attached hereto and made a part hereof, and shall prior to Closing deliver to Purchaser a photocopy of such rush-recorded original showing the recording information.

(n) Seller shall, at or prior to Closing, deliver to Purchaser evidence satisfactory to Purchaser and Title Insurer that no drainage of surface or other water from the Real Estate across the land of others is required, or if required, that such drainage is provided for through public easements or private easements described herein as a part of the Land, and that sanitary sewer service to the Real Estate is provided by publicly dedicated easements or rights-of-way available at the boundary line(s) of the Land, or through appurtenant private easements described herein as a part of the Land that connect to a publicly dedicated easement or right-of-way.

In the event Purchaser shall terminate this Agreement as a result of the non-satisfaction of any of the foregoing conditions (other than the failure of any such condition due to a breach or default hereunder by Purchaser or Seller, in which case the provision of Paragraphs 16 or 17, as applicable, shall control), Purchaser shall be entitled to an immediate return of the Earnest Money from Escrow Agent and no party shall have any other rights or obligations under this Agreement, except for such rights and obligations which expressly survive the termination of this Agreement.

8. *Title and Survey*. Good and marketable record title to the Leasehold Estate shall be conveyed by Seller to Purchaser by Assignment and Assumption of Lease Agreement, free and clear of all liens, easements, restrictions, and encumbrances whatsoever, excepting only the Permitted Exceptions. Prior to the expiration of the Inspection Period, Purchaser shall cause an examination to be made of Seller's title to the Leasehold Estate and Purchaser shall deliver to Seller written notice of any objections to Seller's title to the Leasehold Estate, other than the Permitted Exceptions, and any objections to the initial As-Built Survey delivered by Seller to Purchaser pursuant to Paragraph 10(m) hereof. In addition, Purchaser may, prior to Closing, re-examine Seller's title to the Leasehold Estate and any revisions to the As-Built Survey and deliver to Seller any objections, other than the Permitted Exceptions, to Seller's title to the Leasehold Estate which are recorded subsequent to the effective date of Purchaser's initial examination of Seller's title to the Leasehold Estate and/or matters of survey disclosed on any subsequent revision to the As-Built Survey. In the event either of the aforesaid title examinations shows any liens, encumbrances or defects, other than the Permitted Exceptions, or in the event that the As-Built Survey (or any revision thereof) discloses any adverse matters of survey, Purchaser shall give written notice to Seller of any and all such defects and objections, and Seller shall then have three (3) days after receipt of such notice of title and/or survey defects or objections from Purchaser to advise Purchaser in writing which of such title and/or survey defects or objections Seller does not intend to satisfy or cure; provided, however, Seller hereby agrees that Seller shall satisfy or cure at or prior to Closing any such defects or objections consisting of taxes, mortgages, deeds of trust, mechanic's or materialmen's liens or other such monetary encumbrances (including the Existing Loan Documents), and any title and/or survey defects or objections created by Seller in violation of this Agreement. In the event Seller fails to give such written advice to Purchaser within such three (3) day period, Seller shall be deemed to have agreed to satisfy or cure all such defects or objections set forth in Purchaser's notice. Seller shall have until Closing to satisfy or cure all such defects and objections which Seller agreed (or is deemed to have agreed) to satisfy or cure as provided above. If Seller fails or refuses to cure any defects and objections which are required herein to be satisfied or cured by Seller prior to the Closing, then, at the option of Purchaser, (i) Purchaser may terminate this Agreement by written notice to Seller and Escrow Agent, in which event the Earnest Money shall be immediately refunded to Purchaser, and Purchaser and Seller shall have no further rights, obligations or liabilities hereunder, except for the obligations of the parties which are herein expressly stated to survive the termination of this Agreement, (ii) if any such defect or objection is one that Seller agreed (or is deemed to have agreed) to satisfy or cure as provided above, Purchaser may cure such defect or objection, in which event the Purchase Price payable pursuant to Paragraph 3 hereof shall be reduced by an amount equal to the actual cost and expense incurred by Purchaser in connection with the curing of such defect or objection, (iii) Purchaser may accept title to the Leasehold Estate subject to such defects and objections, or (iv) any combination of items (ii) and (iii). In the event Purchaser elects to cure any such defects and objections pursuant to item (ii)

hereof, Purchaser at its option, upon giving notice to Seller, may extend the date of Closing until the curing of such defects or objections or thirty (30) days from and after the previously scheduled date of Closing, whichever shall first occur. If any defect or objection shall not have been cured within such period, Purchaser may exercise its option under either item (i) or (iii) hereof.

9. *Representations and Warranties of Seller*. Seller hereby makes the following representations and warranties to Purchaser, each of which shall be deemed material:

(a) *Lease and Sublease*. The Lease and Sublease are the only leases in effect relating to the Real Estate. Seller has delivered to Purchaser a complete and accurate copy of each of the Lease and the Sublease. Seller is the "lessee" under the Lease and has not transferred, assigned, pledged, or hypothecated its rights and interests under the Lease to any person or entity whatsoever. Seller is the "landlord" under the Sublease and owns unencumbered legal and beneficial title to the Sublease and the rents and other income thereunder, subject only to the Existing Loan Documents, which shall be paid and cancelled at the time of the Closing.

(b) *Lease—Default*. Seller has not received any notice of termination or default under the Lease, (ii) to the best of Seller's knowledge, there are no existing or uncured defaults by Seller under the Lease, and (iii) to the best of Seller's knowledge, there are no events which with passage of time or notice, or both, would constitute a default by Seller under the Lease.

(c) *Lease—Commissions*. No rental, lease or other commissions with respect to the Lease are payable to Seller, to any partner or member of Seller, any party affiliated with or related to Seller or any partner or member of Seller, or to any third party whatsoever.

(d) *Sublease—Assignment*. To the best of Seller's knowledge, the Subtenant has not assigned its interest in the Sublease or sublet any portion of the premises leased to the Subtenant under its Sublease.

(e) *Sublease—Default*. (i) Seller has not received any notice of termination or default under the Sublease, (ii) to the best of Seller's knowledge, there are no existing or uncured defaults by Seller, by any predecessor landlord, or by Subtenant under the Sublease, (iii) to the best of Seller's knowledge, there are no events which with passage of time or notice, or both, would constitute a default by Seller or by Subtenant, and Seller has complied with each and every undertaking, covenant, and obligation of Seller under the Sublease, (iv) Subtenant has not asserted any defense, set–off, or counterclaim with respect to its tenancy or its obligation to pay rent, additional rent, or other charges pursuant to its Sublease, and (v) to the best of Seller's knowledge, Subtenant is not using its premises in violation of any restrictive covenant applicable to the Property.

(f) *Sublease—Operating Expenses and Rent*. For purposes of this subparagraph (f), the terms "Commencement Date", "Operating Expenses", "Premises", "Operating Expense Base Year", "Building", "Net Rental", "Lease Year", "Remaining Rental" and

"Base Monthly Rent" shall have the same respective meanings ascribed to such terms in the Sublease. The Commencement Date under the Sublease occurred on November 18, 2000; the Premises are comprised of a total of at least 238,600 rentable square feet; the Operating Expenses per rentable square foot of the Premises for the first twelve (12) months of the term of the Lease was equal to or less than $4.87; the Operating Expenses for the Operating Expense Base Year under the Sublease, as adjusted and grossed up as provided in the Sublease, were $4.87 per rentable square foot of the Building; the total Operating Expenses for the Operating Expense Base Year under the Sublease (as adjusted and grossed up as provided in the Sublease) were equal to or less than $1,161,982.00; the total amount of taxes which are includable in Operating Expenses (as defined in the Sublease) ("Taxes") for the Operating Expense Base Year (as defined in the Lease) (before any adjustment thereto as provided in the Sublease) were in the amount of $37,566.50; the Net Rental annual rate under the Sublease for the second Lease Year under the Sublease (12/01/01 through 11/30/02) is $16.5845 per square foot of rentable area; the Remaining Rental annual rate under the Sublease is $4.87 per square foot of rentable area; the total annual rate of Base Monthly Rental for the second Lease Year under the Lease (12/01/01 through 11/30/02) is $21.4545 per square foot of rentable area; the actual fourth target Commencement Date under the Sublease (relating to the Remaining Space) is August 1, 2002; Seller has provided to Tenant the Statement(s) of Actual Adjustment (as defined in the Sublease) for calendar year 2000 (partial year) and calendar year 2001, and all adjustments required to have been made between Seller and Subtenant as a result of each such Statement of Actual Adjustment have been made, and Subtenant has unconditionally approved each such Statement of Actual Adjustment; and Seller has paid or reimbursed to Subtenant the amount by which Subtenant's estimated payments to Seller for Taxes for the Operating Expense Base Year exceeded the amount of Taxes actually incurred for the Operating Expense Base Year.

(g) *Sublease—Rents and Special Consideration*. The Subtenant: (i) has not prepaid rent for more than the current month under the Subtenant's Sublease, (ii) except for the deferral of commencement of Monthly Base Rent with respect to the Remaining Space, is not entitled to receive any rent concession (not already taken) in connection with its tenancy under its Sublease, (iii) is not entitled to any special work (not yet performed) or consideration (not yet given) in connection with its tenancy, and (iv) does not have any deed, option, or other evidence of any right or interest in or to the Real Estate, except for the rights of Subtenant under Special Stipulation 8 of the Sublease relating to Tenant's profit participation in the sale, refinancing and net cash flow of the Real Estate (which shall be satisfied in full at or prior to the Closing) and except for such Subtenant's tenancy as evidenced by the express terms of the Subtenant's Sublease.

(h) *Sublease—Commissions*. Except for the balance of the leasing commission to be paid by Seller at Closing to the Leasing Agents, no rental, lease, or other commissions with respect to the Sublease are payable to Seller, to any partner or member of Seller, any party affiliated with or related to Seller or any partner or member of Seller, or to any third party whatsoever. Except for the balance of the leasing commission to be paid by Seller at Closing to the Leasing Agents, all commissions payable under, relating to, or as a result of the Sublease have been cashed–out and paid and satisfied in full by Seller. No further

commissions shall be due or payable as a result of the exercise by the Subtenant under the Sublease of any right or option to extend the term of such Sublease or to expand the space leased thereunder, except as provided in the Insignia Commission Agreement, a complete and accurate copy of which has been provided by Seller to Purchaser.

(i) *Sublease—Acceptance of Premises*. (i) The Subtenant has accepted its leased premises located within the Real Estate (other than the Remaining Space), including any and all work performed therein or thereon pursuant to its Sublease, (ii) the Subtenant is in full and complete possession of its premises under its Sublease (other than the Remaining Space), and (iii) Seller has not received notice from the Subtenant that such Subtenant's premises (other than the Remaining Space) are not in full compliance with the terms and provisions of such Subtenant's Sublease or are not satisfactory for such Subtenant's purposes. Subtenant has not indicated to Seller either orally or in writing its request or its intent to terminate its Sublease prior to the expiration of the term of such Sublease or to reduce the size of the premises leased by such Subtenant.

(j) *Guaranty*. Seller has delivered to Purchaser a complete and accurate copy of the Sublease Guaranty. Seller has never made demand upon Guarantor to pay or perform the obligations of the Subtenant under the Sublease, and Guarantor has not asserted any defense, set-off or counterclaim with respect to its obligations under the Sublease Guaranty.

(k) *Service Contracts*. Attached hereto as *Exhibit "M"* and by this reference made a part hereof is a complete and accurate list and description of all of the Service Contracts. Seller has provided Purchaser with complete and accurate copies of all Service Contracts. To the best of Seller's knowledge, all such Service Contracts are in full force and effect in accordance with their respective provisions, all payments required to be made by Seller or the "Owner" thereunder have been paid in full, and there is no default, or claim of default, or any event which the passage of time or notice, or both, would constitute a default on the part of any party to any of such Service Contracts. All such Service Contracts are terminable without penalty or obligation to pay any severance or similar compensation on no more than thirty (30) days' notice, except as expressly set forth on *Exhibit "M"*. All Service Contracts are assignable by Seller to Purchaser and no Service Contract prohibits such assignment or provides for any right, claim, or cause of action against Purchaser or the Property upon such assignment. Seller has cancelled or will cancel, effective as of the Closing, any agreement in the nature of a management agreement or service contract between Seller and any partner or member of Seller or any party affiliated with or related to Seller or any partner or member of Seller.

(l) *Warranties and Guaranties*. Attached hereto as *Exhibit "P"* and by this reference made a part hereof is a complete and accurate list and description of all of the Warranties. Within two (2) business days after the effective date of this Agreement, Seller shall provide Purchaser with complete and accurate copies of all such Warranties which are written, which are known by Seller to relate to the Real Estate and Personal Property and which are in the possession or control of Seller.

(m) *No Other Agreements*. Other than the Lease, the Sublease, the Service Contracts, the Existing Loan Documents, the Permitted Exceptions, the Series 2000A Bonds, the Bond Purchase Agreement, the Payment and Indemnity Agreement, and the Home Office Payment Agreement, there are no leases, service contracts, management agreements, or other agreements or instruments in force and effect, oral or written, that grant to any person whomsoever or any entity whatsoever any right, title, interest or benefit in or to all or any part of the Property, any rights to acquire all or any part of the Property or any rights relating to the use, operation, management, maintenance, or repair of all or any part of the Real Estate.

(n) *No Litigation*. Except as disclosed on *Exhibit "Q"* attached hereto and by this reference made a part hereof, there are no actions, suits, or proceedings pending, or to the best of Seller's knowledge threatened by any organization, person, individual, or governmental agency against Seller with respect to the Property or against the Property, nor does Seller know of any basis for such action. Seller also has no knowledge of any pending or threatened application for changes in the zoning applicable to the Real Estate or any portion thereof.

(o) *Condemnation*. Except as provided in the second paragraph of Paragraph 18 hereof, no condemnation or other taking by eminent domain of the Real Estate or any portion thereof has been instituted and, to the best of Seller's knowledge, there are no pending or threatened condemnation or eminent domain proceedings (or proceedings in the nature or in lieu thereof) affecting the Real Estate or any portion thereof or its use.

(p) *Proceedings Affecting Access*. Except as provided in the second paragraph of Paragraph 18 hereof, there are no pending or, to the best of Seller's knowledge, threatened proceedings that could have the effect of impairing or restricting access between the Real Estate and adjacent public roads.

(q) *Declaration of Restrictive Covenants*. The Improvements located on the Land comply with the requirements of Paragraphs 2, 4 and 5 of Exhibit "E" attached to that certain Declaration of Restrictive Covenants by Seller and Spring Creek Partners, LLC in favor of Autumn Chase Homeowner's Association, Inc., dated June 1, 2000, recorded in Deed Book 29747, Page 219, Fulton County, Georgia records, and Seller has fully complied with the covenants set forth in Paragraph 5(a) of Exhibit "E" attached to such Declaration of Restrictive Covenants.

(r) *No Assessments*. No assessments have been made against the Real Estate that are unpaid, whether or not they have become liens, and no impact fees or similar charges or sums are payable as result of the construction of the Improvements. If the Real Estate, or any part thereof, shall be, or shall have been affected by an assessment or assessments, made on or before the date of Closing, and that are, or may become payable in installments, and if the payment of all of such installments are not the unconditional obligation of the Subtenant under the Sublease, then for the purposes of this Agreement all of the unpaid installments of any such assessments, the payment of which are not the

unconditional obligation of the Subtenant under the Sublease, including those that are to become due and payable after the Closing, shall be deemed to be due and payable immediately and shall be paid and discharged in full by Seller at the Closing.

(s) *Conditions of Improvements*. Seller is not aware of any structural or other defects, latent or otherwise, in the Improvements. The heating, ventilating, air conditioning, electrical, plumbing, water, elevator, roofing, storm drainage and sanitary sewer systems at or servicing the Real Estate are, to the best of Seller's knowledge, in good condition and working order and Seller, or Seller's employees or agents, are not aware of any defects or deficiencies, latent or otherwise, therein.

(t) *Certificates*. There are presently in effect permanent certificates of occupancy, licenses, and permits as may be required for the Real Estate (except for the Remaining Space), and the present use and occupation of the Real Estate is in compliance and conformity with the certificates of occupancy and all licenses and permits (other than the Remaining Space as to which no certificate of occupancy has been issued as of the Effective Date). Within two (2) business days after the effective date of this Agreement, Seller shall provide Purchaser with complete and accurate copies of all such Certificates of Occupancy, licenses and permits which are known by Seller to relate to the Real Estate and which are in the possession or control of Seller. There has been no 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 in respect to the Real Estate which has not been complied with.

(u) *Compliance With Governmental Requirements.* To the best of Seller's knowledge, there are no violations of law, municipal or county ordinances, or other legal requirements with respect to the Real Estate, and the Improvements comply with all applicable legal requirements with respect to the use, occupancy, and construction thereof, including the Americans with Disabilities Act. The Real Estate is currently zoned in a classification such as will permit the operation of the Real Estate as an office building and associated parking and the conditions, if any, to the granting of the zoning of the Real Estate have been satisfied.

(v) *Survey*. Seller has heretofore delivered to Purchaser the most current "as-built" survey of the Real Estate in the possession or control of Seller.

(w) *Initial Utility Charges*. All installation and connection charges for utilities serving the Property have been paid in full.

(x) *No Liens*. All contractors, subcontractors, and other persons or entities furnishing work, labor, materials, or supplies by or at the instance of Seller for the Property have been paid in full and, other than routine ongoing charges pursuant to the Service Contracts, there are no claims against the Property or Seller in connection therewith.

(y) *No Liens Upon Building Service Equipment*. None of the fixtures, equipment, apparatus, fittings, machinery, appliances, furniture, furnishings, and articles of personal property attached or appurtenant to, or used in connection with the occupation or operation of, all or any part of the Real Estate are leased by Seller from third parties (except for any of same as are leased by Seller from Issuer under the Lease), and all of same which are owned by Seller or leased by Seller under the Lease, including the Personal Property, are free of any and all liens, encumbrances, charges, or adverse interests, except for the security interest granted to First Union National Bank under the Existing Loan Documents, which security interest shall be terminated at the time of the Closing.

(z) *Employees*. There are no employment, collective bargaining, or similar agreements or arrangements between Seller and any of its employees or others which will be binding on Purchaser or any of Purchaser's successors in title.

(aa) *Bankruptcy*. Seller is solvent 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.

(bb) *Authorization*. Seller is a duly organized and validly existing limited liability company under the laws of the State of Georgia. This Agreement has been duly authorized and executed on behalf of Seller, all necessary action on the part of Seller to authorize the transactions herein contemplated has been taken, and no further action is necessary for such purpose, and this Agreement constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting generally the enforcement of creditor's rights. Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereby will (i) be in violation of Seller's Articles of Organization or Operating Agreement, (ii) conflict with or result in the breach or violation of any law, regulation, writ, injunction or decree of any court or governmental instrumentality applicable to Seller, or (iii) constitute a breach of any evidence of indebtedness or agreement of which Seller is a party or by which Seller is bound (provided that the indebtedness secured by the Existing Loan Documents shall be paid in full by Seller at Closing).

(cc) *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.

At Closing, Seller shall represent and warrant to Purchaser that all such representations and warranties of Seller in this Agreement remain true and correct as of the date of the Closing, except for any changes in any such representations or warranties that occur and are disclosed by Seller to Purchaser expressly and in writing at any time and from time to time prior to Closing upon their occurrence, which disclosures shall thereafter be updated by Seller to the date of Closing. Each and

all of the express representations, warranties and covenants made and given by Seller to Purchaser in this Paragraph 9 shall survive the Closing for a period of one (1) year thereafter, except to the extent that a notice of breach of any representation, warranty or covenant has been given prior to such expiration. If there is any change in any representations or warranties and Seller does not cure or correct such changes prior to Closing, then Purchaser may, at Purchaser's option, (i) close and consummate the transaction contemplated by this Agreement, except that after such closing and consummation Purchaser shall have the right to seek monetary damages from Seller only with respect to any such changes which are willfully caused by Seller or any such representations or warranties which are willfully breached by Seller, or (ii) terminate this Agreement by written notice to Seller, whereupon the Earnest Money shall be immediately returned to Purchaser, and thereafter the parties hereto shall have no further rights or obligations hereunder, except only (1) for such rights or obligations that, by the express terms hereof, survive any termination of this Agreement and (2) that Purchaser shall have the right to seek monetary damages from Seller only with respect to any changes in such representations and warranties which are willfully caused by Seller or any such representations and warranties which are willfully breached by Seller.

Except as otherwise expressly provided in this Agreement or in any documents to be executed and delivered by Seller to Purchaser at the Closing, Seller has not made, and Purchaser has not relied on, any representation or warranty, express or implied, regarding the Real Estate, whether made by Seller, on Seller's behalf or otherwise. Purchaser acknowledges (i) that Purchaser has entered into this Agreement with the intention of making and relying upon its own investigation or that of Purchaser's own consultants and representatives with respect to the physical, environmental, and economic condition of the Real Estate and (ii) that Purchaser is not relying upon any statements, representations or warranties of any kind, other than those specifically set forth in this Agreement or in any document to be executed and delivered by Seller to Purchaser at the Closing, made (or purported to be made) by Seller or anyone acting or claiming to act on Seller's behalf. Purchaser shall be provided the right and opportunity to inspect the Real Estate and, subject to the terms and conditions of this Agreement, shall purchase the Leasehold Estate with respect to the Real Estate in the Real Estate's "as is" condition, "with all faults".

10. *Seller's Additional Covenants.* Seller does hereby further covenant and agree as follows:

(a) *Operation of Property.* Seller hereby covenants that, from the date of this Agreement up to and including the date of Closing, Seller shall: (i) not negotiate with any third party respecting the sale of the Property or any interest therein, (ii) not modify, amend, or terminate the Lease or the Sublease or enter into any new lease, contract, or other agreement respecting the Property, unless Seller obtains the prior written consent to same from Purchaser, which consent shall not be unreasonably withheld, (iii) not waive any rights of Seller under the Lease, the Sublease, the Sublease Guaranty, the Series 2000A Bonds, the Bond Purchase Agreement, the Payment and Indemnity Agreement, any Service Contract or any Permitted Exceptions, (iv) not grant or otherwise create or consent to the creation of any easement, restriction, lien, assessment, or encumbrance respecting the Property without the prior written consent of Purchaser, and (v) cause the Real Estate to be operated, maintained, and repaired in the same manner as the Real Estate is currently being operated, maintained,

and repaired. Purchaser hereby consents to Seller amending the Lease pursuant to the Fifth Amendment to Lease Agreement in the form attached hereto as *Exhibit "F"* and by reference made a part hereof. Purchaser also consents to the execution and recordation of the Boundary Line Agreement, the Reciprocal Easement Agreement and Second Lease Amendment once the form of each of same has been approved by Seller and Purchaser as provided herein.

(b) *Removal of Personal Property*. Seller shall neither transfer nor remove any Personal Property or any fixtures owned or leased by Seller from the Real Estate after the date of this Agreement except for the purposes of replacement thereof, in which case such replacements shall be promptly installed and shall be comparable in quality to the items being replaced.

(c) *Preservation of Sublease*. Seller shall, from and after the date of this Agreement to the date of Closing, use its best efforts to perform and discharge all of the duties and obligations and shall otherwise comply with every covenant and agreement of the landlord under the Sublease, at Seller's expense, in the manner and within the time limits required thereunder. Furthermore, Seller shall, for the same period of time, use diligent and good faith efforts to cause the Subtenant under the Sublease to perform all of its duties and obligations and otherwise comply with each and every one of its covenants and agreements under such Sublease and shall take such actions as are reasonably necessary to enforce the terms and provisions of such Sublease. Seller hereby agrees that from and after full execution of this Agreement, Seller shall not request, authorize or direct First Union National Bank to draw on or negotiate the Letter of Credit issued by Wachovia Bank, N.A. and held by First Union National Bank under the Sublease.

(d) *Insurance*. From and after the date of this Agreement to the date and time of Closing, Seller shall, at its expense, continue to maintain the same special form/"all-risk" insurance covering the Real Estate and Personal Property which is currently in force and effect.

(e) *Estoppel Certificates*. Seller agrees to use reasonable and diligent efforts in good faith to obtain and deliver to Purchaser the Subtenant Estoppel Certificate and the Guarantor Estoppel Certificate duly executed by the applicable signatories thereof and certifying as to the matters set forth in the forms of such estoppel certificates attached to this Agreement. The failure of Seller to obtain the Subtenant Estoppel Certificate after Seller shall use reasonable and diligent efforts in good faith to obtain same shall not constitute a default by Seller under this Agreement.

(f) *Boundary Line Agreement and Second Lease Amendment*. Seller agrees to use reasonable and diligent efforts in good faith to obtain and record prior to Closing the Boundary Line Agreement and the Second Lease Amendment, duly executed by the applicable signatories thereof.

(g) *Amendment to Sublease*. Seller agrees to use reasonable and diligent efforts in good faith to obtain an amendment to the Sublease substantially in the form attached hereto as *Exhibit "F"* and by reference made a part hereof (i.e., the Fifth Sublease Amendment), duly executed by Seller, Subtenant and Guarantor. The failure of Seller to obtain the Fifth Sublease Amendment after Seller shall use reasonable and diligent efforts in good faith to obtain same shall not constitute a default by Seller under this Agreement.

(h) *Amendment to Agreement Regarding Letter of Credit*. Seller agrees to use reasonable and diligent efforts in good faith to obtain an amendment to and restatement of the Agreement Regarding Letter of Credit substantially in the form of the Assignment, Assumption, Amendment and Restatement of Agreement Regarding Letter of Credit attached hereto as *Exhibit "W"* and by reference made a part hereof, duly executed by Seller, Subtenant and Guarantor. The failure of Seller to obtain such amendment and restatement of the Agreement Regarding Letter of Credit after Seller shall use reasonable and diligent efforts in good faith to obtain same shall not constitute a default by Seller under this Agreement.

(i) *Project Architect Certificate*. Seller agrees to use reasonable and diligent efforts in good faith to obtain and deliver to Purchaser the Project Architect Certificate duly executed by the Architect and certifying to the matters set forth in the form attached hereto as *Exhibit "I"* and by reference made a part hereof. The failure of Seller to obtain the Project Architect Certificate after Seller shall use reasonable and diligent efforts in good faith to obtain same shall not constitute a default by Seller under this Agreement.

(j) *Amendment to Insignia Commission Agreement*. Seller agrees to use reasonable and diligent efforts in good faith to obtain an amendment to the Insignia Commission Agreement which shall provide for the deletion of Paragraph 1(B) of the Insignia Commission Agreement. The failure of Seller to obtain such amendment of the Insignia Commission Agreement after Seller shall use reasonable and diligent efforts in good faith to obtain same shall not constitute a default by Seller under this Agreement.

(k) *Amendment to Building 3 Lease*. Seller agrees to use reasonable and diligent efforts in good faith to obtain an amendment to the Building 3 Lease in the form attached hereto as *Exhibit "CC"* and by reference made a part hereof. The failure of Seller to obtain the signatures of Subtenant and Guarantor on such amendment to the Building 3 Lease after Seller shall use reasonable and diligent efforts in good faith to obtain same shall not constitute a default by Seller under this Agreement.

(l) *Cooperation with Purchaser's Auditors and SEC Filing Requirements*. Seller shall provide to Purchaser (at Purchaser's expense) copies of, or shall provide Purchaser access to, such factual information as may be reasonably requested by Purchaser, and in the possession or control of Seller, or its property manager or accountants, to enable Purchaser (or Wells Operating Partnership, L.P. or Wells Real Estate Investment Trust, Inc.) to file its or their Form 8-K, if, as and when such filing may be required by the Securities and Exchange Commission ("SEC"). At Purchaser's sole cost and expense, Seller shall

allow Purchaser's auditor (Arthur Andersen LLP or any successor auditor selected by Purchaser) to conduct an audit of the income statements of the Property for 2000 (partial year), 2001 and 2002 (to the date of Closing), and shall cooperate (at no cost to Seller) with Purchaser's auditor in the conduct of such audit. In addition, Seller agrees to provide to Purchaser's auditor a letter of representation in the form attached hereto as *Exhibit "DD"* and by this reference made a part hereof (the "Representation Letter"), and, if requested by such auditor, historical financial statements for the Property, including income and balance sheet data for the Property, whether required before or after Closing. Without limiting the foregoing, (i) Purchaser or its designated independent or other auditor may audit Seller's operating statements of the Property, at Purchaser's expense; and Seller shall provide such documentation as Purchaser or its auditor may reasonably request in order to complete such audit, and (ii) Seller shall furnish to Purchaser such financial and other information as may be reasonably required by Purchaser to make any required filings with the SEC or other governmental authority; provided, however, that the foregoing obligations of Seller shall be limited to providing such information or documentation as may be in the possession of, or reasonably obtainable by, Seller, its property manager or accountants, at no cost to Seller, and in the format that Seller (or its property manager or accountants) have maintained such information.

(m) *As–Built Survey*. Seller agrees to obtain at Seller's cost and deliver to Purchaser, within fifteen (15) days after the date hereof, an as-built survey of the Real Estate (the "As-Built Survey") of the Real Estate, complying with the Survey Requirements, prepared for and certified to Purchaser and the Title Company by a registered land surveyor approved by Purchaser, which approval shall not be unreasonably withheld. The As-Built Survey shall be dated not earlier than one (1) month prior to the Closing. Seller shall cause the surveyor to prepare the As-Built Survey in compliance with the Survey Requirements.

(n) *Public Sewer Service and Off-Site Drainage Rights*. Seller agrees to use reasonable and diligent efforts in good faith to obtain and deliver to Purchaser at least two (2) business days prior to the expiration of the Inspection Period, evidence that no drainage of surface or other water from the Real Estate across the land of others is required, or if required, that such drainage is provided for through public easements or private easements appurtenant to the Land, and that sanitary sewer service to the Real Estate is provided by publicly dedicated easements or rights-of-way available at the boundary line(s) of the Land, or through private easements appurtenant to the Land that connect to a publicly dedicated easement or right-of-way.

11. *Closing*. Provided that all of the conditions set forth in this Agreement are theretofore fully satisfied or performed, it being fully understood and agreed, however, that Purchaser may waive expressly and in writing, at or prior to Closing, any conditions that are unsatisfied or unperformed at such time, the consummation of the sale by Seller and purchase by Purchaser of the Property (herein referred to as the "Closing") shall be held on or before the date which is fifteen (15) days after the expiration of the Inspection Period, at an office in Atlanta, Georgia at such specific office, and at such specific time and date as shall be designated by Purchaser in a written notice to Seller not less than three (3) business days prior to Closing. In the

event Purchaser fails to give such notice of the time, date and place of Closing, the Closing shall occur at 1:30 p.m. on the last date for such Closing as provided above, at the office of Troutman Sanders LLP, 600 Peachtree Street, N.E., Suite 5200, Atlanta, Georgia 30308.

12. *Seller's Closing Documents*. For and in consideration of, and as a condition precedent to Purchaser's delivery to Seller of the Purchase Price described in Paragraph 3 hereof, Seller shall obtain or execute, at Seller's expense, and deliver to Purchaser at Closing the following documents (all of which shall be duly executed, acknowledged, and notarized where required and shall survive the Closing):

(a) *Assignment and Assumption of Lease*. An Assignment and Assumption of Lease in the form and substance of *Exhibit "R"* attached hereto and by this reference made a part hereof conveying to Purchaser marketable title to the Leasehold Estate, together with all rights, members, easements, and appurtenances thereof, subject only to the Permitted Exceptions;

(b) *Quitclaim Deed*. A Quitclaim Deed releasing and quitclaiming to Purchaser all of Seller's right, title and interest in and to the Real Estate. In the event Purchaser obtains a new or updated survey of the Real Estate, the Quitclaim Deed shall contain a legal description based upon such survey obtained by Purchaser;

(c) *Bill of Sale*. A Bill of Sale conveying to Purchaser marketable title to the Personal Property in the form and substance of *Exhibit "S"* attached hereto and by this reference made a part hereof;

(d) *Blanket Transfer*. A Blanket Transfer and Assignment in the form and substance of *Exhibit "T"* attached hereto and by this reference made a part hereof;

(e) *Assignment and Assumption of Sublease*. An Assignment and Assumption of Sublease in the form and substance of *Exhibit "U"* attached hereto and by this reference made a part hereof, assigning to Purchaser all of Seller's right, title, and interest in and to the Sublease and the Fifth Sublease Amendment and the rents thereunder;

(f) *Letter of Credit*. The original Letter of Credit deposited by Subtenant with First Union National Bank, as the beneficiary thereunder, together with the Assignment of Letter of Credit in the form and substance of *Exhibit "V"* attached hereto and by this reference made a part hereof, executed by both Seller and First Union National Bank;

(g) *Amended and Restated Agreement Regarding Letter of Credit*. An Assignment, Assumption, Amendment and Restatement of Agreement Regarding Letter of Credit among Seller, Subtenant and Purchaser in the form and substance of *Exhibit "W"* attached hereto and made a part hereof, executed by Seller and Subtenant;

(h) *Seller's Certificate*. A certificate evidencing the reaffirmation of the truth and accuracy of Seller's representations, warranties, and agreements set forth in Paragraphs 9 and 20 hereof;

(i) *Seller's Affidavit*. A customary Seller's Affidavit in the form of *Exhibit "X"* attached hereto and by this reference made a part hereof;

(j) *FIRPTA Certificate*. A FIRPTA Affidavit in the form and substance of *Exhibit "Y"* attached hereto and by this reference made a part hereof;

(k) *Assignment of Bonds*. An Assignment of Series 2000A Bonds in the form and substance of *Exhibit "Z"* attached hereto and by this reference made a part hereof, assigning to Purchaser the Series 2000A Bonds executed by Seller and with Seller's signature guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program;

(l) *Assignment of Bond Documents*. An Assignment of Bond Documents in the form and substance of *Exhibit "AA"* attached hereto and by this reference made a part hereof assigning to Purchaser all of Seller's right, title and interest in and to the Bond Purchase Agreement, the Payment and Indemnity Agreement, and the Home Office Payment Agreement;

(m) *Bond Transfer Opinion*. The Bond Transfer Opinion in the form required by the trustee under the Indenture;

(n) *Replacement Series 2000A Bond(s).* A replacement Series 2000A Bond or Bonds issued by the Issuer in the name of Purchaser in the aggregate amount of $32,500,000;

(o) *Construction Management Agreement*. If required under Paragraph 4 hereof, a Construction Management Agreement between Seller and Purchaser as contemplated under Paragraph 4 hereof and in form and substance as mutually agreed upon by Seller and Purchaser prior to the expiration of the Inspection Period;

(p) *Tenant Improvement Escrow Agreement*. If required under Paragraph 4 hereof, a Tenant Improvement Escrow Agreement among Seller, Purchaser and Title Company as contemplated pursuant to Paragraph 4 hereof, in form and substance as mutually agreed by Seller and Purchaser prior to the expiration of the Inspection Period, and executed by Seller and the Title Company;

(q) *Surveys and Plans*. Such surveys, site plans, plans and specifications, and other matters relating to the Property as are described in subparagraph (a) of the Blanket Transfer and Assignment and are in the possession or control of Seller;

(r) *Certificates of Occupancy*. Original Certificates of Occupancy for all space within the Improvements, to the extent same are in the possession or control of Seller;

(s) *Original Documents*. The original executed counterpart(s) of the Lease, the Sublease, the Sublease Guaranty, the Series 2000A Bonds, the Bond Purchase Agreement, and the Payment and Indemnity Agreement in the possession or control of Seller;

(t) *Service Contracts*. An original executed counterpart of each Service Contract;

(u) *Estoppel Certificates*. The Subtenant Estoppel Certificate and the Guarantor Estoppel Certificate referred to in Paragraphs 7(e) and 7(f) hereof, if not previously delivered to Purchaser;

(v) *Operating Expense Statements*. Statements, certified to be complete and accurate by Seller, of operating expenses and other financial and expense information required in order to compute any escalations of and adjustments in rent, additional rent, operating expenses, taxes, and other charges under the Sublease for 2001 and for the period of Seller's ownership during 2002;

(w) *Limited Liability Company Resolution*. Either (i) a copy of a resolution of the Members of Seller, certified by an appropriate officer or manager of Seller to be in force and unmodified as of the date and time of Closing, authorizing the execution and delivery of documents required hereunder, and designating and guaranteeing the signatures of the officers or managers of Seller who are to execute and deliver all such documents on behalf of Seller or (ii) such other evidence of the power and authority of the particular signing officer, manager or member of Seller to execute and deliver all such documents on behalf of and so as to bind Seller as shall be reasonably required by the Title Company;

(x) *Keys and Records*. All of the keys or access cards to any doors or locks on the Property and the original tenant files and other books and records relating to the Property in Seller's possession or control;

(y) *Sale Notices*. Notices from Seller and Purchaser to the Issuer, Trustee and Subtenant of the sale of the Property to Purchaser in such forms as Purchaser shall reasonably approve;

(z) *Termite Report*. A certificate of treatment and written report from a reputable exterminating company specifying that the Improvements have been treated and are free and clear of termites and other wood destroying organisms and damage from same;

(aa) *Settlement Statement*. A settlement statement setting forth the amounts paid by or on behalf of and/or credited to each of Purchaser and Seller pursuant to this Agreement; and

(bb) *Other Documents*. Such other documents as shall be reasonably required by Purchaser's counsel or the Title Company and sufficient to cause the Title Company to issue an ALTA leasehold owner's title insurance policy to Purchaser (i) subject only to the Permitted Exceptions and without exception for any standard exception for mechanics' or materialmen's liens (whether choate or inchoate), or the lien rights (whether choate or inchoate of any person pursuant to the Georgia Commercial Real Estate Broker Lien Act, O.C.G.A. § § 44-14-600 *et seq*., and (ii) including such endorsements as Purchaser may desire, including, without limitation, a Zoning 3.1 endorsement (plus parking), a comprehensive endorsement and such other affirmative coverage as Purchaser may elect to obtain.

13. *Purchaser's Closing Documents*. Purchaser shall obtain or execute, at Purchaser's expense, and deliver to Seller at Closing the following documents, all of which shall be duly executed and acknowledged where required and shall survive the Closing:

(a) *Assignment and Assumption of Lease*. The Assignment and Assumption of Lease in the form and substance of *Exhibit "R"* attached hereto;

(b) *Blanket Transfer*. A Blanket Transfer and Assignment in the form and substance of *Exhibit "T"* attached hereto;

(c) *Assignment and Assumption of Sublease*. The Assignment and Assumption of Sublease in the form and substance of *Exhibit "U"* attached hereto;

(d) *Assignment of Bond Documents*. The Assignment of Bond Documents in the form and substance of *Exhibit "AA"* attached hereto;

(e) *Assignment of Letter of Credit*. The Assignment of Letter of Credit in the form and substance of *Exhibit "V"* attached hereto;

(f) *Sale Notices*. Notices from Seller and Purchaser to the Issuer, Trustee and Subtenant of the sale of the Property to Purchaser;

(g) *Amended and Restated Agreement Regarding Letter of Credit*. The Assignment, Assumption, Amendment and Restatement of Agreement Regarding Letter of Credit in the form and substance of *Exhibit "W"* attached hereto;

(h) *Home Office Payment Agreement*. A Home Office Payment Agreement among the Trustee under the Indenture, the Issuer and Purchaser in its capacities as the purchaser of the Series 2000A Bonds and as the successor lessee under the Lease;

(i) *Construction Management Agreement*. If required under Paragraph 4 hereof, the Construction Management Agreement contemplated under Paragraph 4 hereof;

(j) *Tenant Improvement Escrow Agreement*. If required under Paragraph 4 hereof, the Tenant Improvement Escrow Agreement contemplated under Paragraph 4 hereof;

(k) *Settlement Statement*. A settlement statement setting forth the amounts paid by or on behalf of and/or credited to each of Purchaser and Seller pursuant to this Agreement;

(l) *Other Documents*. Such other documents as shall be reasonably required by Seller's counsel.

14. *Closing Costs*. Seller shall pay the cost of the transfer tax imposed by the State of Georgia upon the conveyance of the Property pursuant hereto, any transfer fee or documentation charge imposed by the Issuer and the Trustee, the attorneys' fees of Seller, the attorneys' fee of the Issuer and the Trustee (if any), and all other costs and expenses incurred by Seller in closing and consummating the purchase and sale of the Property pursuant hereto. Purchaser shall pay the cost of the examination of title to the Property, the premium for any leasehold owner's policy of title insurance obtained by Purchaser, the recording fees on the Assignment and Assumption of Lease and Quitclaim Deed from Seller to Purchaser to be recorded in connection with this transaction, the attorneys' fees of Purchaser, and all other costs and expenses incurred by Purchaser in closing and consummating the purchase and sale of the Property pursuant hereto. All other expenses relating to this transaction shall be allocated in the manner customary for commercial transactions in Atlanta, Georgia.

15. *Prorations*. The following items shall be prorated and/or credited between Seller and Purchaser as of Midnight preceding the date of Closing:

(a) *Rents*. Rents, additional rents, operating costs, and other income of the Property (other than security deposits) collected by Seller from the Subtenant for the month of Closing. Purchaser shall also receive a credit against the Purchase Price payable by Purchaser to Seller at Closing for any rents or other sums (not including security deposits) prepaid by the Subtenant for any period following the month of Closing, or otherwise. In addition to the foregoing, at Closing, Seller shall pay as an expense the Estimated Remaining Space Rent Credit (which expense shall be subject to adjustment as provided in Paragraph 15(f) below). Purchaser shall also receive a credit at Closing for the total sum of all security deposits paid by the Subtenant under the Sublease and not theretofore applied to delinquent rent and other charges payable by the Subtenant. Seller hereby acknowledges that Purchaser shall not be legally responsible to Seller for the collection of any uncollected rent or other income under the Sublease that is past due or otherwise due and payable as of the date of Closing. Purchaser agrees that if (i) Subtenant is in arrears on the date of Closing in the payment of rent or other charges under such Subtenant's Sublease, and (ii) upon Purchaser's receipt of any rental or other payment from the Subtenant, such Subtenant is, or after application of a portion of such payment will be, current under such Lease in the payment of all accrued rental and other charges that become due and payable on the date of Closing or thereafter and in the payment of any other obligations of the Subtenant to

Purchaser, then Purchaser shall refund to Seller, out of and to the extent of the portion of such payment remaining after Purchaser deducts therefrom any and all sums due and owing it from the Subtenant from and after the date of Closing, an amount up to the full amount of any arrearage existing on the date of Closing.

(b) *Real Estate Taxes*. City, state, county, and school district ad valorem taxes based on the ad valorem tax bills for the Real Estate, if then available, or if not, then on the basis of the latest available tax figures and information. Should such proration be based on such latest available tax figures and information and prove to be inaccurate on receipt of the ad valorem tax bills for the Real Estate for the year of Closing, either Seller or Purchaser, as the case may be, may demand at any time after Closing a payment from the other correcting such malapportionment. In addition, if after Closing there is an adjustment or reassessment by any governmental authority with respect to, or affecting, any ad valorem taxes for the Real Estate for the year of Closing or any prior year, any additional tax payment for the Real Estate required to be paid with respect the year of Closing shall be prorated between Purchaser and Seller and any such additional tax payment for the Real Estate for any year prior to the year of Closing shall be paid by Seller.

(c) *Utility Charges*. Except for utilities which are the direct responsibility of the Subtenant to the applicable public or private utilities supplier, Seller shall pay all utility bills received prior to Closing and shall be responsible for utilities furnished to the Real Estate prior to Closing. Purchaser shall be responsible for the payment of all bills for utilities furnished to the Real Estate subsequent to the Closing. Seller and Purchaser hereby agree to prorate as of midnight preceding the date of Closing and pay their respective shares of all utility bills received subsequent to Closing (if they include a service period prior to the date of Closing), which agreement shall survive Closing. Seller shall be entitled to all deposits presently in effect with the utility providers.

(d) *Service Contracts*. Charges under the Service Contracts shall be prorated as of Midnight preceding the date of Closing.

(e) *Other Subtenant Charges*. Where the Sublease contains Subtenant obligations for taxes, common area expenses, operating expenses or additional charges of any nature, and where Seller shall have collected on an estimated basis any portion thereof in excess of amounts actually payable by Subtenant for such items for the period prior to the date of Closing, then there shall be an adjustment and credit given to Purchaser on the date of Closing for such excess amounts collected. Purchaser shall apply all such excess amounts to the charges owed by Purchaser for such items for the period after the date of Closing, and if required by the Sublease, shall rebate or credit Subtenant with any remainder. If it is determined subsequent to the Closing that the amount collected during Seller's ownership period exceeded expenses incurred during the same period by more than the amount previously credited to Purchaser at Closing, then Seller shall promptly pay to Purchaser the deficiency. If it is determined subsequent to Closing that the amount collected during Seller's ownership period exceeded expenses incurred during the same

period by less than the amount previously credited to Purchaser at Closing, then Purchaser shall promptly pay to Seller the overpayment.

(f) *Remaining Space Rent Credit*. Within one hundred twenty (120) days after the end of calendar year 2002, Purchaser shall deliver to Seller and Subtenant (i) the "Statement of Actual Adjustment" as required by Section 8 of the Sublease, and (ii) a calculation (including a reasonably detailed explanation thereof) of the Actual Remaining Space Rent Credit taking into account all of the applicable provisions of the Sublease. In the event the Actual Remaining Space Rent Credit shall exceed the Estimated Remaining Space Rent Credit, then Seller shall pay the difference to Purchaser within fifteen (15) Business Days after Seller's receipt of such calculation; and in the event that the Actual Remaining Space Rent Credit shall be less than the Estimated Remaining Space Rent Credit, then Purchaser shall promptly pay the difference to Seller within three (3) Business Days after Seller's receipt of such calculation. Purchaser hereby agrees not to modify the Sublease in any manner that would delay the commencement date for full Base Monthly Rental under the Sublease. In the event Purchaser shall receive any Base Monthly Rental from Subtenant with respect to the Remaining Space attributable to the period from the date of Closing to July 31, 2002, Purchaser shall promptly remit such amount to Seller.

The obligations of the parties under this Paragraph 15 shall survive the Closing.

16. *Purchaser's Default*. In the event of default by Purchaser under the terms of this Agreement, Seller's sole and exclusive remedy shall be to terminate this Agreement and receive the Earnest Money from Escrow Agent as liquidated damages and thereafter the parties hereto shall have no further rights or obligations hereunder whatsoever. It is hereby agreed that Seller's damages will be difficult to ascertain and that the Earnest Money constitutes a reasonable liquidation thereof and is intended not as a penalty, but as fully liquidated damages. Seller agrees that in the event of a default by Purchaser, it shall not initiate any proceeding to recover damages from Purchaser, but shall limit its recovery to the receipt and retention of the Earnest Money. The limitations on Purchaser's liability under this Paragraph 16 shall be inapplicable to the liability of Purchaser for payments, if any, due by Purchaser to Seller under Paragraph 5 hereof.

17. *Seller's Default*. In the event of default by Seller under the terms of this Agreement, except as otherwise specifically set forth herein, at Purchaser's option: (i) Purchaser shall be entitled to an immediate refund of all but Twenty-Five Dollars ($25.00) of the Earnest Money and to pursue against Seller an action for specific performance, or (ii) Purchaser may terminate this Agreement by written notice to Seller, whereupon the Earnest Money shall be immediately returned by Escrow Agent to Purchaser and Seller shall be responsible for, and Purchaser shall be entitled to seek, actual damages from Seller up to a maximum of $500,000.00; provided, however, the foregoing cap or limitation on actual damages shall not be applicable if Seller knowingly and intentionally breaches any covenant to be performed or any representation or warranty made by Seller under this Agreement or knowingly and intentionally does anything to make impossible or defeat the remedy of specific performance.

18. *Condemnation*. If, after the Effective Date and prior to the Closing, all or any part of the Real Estate is subjected to a bona fide threat of condemnation by a body having the power of eminent domain or is taken by eminent domain or condemnation (or sale in lieu thereof), or if Seller has received notice that any condemnation action or proceeding with respect to the Real Estate is contemplated by a body having the power of eminent domain, Seller shall give Purchaser immediate written notice of such threatened or contemplated condemnation or of such taking or sale, and Purchaser may by written notice to Seller given within fifteen (15) days of the receipt of such notice from Seller, elect to cancel this Agreement. If Purchaser chooses to cancel this Agreement in accordance with this Paragraph 18, then the Earnest Money shall be returned immediately to Purchaser by Escrow Agent and the rights, duties, obligations, and liabilities of the parties hereunder shall immediately terminate and be of no further force and effect, except for the obligations of the parties which are herein expressly stated to survive the termination of this Agreement. If Purchaser does not elect to cancel this Agreement in accordance herewith, this Agreement shall remain in full force and effect and the sale of the Property contemplated by this Agreement, less any interest in the Real Estate taken by eminent domain or condemnation, or sale in lieu thereof, shall be effected with no further adjustment and without reduction of the Purchase Price, and at the Closing, 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. At such time as all or a part of the Real Estate is subjected to a bona fide threat of condemnation and Purchaser shall not have elected to terminate this Agreement as hereinabove provided, Purchaser shall be permitted to participate in the proceedings as if Purchaser were a party to the action. Seller shall not settle or agree to any award or payment pursuant to condemnation, eminent domain, or sale in lieu thereof without obtaining Purchaser's prior written consent thereto in each case.

Seller has advised Purchaser that a portion of the real property currently constituting the 6405 Property will be taken by eminent domain or condemnation (or sale in lieu thereof) in order to expand the rights-of-way of Georgia Highway 400 and Mount Vernon Highway, and that following such taking by eminent domain or condemnation (or sale in lieu thereof), the boundaries of the 6405 Property shall be adjusted to the proposed right-of-way lines as shown on that certain Boundary Survey prepared for Seller by HDR/W.L. Jorden Engineers, dated March 27, 2001, last revised May 14, 2002. Purchaser acknowledges and agrees that such condemnation action or proceeding (or sale in lieu thereof) with respect to the 6405 Property as contemplated above shall not give rise to the right of Purchaser to terminate this Agreement, and Purchaser shall have no right to any award that may be made for such taking, notwithstanding that the Real Estate may include easements over and with respect to the portion of the 6405 Property to be so taken.

19. *Damage or Destruction*. If any of the Improvements shall be destroyed or damaged prior to the Closing, and if either the estimated cost of repair or replacement exceeds Two Hundred Fifty Thousand Dollars ($250,000.00) or the damage is such that the Sublease is terminated or terminable at the option of the Subtenant (unless the termination option is waived in writing), Purchaser may, by written notice given to Seller within twenty (20) days after receipt of written notice from Seller of such damage or destruction, elect to terminate this Agreement, in which event the Earnest Money shall immediately be returned by Escrow Agent to Purchaser and the rights, duties, obligations, and liabilities of all parties hereunder shall immediately terminate and be of no

further force or effect. If Purchaser does not elect to terminate this Agreement pursuant to this Paragraph 19, or has no right to terminate this Agreement (because the damage or destruction does not exceed $250,000.00 and would not give rise to a right by Subtenant to terminate its Sublease), and the sale of the Property is consummated, Purchaser shall be entitled to receive all insurance proceeds paid or payable to Seller by reason of such destruction or damage under the insurance required to be maintained by Seller pursuant to Paragraph 10(d) hereof (less amounts of insurance theretofore received and applied by Seller to costs actually incurred for restoration). Seller shall not settle or release any damage or destruction claims without obtaining Purchaser's prior written consent in each case. All said insurance proceeds received by Seller by the date of Closing shall be paid by Seller to Purchaser at Closing, together with the lesser of (i) that amount necessary to cover any difference between the amount of such proceeds and the estimated cost of repair or replacement, or (ii) the amount of the deductible under Seller's all–risk property damage insurance policy. In addition, at Closing, Seller shall pay over to Purchaser, and assign to Purchaser, all proceeds of any rent loss insurance for the period of time commencing on the date of Closing. If the amount of said casualty or rent loss insurance proceeds is not settled by the date of Closing, Seller shall execute at Closing all proofs of loss, assignments of claim, and other similar instruments in order that Purchaser receive all of Seller's right, title, and interest in and under said insurance proceeds.

20. *Hazardous Substances*. To the best of Seller's knowledge (i) except for diesel fuel stored and used in connection with emergency generators installed at the Real Estate, Hazardous Substances (including glycol and sulfuric acid) contained in the battery power plants installed by Subtenant within the space leased by Subtenant, and other Hazardous Substances in cleaning fluids commonly and legally stored or used as a consequence of using a building for office space uses, all stored and used solely for the purposes set forth above with respect to each such Hazardous Substance, and all in the quantities commonly and legally stored and used for such purposes, no Hazardous Substances or any other pollutants, toxic materials, or contaminants have been or shall prior to Closing be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape on the Real Estate, (ii) no asbestos or asbestos containing materials have been installed, used, incorporated into, or disposed of on the Real Estate, (iii) no polychlorinated biphenyls are located on or in the Real Estate, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form, (iv) no underground storage tanks are located on the Real Estate or were located on the Real Estate and subsequently removed or filled, (v) no investigation, administrative order, consent order and agreement, litigation, or settlement with respect to hazardous substances is proposed, threatened, anticipated or in existence with respect to the Real Estate, and (vi) the Real Estate has not previously been used as a landfill, cemetery, or as a dump for garbage or refuse. Seller hereby indemnifies Purchaser and agrees to holds Purchaser harmless from and against any lost, cost, damage, liability or expense due to or arising out of the breach of any representation or warranty contained in this Paragraph 20. The representations and warranties set forth in this Paragraph 20 and the indemnification given herein shall expressly survive the Closing.

20. *Assignment*. This Agreement and Purchaser's rights, duties, and obligations hereunder may not be delegated, transferred, or assigned by Purchaser without the prior written consent of Seller, and any assignee or transferee proposed by Purchaser shall expressly assume all

of Purchaser's duties, liabilities and obligations under this Agreement by written instrument delivered to Seller. Notwithstanding the foregoing to the contrary, this Agreement, and Purchaser's rights and duties hereunder, may be freely assigned and transferred to any entity under common control with Purchaser or controlled by Purchaser or to Wells Operating Partnership, L.P., a Delaware limited partnership, or to any partnership having Purchaser or Wells Operating Partnership, L.P. as a direct or indirect general partner. In the event of any such transfer or assignment, Seller shall look solely to such transferee or assignee for the performance of all obligations, covenants, conditions, and agreements imposed upon Purchaser pursuant to the terms of this Agreement. For purposes of this Paragraph 21, the term "control" shall mean a twenty percent (20%) ownership in the applicable entity.

22. *Broker's Commission*. Upon the Closing, and only in the event of Closing, Seller shall pay to Broker a real estate sales commission pursuant to the terms of a separate agreement between Seller and Broker. Seller shall and does hereby indemnify and hold harmless Purchaser from and against any claim, whether or not meritorious, for any real estate sales commission, finder's fees, or like compensation in connection with the sale contemplated hereby and arising out of any act or agreement of Seller, including any claim asserted by Broker. Likewise, Purchaser shall and does hereby indemnify and hold harmless Seller from and against any claim, whether or not meritorious, for any real estate sales commission, finder's fees, or like compensation in connection with the sale contemplated hereby and arising out of any act or agreement of Purchaser, except any such claim asserted by Broker. This Paragraph 22 shall survive the Closing or any termination of this Agreement.

23. *Notices*. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by overnight courier, by hand, facsimile transmission or sent by U.S. certified mail, return receipt requested, postage prepaid, to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

PURCHASER: Wells Capital, Inc.
6200 The Corners Parkway, Suite 250
Norcross, Georgia 30092
Attn: Mr. Jeffrey A. Gilder
Facsimile: (770) 200-8199

with a copy to: Troutman Sanders LLP
Bank of America Plaza, Suite 5200
600 Peachtree Street, N.E.
Atlanta, Georgia 30308–2216
Attn: Mr. John W. Griffin
Facsimile: (404) 962-6577

SELLER: Mount Vernon Place Partners, LLC
c/o Griffin Management Services, Inc.
800 Mount Vernon Highway, Suite 300
Atlanta, Georgia 30328
Attn: Mr. Joel J. Griffin
Facsimile: (770) 522-7410

with a copy to: The Taylor Law Firm, PC
Suite 1200 Tower Place 100
3340 Peachtree Road, N.E.
Atlanta, Georgia 30326
Attn: Mr. Bradley J. Taylor
Facsimile: (404) 261-6779

Any notice or other communication (i) mailed as hereinabove provided shall be deemed effectively given or received on the third (3rd) Business Day following the postmark date of such notice or other communication, (ii) sent by overnight courier or by hand shall be deemed effectively given or received on the date of delivery, and (iii) sent by facsimile transmission shall be deemed effectively given or received on the first Business Day after the day of transmission of such notice and confirmation of such transmission.

24. *Possession*. Possession of the Property shall be granted by Seller to Purchaser on the date of Closing, subject only to the Sublease and the Permitted Exceptions.

25. *Time Periods*. If the time period by which any right, option, or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday, or holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled Business Day.

26. *Access to Records Following Closing*. Purchaser agrees that for a period of two (2) years following the Closing, Seller shall have the right during regular business hours, on five (5) days' written notice to Purchaser, to examine and review at Purchaser's Norcross, Georgia office, the books and records relating to the ownership and operation of the Property which were delivered by Seller to Purchaser at the Closing. Likewise, Seller agrees that for a period of two (2) years following the Closing, Purchaser shall have the right during regular business hours, on five (5) days' written notice to Seller, to examine and review at Seller's Atlanta, Georgia office, all books, records, and files, if any, retained by Seller relating to the ownership and operation of the Property prior to the Closing. The obligations of the parties under this Paragraph 26 shall survive the Closing.

27. *Survival of Provisions*. All covenants, warranties, and agreements set forth in this Agreement shall survive the execution or delivery of any and all deeds and other documents at any time executed or delivered under, pursuant to, or by reason of this Agreement, and shall survive the payment of all monies made under, pursuant to, or by reason of this Agreement; provided, however,

that the representations and warranties contained in Paragraphs 9 and 29 hereof shall automatically expire on the date which is one (1) year after the date of Closing, except to the extent that a notice of breach of any representation or warranty has been given prior to such expiration.

28. *Severability*. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall, for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

29. *Authorization*. Purchaser represents to Seller that this Agreement has been duly authorized and executed on behalf of Purchaser and constitutes the valid and binding agreement of Purchaser, enforceable in accordance with its terms, and all necessary action on the part of Purchaser to authorize the transactions herein contemplated has been taken, and no further action is necessary for such purpose.

30. *General Provisions*. No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon the parties hereto unless such amendment is in writing and executed by all parties hereto. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns. Time is of the essence of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. This Agreement shall be construed and interpreted under the laws of the State of Georgia. Except as otherwise provided herein, all rights, powers, and privileges conferred hereunder upon the parties shall be cumulative but not restrictive to those given by law. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender shall include all genders, and all references herein to the singular shall include the plural and vice versa.

31. *Termination of 6405 Contract*. Concurrently with the execution and delivery of this Agreement, Spring Creek Partners, LLC, a Georgia limited liability company ("Spring Creek") and Purchaser have entered into that certain Agreement for the Purchase and Sale of Property of even date herewith for the sale by Spring Creek to Purchaser, and the purchase by Purchaser from Spring Creek, of the 6405 Property which adjoins the Land (the "6405 Contract"). In the event Purchaser elects to terminate the 6405 Contract on or prior to the expiration of the Inspection Period (as defined therein) pursuant Paragraph 8 of the 6405 Contract, and not as a result of a default or breach by Spring Creek under the 6405 Contract, then this Agreement shall automatically be

terminated pursuant to Paragraph 6 of this Agreement, whereupon Escrow Agent shall disburse the Earnest Money as provided in Paragraph 6 of this Agreement, and neither Seller nor Purchaser party shall have any other rights or obligations under this Agreement, except for such rights and obligations which expressly survive the termination of this Agreement.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their respective seals to be affixed hereunto as of the day, month and year first above written.

**"SELLER":**

**MOUNT VERNON PLACE PARTNERS, LLC,**
a Georgia limited liability company

By: /s/ JOEL J. GRIFFIN (SEAL)

**Joel J. Griffin**
**Managing Member**

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

**"PURCHASER":**

**WELLS CAPITAL, INC.,** a Georgia corporation

By: /s/ DOUGLAS P. WILLIAMS

**Douglas P. Williams**
**Senior Vice President**
(CORPORATE SEAL)

**EXHIBIT 10.76**

**LEASE AGREEMENT FOR THE ISS ATLANTA BUILDINGS**

**MOUNT VERNON PLACE**

**LEASE AGREEMENT**

**THIS LEASE,** made and entered into as of this 8th day of November, 1999, by and between **MOUNT VERNON PLACE PARTNERS, L.L.C.**, a Georgia limited liability company (hereinafter referred to as the "Landlord") and **INTERNET SECURITY SYSTEMS, INC.**, a Georgia corporation (hereinafter referred to as the as the "Tenant");

**W I T N E S S E T H :**

1. *PREMISES*. The Landlord, for and in consideration of the rents, covenants, agreements, and stipulations hereinafter mentioned, reserved, and contained, to be paid, kept and performed by the Tenant, has leased and rented, and by these presents does lease and rent, unto the said Tenant, and said Tenant hereby agrees to lease and take upon the terms and conditions which hereinafter appear, the following described property (hereinafter referred to as the "Premises") two buildings known as Mount Vernon Place (hereinafter collectively referred to in the singular as the "Building" and respectively as the "Phase I Building" and the "Phase II Building") to be situated in Land Lot 35 of the 17th District, Fulton County, Georgia. A legal description of the land on which the Building is to be situated is attached hereto as *Exhibit "B"* (hereinafter referred to as the "Land").

(a) *Exhibit "A"* attached hereto represents a description and approximation of the Premises to be leased pursuant to this Lease, such Premises to comprise approximately 238,600 rentable square feet within the Building (inclusive of the bridges to be constructed by Landlord pursuant to Special Stipulation 2 attached to this Lease). For purposes of this Lease, the parties agree that the rentable square feet of the Premises shall be measured and determined in accordance with the Building Owners and Managers Association International standard of measurement ANSI/BOMA Z65.1 1996. Upon the final Drawings and Specifications, as this term is defined in the Work Letter, being ascertained, Landlord and Tenant's architect, Warner, Summers, Ditzel, Benefield, Ward & Associates, Inc. shall measure the rentable square footage of the Premises in accordance with such standard, which measure by Landlord and Tenant's architect shall be controlling, and the 238,600 rentable square foot figure set forth above shall be adjusted accordingly. The standard of measurement ANSI/BOMA Z65.1 1996 shall be used as the same is in effect as of the date of this Lease even if such standard shall change hereafter.

(b) Within five (5) days after the Commencement Date (as defined below), Landlord shall deliver to Tenant a completed Tenant Acceptance Agreement (the "Tenant Acceptance Agreement") attached hereto as *Exhibit "C"* and incorporated herein, which shall contain an acknowledgment of the date upon which the Commencement Date (as defined below) of this Lease occurred, and Landlord's calculation of the exact number of rentable square feet within the Premises. Tenant shall have the right to object to the

Tenant Acceptance Agreement by delivering written notice to Landlord within five (5) days after Landlord delivers the Tenant Acceptance Agreement to Tenant, failing which Tenant shall be deemed to have agreed that all information contained in the Tenant Acceptance Agreement is correct. If Tenant objects to the Tenant Acceptance Agreement within said five (5) day period, Landlord and Tenant shall work together to resolve their differences and, after such differences have been resolved, Landlord shall execute the Tenant Acceptance Agreement and deliver same to Tenant and Tenant shall have a period of five (5) days to give written notice to Landlord objecting to the Tenant Acceptance Agreement, failing which Tenant shall be deemed to have agreed that the Tenant Acceptance Agreement is correct. Upon Tenant agreeing or being deemed to have agreed that all information contained in the Tenant Acceptance Agreement is correct, the Commencement Date as shown on the Tenant Acceptance Agreement shall be the Commencement Date for purposes of Section 2 of this lease and for all other purposes under this Lease and the rentable square feet of the Premises as shown on the Tenant Acceptance Agreement shall replace the rentable square feet of the leased premises referenced and defined in Section 1 above, and shall be deemed to be the rentable square feet of the Premises for all purposes under this lease. All payments of Base Monthly Rental (as defined below), and all other payments of rent and other sums of money required of Tenant herein shall be made as and when required herein, notwithstanding any unresolved objections to the Tenant Acceptance Agreement. All such payments shall be based upon the Tenant Acceptance Agreement prepared by Landlord until such objections have been finally resolved, whereupon any overpayment or any underpayment theretofore made shall be adjusted by increasing or reducing, as the case may be, the next installment of Base Monthly Rental coming due.

2. *TERM*. The term of this Lease shall be for a period of eleven (11) years and six (6) months commencing on the Commencement Date (as defined below) (such term being hereinafter referred to as the "Term"), unless sooner terminated as may be hereinafter provided.

3. *COMPLETION OF IMPROVEMENTS*. (a) Landlord agrees to proceed with due diligence to prepare the Premises in accordance with the Work Letter attached hereto as *Exhibit "D"* (hereinafter referred to as the "Work Letter") and in accordance with the terms of this Lease. Subject to Force Majeure (as defined in Section 45) and subject to Tenant Delay, as defined in Section 2.01(b) of the Work Letter, Landlord shall deliver the Premises to Tenant on or before November 1, 2000. At the time of delivery of the leased premises to Tenant, the "Base Building Condition" as described in Section 1.02 of the Work Letter (the "Base Building Condition") shall be constructed and installed by Landlord and Tenant's leasehold improvements shall be constructed and installed by Landlord pursuant to the terms, conditions and provisions of the Work Letter. **See Special Stipulation 25. See Special Stipulation 28.**

As used herein, "Commencement Date" means the earlier of (i) the Commencement Date as calculated pursuant to Special Stipulation 4 or (ii) the date upon which Tenant commences conducting its business from all or any portion of the Premises; provided, however, in no event shall the Commencement Date be earlier than November 1, 2000.

4. *QUIET ENJOYMENT.* Landlord hereby represents and warrants that, on the Commencement Date, Landlord will own indefeasible fee simple title in and to the Land and Building. So long as Tenant shall observe and perform the covenants and agreements binding on it hereunder and subject to the terms and provisions hereof, Tenant shall at all times during the Term peacefully and quietly have and enjoy possession of the Premises.

5. *BASE MONTHLY RENTAL.* Tenant agrees to pay Landlord, by payments to Mount Vernon Place Partners, L.L.C., and delivered to Landlord c/o Griffin Management Services, Inc., 800 Mt. Vernon Highway, Suite 300, Atlanta, Georgia 30328, promptly on the first day of each month in advance, during the Term of this Lease, without deduction or set off, in legal tender, a monthly rental as determined under Special Stipulation 16 (hereinafter referred to as "Base Monthly Rental"). If the Term commences on a day other than the first day of a month, or terminates on a day other than the last day of a month, the Base Monthly Rental for the first or last partial month shall be prorated based upon the actual number of days in such a month.

Tenant hereby acknowledges that if any monthly payment of rent or any monies due hereunder from Tenant shall not be received by Landlord within five (5) business days after written notice from Landlord to Tenant that such payment is due, then Tenant shall pay the Landlord a late charge equal to 2 ½% of such delinquent amount. Any amounts payable hereunder by Tenant to Landlord which are not paid within five (5) business days after written notice from Landlord to Tenant that such payment is due shall bear interest at the rate of one percent (1%) per month until paid.

6. *BASE MONTHLY RENTAL ADJUSTMENT.* For purposes of this Section 6 and all other provisions of this Lease, Base Monthly Rental shall be composed of two (2) components: (i) Net Rental which is defined as the total Base Monthly Rental less operating expenses per square foot of the Premises for the first twelve (12) months of the term of this Lease, and (ii) Remaining Rental which is defined as the remainder of Base Monthly Rental other than Net Rental, such that Net Rental and Remaining Rental when combined shall equal the total Base Monthly Rental. Commencing one year from the date of the initial Lease term hereof and continuing on the same day of each year during the initial and any renewal term hereof, the Net Rental component of Base Monthly Rental, as increased by previous rental adjustments hereunder, shall be increased by the lesser of the following: (i) the amount of the CPI Increase, as this term is defined below; or (ii) two and one-half percent (2 ½%).

As used in this Section 6, the term "Lease Year" shall mean the twelve (12) month period commencing on the Commencement Date, or, if the Commencement Date is not on the first day of the calendar month, commencing on the first day of the first calendar month following the Commencement Date, and each successive twelve (12) month period thereafter during the Term. The term "Subsequent Year" shall mean each Lease Year of the Term following the first year. The term "Prior Year" shall mean the Lease Year prior to the subsequent year. The term "Index" shall mean the Consumer Price Index-Seasonally Adjusted U.S. City Average for All Urban Consumers (Base Year 1982-1984 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor. The term "Base Month" shall mean the calendar month which is two (2) months prior to the month during which the Lease is fully executed by Landlord and Tenant. The

term "Comparison Month" shall mean the calendar month which is two (2) months prior to the first full month of each Subsequent Year in question. On the first day of each Subsequent Year, the CPI Increase shall be calculated as follows: the Net Rental component of Base Monthly Rental shall be increased to an amount equal to Net Rental for the first Lease Year plus an amount equal to the product of ten (10) times the percentage increase in the Index for the Comparison Month as compared to the Index for the Base Month multiplied by Net Rental for the first Lease Year; provided, however, in no event shall Net Rental for a Subsequent Year be less than Net Rental applicable to the Prior Year. In the event the Base Year (1982-1984 = 100) used in computing the Index is changed, the figures used in making the adjustment above shall accordingly be changed. Likewise, if the Index is discontinued, the index increase shall be in accordance with an industry wide standard for measuring the cost of living increase and used at the time of such discontinuation acceptable to Landlord.

An estimated annual rent schedule of the Net Rental annual rate, assuming an annual escalation of two and one-half percent (2 ½%) per year in Net Rental occurs pursuant to this Section 6 and assuming operating expenses for the first year of the Term of this Lease are $4.87 per square foot of the Premises, is set forth in the illustrative chart below:

| Lease Year | | Net Rental annual rate |
|---|---|---|
| First Year | $ | 16.18 |
| Second Year | $ | 16.58 |
| Third Year | $ | 17.00 |
| Fourth Year | $ | 17.42 |
| Fifth Year | $ | 17.86 |
| Sixth Year | $ | 18.31 |
| Seventh Year | $ | 18.76 |
| Eighth Year | $ | 19.23 |
| Ninth Year | $ | 19.71 |
| Tenth Year | $ | 20.21 |
| Eleventh Year | $ | 20.71 |
| Last Six Months | $ | 21.23 |

In the event actual Operating Expenses for the first year of the Term are greater than $4.87 per square foot of the Premises, then the above Net Rental annual rates shall be adjusted downward accordingly.

7. **[RESERVED]**

8. *ADDITIONAL RENT, OPERATING EXPENSE ADJUSTMENT.* The Operating Expense Base Year of the rentable area of the Building shall be the calendar year of January 1, 2001 through December 31, 2001. Subject to Section 1(a) above, the total rentable area of the Building is anticipated to be 238,600 rentable square feet. **See Special Stipulation 2.** If in any calendar year after the Operating Expense Base Year during the term hereof, the Operating

Expenses of the rentable area of the Building should exceed the Operating Expenses of the Base Year (such excess being hereinafter referred to as the "Operating Expense Differential"), then as additional rent for the calendar year, Tenant shall pay within thirty (30) days after written notice by Landlord of said amount being due for each rentable square foot of floor space leased hereunder, and in any expansion or extensions hereof. For the purpose of this Paragraph 8, Operating Expenses are defined in Exhibit "E" of this Lease. In addition Operating Expenses shall be adjusted and grossed up so as to show actual Operating Expenses without computing or taking into account reduced costs because of first year warranties on materials and equipment.

If during any calendar year of the Lease, the occupancy of the rentable area of the Building averages less than one hundred percent (100%), then it is agreed that the Operating Expense will be adjusted for such year so that all such Operating Expenses shall be computed as though the rentable area of the Building has been one hundred percent (100%) occupied for such calendar year. All such expense categories will be accounted for and reported in accordance with generally accepted accounting principles.

At any time during the term of this Lease but not later than fifteen (15) days prior to the date an additional rental payment is due pursuant to this Section 8, Landlord may deliver to Tenant a written estimate of any additional rents which may be reasonably anticipated hereunder, estimated divided by the number of months remaining in the calendar year, and Tenant shall pay as additional rental to Landlord promptly on the first day of each month in advance without deduction or set off in legal tender the monthly amount called for under such estimate from Landlord to Tenant for those months for which such additional rental is due pursuant to this Section 8. Any such written estimate from Landlord to Tenant, as contemplated in this paragraph, may also include amounts reasonably estimated by Landlord to be due as a result of Landlord's replacing light bulbs and fixtures in the Premises, as contemplated in Section 14 of this Lease, or as a result of Landlord's paying utility bills on behalf of Tenant and thereafter receiving reimbursement from Tenant for such payments by Landlord on Tenant's behalf, as contemplated under Section 17 of this Lease. **See Special Stipulation 31.**

Statements showing the actual Operating Expenses of the Building and Tenant's proportionate share thereof (hereinafter referred to as "Statement of Actual Adjustment") shall be delivered by Landlord to Tenant within one hundred twenty (120) days after the end of any calendar year in which additional rental was paid or due by Tenant under provisions hereof. Within thirty (30) days after written notice by Landlord to Tenant of such Statement of Actual Adjustment, Tenant shall pay to Landlord the amount of any rentals shown as being due and unpaid thereon. Should such Statement of Actual Adjustment show the Tenant had paid to Landlord an aggregate amount in excess of the additional rental due for the preceding calendar year and Tenant is not then in default hereunder, Landlord shall refund the amount of overpayment.

If the Term of this Lease begins on a day other than the first day of the calendar year, or should this Lease terminate on a day other than the last day of the calendar year, the amount shown as due by Tenant on the Statement of Actual Adjustment shall reflect a proration based on the proportion that the number of days this Lease was in effect during such calendar year bears to

360. The Landlord's right to recover Operating Expenses Adjustment shall survive the termination of this Lease.

Provided Tenant is not in default under the terms of this Lease Tenant shall have the right to inspect Landlord's books and records with respect to Operating Expenses and its proportionate share thereof for any preceding calendar year. This inspection shall be completed at the Tenant's sole cost and expense by independent, certified public accountants practicing for an accounting firm of national prominence and for the exclusive purpose of determining whether Landlord has complied with the terms of this Lease relating to Operating Expenses. Should Tenant's inspection reveal that Landlord has overstated or understated Operating Expenses an appropriate adjustment will be made. If Tenant owes any amount to Landlord based on such adjustment, it shall be paid to Landlord within thirty (30) days after the request thereof; if Landlord owes any amount to Tenant based on such adjustment, such amount shall be credited against the rent next coming due under this Lease.

9. *USE OF PREMISES*. The Premises shall be used for general office purposes, and purposes related thereto (which may include a cafeteria or food service facility for use by Tenant's employees if permitted by applicable laws, ordinances and regulations), and no other purposes, all in accordance with the Rules and Regulations attached hereto and incorporated herein by this reference. The Tenant shall not use, permit or allow the Premises to be used other than as strictly provided in this Lease and shall not use, permit or allow the Premises or any part thereof to be used for any unlawful purpose or otherwise in violation of any federal, state or local statute, law, ordinance, rule or regulation, including, without limitation, in violation of any zoning ordinances; nor shall the Tenant knowingly permit any nuisance within the Premises or permit the Premises to be used in any manner which will be a source of material annoyance or in any way knowingly interfere with the peaceful possession, enjoyment and proper use of other areas of the Building, nor shall the Premises be knowingly used in any manner so as to vitiate the insurance or increase the rate of insurance on the Premises or the Building, nor shall the Premises be used for any unlawful purpose which would tend to lower the quality or character of the Building, create unreasonable elevator loads or otherwise materially interfere with Building operations. Not by way of limitation of the foregoing but in addition thereto, neither the Premises nor any portion thereof shall be used or occupied for any or all of the following: governmental or quasi-governmental offices, spas (other than a health club or exercise facility for employees of Tenant), massage parlors, escort services offices, retail sales purposes, classroom facility purposes (other than in connection with Tenant's employee and client training), schools, auto leasing or auto sales offices, equipment or appliance repair shops, day care centers (other than for Tenant's employees' children), nurseries, churches, or places of religious or quasi-religious worship, religious facilities or offices of religious organizations, or retail or wholesale sale purposes, medical research laboratories or offices for medical or quasi-medical professionals providing medical treatments.

10. *NO NUISANCE*. Tenant shall conduct its business in such a manner so as not to knowingly create any nuisance or interference with Landlord in its operation of the Building.

11. *ASSIGNMENT AND SUBLETTING*. Tenant may sublease or assign any or all of the Premises without Landlord's prior written consent; provided, however, any assignee or

subtenant of Tenant shall be bound by all of the terms, conditions and provisions of this Lease, including, without limitation, the provisions of Section 9 concerning use of the Premises, and Tenant shall remain primarily liable on this Lease for the entire Term hereof and shall in no way be released from the full and complete performance of all of the terms, obligations (including, without limitation, those under Special Stipulation 10), covenants and agreements contained herein. Prior to the time of any such assignment or sublease by Tenant, Tenant shall first provide Landlord with written notification of Tenant's intent to so assign or sublease and such written notification from Tenant to Landlord shall include, at a minimum, the following information regarding any applicable proposed assignee or sublessee: (i) financial statements and other relevant financial information regarding any proposed assignee or sublessee; (ii) the identity and type of business of such proposed assignee or sublessee; and (iii) such proposed assignee or sublessee's proposed use of the Premises which shall in all events be consistent and in compliance with the permitted use provisions set forth under Section 9 above. Landlord's consent shall not be required with respect to any such proposed assignee or sublessee; rather, the purpose of the preceding provisions regarding such notification and information from Tenant to Landlord shall be that of notifying Landlord with respect to any proposed assignee or sublessee. Further, in the event Tenant fails to comply with its obligations set forth under this Section 11 with respect to providing such information to Landlord and otherwise notifying Landlord as called for above under this Section 11, then any such breach by Tenant shall be considered a nonmonetary breach pursuant to nonmonetary event of default 16(ii) in Section 16 of this Lease which follows, as opposed to a monetary event of default pursuant to 16(i) in Section 16 of this Lease which follows, and accordingly, shall be subject to the notice and cure provisions set forth in said 16(ii).

12. *HOLDING OVER.* Should Tenant or any of its successors in interest continue to hold the Premises after termination of this Lease, whether such termination occurs by lapse of time or otherwise, with Landlord's acquiescence, and without any distinct agreement between the parties, then for the first six (6) month period of such holding over by Tenant, such holding over shall constitute and be construed as a tenancy at will at a monthly rental equal to 125% of the monthly rental (including Base Monthly Rental and any adjusted and additional rent) provided herein at the time of such termination. At all times following the first six (6) month period of such holding over by Tenant, such holding over shall then constitute and be construed as a month to month tenancy at will at a monthly rental equal to one hundred fifty percent (150%) of the monthly rental (including Base Monthly Rental and any adjusted and additional rent). At all times during the period of such holding over by Tenant (but only during such period of such holding over by Tenant and not prior to the expiration of the normal term of this Lease), Tenant shall be entitled to terminate this Lease upon thirty (30) days prior written notice to Landlord. Similarly, at all times following the first six (6) month period of such holding over by Tenant, Landlord shall be entitled to terminate this Lease upon sixty (60) days prior written notice to Tenant and at all times following the expiration of such sixty (60) day notice period from Landlord to Tenant, Tenant shall be regarded as a tenant at sufferance and not as a tenant at will; subject, however, to all the terms, provisions, covenants and agreements on the part of Tenant hereunder. At all times during the period of such tenancy at sufferance, no payments of money by Tenant to Landlord after the termination of this Lease shall reinstate, continue, renew or extend the Term and no extension of this Lease after the termination hereof shall be valid unless and until the same shall be reduced to writing and signed by both Landlord and Tenant. With respect to such tenancy at sufferance, Tenant shall be liable to

Landlord for all damage which Landlord shall suffer by reason of Tenant's holding over and Tenant shall indemnify, defend and hold Landlord harmless against all claims made by any other tenant or prospective tenant against Landlord resulting from delay by Landlord in delivering possession of the Premises to such other tenant or prospective tenant.

13. *ALTERATIONS AND IMPROVEMENTS*. (a) No structural alteration in, or structural addition to, the Premises or the mechanical, electrical, or any other systems (other than security) of the Premises will be made without first obtaining Landlord's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed, and any such work consented to, although paid for by Tenant, may be done by Landlord's contractor. However, in the event the same is performed by Tenant then all such work performed by Tenant shall meet any and all applicable building codes, and shall otherwise be performed in full compliance with any and all applicable laws, ordinances, codes and regulations, and further, Tenant shall (i) perform all such work in a reasonable manner; (ii) utilize only contractors or other vendors with a first class reputation; (iii) cause such work to be completed promptly on a lien free basis; (iv) cause such work to be completed in compliance with all applicable laws, ordinances, regulations and rules; (v) utilize the same or similar materials as any materials which may be replaced; (vi) obtain Landlord's prior written approval of all contractors, subcontractors and other vendors to be utilized by Tenant in performing any such work; and (vii) obtain any and all required building permits and other required approvals prior to performing any such work. Tenant shall, however, be entitled to perform nonstructural alterations or nonstructural additions to the Premises and shall be entitled to work on the security system (but not any other Building system) without Landlord's prior written consent but subject to and in compliance with the terms and conditions set forth in this Section 13 regarding any work performed by Tenant.

(b) If Tenant's actions, omissions or occupancy of the Premises shall knowingly cause the rate of fire or other insurance either on the Building or the Premises to be increased, Tenant shall pay, as additional rent, the amount of any such increase promptly upon demand by Landlord; and

(c) All erections, additions, fixtures and improvements, whether temporary or permanent in character (except only the movable office furniture of Tenant) made in or upon the Premises shall be and remain Landlord's property and shall remain upon the Premises at the termination of this Lease by lapse of time or otherwise, with no compensation to Tenant. At the expiration of the Term of this Lease, Tenant shall leave the Premises broom clean and in good condition, normal wear and tear accepted.

13. *REPAIRS TO THE PREMISES*. Landlord shall not be required to make any repairs or improvements to the Premises, except roof and structural repairs and repairs of latent defects necessary for safety and, tenantability, together with repairs to the mechanical, electrical and power, plumbing (including hot and cold water), HVAC, elevators and restrooms as may be required. Tenant shall, at its own cost and expense, keep in good repair all portions of the Premises, including but not limited to windows, interior glass, doors, interior walls and finish work, floors and floor coverings, and supplemental or special heating and air conditioning systems, and shall take good care of the Premises and its fixtures and permit no waste, except normal wear and tear with due consideration for the purpose for which the Premises are leased. Landlord shall maintain and

replace, at its cost and expense, all light bulbs and fixtures in the Premises. To the extent Landlord incurs costs pursuant to the preceding sentence in excess of Landlord's costs associated with the Building's standard two foot by four foot fluorescent light fixtures and bulbs and any other Building standard lighting, Landlord shall invoice Tenant for such excess costs incurred by Landlord, and Tenant shall pay any and all such invoices as additional rental in accordance with the provisions of Section 8 and Special Stipulation 31 of this Lease. Tenant shall indemnify Landlord against any loss, damage, or expense arising by reason of any failure of Tenant to keep the Premises in good repair and tenantable condition as expressly required herein or due to any act or neglect of Tenant, its agents, employees, contractors, invitees, licensees, tenants, or assignees. If Tenant fails to perform after five (5) days prior written notice from Landlord to Tenant that any such maintenance or repair is required (except in the event of emergency in which event no such prior written notice shall be required), or cause to be performed, such maintenance and repairs, then at the option of Landlord, in its sole discretion, any such maintenance or repair may be performed or caused to be performed by Landlord and the cost and expense thereof charged to Tenant, and Tenant shall pay the amount thereof to Landlord on demand as additional rental. Tenant shall promptly report to Landlord in writing any damage to, or defective condition in or about the Building or Premises known to Tenant.

15. *LANDLORD'S RIGHT TO ENTER PREMISES*. Tenant shall not change the locks on any entrance to the Premises without prior written notice to Landlord, and in this event, Tenant shall provide copy keys to Landlord to the Premises; provided, however, Tenant shall have the right to utilize a card access system for entry to the Premises to which Landlord shall be subject but Landlord shall at all times have full access to the Premises and Building. However, notwithstanding the foregoing, Landlord and Tenant will agree upon certain limited specific areas of the Premises which will be off limits to Landlord at all times with such agreement by Landlord and Tenant to be reflected in an amendment to this Lease. Designated agents, employees, and contractors of Landlord shall have the right to enter the Premises upon one (1) business day prior written notice from Landlord to Tenant (except in the event of emergency in which event no such notice shall be required), at such times as Landlord deems reasonably necessary, to make necessary repairs, additions, alterations, and improvements to the Premises or the Building, including, without limitation, the erection, use, and maintenance of pipes and conduits. Landlord shall also be allowed to take into and through the Premises any and all needed materials that may be required to make such repairs, additions, alterations, and improvements, all without being liable to Tenant in any manner whatsoever. During such time as work is being carried on in or about the Premises, provided such work is carried out in a manner so as not to interfere unreasonably with the conduct of Tenant's business therein, the rent provided herein shall in no way abate, and Tenant waives any claim and cause of action against Landlord for damages by reason of loss or interruption to Tenant's business and profits therefrom because of the prosecution of any such work or any part thereof. In the event of emergency, or if otherwise necessary to prevent injury to persons or damage to property, such entry to the Premises may be made by force without any liability whatsoever on the part of Landlord for damage resulting from such forcible entry.

16. *DEFAULT AND REMEDIES*. The following events shall be deemed to be events of default by Tenant under this Lease: (i) Tenant shall fail to pay any installment of Base Monthly Rental, Additional Rent or any other charge or assessment against Tenant pursuant to the terms

hereof within ten (10) days after notice thereof to Tenant; (ii) Tenant shall fail to comply with any term, provision, covenant or warranty made under this Lease by Tenant, other than the payment of the Base Monthly Rental or additional rent or any other charge or assessment payable by Tenant, and shall not cure such failure within thirty (30) days after notice thereof to Tenant except that if such matter, by its nature, requires more than thirty (30) business days to cure, then Tenant shall be entitled to additional time (but not to exceed an additional forty-five (45) business days) provided Tenant commences such cure promptly and diligently pursues such cure to completion in all events within such additional forty-five (45) business day period; (iii) Tenant or any guarantor of this Lease shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition in any proceeding seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or fail timely to contest the material allegations of a petition filed against it in any such proceeding; (iv) a proceeding is commenced against Tenant or any guarantor of this Lease seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, and such proceeding shall not have been dismissed within sixty (60) business days after the commencement thereof; (v) a receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant or of any guarantor of this Lease; or (vi) Tenant shall fail to take possession of the Premises as provided in this Lease; (vii) Tenant shall knowingly do or permit to be done anything which creates a lien upon the Premises or the Building and such lien is not removed or discharged within thirty (30) business days after the filing thereof.

Upon the occurrence of any of the aforesaid events of default, without notice or demand of Tenant in any instance, Landlord shall have the option to pursue any one or more of the following remedies:

(a) Terminate this Lease by giving Tenant notice of termination, in which event this Lease shall expire and terminate on the date specified in such notice of termination, with the same force and effect as though the date so specified were the date herein originally fixed as the termination date of the Term of this Lease, and all rights of Tenant under this Lease and in and to the Premises shall expire and terminate, and Tenant shall remain liable for all obligations under this Lease arising up to the date of such termination, and Tenant shall surrender the Premises to Landlord on the date specified in such notice and if Tenant fails to do so, Landlord may without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any portion thereof.

(b) Landlord may immediately, or at any time thereafter so long as such event of default remains uncured, terminate this Lease, and in the event this Lease is so terminated, Landlord shall be entitled to recover forthwith against Tenant, as liquidated damages and not as a penalty, the present value determined by application of a reasonable discount rate selected by Landlord of the Aggregate Gross Rent (defined below) and the actual or estimated (as reasonably determined by Landlord) Reletting Costs (defined below) less the aggregate fair market rental

value of the Premises for what otherwise would have been the unexpired balance of the Lease Term (Landlord and Tenant hereby agreeing that Landlord's actual damages in such event are impossible to ascertain and the amount set forth hereinabove as Landlord's liquidated damages is a reasonable estimate of the amount of actual damages which Landlord probably would suffer). In determining the aggregate fair market rental value pursuant to the preceding sentence, the parties hereby agree that all relevant factors shall be considered as of the time Landlord seeks to enforce such remedy, including, but not limited to, (i) the length of time remaining in what otherwise would have been the unexpired balance of the Lease Term (exclusive of renewals and extensions), (ii) the then current market conditions in the metropolitan Atlanta, Georgia area, (iii) the likelihood of reletting the Premises for a period of time equal to what otherwise would have been the unexpired balance of the Lease Term, (iv) the net effective rental rates (taking into account all concessions) then being obtained for space of similar type and size in similar type buildings in the metropolitan Atlanta, Georgia area, (v) the vacancy levels in comparable quality multi-tenant office buildings in the metropolitan Atlanta, Georgia area, (vi) the anticipated duration of the period the Premises will be unoccupied prior to the reletting, (vii) the anticipated cost of reletting, and (viii) the current levels of new construction of multi-tenant office buildings in the metropolitan Atlanta, Georgia area that will be completed during the period in what otherwise would have been the unexpired balance of the Lease Term and the degree to which such new construction will likely affect vacancy rates and rental rates in comparable quality multi-tenant office buildings in the metropolitan Atlanta, Georgia area. In the event Landlord shall relet the Premises for the period which otherwise would have constituted the unexpired portion of the Term (or any part thereof), the amount of rent and other sums payable by the tenant thereunder shall be deemed prima facie to be the rental value for the Premises (or the portion thereof so relet) for the Lease Term of such reletting. Tenant shall in no event be entitled to any rents collected or payable in respect of any reletting, whether or not such rents shall exceed the Base Monthly Rental and any additional rent reserved in this Lease. As used herein, the term "Aggregate Gross Rent" shall mean the Base Monthly Rental and any additional rent and any other sums due hereunder as of the date of termination of this Lease plus the Base Monthly Rental and any additional rent which would have been owing by Tenant hereunder for the balance of the Lease Term had this Lease not been terminated, less the net proceeds, if any, received as a result of any reletting of the Premises by Landlord subsequent to such termination, after deducting all of Landlord's expenses including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration and repair costs and expenses of preparation for such reletting (collectively, the "Reletting Costs").

(c) Without terminating this Lease, terminate Tenant's right of possession and enter into and upon and take possession of the Premises or any part thereof, and at Landlord's option, expel and remove persons and property therefrom by entry (including the use of force if necessary), dispossessing suit or otherwise, without thereby releasing Tenant from any liability hereunder, without terminating this Lease, and without being liable to prosecution or any claim for damages therefor. Such property, if any, may be removed and stored in a warehouse or elsewhere at the cost of, and for the account of Tenant, all without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may, but shall be under no obligation to do so relet the Premises or any portion thereof in Landlord's or Tenant's name, but for the account of Tenant, with or without advertisement, and by private negotiations, and receive the

rent therefore, and for any term and upon such terms and conditions as Landlord may deem necessary or desirable. Landlord shall in no way be responsible or liable for any rental concessions or any failure to lease the Premises or any part thereof, or for any failure to collect any rent due upon such reletting. Upon each such reletting, all rentals received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness (other than any amounts due hereunder) from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including, without limitation, brokerage fees and attorneys' fees and costs of alterations and repairs (Tenant agreeing that Landlord shall have the right to make such alterations and repairs as, in Landlord's judgement, may be necessary to relet the Premises); third, to the payment of rental and other charges then due and unpaid hereunder; and the residue, if any, shall be held by Landlord to the extent of and for application in payment of future amounts due hereunder as the same may become due and payable hereunder. In reletting the Premises as aforesaid, Landlord may grant rent concessions and Tenant shall not be credited therefor. If such rentals received from such reletting shall at any time or from time to time be less than sufficient to pay to Landlord the entire sums then due from Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall, at Landlord's option, be calculated and paid monthly. No such reletting shall be construed as an election by Landlord to terminate this Lease unless a written notice of such election has been given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for any such previous event of default provided same has not been cured. Notwithstanding anything contained herein to the contrary, no termination of Tenant's right of possession of the Premises by dispossessory action or otherwise shall release Tenant from the performance of Tenant's obligations under this Lease, including, without limitation, the timely payment of all rent reserved hereunder for the balance of the Term of this Lease following such termination of Tenant's right of possession, and Tenant agrees to so perform said obligations.

(d) Without liability to Tenant or any other party and without constituting a constructive or actual eviction, suspend, or discontinue furnishing or rendering to Tenant any property, material, labor, utilities or other service, wherever Landlord is obligated to furnish or render the same, so long as Tenant is in default under this Lease.

(e) Allow the Premises to remain unoccupied and collect Base Monthly Rental and other charges due hereunder from Tenant as they come due.

(f) Landlord may perform, as agent for and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord shall have given Tenant notice and opportunity to cure as provided herein, the cost of which performance by Landlord together with interest thereon at the default rate from the date of such expenditure, shall be deemed additional rental and shall be payable by Tenant to Landlord upon demand, and Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, whether caused by negligence of Landlord or otherwise.

(g) Landlord may exercise any other legal or equitable right or remedy which it may have, including, but not limited to Landlord's right judicially to obtain possession pursuant to Georgia statutory law.

Any costs and expenses incurred by Landlord (including, without limitation, reasonable (non-statutory) attorneys' fees actually incurred) in successfully enforcing any of its rights or remedies under this Lease shall be deemed additional rent and shall be repaid to Landlord by Tenant demand.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies thereby excluding the later election of an alternate remedy, or a forfeiture or waiver of any Base Monthly Rental, additional rent or other charges and assessments payable by Tenant and due to Landlord hereunder or of any damage accruing to Landlord by reason or violation of any of the terms, covenants, warranties and provisions herein contained. No course of dealing between Landlord and Tenant or any failure or delay on the part of Landlord in exercising any rights of Landlord under this paragraph, or under any other provisions of this Lease, shall operate as a waiver of any rights of Landlord hereunder or under any other provisions of this Lease, nor shall any waiver of an event of default on one occasion operate as a waiver of any subsequent event of default or of any other event of default. No express waiver shall affect any condition, covenant, rule, or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

If this Lease is terminated by Landlord pursuant to clause (b) above, "present value" may be computed by discounting the amount of such excess to present worth at a discount rate equal to one percent (1%) above the discount rate then in effect at the Federal Reserve Bank of Atlanta, Georgia. Neither the commencement of any action or proceeding, nor the settlement thereof, nor entry of judgment thereon shall bar Landlord from bringing subsequent actions or proceedings from time to time, nor shall the failure to include in any action or proceeding any sum or sums then due be a bar to the maintenance of any subsequent actions or proceedings for the recovery of such sum or sums so omitted. Landlord's pursuit of any remedy or remedies, including, without limitation, any one or more of the remedies stated above, shall not (i) constitute an election of remedies or preclude pursuit of any other remedy or remedies provided in this Lease or separately or concurrently or in any combination, or (ii) serve as the basis for any claim of constructive eviction, or allow Tenant to withhold any payments under this Lease.

The failure of Landlord to insist upon strict performance of any of the terms, conditions and covenants herein shall not be deemed to be a waiver of any subsequent breach or default in the terms, conditions, and covenants herein contained except as may be expressly waived in writing.

Landlord shall in no event be in default in the performance of any of its obligations in this Lease unless and until Landlord shall have failed to perform such obligation within thirty (30) days or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation.

If Tenant shall at any time be in default hereunder, and if Landlord shall deem it necessary to engage attorneys to enforce Landlord's rights hereunder, the determination of such necessity to be in the reasonable discretion of Landlord or if Landlord is made a party to litigation involving or

pertaining to Tenant due to no fault of Landlord, then Tenant will reimburse Landlord for the reasonable expenses incurred thereby, including but not limited to court costs and reasonable attorneys' fees and other legal expenses.

Tenant hereby covenants that, prior to the exercise of remedies, it will give the holder of any Mortgage (as defined below) notice and thirty (30) days to cure said default unless said default cannot be cured within thirty (30) days, in which case such holder shall have the right, but not the obligation, to commence and to diligently prosecute the cure of Landlord's default.

17. *LANDLORD'S SERVICES*. Landlord shall furnish the following services to Tenant during the Term of this Lease:

(a) Janitor service shall be provided Monday through Friday of each week, exclusive of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, pursuant to specifications therefor described on *Exhibit "G"* attached hereto and incorporated herein by reference. The janitorial staff shall be subject to Tenant's security clearance procedures for the Premises. Additionally, Tenant shall have the right to replace the janitorial services provided by Landlord, and if Tenant so elects, then the rental under this Lease shall be reduced by Landlord's previous cost in providing such janitorial services as documented by an amendment to this Lease to be executed by Landlord and Tenant.

Tenant will design Tenant's electrical system serving any equipment producing non-linear electrical loads to accommodate such non-linear electrical loads, including, but not limited to, over-sizing neutral conductors, de-rating transformers and/or providing power line filters. Tenant's final contract documents for the Tenant Improvements (as defined in the Work Letter) shall include a calculation of Tenant's fully connected design load with and without demand factors and shall indicate the number of watts of un-metered and sub-metered loads.

The design and installation of any additional electrical equipment (or any related meter) required by Tenant shall be subject to the prior approval of Landlord (which approval shall not be unreasonably withheld). All expenses incurred by Landlord in connection with the review and approval of any additional electrical equipment shall also be reimbursed to Landlord by Tenant.

If any of Tenant's electrical equipment requires conditioned air in excess of Building Standard air conditioning, the same shall be installed by Tenant at Tenant's sole cost in a manner previously approved by Landlord in writing, and Tenant shall pay all design, installation, metering and operating costs relating thereto.

To the extent the services described hereinabove require electricity and water supplied by public utilities, Landlord's covenants thereunder shall only impose on Landlord the obligation to use its good faith, reasonable efforts to cause the applicable public utilities to furnish the same. All of the services (other than janitorial) contemplated under this Section 17 as well as any other applicable utility services shall be provided by Landlord to Tenant solely at Tenant's cost, and in no event, notwithstanding any other provision of this Lease to the contrary, shall Landlord incur

any costs whatsoever associated with utility invoices from the applicable utilities. Rather, Landlord's only responsibility shall be to receive and remit payment for such invoices on Tenant's behalf to be reimbursed by Tenant in accordance with the following: In the course of Landlord's management of the Building, Landlord shall receive and remit payment for the utility invoices associated with the services set forth under this Section 17, and Tenant shall reimburse Landlord for such payments made by Landlord on Tenant's behalf within fifteen (15) days of Landlord's presentation of Landlord's invoice to Tenant associated with Landlord's payment on Tenant's behalf of any such utility payments. **See Section 8 and Special Stipulation 31.** Landlord's management of the Building shall include landscaping and other services commensurate with the following standard: such management shall be in a first class manner comparable to other office properties in the Central Perimeter Office Market of Atlanta, Georgia. **See Special Stipulation 19.**

18. *WINDOW DRESSINGS*. All exterior windows of the Premises shall be equipped only with Building-standard blinds provided by the Landlord. Tenant may install other window treatments so long as same have solid white linings and so long as the Building-standard blinds remain affixed between the window glass and the other window treatments.

19. *TELEPHONE SERVICE*. Tenant acknowledges and agrees that securing and arranging for telephone service to the Premises is the sole responsibility of Tenant and that Landlord has no responsibility or obligation to provide or arrange such telephone service.

20. *DESTRUCTION OF PREMISES*. Should the Premises be so damaged by fire or other cause that rebuilding or repairs cannot, in the estimation of Landlord, be completed within one hundred twenty (120) days from the date of the fire, or other cause of damage, then either Landlord or Tenant may terminate this Lease by written notice to the other given within thirty (30) days of the date of such damage or destruction, in which event rent shall be abated from the date of such damage or destruction. However, if the damage or destruction is such that rebuilding or repairs can be completed within one hundred twenty (120) days, Landlord covenants and agrees, subject to the provisions of this paragraph, to make such repairs with reasonable promptness and dispatch within such one hundred twenty (120) day period, and to allow Tenant an abatement in the Base Monthly Rental for such time as the Premises are untenantable or proportionately for such portion of the Premises as shall be untenantable, and Tenant covenants and agrees that the terms of this Lease shall not be otherwise affected. In no event shall Landlord be required to repair or replace any trade fixtures, furniture, equipment or other property belonging to Tenant nor shall Landlord be required to rebuild, repair or replace any part of the partitions, fixtures, additions, or other improvements which may have been placed in or about the Premises by Tenant. Notwithstanding anything to the contrary contained in this paragraph, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty contained under this paragraph occurs during the last six (6) months of the Term of this Lease, but rent shall abate to the extent set forth above in this Section 20 until such repairs are completed.

21. *CONDEMNATION*. If the whole of the Premises or access to the Premises, or such portion thereof, as will make Premises unusable for the purposes herein leased, be condemned by

any legally constituted authority for any public use or purpose, then, in either of said events, the Term hereby granted shall cease from the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of said date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemnor; provided, however, Tenant shall not be entitled to claim compensation for items which would reduce Landlord's award.

22. *INSURANCE*. Landlord shall insure the initial Tenant Improvements to the Premises. Subject to the foregoing, Tenant shall insure subsequent alterations, additions, and improvements to the Premises and shall otherwise carry the required insurance under this Lease as follows: Tenant shall carry fire and extended coverage insurance insuring Tenant's interest in its improvements and betterment to the Premises and any and all furniture, equipment, supplies, and other property owned, leased, held, or possessed by it and contained therein, against loss or damage by fire, flood, windstorms, hail, earthquakes, explosion, riot, damage from aircraft and vehicles, smoke damage, vandalism and malicious mischief and such other risks as are from time to time covered under "extended coverage" endorsements and special extended coverage endorsements commonly known as "all risks" endorsements, such insurance coverage to be in an amount equal to the full replacement value of such improvements and property.

Tenant also agrees to carry a policy or policies of workers' compensation and commercial general liability insurance, including personal injury and property damage in an amount of not less than Two Million and No/100 Dollars ($2,000,000.00) for the property damage and Five Million and No/100 Dollars ($5,000,000.00) per occurrence for personal injuries or deaths of persons occurring in or about the Premises. Said policies shall: (i) name Landlord, its agents and mortgagees as additional insureds and insure Landlord's contingent liability under this Lease (except for the workers' compensation policy, which shall instead include waiver of subrogation endorsement in favor of Landlord); (ii) be issued by an insurance company which is acceptable to Landlord and licensed to do business in the State of Georgia and maintains an A.M. Best credit rating of "B+" or better; and (iii) provide that said insurance shall not be cancelled unless thirty (30) days' prior written notice shall have been given to Landlord. Said policy or policies, or certificate thereof, shall be delivered to Landlord by Tenant upon commencement of the Term of the Lease and upon each renewal and/or modification of said insurance. If during the Term or any extension thereof additional coverage and/or higher limits of insurance than those mentioned above shall be deemed necessary by Landlord, Tenant shall procure such additional coverage provided such additional coverage is appropriate, customary and generally required for like premises utilized for similar purpose. If Tenant shall fail at any time to procure and/or maintain the insurance required herein, Landlord may, at its option, procure such insurance on Tenant's behalf and the cost thereof shall be payable upon demand, as additional rent. Payment by Landlord of any insurance premium or the carrying by Landlord of any such insurance policy shall not be deemed to waive or release the default of Tenant with respect thereto.

Landlord shall procure and maintain at its expense (but with the expense to be included in Operating Expenses) throughout the Term a policy or policies of special form/all risk insurance covering the Building including the initial Tenant Improvements in the Premises up to the amount

of the Tenant Improvement Allowance, but excluding Tenant's personal property and equipment, in an amount equal to the full insurable replacement costs thereof as such may increase from time to time (but such insurance may provide for a commercially reasonable deductible), and in an amount sufficient to comply with any coinsurance requirements in such policy, and a policy of worker's compensation insurance, if any, as required by applicable law. In addition, Landlord shall procure and maintain at its expense (but with the expense to be included in Operating Expenses) and shall thereafter maintain throughout the Term, a commercial general liability insurance policy covering the Building with combined single limits for damage to property and personal injury of not less than One Million Dollars ($1,000,000.00) per occurrence, subject to annual aggregate limits of not less than Two Million Dollars ($2,000,000.00). Landlord may also carry such other types of insurance in form and amounts which Landlord shall determine to be appropriate from time to time, and the costs thereof shall be included in Operating Expenses. All such policies procured and maintained by Landlord pursuant to this Section 22 shall be carried with companies licensed to do business in the State of Georgia. Any insurance required to be carried by Landlord hereunder may be carried under blanket policies covering other properties of Landlord and/or its members and/or their respective related or affiliated corporations and entities as long as such blanket policies provide insurance at all times for the Building as required by this Lease. Tenant shall be named as an additional insured on all such insurance carried by Landlord with respect to the Building.

23. *WAIVER OF SUBROGATION*. Landlord and Tenant each hereby releases the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils that is insured against or that are required to be insured against under the terms of the Lease, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, including, without limitation, any other tenants or occupants of the remainder of the Building in which the Premises are located; provided, however, that this release shall be applicable and in force and effect only to the extent that such release shall be lawful at that time and in any event only with respect to loss or damage occurring during such time as the releaser's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releaser to recover thereunder and then only to the extent of the insurance proceeds payable under such policies. Landlord and Tenant each agrees that it will request its insurance carriers to include in its policies such a clause of endorsement. If extra cost shall be charged therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so. If such other party fails to pay such extra costs, the release provisions of this paragraph shall be inoperative against such other party to the extent necessary to avoid invalidation of such releaser's insurance.

24. *NO ESTATE IN LAND*. This contract shall create the relationship of Landlord and Tenant between the parties hereto; no estate shall pass out of Landlord. Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except by Landlord's consent.

25. *INDEMNITY*. Excepting for the willful acts or negligence of Landlord, its agents and employees, Tenant indemnifies and shall hold Landlord, its agents and employees, harmless from

and defend Landlord, its agents, officers, directors, partners, attorneys and employees, against any and all claims or liability for injury or death to any person or damage to any property whatsoever:

(a) either (i) occurring in, on, or about the Premises; or (ii) occurring in, on, or about any facilities (including, without limitation, elevators, stairways, passageways or hallways) the use of which Tenant may have in conjunction with other occupants of the Building, when such injury, death or damage shall be caused in part or in whole by the act, neglect or fault of, or omission of any duty with respect to the same by Tenant, its agents, employees, contractors, invitees, licensees, tenants, or assignees; or

(b) arising from any work or thing whatsoever done by or benefiting the Tenant in or about the Premises or from transactions of the Tenant concerning the Premises; or

(c) arising from any breach or default on the part of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to the terms of this Lease; or

(d) otherwise arising from any act or neglect of the Tenant, or any of its agents, employees, contractors, invitees, licensees, tenants or assignees; and from and against all costs, expenses, counsel fees, and court costs incurred or assessed in connection with any or all of the foregoing. Furthermore, in case any action or proceeding be brought against Landlord by reason of any claims or liability, Tenant agrees to cause such action or proceeding to be defended at Tenant's sole expense by counsel reasonably satisfactory to Landlord. The provisions of this Lease with respect to any claims or liability occurring or caused prior to any expiration or termination of this Lease shall survive such expiration or termination.

Tenant shall give immediate notice to Landlord in case of casualty or accidents in the Premises. The provisions of this paragraph shall survive the expiration or sooner termination of this Lease.

Except for the willful acts or negligence of Tenant, its agents, contractors, employees, invitees, licensees, visitors, and customers, Landlord hereby indemnifies and shall hold Tenant harmless from and defend Tenant against any and all claims or liability for injury or death to any person or damage to any property whatsoever arising from any breach or default on the part of Landlord in the performance of any covenant or agreement on the part of Landlord to be performed pursuant to the terms of this Lease.

26. *LIABILITY OF LANDLORD.* Subject to the provisions of Special Stipulations 18 and 19, Landlord shall not be liable to Tenant or to any persons, firm, corporation, or other business association claiming by, through, or under Tenant for failure to furnish or for delay in furnishing any service provided for in this Lease, and no such failure or delay by Landlord shall be an actual or constructive eviction of Tenant nor shall any such failure or delay operate to relieve Tenant from the prompt and punctual performance of each and all the covenants to be performed herein by Tenant; nor for water discharged from sprinkler systems, if any, or from water pipes and plumbing facilities in the Building; nor for the theft, mysterious disappearance, or loss of any property of

Tenant whether from the Premises or any part of the Building; and nor from interference, disturbance, or acts to or omitted against Tenant by third parties, including, without limitation other occupants of the Building and any such occurrences shall not constitute an actual or constructive eviction of Tenant.

27. *LIMITATION OF LIABILITY*. Landlord's obligations and liability with respect to this Lease shall be limited solely to Landlord's interest in the Building any insurance proceeds received by Landlord in connection therewith to the extent not yet applied by Landlord, as such interest is constituted from time to time, and neither Landlord nor any officer, director, shareholder, or partner of Landlord, or of any partner of Landlord, shall have any personal liability whatsoever with respect to this Lease. In no event shall Landlord be liable to Tenant nor shall any interest of Landlord in the Building be subject to execution by Tenant, for any indirect, special or consequential damages.

28. *NO WAIVER OF RIGHTS*. No failure or delay of Landlord to exercise any right or power given it herein or to insist upon strict compliance by Tenant of any obligation imposed on it herein and no custom or practice of either party hereto at variance with any term hereof shall constitute a waiver or a modification of the terms hereof by Landlord or any right it has herein to demand strict compliance with the terms hereof by Tenant. No person has or shall have any authority to waive any provision of this Lease unless such waiver is expressly made in writing and signed by Landlord.

29. *ENTIRE AGREEMENT AND EXHIBITS*. This Lease constitutes and contains the sole and entire agreement of Landlord and Tenant and no prior or contemporaneous oral or written representation or agreement between the parties and affecting the Premises shall have legal effect. The content of each and every exhibit which is referenced in this Lease as being attached hereto is incorporated into this Lease as fully as if set forth in the body of this Lease.

30. *NOTICES*. All notices required or desired to be given with respect to this Lease shall, in order to be effective, be in writing and shall be effectively given or delivered if hand delivered to the addresses for Landlord and Tenant specified hereinbelow, or if deposited, postage prepaid, to the United States mail, certified, return receipt requested, properly addressed to the addresses specified hereinbelow, or if delivered by Federal Express or other overnight commercial courier to the addresses for Landlord and Tenant hereinbelow. Any notice mailed or sent by overnight commercial courier shall be deemed to have been given upon receipt or refusal thereof. Notice effected by hand delivery shall be deemed to have been given at the time of actual delivery. In the event of a change of address by either party, such party shall give written notice thereof to the other party in accordance with the foregoing. Additionally, Tenant agrees to send copies of all notices required or permitted to be given to Landlord to each lessor under any ground or land lease covering all or any part of the Land and each holder of a mortgage or deed to secure debt encumbering the Building and/or the Land that notifies Tenant in writing of its interest in the address to which notices are to be sent.

If to Tenant (prior to Commencement Date):
INTERNET SECURITY SYSTEMS, INC.
6600 Peachtree-Dunwoody Road, N.E.
30 Embassy Row, Fifth Floor
Atlanta, Georgia 30328
Attention: Mr. Richard Macchia

If to Tenant (after Commencement Date):
INTERNET SECURITY SYSTEMS, INC.
6303 Barfield Road
Suite 100
Atlanta, Georgia 30328
Attn: Mr. Richard Macchia

If to Landlord:
MOUNT VERNON PLACE PARTNERS, L.L.C.
c/o Griffin Management Services, Inc.
800 Mount Vernon Highway, Suite 300
Atlanta, Georgia 30328
Attn: Mr. Joel J. Griffin

The foregoing addresses may be changed by thirty (30) days written notice from time to time.

Tenant hereby appoints as his agent to receive the service of all dispossessory or distraint proceedings and notices thereunder, and all notices required under this Lease, the person in charge of or occupying the Premises at the time; and if no person is in charge of or occupying same, then such service or notice may be made by attaching the same on the main entrance to the Premises. To the extent permitted by law, Tenant hereby submits to the jurisdiction of any state or federal court located in Fulton County, Georgia, as well as to the jurisdiction of all courts from which an appeal may be taken from the aforesaid courts for the purpose of any suit, action or other proceeding arising out of Tenant's obligations under or with respect to this Lease and Tenant hereby expressly waives any and all objections that Tenant may have as to jurisdiction and/or venue in any of such courts.

31. *SUCCESSORS AND ASSIGNS*. The covenants, conditions and agreements herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its heirs, executors, administrators, successors and assigns, and shall inure to the benefit of Tenant. Nothing contained in this Lease shall in any manner restrict Landlord's right to assign or encumber this Lease in its sole discretion. Should Landlord assign this Lease as provided for above, Tenant shall be bound to said conditions of this Lease for the balance of the Term hereof remaining after such succession, and Tenant shall attorn to such succeeding party as its landlord under this Lease promptly under any such successions. Tenant agrees that should any party so succeeding to the interest of Landlord require a separate agreement of attornment regarding the matters covered by this Lease, then Tenant shall enter into any such "attornment agreement," provided the same does not modify any of the provisions of this Lease and has no adverse effect upon Tenant's continued occupancy of the Premises.

32. *SUBORDINATION*. Landlord will obtain within thirty (30) days from the date of this Lease from its lender financing the acquisition of the Land, as this term is defined in Special Stipulation 1, and the construction of the Building in connection therewith, a subordination, non-disturbance and attornment agreement between Landlord, such lender, and Tenant. Tenant agrees that this Lease shall, subject to obtaining the aforesaid subordination, non-disturbance attornment agreement be and remain subject and subordinate to all present and future mortgages, deeds to secure debt or other security instruments (the "Security Deeds") affecting the Premises provided that such future lenders will not disturb Tenant as long as Tenant remains in full compliance with all terms and conditions of this Lease. Tenant shall promptly execute and deliver to Landlord such certificate or certificates in writing as Landlord may request, confirming the subordinate nature of the Lease to such Security Deeds.

33. *ESTOPPEL CERTIFICATE*. Tenant shall, within ten (10) days after request from Landlord, at any time and from time to time execute, acknowledge and deliver to Landlord a written statement certifying as follows: (a) that this Lease is unmodified and in full force and effect (or if there has been modification thereof, that the same is in full force and effect as modified and stating the nature thereof); (b) that to the best of its knowledge there are no uncured defaults on the part of Landlord (or if any such default exists, the specific nature and extent thereof); and (c) the date to which any rents and other charges have been paid in advance, if any; and (d) such other matters as Landlord may reasonably request.

34. *TIME IS OF THE ESSENCE*. Time is of the essence with the respect to the performance of each of the covenants and agreements of this Lease; provided, however, that failure of Landlord to provide Tenant with any notification regarding adjustments in Base Monthly Rental, or any other charges provided for hereunder, within the time periods prescribed in this Lease shall not relieve Tenant of its obligation to make such payments, which payments shall be made by Tenant at such time as notice is subsequently given. Unless specifically provided otherwise, all references to terms of days or months shall be construed as references to calendar days or calendar months, respectively.

35. *CAPTIONS; GOVERNING LAW*. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease. The laws of the State of Georgia shall govern the validity, performance and enforcement of this Lease.

36. *DEFINITIONS*. "Landlord" as used in this Lease shall include his heirs, representatives, assigns and successors in title to Premises. "Tenant" shall include its heirs and representatives, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sublessees, as to premises covered by such assignment or sublease. "Broker" and "Co-Broker" shall include its successors, assigns, heirs, and representatives. "Landlord," "Tenant," "Broker" and "Co-Broker," shall include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

37. *SEVERABILITY*. If any clause or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any

governmental body or entity, effective during its term, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby, unless such invalidity is, in the sole determination of Landlord, essential to the rights of both parties in which event Landlord has the right to terminate this Lease on written notice to Tenant.

38. *LAWS AND REGULATIONS; BUILDING RULES AND REGULATIONS*. Subject to the provisions of Special Stipulation 11, Tenant shall comply with, and Tenant shall cause its agents, contractors, customers, employees, invitees, licensees, servants and visitors to comply with (i) all applicable laws, ordinances, orders, directions, requirements, rules and regulations (state, federal, municipal and other agencies or bodies having any jurisdiction thereof) now in force or which may hereafter be in force, which shall impose any duty upon Landlord or Tenant relating to the use, condition or occupancy of the Premises or the conduct of Tenant's business therein, including, without limitation, the Americans With Disabilities Act of 1990 (as now or hereafter amended); and (ii) the Building Rules and Regulations set forth in *Exhibit "F,"* as such Rules and Regulations are modified and supplemented by Landlord from time to time, and such other rules and regulations as are reasonably adopted by Landlord from time to time, for the safety, care or cleanliness of the Premises and the Building, or for preservation of good order therein, all of which will be sent by Landlord to Tenant in writing and shall be thereafter carried out and observed by Tenant, its agents, contractors, customers, employees, invitees, licensees, servants and visitors. Tenant hereby expressly waives the benefit of all existing and future rent control laws and similar governmental rules and regulations, whether in time of war or not, to the full extent permitted by law.

39. *SPECIAL STIPULATIONS*. The Special Stipulations attached hereto are hereby incorporated herein and made a part hereof. In the event the Special Stipulations conflict with any of the foregoing provisions of this Lease, the Special Stipulations shall control.

40. *BROKER COMMISSION*. Tenant represents and warrants to Landlord that, other than Insignia/ESG, Inc. ("Broker"), no broker, agent, commissioned salesperson or other person has represented Tenant in the negotiations for and procurement of this Lease, and that no commissions, fees or compensation of any kind are due in connection herewith to any broker, agent, commissioned salesperson or other person, other than Broker, which has acted as broker for Tenant in this transaction. Landlord shall pay Broker a real estate commission in connection with this transaction pursuant to the terms of a separate written Commission Agreement between Landlord and Broker. Landlord has disclosed that The Griffin Company ("Co-Broker") is acting on behalf of Landlord in this transaction and is receiving a commission pursuant to the terms of a separate written Commission Agreement.

41. *REMOVAL OF PERSONAL PROPERTY*. Tenant may (if not in default hereunder) prior to the expiration of this Lease, or any extension thereof, remove all unattached and movable personal property and equipment which Tenant has placed in the Premises, provided Tenant repairs all damages to Premises caused by such removal. All personal property of Tenant remaining on the Premises after the end of the Term shall be deemed conclusively abandoned, notwithstanding that title to or a security interest in such personal property may be held by an individual or entity other than Tenant, and Landlord may dispose of such personal property in any manner it deems proper, in

its sole discretion. Tenant hereby waives and releases any claim against Landlord arising out of the removal or disposition of such personal property. Tenant shall reimburse Landlord for the cost of removing such personal property.

42. *SIGNAGE*. Subject to applicable laws, regulations, and ordinances, Tenant, at Tenant's sole cost and expense (but with Tenant allowed to use a portion of the Tenant Improvement Allowance as set forth in the Work Letter attached as *Exhibit "D"*) and subject to Landlord's prior written approval as to the exact location and as to the plans and specifications for such signage, shall be entitled to install signage including Tenant's corporate name and logo on each Building and the parking deck together with a monument sign adjacent to each Building and the walls of elevator lobbies of the Building and on entrance doors to the Building on any full floors of the Building leased by Tenant. The location of such signage together with all plans and specifications for such signage shall be provided by Tenant to Landlord subject to Landlord's prior written approval not to be unreasonably withheld by Landlord. Subject to the foregoing, Tenant shall not place any other signs, decals, or other materials upon the windows or suite doors of the Premises nor on the exterior walls of Premises. Any additional signage other than as provided for under this Section 42 desired by Tenant shall be approved, in writing, by Landlord and the management company of the Building, which shall be granted in their sole discretion.

43. *EFFECT OF TERMINATION OF LEASE*. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

44. *RIGHTS CUMULATIVE*. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative but not restrictive to those given by law.

45. *FORCE MAJEURE*. In the event of strike, lockout, labor trouble, civil commotion, act of God, or any other cause (hereinafter collectively referred to as "Force Majeure") outside and beyond Landlord's control, resulting in the impairment of Landlord's ability to perform any obligation or provide any service hereunder, this Lease shall not terminate, and Tenant's obligation to pay Base Monthly Rental, additional rental and all other charges and sums due payable by Tenant shall not be altered or excused and Landlord shall not be considered to be in default under this Lease or liable in damages to Tenant in any manner.

46. *TENANT CORPORATION, PARTNERSHIP OR INDIVIDUAL*. If Tenant executes this Lease as a corporation, each of the persons executing this Lease on behalf of Tenant does hereby covenant, warrant and represent that Tenant is a duly organized and validly existing corporation, that Tenant has and is qualified to do business in Georgia, that the corporation has full right and authority to enter into this Lease, and that each and all persons signing on behalf of the corporation were authorized to so do. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing covenants and warranties. If Tenant executes this Lease as a partnership, Tenant does hereby covenant, warrant and represent that all the persons who are general or managing partners in said partnership have executed this Lease on behalf of Tenant, or that this Lease has been executed and delivered pursuant to and in conformity with a valid and effective authorization therefor, by all of the general or managing

partners of such partnership, and is and constitutes the valid and binding agreement of the partnership and each and every partner therein in accordance with its terms. Also, it is agreed that each and every present and future partner of Tenant shall be and shall remain at all times jointly and severally liable hereunder, and that the death, resignation, or withdrawal of any partner shall not release the liability of such partner under the terms of this Lease unless and until Landlord consents in writing to such release. If Tenant executes this Lease as an individual, Tenant does hereby covenant, warrant and represent that his legal residence address is that set forth below his signature on this Lease. If more than one individual or entity comprises and constitutes Tenant, then all individuals and entities comprising Tenant are and shall each be jointly and severally liable for the due and proper performance of Tenant's covenants, duties and obligations arising under or in connection with this Lease.

47. *SUBMISSION OF LEASE*. The submission of this Lease for examination does not constitute an offer to lease nor a reservation of space even if said lease is executed by Landlord, and this Lease shall be effective only upon execution hereof by Landlord and Tenant.

48. *NO RECORDATION OF LEASE*. This Lease is not in recordable form, and Tenant agrees not to record or permit the recording of this Lease or other evidence thereof except that Tenant shall be entitled to record a memorandum of this Lease, previously approved in writing by Landlord, which memorandum shall provide that this Lease is subject to present and future lenders as set forth in Section 32 of this Lease and subject to the terms and conditions of Section 32 of this Lease.

49. *HAZARDOUS SUBSTANCES*. Tenant hereby covenants and agrees that Tenant shall not cause or knowingly permit any "Hazardous Substances" (as hereinafter defined) to be generated, placed, held, stored, used, located or disposed of at the Building or any part thereof, except for Hazardous Substances as are commonly and legally used or stored as a consequence of using the Demised Premises for general office and administrative purposes, but only so long as the quantities thereof do not pose a threat to public health or to the environment or would necessitate a "response action", as that term is defined in CERCLA (as hereinafter defined), and so long as Tenant strictly complies or causes compliance with all applicable governmental rules and regulations concerning the use or production of such Hazardous Substances. For purposes of this paragraph, "Hazardous Substances" shall mean and include those elements or compounds which are contained in the list of Hazardous Substances adopted by the United States Environmental Protection Agency (EPA) or the list of toxic pollutants designated by Congress or the EPA which are defined as hazardous, toxic, pollutant, infectious or radioactive by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including, without limitation, strict liability) or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereinafter in effect (collectively "Environmental Laws"). Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person, entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence in, or the escape, leakage, spillage, discharge,

emission or release from, the Demised Premises of any Hazardous Substances (including, without limitation, any losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act ["CERCLA"], any so–called federal, state or local "Superfund" or "Superlien" laws or any other Environmental Law); provided, however, that the foregoing indemnity is limited to matters arising solely from Tenant's violation of the covenant contained in this Article. The obligations of Tenant under this Article shall survive any expiration or termination of this Lease. **See Special Stipulation 12.**

50. *EXECUTION*. This Lease may be executed in any number of counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete in itself and may be introduced into evidence or used for any purpose without the production of the other counterparts. No modification or amendment of this Lease shall be binding upon the parties hereto unless such modification or amendment is in writing and signed by Landlord and Tenant.

51. *LANDLORD AND TENANT RELATIONSHIP*. The relationship between Landlord and Tenant shall be solely that of landlord and tenant only, and no provision of this Lease including, without limitation, the provisions of Special Stipulation 8 of this Lease, shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture, between the parties hereto, and accordingly, without limiting the generality of the foregoing provisions, Tenant shall have no authority to bind or enter into any agreements on behalf of Landlord whatsoever.

52. *AUTHORITY*. As a material inducement to Landlord to enter into this Lease, Tenant, acknowledging that Landlord may rely on each such representation and warranty, represent and warrant to Landlord that:

(a) the execution, delivery and full performance of this Lease by Tenant do not and shall not constitute a violation of any contract, agreement, undertaking, judgment, statute, regulation, governmental or court order or other restriction of any kind to which Tenant is or may be bound;

(b) Tenant has executed and entered into this Lease free from fraud, undue influence, duress, coercion or other defenses to the execution of this Lease;

(c) Tenant is duly organized, validly existing and in good standing under the laws of the state of Georgia and has full power and authority to enter into this Lease, to perform Tenant's obligations under this Lease in accordance with the terms hereof, and to transact business in the State of Georgia; and

(d) the execution and delivery of this Lease by the individual or individuals executing this Lease on behalf of Tenant, and Tenant's performance of its obligations under this Lease, have been duly authorized and approved by all necessary corporate or partnership action, as the case may be, and Tenant's execution, delivery and

performance of this Lease are not in conflict with Tenant's bylaws or articles of incorporation, or other charters, agreements, rules or regulations governing Tenant's business, as any of the foregoing may have been supplemented, modified, amended, or altered in any manner.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals hereunder and have caused this Lease to be executed in their names and their corporate seals to be affixed by their officers duly authorized thereunto, upon the day and year set forth above.

**TENANT:**

Signed, sealed and delivered
in the presence of:

**INTERNET SECURITY SYSTEMS, INC.,**
a Georgia corporation

/s/ JOHN D. SHLESINGER

By: /s/ RICHARD MACCHIA

Notary Public or Witness

Name: Richard Macchia

(Please Print)

John D. Shlesinger

Title: Chief Financial Officer

Name (Please Print)

Attest: /s/ CHRIS KLAUS

Name: Chris Klaus

(Please Print)

Title: Corporate Secretary

[CORPORATE SEAL]

**LANDLORD:**

Signed, sealed and delivered
in the presence of:

**MOUNT VERNON PLACE PARTNERS, L.L.C.,** a Georgia limited liability company

/s/ PATRICIA BLANKENSHIP

By: /s/ JOEL J. GRIFFIN

Notary Public or Witness

Joel J. Griffin
Managing Member

Patricia Blankenship

Name (Please Print)

**EXHIBIT 10.77**

**AMENDMENT NO. 5 TO LEASE AGREEMENT**
**FOR THE ISS ATLANTA BUILDINGS**

**FIFTH AMENDMENT TO LEASE AGREEMENT**

THIS FIFTH AMENDMENT TO LEASE AGREEMENT (the "Fifth Amendment") is made and entered into as of this 1st day of July, 2002, by and between MOUNT VERNON PLACE PARTNERS, LLC, a Georgia limited liability company ("Landlord"), and INTERNET SECURITY SYSTEMS, INC., a Georgia corporation ("Tenant").

**W I T N E S S E T H:**

WHEREAS, Landlord and Tenant previously entered into that certain Lease Agreement dated November 8, 1999 (the "Original Lease"), as amended by that certain First Amendment to Lease Agreement between Landlord and Tenant dated December 7, 1999 (the "First Amendment"), and as further amended by Second Amendment to Lease Agreement between Landlord and Tenant dated as of November 27, 2000 (the "Second Amendment"), and as further amended by Third Amendment to Lease Agreement between Landlord and Tenant dated as of February , 2001, and executed on June 8, 2001 (the "Third Amendment"), and as further amended by Fourth Amendment to Lease Agreement between Landlord and Tenant dated as of August 17, 2001 (the "Fourth Amendment"; the Original Lease, as previously amended, is herein referred to as the "Lease"), pursuant to the terms of which Tenant has leased those certain "Premises" (as defined in the Original Lease) located in Fulton County, Georgia; and

WHEREAS, Landlord and Tenant now desire to further modify and amend the Lease as set forth herein.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and for other good and valuable consideration in hand paid by each of the parties hereto to the other, the receipt, adequacy, and sufficiency of which are hereby acknowledged, Landlord and Tenant do hereby covenant and agree as follows:

1. *Defined Terms*. Terms used herein and denoted by their initial capitalization shall have the meanings set forth in the Lease unless specifically provided herein to the contrary.

2. *Description of Land*. The legal description of the Land attached as Exhibit "B" to the Original Lease is hereby deleted and the legal description of the Land attached as *Exhibit "B"* to this Fifth Amendment is substituted in lieu thereof.

3. *Commencement Date*. Landlord and Tenant acknowledge and agree that the Commencement Date under the Lease occurred on November 18, 2000. Accordingly, the first Lease Year expired on November 30, 2001, and that the second and each succeeding Lease Year shall commence on December 1 following the expiration of the preceding Lease Year.

4. *Size of Premises*. Landlord and Tenant acknowledge, stipulate and agree that the Premises are comprised of a total of 238,600 rentable square feet determined in accordance with the Lease and that the foregoing stipulated rental square foot area of the Premises shall be utilized for all purposes of the Lease, including, without limitation, for the calculation of Base Monthly Rental.

Landlord and Tenant further acknowledge, stipulate and agree that as contemplated in Section 6 of this Fifth Amendment, as of the date of this Fifth Amendment and continuing until July 31, 2002, Tenant is obligated to pay and shall pay Base Monthly Rental calculated on the basis of 215,500 rentable square feet of space within the Premises. Commencing on August 1, 2002, and continuing thereafter throughout the remainder of the Term of the Lease, Tenant shall be obligated to pay and shall pay Base Monthly Rental calculated on the basis of the entire 238,600 rentable square feet contained within the Premises.

5. *Base Monthly Rental*. Landlord and Tenant acknowledge, stipulate and agree that the Operating Expenses per square foot of the Premises for the first twelve (12) months of the Term of the Lease were equal to or less than $4.87 and accordingly, the Net Rental annual rate and the Base Monthly Rental annual rate, assuming an annual escalation of two and one-half percent (2½%) per year in Net Rental occurs pursuant to Section 6 of the Original Lease, are set forth in the illustrative chart below:

| Lease Year | Net Rental Annual Rate | Remaining Rental Rate | Base Monthly Rental Annual Rate | Amount of Base Monthly Rental Subject to Assumptions Set Forth Above | Amount of Annual Base Rental Subject to Assumptions Set Forth Above |
|---|---|---|---|---|---|
| First Lease Year (11/18/00-11/30/01) | $16.1800 | $ 4.87 | $21.0500 | See Lease prior to date hereof | See Lease prior to date hereof |
| Second Lease Year (12/1/01-11/30/02) | $16.5845 | $ 4.87 | $21.4545 | $ 426,586.98[1] | $ 5,119,043.70[1] |
| Third Lease Year (12/1/02-11/30/03) | $16.9991 | $ 4.87 | $21.8691 | $ 434,830.60 | $ 5,217,967.26 |
| Fourth Lease Year (12/1/03-11/30/04) | $17.4241 | $ 4.87 | $22.2941 | $ 443,281.02 | $ 5,319,372.26 |
| Fifth Lease Year (12/1/04-11/30/05) | $17.8597 | $ 4.87 | $22.7297 | $ 451,942.20 | $ 5,423,306.42 |
| Sixth Lease Year (12/1/05-11/30/06) | $18.3062 | $ 4.87 | $23.1762 | $ 460,820.11 | $ 5,529,841.32 |
| Seventh Lease Year (12/1/06-11/30/07) | $18.7638 | $ 4.87 | $23.6338 | $ 469,918.72 | $ 5,639,024.68 |
| Eighth Lease Year (12/1/07-11/30/08) | $19.2329 | $ 4.87 | $24.1029 | $ 479,246.00 | $ 5,750,951.94 |
| Ninth Lease Year (12/1/08-11/30/09) | $19.7138 | $ 4.87 | $24.5838 | $ 488,807.89 | $ 5,865.694.68 |
| Tenth Lease Year (12/1/09-11/30/10) | $20.2066 | $ 4.87 | $25.0766 | $ 498,606.40 | $ 5,983.276.76 |
| Eleventh Lease Year (12/1/10-11/30/11) | $20.7118 | $ 4.87 | $25.5818 | $ 508,651.46 | $ 6,103,817.48 |
| Twelfth Lease Year (12/1/11-11/30/12)2 | $21.2296 | $ 4.87 | $26.0996 | $ 518,947.05 | $ 6,227,364.56 |
| Last Six Months (12/1/12-5/31/13)[2] | $21.2296 | $ 4.87 | $26.0996 | $ 518,947.05 | $ 6,227,364.56 |

The foregoing chart does not take into account any Operating Expense Differential or other amounts payable by, or reimbursable to, Tenant pursuant to the Lease, including without limitation Sections 8, 14 and 17 and Special Stipulation 31 of the Lease. The foregoing chart replaces and supersedes all prior charts contained in the Lease with respect to all periods from and after the date of this Fifth Amendment, but shall not affect the rent payable by Tenant prior to the date hereof with respect to Tenant's staged occupancy of the Premises.

[1] Based on Tenant's occupancy of 238,600 rentable square feet, commencing as of August 1, 2002. See Sections 4 and 6 of this Fifth Amendment regarding Tenant's occupancy and payment of Base Monthly Rental, as of the date hereof and continuing through July 31, 2002, calculated on the basis of 215,500 rentable square feet.

[2] Nothing contained in this illustrative chart is intended to modify the expiration date of the lease, which expiration date shall continue to be governed by and subject to adjustment as provided in Section 2 of the lease, as replace in the Third Amendment.

6. *Actual Fourth Target Commencement Date*. Landlord and Tenant acknowledge, stipulate and agree that the fourth target Commencement Date for the remaining (and final) floor of the Phase II Building, consisting of 23,100 rentable square feet on the fifth (5th) floor of the Phase II Building, is August 1, 2002.

7. *Operating Expenses of the Base Year*. Landlord and Tenant acknowledge, stipulate and agree that the Operating Expenses of the Base Year, as adjusted and grossed up as provided in the Lease, including Section 8 and Special Stipulation 30 thereof, were $4.87 per rentable square foot of the Premises, inclusive of $3.37 per rentable square foot, or $806,468.00 (representing the product of $3.37 per square foot, multiplied by 238,600 rentable square feet contained within the Premises) for all Operating Expenses other than Taxes (said expenses being herein referred to as the "Non-Tax Operating Expenses" and the Base Year amount thereof being referred to as the "Non-Tax Expense Base Year Amount"), and $1.50 per rentable square foot, or $357,900 (representing the product of $1.50 per square foot, multiplied by 238,600 rentable square feet contained within the Premises) for the component of Operating Expenses relating only to Taxes (the "Tax Expense Base Year Amount"). For purposes hereof, the term "Taxes" shall have the meaning described in the fifth ($5^{th}$) item appearing on the first page of Exhibit "E" (Operating Expenses—Definitions) attached to the Original Lease. The foregoing stipulated amounts of the Operating Expenses of the Base Year, the Non-Tax Expense Base Year Amount and the Tax Expense Base Year Amount, shall be deemed to be final and not subject to adjustment under any circumstances and without regard to the validity or enforceability of the tax abatement agreement which has been obtained by Tenant prior to the date hereof. For so long as the Premises are subject to the tax abatement obtained by Tenant pursuant to Special Stipulation 30 of the Lease, the provisions of the Lease with regard to Operating Expenses shall be applied separately with respect to Non-Tax Operating Expenses and Taxes, utilizing the Non-Tax Expense Base Year Amount and the Tax Expense Base Year Amount, respectively. Subject to the limitations contained in Special Stipulation 6 of the Lease (as restated in this Fifth Amendment), Tenant agrees that it shall pay as additional rent pursuant to Section 8 of the Lease the amount by which (if any) the Taxes in any calendar year exceed the Tax Expense Base Year Amount. To the extent that such Taxes are less than the Tax Expense Base Year Amount as a result of the property tax abatement now or hereafter obtained by Tenant pursuant to Special Stipulation 30 (as restated in Paragraph 17 of this Fifth Amendment), the "Tax Savings" (as defined in said Special Stipulation) shall be applied to reduce the additional rent otherwise payable by Tenant pursuant to Section 8 of the Lease with respect to Taxes. If and to the extent the Premises were to be subjected to a "rollback" of Taxes for any period during Tenant's tax abatement period (notwithstanding any provisions of Tenant's tax abatement agreement to the contrary), Landlord and Tenant, upon the demand of either party, shall make such adjustments to Operating Expenses with respect to any periods subjected to any such rollback of Taxes so as to ensure that Landlord's obligation shall be the payment of any Taxes up to the Tax Expense Base Year Amount and Tenant's obligation shall be the payment of any Taxes in excess of the Tax Expense Base Year Amount. Nothing contained herein shall affect Tenant's rights or Landlord's obligations pursuant to the first grammatical paragraph of Section 17(a) of the Original Lease with respect to the adjustment of additional rental in the event Tenant elects to provide its own janitorial services to the Premises.

8. *Destruction of Premises*. Section 20 of the Original Lease is hereby deleted in its entirety and the following Section 20 is hereby inserted in lieu thereof:

20. ***DESTRUCTION OF PREMISES.***

20.1 *Reciprocal Termination Rights.*

(a) If the Premises are damaged or destroyed, in whole or in part, by a fire or other casualty ("Casualty"), Landlord shall obtain the determination of Landlord's Architect (as defined in Section 20.4 hereof) of the Estimated Repair Period (as defined in Section 20.3 hereof) on or before the Determination Date (as also defined in Section 20.3 hereof). Unless this Lease is terminated by Landlord or Tenant pursuant to this Section 20, Landlord shall repair and restore the Premises, subject to and as provided in Section 20.3 hereof, within the Estimated Repair Period in each case. For purposes of this Section 20, and the time periods referenced herein, the date of the related Casualty is herein referred to as the "Damage Date."

(b) If less than twenty-five percent (25%) of the number of rentable square feet of space contained in either Building are rendered untenantable as a result of a Casualty, then Landlord shall repair and restore the Premises as provided in Section 20.3 hereof within one hundred twenty (120) days unless the Estimated Repair Period is more or less than one hundred twenty (120) days, but not more than one hundred eighty (180) days, in which event Landlord shall repair and restore the Premises within the Estimated Repair Period; provided, however, that if in the reasonable determination of Landlord's Architect given in writing to both parties pursuant to Section 20.3 hereof on or before the Determination Date, the Estimated Repair Period is more than one hundred eighty (180) days after the Damage Date, either party may terminate this Lease by giving the other party notice within ten (10) days after receipt of such determination of Landlord's Architect.

(c) If more than twenty-five percent (25%) but up to fifty percent (50%) of the number of rentable square feet of space contained in either Building are rendered untenantable as a result of a Casualty, and if in the reasonable determination of Landlord's Architect given in writing to both parties pursuant to Section 20.3 hereof on or before the Determination Date, the Estimated Repair Period is more than one hundred eighty (180) days after the Damage Date, either party may terminate this Lease by giving the other party notice within ten (10) days after receipt of such determination of Landlord's Architect. If the Lease is not so terminated, then Landlord shall repair and restore the Premises as provided in Section 20.3 hereof within the Estimated Repair Period.

(d) If more than fifty percent (50%) of the number of rentable square feet of space contained in either Building are rendered untenantable as a result of a Casualty, and if in the reasonable determination of Landlord's Architect given in writing to both parties pursuant to Section 20.3 hereof on or before the Determination Date, the Estimated Repair Period is more than two

hundred seventy (270) days after the Damage Date, either party may terminate this Lease by giving the other party notice within ten (10) days after receipt of such determination of Landlord's Architect. If the Lease is not so terminated, then Landlord shall repair and restore the Premises as provided in Section 20.3 hereof within the Estimated Repair Period.

20.2 *Tenant's Additional Termination Rights.* In addition to the termination rights granted to Tenant under Section 20.1 above, if the Premises are damaged or destroyed by Casualty, and if the Premises are not restored in all material respects by Landlord to the extent required of Landlord hereunder within the Estimated Repair Period (as such period may be extended for delays outside of Landlord's control as set forth hereinbelow), then at any time following the expiration of the Estimated Repair Period and prior to substantial completion of such repair and restoration, Tenant shall have the right to terminate this Lease by giving written notice thereof to Landlord; provided, however, that if Landlord is delayed as a result of changes, deletions or additions in construction requested by Tenant, or other delays or interference caused by the acts or omissions of Tenant or its agents, contractors or employees, or as a result of force majeure, the Estimated Repair Period shall be extended for the amount of time Landlord is so delayed; and provided further that if Tenant exercises such election to terminate and Landlord shall complete the repair and restoration of the Premises to the extent required of Landlord hereunder within thirty (30) days following the date of Tenant's notice of termination, said notice of termination shall be nullified and the Lease shall continue in full force and effect. Unless the delay is caused by Tenant, its agents, contractors or employees, the extension under the first proviso in the preceding sentence shall not exceed an additional ninety (90) days.

20.3 *Landlord's Restoration Obligations.* Promptly upon the occurrence of any Casualty, Landlord shall require Landlord's Architect to prepare a written determination for the benefit of Landlord and Tenant of said Architect's estimation of the time period reasonably required from the Damage Date, in light of all circumstances then known, to complete the restoration of the Premises, said written determination to be made and delivered to Landlord and Tenant as soon as may be practicable under the circumstances and in any event within thirty (30) days after the related Casualty (the "Determination Date"); provided, however, that if Warner, Summers, Ditzel, Benefield, Ward & Associates, Inc. or the principal(s) of said firm who designed and are familiar with the plans and specifications for the Building are not available to serve as Landlord's Architect, the Determination Date shall be thirty (30) days after the date on which Landlord shall have selected, and Tenant shall have approved, another architect to serve as Landlord's Architect, such selection and approval to be made as promptly as practicable. The period of time estimated by Landlord's Architect for the completion of repairs to the Premises, as set forth in said written notice from Landlord's Architect to Landlord and Tenant and as measured from the related Damage Date, is herein referred to as the "Estimated Repair Period." If neither Landlord nor Tenant has the right to terminate this Lease pursuant to any of the provisions of this Section 20, or if the party or parties that

have the right to terminate this Lease do not exercise such right as herein provided, then, subject to the last sentence of this Section 20.3, Landlord shall have the property damaged by such Casualty repaired or restored to the condition in all material respects that existed prior to the Casualty at the sole expense of the Landlord. If Landlord is obligated hereunder to repair and restore such damage, Landlord shall use all reasonable efforts in good faith to commence and thereafter to prosecute to completion the repair and restoration of such damage as speedily as may be practicable under the circumstances and to complete such repair and restoration within the Estimated Repair Period. Landlord further agrees to allow Tenant an abatement in the Base Monthly Rental for such time as the Premises are untenantable or proportionately for such portion of the Premises as shall be untenantable, and Tenant covenants and agrees that the terms of this Lease shall not be otherwise affected. In no event shall Landlord be required to repair or replace any trade fixtures, furniture, equipment or other property belonging to Tenant, nor shall Landlord be required to rebuild, repair or replace any part of the partitions, fixtures, additions or other improvements which may have been placed in or about the Premises by Tenant.

20.4 *Landlord's Architect; Termination Conditions*. For purposes of this Section 20, the term "Landlord's Architect" shall mean Warner, Summers, Ditzel, Benefield, Ward & Associates, Inc., except that if said firm is then no longer in existence or if the principal(s) of said firm who designed and are familiar with the plans and specifications for the Buildings (i.e., James Dietzel and James Fredrickson) shall then have retired or withdrawn from said firm or shall then be disabled or deceased, or if said firm declines to serve as Landlord's Architect, the term "Landlord's Architect" shall mean a reputable, qualified architect licensed in Georgia selected by Landlord, the selection of whom shall be subject to Tenant's reasonable approval (which shall not be unreasonably denied, delayed or conditioned). In the event of any termination of this Lease by either party pursuant to this Section 20, Rent hereunder shall be apportioned and paid to the date of termination.

20.5 *Termination Rights During Last Eighteen (18) Months; Uninsured Loss*. Notwithstanding anything in this Section 20 to the contrary, if the Premises are substantially damaged or destroyed by Casualty at any time during the last eighteen (18) months of the Term, then Landlord may terminate this Lease upon notice to Tenant within thirty (30) days after the Damage Date; provided that if Landlord exercises such election to terminate and Tenant has any unexercised option to extend the Term, then Tenant may nullify Landlord's asserted termination of this Lease by exercising Tenant's right to extend the Term, pursuant to Special Stipulation 13 of the Lease, for the applicable renewal term within fifteen (15) days after receipt of Landlord's notice of termination. Also, notwithstanding anything in this Section 20 to the contrary, if the Premises are substantially damaged or destroyed by Casualty, and such Casualty occurs during the last eighteen (18) months of the Term, Tenant may terminate this Lease upon notice to Landlord within thirty (30) days after the Damage Date. Also, notwithstanding anything in

this Section 20 to the contrary, if the Premises are substantially damaged as the result of a Casualty not required to be insured against by Landlord hereunder or if the Premises are substantially damaged by Casualty required to be insured against by Landlord but the insurance company is insolvent and financially unable to pay the proceeds which otherwise are payable (through no fault of Landlord), Landlord shall have the right to terminate this Lease by notice to Tenant given within sixty (60) days after the Damage Date. As used in this Section 20, the term "substantially damaged" shall mean such damage that the cost of repair and restoration thereof is reasonably estimated by Landlord's Architect to exceed Three Million and No/100 Dollars ($3,000,000).

20.6 *Reaffirmation of Lease*. Upon the occurrence of any damage to, or destruction of the Premises, and provided that either Tenant does not have the right hereunder to terminate this Lease as a result of such damage or if Tenant does have the right hereunder to terminate this Lease but has elected not to (or has failed to) terminate this Lease as provided herein, Tenant shall, within ten (10) days after receipt by Tenant of a written request therefor from Landlord and the receipt by Tenant from Landlord or Landlord's Architect, as the case may be, of all notices, elections and other information Tenant may reasonably require in order to make any election permitted under this Section 20, provide Landlord with a written reaffirmation of this Lease, including an acknowledgment that Tenant does not have the right to terminate this Lease as a result of such damage or that Tenant had the right to terminate this Lease but has elected not to (or has failed to) terminate this Lease as herein provided.

9. *Subordination*. Supplementing Section 32 of the Lease, Tenant agrees that any "certificate" confirming the subordinate nature of the Lease to any Security Deed may itself be in the form of a subordination, non-disturbance and attornment agreement between the applicable lender and Tenant, and Tenant agrees that upon request by Landlord, Tenant shall join in and deliver such subordination, non-disturbance and attornment agreement, provided that same is in a commercially reasonable form utilized by institutional lenders.

10. *Property Tax Increase*. At Tenant's request, in furtherance of Tenant's desire to obtain tax abatements with respect to the Premises as provided in Special Stipulation 30 of the Original Lease, Landlord conveyed the Premises to the Development Authority of Fulton County (the "Authority") and leased the Premises back from the Authority for a term of fifteen (15) years. Accordingly, Tenant hereby agrees that Special Stipulation 6 of the Original Lease shall be inapplicable to any transfer of the Premises from the Authority to Landlord or to any determination by a governmental authority as to the invalidity or unenforceability of Tenant's tax abatement agreement.

11. *Deletion of Additional Landlord Contribution to Tenant Costs*. Landlord and Tenant hereby acknowledge and agree that Tenant has not heretofore exercised its right under the first sentence of Special Stipulation 7 of the Original Lease to cause Landlord to pay for up to $2.50 per rentable square foot of the Premises of the Tenant Costs over and above the total $24.00 per rentable square foot Tenant Improvement Allowance, and Tenant has determined that Tenant will not exercise such right under the first sentence of Special Stipulation 7 of the Original Lease. Accordingly, the first sentence of Special Stipulation 7 of the Original Lease is hereby deleted.

12. *Tenant's Profit Participation*. Landlord and Tenant hereby acknowledge, stipulate and agree that Special Stipulation 8 of the Lease shall be binding only on the initial Landlord, Mount Vernon Place Partners, LLC. Said initial landlord under the Lease is sometimes referred to in this Fifth Amendment as "Mount Vernon". Mount Vernon has disclosed to Tenant that Mount Vernon has entered into a contract to sell the Buildings to Wells Capital, Inc., a Georgia corporation (Wells Capital, Inc. and its permitted assigns, including, without limitation, Wells Operating Partnership, L.P., a Delaware limited partnership, are herein referred to as "Wells"). Immediately upon any consummation of the purchase and sale of the Buildings by and between Mount Vernon and Wells and the assignment to and assumption by Wells of the Lease, Special Stipulation 8 of the Lease shall be deemed automatically deleted in its entirety and shall have no further force or effect whatsoever. Notwithstanding the foregoing, Mount Vernon shall remain responsible for the payment to Tenant of all amounts payable to Tenant upon the sale of the Buildings to Wells pursuant to Special Stipulation 8; Tenant shall look solely to Mount Vernon for the payment of any such sums; and neither Wells nor any other successor landlord shall have any liability whatsoever to Tenant pursuant to or arising out of said Special Stipulation 8, or be subject to any claim, counterclaim, demand, right of set-off or reduction or abatement in rent arising out of said Special Stipulation 8.

13. *Special Stipulation 12 Representation*. Landlord and Tenant acknowledge that the representation made by Landlord in the first sentence of Special Stipulation 12 of the Lease is effective only as of the date of the execution and delivery of the Original Lease. The foregoing acknowledgment shall not be deemed to release Mount Vernon from any obligations incurred by Mount Vernon pursuant to Special Stipulation 12 at any time prior to the date on which Mount Vernon may no longer be the Landlord under the Lease, nor shall the foregoing acknowledgment be deemed to release Landlord from its continuing obligations pursuant to the second sentence of Special Stipulation 12 of the Lease.

14. *Prior Modification of Special Stipulation 23*. Tenant acknowledges and agrees that notwithstanding anything to the contrary set forth in Special Stipulation 23 of the Original Lease, Tenant's rights as to the use of the Land and the Buildings 1 and 2 Parking Deck are and shall be

subject to the nonexclusive rights and easements of Spring Creek Partners, LLC, a Georgia limited liability company ("Spring Creek"), as the owner of the land which is the subject of the Building 3 Lease (the "Building 3 Land"), which rights and easements shall inure to the benefit of the successors, successors-in-title and assigns of Spring Creek, and its and their tenants, agents, employees and invitees and other occupants from time to time of the Building 3 Land, as provided in (a) Special Stipulation 14 of the Lease (which is set forth in the Third Amendment), and (b) Special Stipulation 32 of the Lease (which also is set forth in the Third Amendment), and (c) as shall be provided in the amendment to the Existing Easement Documents to be entered into prior to the commencement of construction of the office building contemplated by the Building 3 Lease, as provided in said Special Stipulation 32.

15. *Parking*. Special Stipulation 14 as set forth in Paragraph 3 of the Third Amendment is hereby deleted in its entirety and the following Special Stipulation 14 is hereby inserted in lieu thereof:

> 14. Landlord and Tenant acknowledge, stipulate and agree that Landlord has constructed an additional sixth level of parking (the "Additional Parking Level") containing 149 parking spaces on the existing parking deck located on the Premises (said parking facility, as so expanded, is referred to as the "Buildings 1 and 2 Parking Deck") and that the Buildings 1 and 2 Parking Deck, as so expanded, contains a total of 929 parking spaces. Landlord agrees that all of the parking spaces within the Buildings 1 and 2 Parking Deck shall be available during the Term and any extensions or renewals thereof for the sole use of Tenant at no charge, except that the rights of Tenant to use the Additional Parking Level may be terminated in the event of the occurrence of a Building 3 Lease Termination, as defined in Special Stipulation 32 of this Lease. All such spaces, subject to the foregoing and all remaining terms and conditions of the Lease, will be available twenty-four (24) hours per day, seven (7) days a week, every day of the year.

16. *Cooperation in Tax Abatement*. In furtherance of Tenant's desire to obtain tax abatements with respect to the Premises as provided in Special Stipulation 30 of the Lease, Landlord and Tenant acknowledge, stipulate and agree that prior to the date hereof, Landlord has cooperated with Tenant in obtaining certain ad valorem real property tax abatement benefits for the Premises through the issuance of (a) that certain Development Authority of Fulton County Taxable Revenue Bond (Internet Security Systems, Inc. Project), Series 2000A, dated as of September 14, 2000, Numbered AR-1, in the stated amount of Twenty-Six Million and No/100 Dollars ($26,000,000.00), and that (b) Development Authority of Fulton County Taxable Revenue Bond (Internet Security Systems, Inc. Project) Series 2000A, Numbered AR-2 in the stated amount of Six Million Five Hundred Thousand and No/100 Dollars ($6,500,000), dated as of December 20, 2001 (collectively, the "Bonds"). Landlord agrees, upon the request of Tenant and at Tenant's sole cost and expense (including, without limitation, the agreement of Tenant to pay or reimburse Landlord's actual and reasonable attorneys' fees and expenses incurred in connection therewith), to cooperate with Tenant in obtaining the issuance of "Additional Bonds" relative to the "Series 2000B Bonds" (as said terms are defined in the Indenture and Authority Lease described below) by the Development Authority of Fulton County ("Issuer") up to the maximum amount thereof authorized pursuant to that certain Indenture of Trust between Issuer and SunTrust Bank, as trustee, dated as of

September 1, 2000, it being mutually understood and agreed that Tenant anticipates seeking the issuance of such Additional Bonds relative to the Series 2000B Bonds in or about December 2002. It is expressly understood and agreed that Landlord makes no representations or warranties of any kind whatsoever in respect of any tax abatement agreement obtained by Tenant, whether prior to or after the date of this Amendment; it being Landlord's sole obligation, at no cost or expense to Landlord, to cooperate in good faith with Tenant, at Tenant's expense, in obtaining and maintaining a tax abatement for the Premises for so long as permissible under Georgia law.

17. *Tax Abatement and Tax Gross-Up Provision*. Special Stipulation 30 of the Original Lease is hereby deleted in its entirety and the following Special Stipulation 30 is hereby inserted in lieu thereof:

30. Landlord and Tenant mutually acknowledge and agree that prior to the date of this Fifth Amendment, Tenant obtained certain property tax abatements with respect to the Premises. Landlord and Tenant further mutually acknowledge and agree that if in any calendar year during the Term of this Lease while such property tax abatement is in effect, the actual Taxes paid or incurred by Landlord with respect to the Premises are less than the Tax Expense Base Year Amount of $357,900.00 (the amount by which $357,900.00 exceeds such actual Taxes in any calendar year during the Term while such tax abatement is in effect being herein referred to as the "Tax Savings"), then, the amount of such Tax Savings shall be applied to reduce the additional rent otherwise payable by Tenant pursuant to Section 8 of the Lease with respect to Taxes. For purposes of calculating Operating Expenses for the first year of the Term or any other calendar year during the Term, including the Operating Expense Base Year of 2001, Operating Expenses shall be calculated based upon a fully assessed and occupied Building."

18. *Special Stipulation 32 Amendment*. Special Stipulation 32 of the Lease, as added to the Lease pursuant to the Third Amendment, is hereby modified and amended as follows:

(a) by inserting the phrase", except for such reasonable rights of ingress and egress as may be reasonably required to obtain access to and from the Additional Parking Level" at the end of clause (i) thereof; and

(b) by deleting the date "August 1, 2001" appearing therein on page 3 of the Third Amendment, and by inserting in lieu of said date the phrase "the commencement of construction of the office building improvements under the Building 3 Lease".

19. *Emergency Power Generators*. Landlord has heretofore installed one or more emergency power generators (collectively, the "Generator") and associated fuel storage tanks (collectively, "FST") in accordance with specifications designed by Tenant as provided in Special Stipulation 20 of the Original Lease, and Tenant has accepted the Generator and FST for maintenance by Tenant and acknowledges that same have been installed in accordance with Tenant's requirements and are satisfactory for Tenant's purposes. Tenant shall be solely responsible during the Term of the Lease for conducting all monitoring and maintenance of the Generator and FST in accordance with all applicable requirements of governmental authorities and in accordance with the equipment specifications of the manufacturers thereof, all at Tenant's sole cost and

expense. If any Generator should cease to function properly, however, Tenant may elect not to repair or replace such Generator, or otherwise to keep such Generator in operating condition, so long as the Tenant's election not to maintain the Generator in operating condition shall not adversely affect the environmental condition of the Premises. Within ninety (90) days prior to the expiration of the Lease, or if the Lease shall terminate prior to the natural expiration of the Term of the Lease, within thirty (30) days after the termination of the Lease, Tenant shall provide to Landlord written confirmation to Landlord from an environmental consultant reasonably approved by Landlord that the FST and Generator have not impacted soil or groundwater at the Premises. In the event Tenant is unable or fails to provide such confirmation to Landlord within thirty (30) days after written notice from Landlord to Tenant requesting the same, then and in that event, Landlord shall have the right to require Tenant to remove and dispose of the FST and Generator in accordance with all applicable Environmental Laws and to repair any damage to the Premises caused by such removal and to remediate and clean up any impacted soil or groundwater at the Premises, all at Tenant's sole cost and expense. Unless Landlord exercises such option to cause Tenant to remove and dispose of the FST and Generator as provided in the preceding sentence, Tenant shall have no right to remove, and shall not remove, the FST and Generator upon the termination or expiration of the Lease. Tenant shall operate and, if applicable, remove (or close in place) the FST and remove Generator in strict compliance with all applicable federal, state and local laws, codes and regulations.

Tenant shall immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the FST or the Generator.

Notwithstanding any other provision in the Lease, Landlord shall have the right, but not the obligation, to enter the Premises or to take such other actions as it deems necessary to respond to, clean up, remove, resolve or minimize the impact of, or otherwise manage, any Hazardous Substances released as a result of the operation or existence of the FST or Generator; provided, however, that, except in an emergency, Landlord shall take such action only after providing at least ten (10) days written notice to Tenant of the existence of conditions requiring action and the failure by Tenant to address such conditions to the satisfaction of the Landlord. All reasonable costs and expenses incurred by Landlord in the exercise of any such rights, which costs and expenses result from the violation of the covenants and agreements of Tenant contained in this Paragraph, shall be deemed additional rent under the Lease and shall be payable by Tenant upon demand.

Tenant agrees to and shall indemnify Landlord and hold Landlord harmless from and against (i) the negligence of Tenant or its employees, agents or contractors in the operation and removal of the FST and Generator and (ii) environmental liabilities of any kind whatsoever associated with the FST or the Generator. Landlord agrees to and shall indemnify Tenant and hold Tenant harmless from and against the negligence of Landlord or its employees, agents or contractors in the exercise of any rights of Landlord in connection with the FST and Generator.

20. *Tenant Improvements in Remaining Space*. Tenant hereby acknowledges that, excepting only that certain space on the fifth (5th) floor in the Phase II Building which contains 23,100 rentable square feet (the "Remaining Space"), Tenant is in full and complete possession of the Premises and has accepted the same, including the work of Landlord performed therein pursuant to the terms and provisions of the Lease. Tenant does hereby further acknowledge that (i) Landlord

has completed all of the Base Building work and improvements required to be furnished, installed and made operational by Landlord under the Lease, including all Base Building work and improvements in or affecting the Remaining Space, (ii) excepting only the Tenant Improvements in the Remaining Space, all Tenant Improvements in the Premises have been completed and are satisfactory to Tenant in all respects, and (iii) Landlord has heretofore fully funded the Landlord's Allowance for Tenant Costs (also referred to in the Lease as the Tenant Improvement Allowance) with respect to the entire Premises, including the Remaining Space, and no further Tenant Improvement Allowance is available from Landlord to apply to the Tenant Costs which may be incurred with respect to the Remaining Space.

Landlord and Tenant hereby agree that notwithstanding anything to the contrary contained in the Lease, Tenant, and not Landlord, shall be responsible for the construction and installation of the Tenant Improvements in the Remaining Space through a contractor or contractors selected by Tenant and approved by Landlord as hereinafter provided, and Landlord is hereby relieved of any obligations and responsibilities with respect to the construction and installation of the Tenant Improvements in the Remaining Space. The Tenant Improvements in the Remaining Space shall be constructed and installed by Tenant in accordance with the terms, conditions, requirements and procedures set forth on *Exhibit "A"* attached hereto and by reference made a part hereof.

21. *Costs of Utilities*. The following is hereby added as item 27 in the list of the "Operating Expense Exclusions" attached as Exhibit "E" to the Original Lease:

> 27. The cost of all utilities for the Premises, including the cost of electricity, gas, water and sewer services, it being acknowledged that Tenant shall be responsible for the cost of such utilities as provided in Section 17 of this Lease and Special Stipulation 31.

22. *Miscellaneous*. Except as modified by this Fifth Amendment, the Lease shall otherwise remain unmodified and in full force and effect and the parties do hereby ratify and confirm the terms thereof. In the event of conflict or inconsistency between the terms and conditions of the Lease and the terms and conditions of this Fifth Amendment, the terms of this Fifth Amendment shall control and prevail and govern the rights, liabilities and obligations of the parties. This Fifth Amendment may be executed in counterparts and/or with counterpart signature pages, all of which together shall constitute a single agreement.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties, through their duly authorized officers and manager, respectively, have executed this Fifth Amendment the day and year first above written.

"TENANT":

INTERNET SECURITY SYSTEMS, INC.,
a Georgia corporation

By: /s/ RICHARD MACCHIA

**Richard Macchia**
**Chief Financial Officer**

Attest: /s/ SEAN BOWEN

**Sean Bowen**
**Secretary**

[CORPORATE SEAL]

"LANDLORD":

MOUNT VERNON PLACE PARTNERS, LLC,
a Georgia limited liability company

By: /s/ JOEL J. GRIFFIN (SEAL)

**Joel J. Griffin**
**Manager**

For Ten and No/100 Dollars ($10.00) and other good and valuable consideration in hand paid by Landlord to Internet Security Systems, Inc., a Delaware corporation (successor by name change to ISS Group, Inc., a Delaware corporation) ("Guarantor"), the receipt and sufficiency of which are hereby acknowledged by Guarantor, Guarantor agrees that Guarantor's Guaranty Agreement of the Lease dated November 8, 1999 (the "Guaranty") shall remain in full force and effect and shall constitute a Guaranty of the Lease, as amended by this Fifth Amendment to Lease Agreement. Guarantor, through its duly authorized officers, join in the execution provisions of this Fifth Amendment for the purpose of reaffirming its guaranty obligations, as amended by this Fifth Amendment.

"GUARANTOR":

Signed, sealed and delivered
in the presence of:

INTERNET SECURITY SYSTEMS, INC.,
a Delaware corporation

By: /s/ [ILLEGIBLE]
**Unofficial Witness**

By: /s/ RICHARD MACCHIA
**Richard Macchia**
**Chief Financial Officer**

By: /s/ PATRICIA BLANKENSHIP
**Notary Public**

By: /s/ SEAN BOWEN
**Sean Bowen**
**Assistant Secretary**

[NOTARY SEAL]

[CORPORATE SEAL]

**EXHIBIT "A"**

**TENANT IMPROVEMENTS IN REMAINING SPACE**

(a) *Drawings and Approval of Contractors*. The Tenant Improvements in the Remaining Space shall be constructed in substantial accordance with Drawings and Specifications to be prepared by Tenant at Tenant's cost and to be approved in writing by Landlord prior to the commencement of such Tenant Improvements. Landlord's approval of such Drawings and Specifications shall not be unreasonably withheld. Tenant shall also obtain the prior written consent of Landlord (which consent shall not be unreasonably withheld) as to the qualification of the contractor Tenant chooses to perform the Tenant Improvements in the Remaining Space ("Tenant's Contractor") and the mechanical and electrical subcontractors to be engaged in connection with the Tenant Improvements in the Remaining Space. Landlord shall have no responsibility for any defects or deficiencies in the Tenant Improvements in the Remaining Space performed by Tenant through Tenant's Contractor, and no approval by Landlord of the identity of Tenant's Contractor or any mechanical or electrical subcontractors to be engaged in connection with the Tenant Improvements in the Remaining Space shall create or give rise to any such responsibility. Tenant shall contract directly with Tenant's Contractor for the performance of the Tenant Improvements in the Remaining Space.

(b) *Certain Requirements*. Tenant and Tenant's Contractor shall perform the Tenant Improvements in the Remaining Space as follows:

(i) All of such work shall be done and installed in compliance with all reasonable rules and regulations promulgated by Landlord from time to time and all applicable requirements of any governmental authority having jurisdiction with respect to such work and shall comply with applicable standards of The National Board of Fire Underwriters, The American Society of Heating, Refrigeration and Air Conditioning Engineers, Landlord's insurance underwriter, and the requirements of the insurance companies which provide insurance coverage relating to the Building. Approval by Landlord shall not be deemed to relieve Tenant of its obligations to comply with the requirements of applicable governmental authorities and other matters set forth in this paragraph.

(ii) In connection with such work, Tenant shall file all approved plans and specifications and other materials, pay all fees and obtain all permits and applications from the Building Department and any other authorities having jurisdiction; and Tenant shall obtain a certificate of occupancy and all other approvals required for Tenant to use and occupy the Remaining Space. Landlord shall cooperate with Tenant to facilitate the efficient processing of all such permits and applications. Copies of all permits, certificates and approvals shall be forwarded to Landlord promptly after receipt by Tenant.

(iii) No item shall be mounted or hung from the exterior of the Building by Tenant or Tenant's Contractor without Landlord's prior written approval.

(iv) Upon completion of the Tenant Improvements in the Remaining Space, Tenant's architect shall furnish to Landlord a complete set of the as-built Drawings and Specifications with respect to the Tenant Improvements in the Remaining Space.

(c) *Insurance*. Tenant shall provide or cause to be provided the following type of insurance during the construction of the Tenant Improvements in the Remaining Space:

(i) At all times during the period between the commencement of construction of such work and the date such work is completed and Tenant commences occupancy of the Remaining Space for business purposes, Tenant shall maintain or cause to be maintained, casualty insurance in Builder's Risk Form, covering Landlord, Landlord's managing agent, Landlord's mortgagee, and Tenant and Tenant's contractors and subcontractors, as their interests may appear, against loss or damage by fire, vandalism, and malicious mischief and other such risks as are customarily covered by the so–called broad form extended coverage endorsement upon all such work in place and all materials stored at the site of such work and all materials, equipment and supplies of all kinds incident to such work and builder's machinery, tools and equipment used in the construction of such work while in or on the Premises, or when adjacent thereto, all on a completed value basis to the full insurable value at all times. Said Builder's Risk Insurance will also include coverage for loss of rents for a period of twelve (12) months. Said Builder's Risk Insurance shall contain an express waiver of any right of subrogation by the insurer against Landlord, its agents, employees and contractors.

(ii) Liability Insurance in amounts not less than as required by Section 22 of the Lease. Such liability insurance shall be on a comprehensive basis including:

(1) Premises—Operations (including X–C–U);

(2) Independent contractors protection;

(3) Contractual Liability, including specified provisions for the general contractor's obligations under subparagraph (i) above and for the Tenant's Contractor's indemnity obligations under subparagraph (d) below;

(4) Owned, non–owned and hired motor vehicles; and

(5) Broad form coverage for property damage.

(iii) Statutory Workers' Compensation Insurance as required by the State of Georgia or local municipality having jurisdiction.

All insurance policies procured and maintained pursuant to this paragraph shall name Landlord, Landlord's managing agent, and Landlord's mortgagee and any additional parties designated by

Landlord (which have an insurable interest) as additional insureds, shall be carried with companies licensed to do business in the State of Georgia reasonably satisfactory to Landlord and shall be non–cancelable except after twenty (20) days written notice to Landlord. Such policies or duly executed certificates of insurance with respect thereto shall be delivered to Landlord before the commencement of such work, and renewals thereof as required shall be delivered to Landlord at least thirty (30) days prior to the expiration of each respective policy term.

(d) *Indemnity*. Tenant shall indemnify and hold harmless Landlord and any of Landlord's contractors, agents and employees from and against (but subject to any waiver of subrogation required or permitted by the Lease) any and all losses, damages, costs (including costs of suits and reasonable attorneys' fees incurred), liabilities, or cause of action arising out of the actions of Tenant or Tenant's Contractor during the course of the construction of the Tenant Improvements in the Remaining Space, including but not limited to mechanics', materialmen's or other liens or claims (and all costs or expenses associated therewith) asserted, filed or arising out of any such work. All materialmen, contractors, artisans, mechanics, laborers and other parties hereafter contracting with Tenant or Tenant's Contractor for the furnishing of any labor, services, materials, supplies or equipment with respect to the Remaining Space are hereby charged with notice that they must look solely to Tenant for payment of same. Without limiting the generality of the foregoing, Tenant shall repair or cause to be repaired at its expense all damage caused by Tenant's Contractor, its subcontractors or their employees. Tenant shall promptly pay to Landlord, upon notice thereof from Landlord, any costs incurred by Landlord to repair any damage caused by the Tenant's Contractor or any costs incurred by Landlord in requiring the Tenant's Contractor's compliance with the rules and regulations. Tenant agrees to cause the Tenant's Contractor to provide an indemnification and hold harmless agreement providing the protection set forth in this paragraph and to cause the Tenant's Contractor to procure, as additional protection, an indemnification and hold harmless agreement from each subcontractor providing for the protection set forth in this paragraph. In connection with any and all claims against Landlord or any of its agents, contractors or employees by any employee of the Tenant's Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts the Tenant's Contractor or any subcontractor may be liable, the indemnification obligations of the Tenant's Contractor and any subcontractor under the agreements hereinabove referred to in this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Tenant's Contractor or subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

(e) *Further Assurances*. At the request of Landlord, Tenant shall, at Tenant's sole cost and expense, provide evidence in form and content reasonably satisfactory to Landlord (including, but not limited to, certificates and affidavits of Tenant, Tenant's Contractor or such other persons as Landlord may reasonably require) showing:

(i) that all outstanding claims for labor, materials and fixtures have been paid;

(ii) that there are no liens outstanding against the Premises or the Building arising out of or in connection with the Tenant Improvements in the Remaining Space; and

(iii) that all construction of the Tenant Improvements in the Remaining Space prior to the date thereof has been done in accordance with the approved Drawings and Specifications.

(f) *Consent of Landlord*. Any approval by Landlord of or consent by Landlord to any plans, specifications, or other items to be submitted by Tenant to and/or reviewed by Landlord pursuant to this *Exhibit "A"* shall be deemed to be strictly limited to an acknowledgment of approval or consent by Landlord thereto and such approval or consent shall not constitute an assumption by Landlord of any responsibility for the accuracy, sufficiency or feasibility of any plans, specifications or other such items and shall not imply any representation, acknowledgment or warranty by Landlord that the design is safe, feasible or structurally sound or will comply with any legal or governmental requirements. Any deficiency in design, although same had prior approval of Landlord, shall be solely the responsibility of Tenant, and any deficiency in any construction by Tenant or Tenant's Contractor shall be solely the responsibility of Tenant.

**EXHIBIT "B"**

**LEGAL DESCRIPTION**
**BUILDINGS 1 & 2**
**MOUNT VERNON PLACE**

**ALL THAT TRACT OR PARCEL OF LAND** lying and being in Land Lot 35 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

**TO FIND THE POINT OF BEGINNING,** commence at Fulton County GIS Monument F451 and run thence South 52 degrees 28 minutes 48 seconds East, a distance of 4,733.1 feet to a point located at the intersection of the southerly existing right-of-way line of Mount Vernon Highway (variable right-of-way, 70' right-of-way at this point) and the easterly existing right-of-way line of Barfield Road (variable right-of-way, 33.6' from centerline at this point); run thence along said easterly existing right-of-way line of Barfield Road South 00 degrees 06 minutes 00 seconds East, a distance of 154.59 feet to a one-half inch ( 1/2") rebar found (33.5' from centerline at this point); thence continuing along said easterly existing right-of-way line of Barfield Road, run North 89 degrees 53 minutes 30 seconds East, a distance of 11.37 feet to a point (44.8' from centerline at this point), said point being **THE POINT OF BEGINNING; FROM THE POINT OF BEGINNING AS THUS ESTABLISHED,** thence leaving said easterly existing right-of-way line of Barfield Road and run North 89 degrees 53 minutes 30 seconds East, a distance of 188.60 feet to a one-half inch ( 1/2") rebar found; run thence North 89 degrees 53 minutes 30 seconds East, a distance of 13.99 feet to a point; run thence South 89 degrees 53 minutes 58 seconds East, a distance of 125.69 feet to a point located on the westerly existing right-of-way line of Georgia 400 (right-of-way varies); run thence southerly along said westerly existing right-of-way line of Georgia 400 South 02 degrees 52 minutes 39 seconds West, a distance of 42.70 feet to a point; run thence along the arc of a curve to the left, said arc having a radius of 6,622.90 feet and being subtended by a chord which bears South 02 degrees 48 minutes 36 seconds West a chord distance of 15.55 feet, an arc distance of 15.55 feet, an arc distance of 15.55 feet to a point; continue thence along said westerly existing right-of-way line of Georgia 400 along the arc of a curve to the left, said arc having a radius of 6,622.90 feet and being subtended by a chord which bears South 02 degrees 06 minutes 46 seconds West a chord distance of 145.61 feet, an arc distance of 145.61 feet to a point; continue thence along said westerly existing right-of-way line of Georgia 400 along arc of a curve to the left, said arc having a radius of 6,622.90 feet and being subtended by a chord which bears South 00 degrees 05 minutes 10 seconds West a chord distance of 322.97 feet, an arc distance of 323.00 feet to a point located on the land lot line common to Land Lots 35 and 36 of the 17th District, Fulton County, Georgia; thence leaving said westerly existing right-of-way line of Georgia 400, run along said common land lot line North 88 degrees 32 minutes 30 seconds West, a distance of 318.71 feet to a point located on the easterly existing right-of-way line of Barfield Road (45.0' from centerline at this point); thence leaving said common land lot line, run along said easterly existing right-of-way line of Barfield Road North 00 degrees 06 minutes 04

seconds West, a distance of 526.77 feet to a point, said point being **THE POINT OF BEGINNING.**

Said property containing 168,961 square feet or 3.87880 acres, more or less, and being shown and depicted on that certain plat of survey captioned, "ALTA/ACSM Land Title Survey of #6303 & #6405 Barfield Road" prepared for Wells Capital, Inc.; Wells Operating Partnership, L.P.; Colonial Bank; Bank of America, N.A.; Mount Vernon Place Partners, LLC; Spring Creek Partners, LLC; and First American Title Insurance Company by HDR/WL Jorden, under certification and seal of Clyde R. Eldredge, PLS, Georgia Registered Land Surveyor No. 2659, dated October 30, 2000, last revised June 21, 2002, which survey is incorporated
herein and made a part hereof by this reference.

**TOGETHER WITH** those certain rights and easements as described in and pursuant to the terms and conditions of that certain Reciprocal Easement Agreement by and among Mount Vernon Place Partners, LLC, Spring Creek Partners, LLC and the Development Authority of Fulton County, Georgia dated July 1, 2002, to be recorded in the records of Fulton County, Georgia.

**EXHIBIT 10.78**

**GROUND LEASE AGREEMENT**
**FOR THE ISS ATLANTA BUILDINGS**

After recording return to
Michael J. Williams
King & Spalding
191 Peachtree Street
Atlanta, Georgia 30303-1763

**LEASE AGREEMENT**

**between**

**DEVELOPMENT AUTHORITY
OF FULTON COUNTY**

**and**

**MOUNT VERNON PLACE PARTNERS, L.L.C.**

**Dated as of September 1, 2000**

This Lease Agreement and all right, title and interest of the Development Authority of Fulton County in any rents, revenues and receipts derived under this Lease Agreement have been assigned to SunTrust Bank, as Trustee under the Indenture of Trust, dated as of September 1, 2000, from the Development Authority of Fulton County which secures not to exceed $49,000,000 in aggregate principal amount of Development Authority of Fulton County Taxable Revenue Bonds (Internet Security Systems, Inc. Project), Series 2000A and any Additional Bonds relating to such series issued thereunder.

This instrument was prepared by:

King & Spalding
191 Peachtree Street
Suite 4400
Atlanta, Georgia 30303-1763

**LEASE AGREEMENT**

**TABLE OF CONTENTS**

(The Table of Contents for this Lease Agreement is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Lease Agreement.)

**LEASE AGREEMENT**

THIS LEASE AGREEMENT, dated as of September 1, 2000, by and between the DEVELOPMENT AUTHORITY OF FULTON COUNTY (the "Issuer"), a public body corporate and politic of the State of Georgia, as lessor, and MOUNT VERNON PLACE PARTNERS, L.L.C. (the "Lessee"), a limited liability company organized and existing under the laws of the State of Georgia, as lessee,

**W I T N E S S E T H:**

That in consideration of the respective representations and agreements hereinafter contained, the Issuer and the Lessee agree as follows (provided, that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money shall not be a general debt on its part but shall be payable solely out of the rents, revenues and receipts derived from this Lease Agreement, the sale of the bonds referred to in Section 2.1 hereof, the insurance and condemnation awards as herein described and any other rents, revenues and receipts arising out of or in connection with its ownership of the Series 2000A Project as hereinafter defined):

**ARTICLE I**
**DEFINITIONS**

SECTION 1.1. *Definitions.*

In addition to the words and terms elsewhere defined in this Lease Agreement, the following words and terms as used in this Lease Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent. Terms which are not defined in this Lease Agreement shall have the meaning specified in Article I of the Indenture except as herein otherwise expressly provided or unless the context requires otherwise.

"Act" means an act of the General Assembly of the State of Georgia (O.C.G.A. Section 36–62), as amended.

"Additional Bonds" means the bonds, other than the Series 2000A Bonds, authorized under the Indenture and authenticated and delivered in accordance with Sections 401 and 402 of the Indenture for the purposes of financing any portion of the Series 2000A Project.

"Authorized Issuer Representative" means the person or persons at the time designated to act on behalf of the Issuer by certificate furnished to the Lessee and the Trustee containing the specimen signature of each such person and signed by the Chairman or Vice Chairman of the Issuer. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Issuer Representative. Such certificate shall be effective until revoked in writing. Should any Authorized Issuer Representative not be satisfactory to the Lessee, then upon the request of the Lessee and the Trustee, the Issuer will designate another Authorized Issuer Representative.

"Authorized Lessee Representative" means the person or persons at the time designated to act on behalf of the Lessee by written certificate furnished to the Issuer and the Trustee containing the specimen signature of each such persons and signed on behalf of the Lessee by the chairman of the board, president or any vice president of the Lessee. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Lessee Representative. Such certificate shall be effective until revoked in writing.

The term "bondholder" or "holder of the Bonds" means the registered owner of any fully registered Series 2000A Bond.

"Building" means those certain facilities forming a part of the Series 2000A Project located on the Leased Land and not constituting a part of the Leased Equipment, the acquisition, construction or installation of which or the improvements or replacement thereto, in whole or in part, is to be financed with the proceeds from the sale of the Series 2000A Bonds, as they may at any time exist.

"Completion Date" means the date of completion of the acquisition, construction and installation of the Series 2000A Project as that date shall be certified as provided in Section 4.5 hereof.

"Construction Period" means the period beginning on the date on which the Bonds are delivered to the first purchaser or purchasers thereof or the date upon which the acquisition, construction and installation of the Series 2000A Project began, whichever is earlier, and ending on the Completion Date.

"Counsel" means an attorney or firm thereof admitted to practice law before the highest court of any State of the United States of America or the District of Columbia. An attorney for the Issuer or the Lessee may be eligible for appointment as Counsel.

"Default Rate" shall mean the lesser of (i) that rate of interest per annum equal to the lower of two percent (2%) per annum above the Prime Rate in effect from time to time, floating, or (ii) the highest lawful rate of interest.

"Event of Default" means any of the events described in Section 10.1 hereof.

"Financing Statements" means any and all financing statements (including continuation statements) filed for record from time to time to perfect the security interests created by the Indenture.

"Government Obligations" means (a) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, or (b) obligations issued by any agency controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of and interest on which is fully and unconditionally guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (a) or (b) issued or held in book–entry form on the books of the Department of Treasury of the United States of America), which obligations, in either case, are held in the name of the Trustee and are not subject to redemption prior to maturity by anyone other than the holder thereof.

"Indenture" means the Indenture of Trust between the Issuer and the Trustee, of even date herewith, pursuant to which the Series 2000A Bonds are authorized to be issued and the Issuer's interest in the Lease and the rents, revenues and receipts arising out of or in connection with the Issuer's ownership of the Series 2000A Project are to be pledged and assigned to the Trustee as security for the payment of the principal of, and redemption premium (if any) and interest on, the Series 2000A Bonds, including any indenture supplemental thereto.

"Independent Counsel" means an attorney or firm thereof duly admitted to practice law before the highest court of any state in the United States of America or the District of Columbia and not an employee of or regularly retained by either the Issuer or the Lessee.

"ISS" means Internet Security Systems, Inc., a Georgia corporation, and its successors and assigns, including any surviving, resulting or transferee corporation as provided in Section 8.3 of the Series 2000B Lease Agreement.

"Issuer" means the Development Authority of Fulton County, a public body corporate and politic created and existing under the laws of the State of Georgia, and its lawful successors and assigns.

"Issuer Documents" means this Lease, the Indenture and the Limited Warranty Deed and Bill of Sale.

"Lease" means this Lease Agreement as it now exists and as it may hereafter be amended pursuant to Article XIV of the Indenture.

"Lease Term" means the duration of the leasehold interest created by this Lease as specified in Section 5.1 hereof.

"Leased Equipment" means those items of machinery, equipment and related property required herein to be acquired and/or installed in the Building or on the Leased Land with proceeds from the sale of the Series 2000B Bonds or the proceeds of any payment by ISS pursuant to Section 4.6 of the Series 2000B Lease Agreement and any item of machinery, equipment and related property acquired and installed in the Building or on the Leased Land in substitution therefor and renewals and replacements thereof pursuant to Sections 6.2, 7.1 and 7.2 of the Series 2000B Lease Agreement, less such machinery, equipment and related property as may be released from the Series 2000B Lease Agreement pursuant to Section 6.2 thereof or taken by the exercise of power of eminent domain as provided in Section 7.2 thereof, but not including the ISS's own machinery, equipment and related property installed under the provisions of Section 6.1 thereof. The Leased Equipment insofar as it will be initially installed as a part of the Series 2000B Project is more fully described in Exhibit "B" attached the Series 2000B Lease Agreement.

"Leased Land" means the real estate and interests in real estate described in Exhibit "A" attached hereto and by this reference made a part hereof, less such real estate and interests in real estate as may be released from this Lease pursuant to Sections 8.5 and 8.6 hereof or taken by the exercise of the power of eminent domain as provided in Section 7.2 hereof.

"Lessee" means Mount Vernon Place Partners, L.L.C., a Georgia limited liability company and its successors and assigns, including any surviving, resulting or transferee corporation as provided in Section 8.3 hereof.

"Mortgagee" means First Union National Bank and its successors and assigns, including any surviving, resulting or transferee corporation as lender under the Project Loan Documents.

"Net Proceeds" when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that

term is used remaining after payment of all expenses (including attorneys' fees and any Extraordinary Expenses of the Trustee as defined in the Indenture) incurred in the collection of such gross proceeds.

The term "Payment in Full of the Series 2000A Bonds" specifically encompasses the situations referred to in Section 1002 of the Indenture.

"Permitted Encumbrances" means, as of any particular time, (i) liens for ad valorem taxes and special assessments not then delinquent or permitted to exist as provided in Section 6.3 hereof, (ii) this Lease, the Indenture, the Sublease, the Project Loan Documents, and the security interests created herein, in the Indenture, the Sublease, and the Project Loan Documents (iii) utility, access or other easements and rights–of–way, restrictions, reservations, reversions and exceptions in the nature of easements that the Lessee certifies will not materially interfere with or impair the operations being conducted at the Series 2000A Project, (iv) unfiled and inchoate mechanics' and materialmen's liens for construction work in progress, (v) architects', contractors', subcontractors', mechanics', materialmen's, suppliers', laborers' and vendors' liens or other similar liens not then payable or permitted to exist as provided in Section 6.1(c) hereof, (vi) such minor defects, irregularities, encumbrances, easements, rights–of–way and clouds on title as the Lessee, by an Authorized Lessee Representative, certifies do not, in the aggregate, materially impair the property affected thereby for the purpose for which it was acquired or is held by the Issuer, and (vii) exceptions described in any Owner's Policy of Title Insurance that may be procured by the Issuer at the request and with the consent of the Lessee and delivered on the date of execution and delivery of this Lease.

"Project Loan Documents" means each of those documents listed on Exhibit "G" attached hereto, as the same may be amended from time to time.

"Project Summary" means the project summary dated as of September 1, 2000 filed with the Secretary of the Issuer, as the same may be amended from time to time in accordance with the provisions of this Lease. The Project Summary is contained as Exhibit "C" attached hereto and by this reference made a part of this Lease.

"Quitclaim Deed" means the Quitclaim Deed to be dated the date of actual execution and delivery thereof, held in trust by the Trustee in accordance with the provisions hereof. The Quitclaim Deed and Bill of Sale, in substantially the form it is to be executed and delivered, is attached as Exhibit "D" hereto.

"Security interest" or "security interests" means the security interests created in the Indenture and shall have the meaning set forth in the Uniform Commercial Code of Georgia, as now or hereafter amended.

"Series 2000A Bond" or "Series 2000A Bonds" means any or all of the Series 2000A Bonds and any Additional Bonds issued for the purpose of financing any portion of the Series 2000A Project, which are issued by the Issuer pursuant to the Indenture.

"Series 2000A Bond Fund" means the Bond principal and interest payment fund created by Section 602 of the Indenture, relating to the Series 2000A Bonds, and within which has been established a General Account and a Special Account. Any reference herein to the "Series 2000A Bond Fund" without further limitation or explanation shall be deemed to be a reference to the General Account in the Series 2000A Bond Fund.

"Series 2000A Project" means the Building and the Leased Land, as they may at any time exist.

"Series 2000A Project Fund" means the project fund created by Section 701 of the Indenture relating to the Series 2000A Bonds and referred to in Sections 4.2 and 4.3 hereof.

"Series 2000B Project" means the Leased Equipment, as they may at any time exist.

"Sublease" means that certain lease agreement between the Lessee and Internet Security Systems, Inc., dated November 8, 1999, as amended by the First Amendment to Lease Agreement, dated December 7, 1999 and the Second Amendment to Lease Agreement, dated November 27 , 2000, as the same may further be amended or restated from time to time.

"Sublessee" means Internet Security Systems, Inc., a Georgia corporation, and its successors and assigns, including any surviving, resulting or transferee corporation.

"Trustee" means SunTrust Bank, or any co–trustee and any successor trustee under the Indenture.

SECTION 1.2. *Rules of Construction*.

Unless the context clearly indicates to the contrary:

(a) "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to this Lease and not solely to the particular portion thereof in which any such word is used.

(b) Words importing the singular number shall include the plural number and vice versa, and any pronoun used herein shall be deemed to cover all genders.

(c) All references herein to particular Articles or Sections are references to Articles or Sections of this Lease.

(d) Any certificate or statement required to be delivered under the provisions of this Lease or the Indenture shall, in the absence of manifest error, be deemed to be conclusive evidence of the truth, correctness and accuracy of the matters covered in such certificate or statement.

## ARTICLE II
## REPRESENTATIONS AND WARRANTIES

SECTION 2.1. *Representations and Warranties by the Issuer.*

The Issuer makes the following representations and warranties:

(a) *Organization and Authority*. The Issuer is a public body corporate and politic, created and validly existing pursuant to the Constitution and laws of the State of Georgia, including particularly the provisions of the Act. Under the provisions of the Act, the Issuer has the power to execute and deliver the Issuer Documents, to enter into the transactions contemplated thereby and to perform and observe its obligations contained therein in accordance with the terms thereof. By proper corporate action, the Issuer has duly authorized the execution and delivery of the Issuer Documents.

(b) *Qualification of Series 2000A Project Under Act*. The Series 2000A Project constitutes a "project" within the meaning of Section 36-62-2(2)(N) of the Act and is located within the corporate limits of Fulton County, Georgia.

(c) *Public Purpose*. The Issuer has found and hereby declares that the issuance of the Series 2000A Bonds and the use of the proceeds of the Series 2000A Bonds to acquire, construct and install the Series 2000A Project and the leasing of the Series 2000A Project to the Lessee and the sale of the Series 2000A Project to the Lessee, for sublease to ISS, at the expiration or sooner termination of the Lease Term is in furtherance of the public purposes for which the Issuer was created.

(d) *Agreements are Legal and Authorized*. The Issuer is not subject to any charter, by–law or contractual limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the Issuer from entering into the Issuer Documents or performing any of its obligations thereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights.

(e) *Limited Obligations*. Notwithstanding anything herein contained to the contrary, any obligation the Issuer may hereby incur for the payment of money shall not be a general debt on its part but shall be payable solely from rents, revenues and receipts derived from this Lease, the sale of the Series 2000A Bonds and any other rents, revenues and receipts derived by the Issuer arising out of or in connection with its ownership of the Series 2000A Project (except for Unassigned Rights).

(f) *Issuance of Series 2000A Bonds*. To accomplish the foregoing, the Issuer proposes to issue not to exceed $49,000,000 in aggregate principal amount of its Series 2000A Bonds immediately following the execution and delivery of this Lease. The date, denominations, interest rate, maturity date, redemption provisions and other pertinent provisions with respect to the Series 2000A Bonds are set forth in the Indenture

(particularly Articles II and III thereof) and by this reference thereto they are incorporated herein.

(g) *Security for Series 2000A Bonds*. The Series 2000A Bonds are to be issued under and secured by the Indenture, pursuant to which the Issuer's right, title and interest in this Lease (except for certain rights of indemnification and payment of expenses), and the rents, revenues and receipts arising out of or in connection with the Issuer's ownership of the Series 2000A Project will be assigned to the Trustee and pledged as security for the payment of the principal of and interest on the Series 2000A Bonds.

(h) *No Prior Pledge*. Neither this Lease nor the Receipts and Revenues have been pledged or hypothecated in any manner or for any purpose (other than as provided in the Indenture).

(i) *Governmental Consents*. Neither the nature of the Issuer nor any of its activities or properties, nor any relationship between the Issuer and any other Person, nor any circumstance in connection with the offer, issue, sale or delivery of any of the Series 2000A Bonds is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Issuer in connection with the execution, delivery and performance of any of the Issuer Documents or the offer, issue, sale or delivery of the Series 2000A Bonds, other than those already obtained or filed; provided, however, no representation is made herein as to compliance with the securities or "blue sky" laws of any jurisdiction.

(j) *No Defaults*. No event has occurred and no condition exists with respect to the Issuer which would constitute an event of default, as defined therein, under any of the Issuer Documents or which, with the lapse of time or with the giving of notice or both, would become an event of default under any of the Issuer Documents.

(k) *Enforceability*. This Lease is a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms, except to the extent the enforceability hereof may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity, and (ii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereinafter enacted to the extent constitutionally applicable.

(l) *No Warranty by Issuer of Condition or Suitability of the Series 2000A Project Facilities*. The Issuer makes no warranty, either expressed or implied, as to the suitability or utility of the Series 2000A Project or as to the condition of the Series 2000A Project or that they are or will be suitable for the Lessee's purposes or needs.

SECTION 2.2. *Representations and Warranties by the Lessee.*

The Lessee makes the following representations and warranties:

(a) *Corporate Organization and Power*. The Lessee is a limited liability company duly organized and validly existing under the laws of the State of Georgia, is qualified to do business in the State of Georgia, is in good standing under the laws of Georgia, has the power to enter into this Lease and to perform and observe its obligations contained herein in accordance with the terms hereof, and has, by proper action, been duly authorized to execute, deliver and perform this Lease in accordance with the terms hereof.

(b) *Pending Litigation*. There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Lessee threatened, against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which is reasonably anticipated to materially and adversely affect the transactions contemplated by the Lease or which is reasonably anticipated to adversely affect the validity or enforceability of the Series 2000A Bonds or the Lease or the ability of the Lessee to perform its obligations under any of the foregoing.

(c) *Agreements Are Valid and Authorized*. The execution and delivery by the Lessee of the Lease and the compliance by the Lessee with all of the provisions hereof and the consummation of the transactions contemplated hereby (A) (i) are within the corporate power of the Lessee, (ii) will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under, its articles or certificate of incorporation, its bylaws, or any commitment, agreement or instrument of whatever nature to which the Lessee is a party or by which it may be bound, or to which any of its properties may be subject, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Lessee or any of its activities or properties, or (iii) result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee under the terms of any instrument or agreement, and (B) have been duly authorized by all necessary action on the part of the Lessee.

(d) *Governmental Consents*. Neither the Lessee nor any of its business or properties, nor any relationship between the Lessee and any other Person, nor any circumstance in connection with the execution, delivery and performance by the Lessee of the Lease, or the offer, issue, sale or delivery by the Issuer of the Series 2000A Bonds, is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Lessee, other than those already obtained as of the Closing Date; provided, however, no representation is made herein as to compliance with the securities or "blue sky" laws of any jurisdiction.

(e) *No Defaults*. No event has occurred and no condition exists with respect to the Lessee that would constitute an event of default, as defined therein, under the Lease or which, with the lapse of time or with the giving of notice or both, would become an event of default under the Lease.

(f) *Governmental Approvals*. The Series 2000A Project will be acquired, constructed and installed in such manner as to conform in all material respects with all applicable zoning, planning, building and other regulations of governmental authorities having jurisdiction over the Series 2000A Project and all necessary utilities will be available in all material respects to the Series 2000A Project.

(g) *Enforceability*. This Lease is a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms, except to the extent the enforceability hereof may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity, and (ii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereinafter enacted to the extent constitutionally applicable.

(h) *Operation of Series 2000A Project*. The Lessee presently intends to operate the Series 2000A Project, located wholly within Fulton County, in a manner consistent with the Act, principally as a software development and computer services facility from the Completion Date until the expiration or sooner termination of the Lease Term as provided herein.

## ARTICLE III
## LEASING CLAUSES AND WARRANTY OF TITLE

SECTION 3.1. *Lease of the Series 2000A Project.*

The Issuer hereby leases to the Lessee, and the Lessee hereby leases from the Issuer, subject to Permitted Encumbrances, the Series 2000A Project at the rental set forth in Section 5.3 hereof and in accordance with the provisions of this Lease.

The Lessee hereby grants to the Issuer an easement in gross over such portions of the Series 2000A Project as necessary for the purpose of acquiring, constructing, installing, maintaining and operating the Series 2000A Project.

SECTION 3.2. *Warranty of Title*.

The Issuer for itself, its successors and assigns, warrants to the Lessee, its successors and assigns, that the Issuer has good, valid and marketable title in and to the Leased Land, free from all encumbrances except Permitted Encumbrances. The Issuer agrees that, upon the request of the Lessee, it will furnish to the Lessee, and at the Lessee's expense a title insurance policy issued by a title insurance company designated by the Lessee and in a face amount to be determined by the Lessee.

The Issuer agrees that it shall upon request of the Lessee join where necessary in any proceeding to protect and defend the Issuer's title in and to the Series 2000A Project, provided that the Lessee shall pay the entire cost of any such proceeding, reimburse and indemnify and hold harmless the Issuer from any cost or liability whatsoever.

SECTION 3.3. *Quiet Enjoyment*.

The Issuer warrants and covenants that it will defend the Lessee in the quiet enjoyment and peaceable possession of the Leased Land, and all appurtenances thereunto belonging, free from all claims of all persons whomsoever acting by, through or under the Issuer, throughout the Lease Term.

In addition to the foregoing warranty, the Issuer agrees that it will not take or cause another party to take any action to interfere with the Lessee's peaceful and quiet enjoyment of the Series 2000A Project. The Issuer agrees that in the event the peaceful and quiet enjoyment of the Series 2000A Project shall otherwise be denied to the Lessee or contested by anyone, the Issuer shall upon request of the Lessee join where necessary in any proceeding to protect and defend the quiet enjoyment of the Lessee, provided that, unless such denial or contest shall result from the gross negligence or wilful misconduct of the Issuer, the Lessee shall pay the entire cost of any such proceeding, reimburse and indemnify and hold harmless the Issuer from any cost or liability whatsoever.

The provisions of this section shall apply so long as the Lessee shall perform the covenants, conditions and agreements to be performed by it hereunder, or so long as the period for remedying any default in such performance shall not be expired.

SECTION 3.4. *Limitations of Warranties.*

The warranties of the Issuer which are contained in Sections 3.2 and 3.3 hereof shall be limited to the extent and in such amount as may be collected from time to time from the Lessee under the Lease Agreement; provided, however that nothing contained in this section shall restrict the Issuer's liability resulting from the Issuer's tortious acts or gross negligence.

SECTION 3.5. *Agreement of the Issuer to Execute Amendment to Lease Agreement*.

The Issuer and the Lessee understand and decree that portions of the Leased Land and/or items of Leased Equipment may be removed from this Lease in accordance with the provisions hereof and that certain items of personal property may be acquired by the Lessee and conveyed to the Issuer or may be acquired directly by the Issuer from time to time hereafter. The Issuer agrees, at the request of the Lessee to execute an Amendment to Lease Agreement in the form contained as Exhibit "E" hereto without further action on its part unless further action is otherwise required under the provisions hereof.

**ARTICLE IV**
**COMMENCEMENT AND COMPLETION OF THE SERIES 2000A PROJECT; ISSUANCE OF THE SERIES 2000A BONDS; ADDITIONAL BONDS**

SECTION 4.1. *Agreement to Construct and Install the Series 2000A Project on the Leased Land*.

Not later than the delivery of this Lease the Issuer will have acquired the title in and to the Leased Land which it warrants in Section 3.2 hereof and, subject to the provisions of Section 4.6 hereof, the Issuer agrees that it will cause the acquisition, construction and installation of the Buildings to be made in accordance with the Project Summary, as may be amended from time to time by the Lessee, as shall from time to time prior to the Completion Date be specified in written orders from the Lessee to the Issuer, all of which acquisitions and installations shall be made substantially in accordance with directions given by the Lessee. Any changes to the Project Summary shall be made at the sole discretion of the Lessee and shall also be filed with the Secretary of the Issuer and the Authorized Lessee Representative. The Building shall be the property of the Issuer and subject to the terms of this Lease.

The Issuer, to the maximum extent permitted by law, hereby makes, constitutes and appoints the Lessee as its true, lawful and exclusive agent for the acquisition, construction and installation of the Series 2000A Project, and the Lessee hereby accepts such agency to act and do all things on behalf of the Issuer, to perform all acts of the Issuer hereinbefore provided in this Section 4.1 and under the Sublease, and to bring any actions or proceedings against any person which the Issuer might bring with respect thereto as the Lessee shall deem proper. The Issuer hereby ratifies and confirms all actions of, and assumes and adopts all contracts entered into by, including the Sublease, the Lessee with respect to the Series 2000A Project prior to the date hereof. This appointment of the Lessee to act as agent and all authority hereby conferred or granted is conferred and granted irrevocably, until all activities in connection with the acquisition, construction and installation of the Series 2000A Project shall have been completed, and shall not be terminated prior thereto by act of the Issuer or of the Lessee.

The Issuer agrees that only such changes will be made in the Project Summary as may be specified by an Authorized Lessee Representative. The Issuer agrees that it will enter into, or accept the assignment of, such contracts as the Lessee may request in order to effectuate the purposes of this Section, but that it will not execute any other contract or give any order for the construction of the Building or any modification thereto unless and until the Authorized Lessee Representative shall have approved the same in writing.

The Issuer (or the Lessee, as it agent), agrees to complete the acquisition, construction and installation of the Series 2000A Project in accordance with the Project Summary as promptly as practicable after the date of the execution and delivery of this Lease, to continue said construction with all reasonable dispatch and to use its best efforts to cause said construction to be completed as soon as practicable, delays incident to strikes, riots, acts of God or the public enemy beyond the reasonable control of the Issuer only excepted, but if said acquisition, construction and installation is not completed within the time herein contemplated

there shall be no resulting liability on the part of the Issuer and no diminution in or postponement of the rents required in Section 5.3 hereof to be paid by the Lessee.

Notwithstanding anything herein to the contrary, the Issuer consents to the Lessee's taking of any action necessary in the discretion of the Lessee that the Series 2000 Project is managed and operated in a sound and businesslike manner after the Completion Date.

SECTION 4.2. *Agreement to Issue Series 2000A Bonds; Application of Series 2000A Bond Proceeds.*

In order to provide funds for payment of the cost of the acquisition, construction and installation of a portion of the Series 2000A Project provided for in Section 4.1 hereof, the Issuer agrees that as soon as possible it will authorize, sell and cause to be delivered to the initial purchaser or purchasers thereof, the Series 2000A Bonds, bearing interest and maturing as set forth in Article III of the Indenture, at a price to be approved by the Lessee. Upon receipt of the proceeds derived from the sale of the Series 2000A Bonds, the Issuer will deposit said proceeds received upon said sale in the Series 2000A Project Fund.

SECTION 4.3. *Disbursements from the Series 2000A Project Fund.*

The Issuer will in the Indenture authorize and direct the Trustee to use the moneys in the Series 2000A Project Fund for the following purposes:

(a) Payment of the initial or acceptance fee of the Trustee and customary and reasonable fees and expenses of the Trustee and its counsel; the fees and expenses for recording or filing the deed whereby fee simple title in and to the Leased Land has been or is to be conveyed to the Issuer; the fees and expenses for recording or filing this Lease, the Indenture and any other documents by which this Lease is assigned as security for the Series 2000A Bonds; the fees and expenses for recording or filing any documents that the Lessee may deem desirable to file for record in order to protect the title of the Issuer to the Series 2000A Project, or any part thereof; and the fees and expenses in connection with any actions or proceedings that the Lessee may deem desirable to bring in order to perfect or protect the title of the Issuer to the Series 2000A Project;

(b) Payment to the Lessee and the Issuer, as the case may be, of such amounts, if any, as shall be necessary to reimburse the Lessee and the Issuer in full for all advances and payments made by them or either of them prior to or after the delivery of the Series 2000A Bonds for expenditures in connection with the acquisition by the Issuer or the Lessee of fee simple title to the Leased Land (including the cost of the Leased Land and of any options to purchase the Leased Land and rights–of–way for the purpose of providing access to and from the Leased Land), clearing the Leased Land, site improvement, the preparation of the plans and specifications for the Series 2000A Project (including any preliminary study or planning of the Series 2000A Project or any aspect thereof), the acquisition, construction and installation of the Series 2000A Project, the acquisition, construction and installation necessary to provide utility services or other facilities including trackage to connect the Series 2000A Project with public transportation facilities, and the acquisition, construction and installation of all real or

personal properties deemed necessary in connection with the Series 2000A Project, and any architectural, engineering and supervisory services with respect to any of the foregoing;

(c) Payment of, or reimbursement of the Issuer or the Lessee for, the customary and reasonable legal and accounting fees and expenses, financial consultants' fees, rating agencies' fees, financing charges (including underwriting or placement fees) and printing and engraving costs incurred in connection with the authorization, sale and issuance of the Series 2000A Bonds, the preparation of this Lease, the Indenture, the Financing Statements and all other documents in connection therewith and in connection with the acquisition of title to the Series 2000A Project;

(d) Payment for labor, services, materials and supplies used or furnished in site improvement and in the acquisition, construction and installation of the Series 2000A Project, all as provided in the plans and specifications therefor; payment for the cost of the acquisition, construction and installation of utility services or other facilities including trackage to connect the Series 2000A Project with public transportation facilities, and payment for the cost of all real and personal property deemed necessary in connection with the Series 2000A Project; and payment for the miscellaneous expenses incidental to any of the foregoing;

(e) Payment of the fees, if any, for architectural, engineering and supervisory services with respect to the Series 2000A Project;

(f) Payment, as such payments become due, of the fees and expenses of the Trustee and the fees and expenses of its counsel properly incurred under the Indenture that may become due during the Construction Period;

(g) To such extent as they shall not be paid by a contractor for acquisition, construction or installation with respect to any part of the Series 2000A Project, payment of the premiums on all insurance required to be taken out and maintained during the Construction Period under this Lease, or reimbursement thereof if paid by the Lessee under Section 6.4 hereof;

(h) Payment of the taxes, assessments and other charges, if any, referred to in Section 6.3 hereof that may become payable during the Construction Period;

(i) Payment of expenses incurred with approval of the Lessee in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the Series 2000A Project;

(j) All moneys remaining in the Series 2000A Project Fund (including moneys earned on investments made pursuant to the provisions of Section 4.8 hereof) after the Completion Date and payment in full of the costs of the acquisition, construction and installation of the Series 2000A Project, and after payment of all other items provided for in the preceding subsections of this Section then due and payable shall, at

the written direction of the Authorized Lessee Representative, be (i) used for the purchase of Series 2000A Bonds for the purpose of cancellation, or (ii) paid into the Series 2000A Bond Fund, or (iii) a combination of (i) and (ii) as is provided in such direction, provided that amounts approved by the Lessee and the Authorized Issuer Representative shall be retained by the Trustee in the Series 2000A Project Fund for payment of Series 2000A Project costs not then due and payable. Any balance remaining of such retained funds after full payment of all such Series 2000A Project costs shall be used by the Trustee as directed by the Lessee in the manner specified in clauses (i), (ii) and (iii) of this subsection.

The payments specified in subsections (a) through (j) of this Section shall be made by the Trustee only upon receipt of the following:

(a) A written Requisition for such payment signed by the Lessee by an Authorized Lessee Representative in the form contained as Exhibit "F" hereto;

(b) A certification by the Lessee certifying to the best knowledge and belief of the Lessee:

(1) that an obligation in the stated amount has been incurred by or on behalf of the Issuer or the Lessee in connection with the issuance of the Series 2000A Bonds or the acquisition, construction and installation of the Series 2000A Project;

(2) that such obligation is a proper charge against the Series 2000A Project Fund and has not been the basis of any previous withdrawal from the Series 2000A Project Fund, and specifying the purpose and circumstances of such obligation in reasonable detail and to whom such obligation is owed; and

(3) that the Lessee has no notice of any vendor's, mechanic's, or other liens or right to liens, chattel mortgages or conditional sales contracts, or other contracts or obligations (other than those being contested in good faith as permitted in Section 6.1(c) hereof) which should be satisfied or discharged before such payment is made.

(c) with respect to any such requisition for payment for labor, services, material, supplies or equipment, a certificate, signed on behalf of the Lessee by an Authorized Lessee Representative, certifying that insofar as such obligation was incurred for labor, services, material, supplies or equipment in connection with the acquisition, construction and installation of the Series 2000A Project, such labor and services were to the Lessee's best knowledge and belief performed and such material, supplies or equipment were or are to be used in connection with the acquisition, construction and installation of the Series 2000A Project or delivered at the site of the Series 2000A Project for that purpose. If any such requisition for materials, supplies or equipment requires reimbursement for such item to the Lessee where title is not in the Issuer, such requisition shall so state and shall include any bill of sale necessary to convey title in and

to such item to the Issuer. Such certificate shall be given without prejudice against any rights of the Issuer or the Lessee against third parties which exist on the date thereof.

In making any such payment from the Series 2000A Project Fund the Trustee may conclusively rely on any such requisitions and certificates delivered to it pursuant to this Section and the Trustee shall be relieved of all liability with respect to making such payments in accordance with such requisitions and such certificates without inspection of the Series 2000A Project or any other investigation.

SECTION 4.4. *Obligation of the Parties to Cooperate in Furnishing Documents to Trustee.*

The Issuer and the Lessee agree to cooperate with each other in furnishing to the Trustee the documents referred to in Section 4.3 hereof that are required to effect payments out of the Series 2000A Project Fund, and to cause such requisitions and certificates to be directed by the Authorized Issuer Representative and the Authorized Lessee Representative to the Trustee as may be necessary to effect payment out of the Series 2000A Project Fund in accordance with Section 4.3 hereof. Such obligation of the Issuer and the Lessee is subject to any provisions of this Lease or the Indenture requiring additional documentation with respect to payments and shall not extend beyond the moneys in the Series 2000A Project Fund available for payment under the terms of the Indenture.

SECTION 4.5. *Establishment of Completion Date.*

The Completion Date shall be evidenced to the Trustee by a certificate signed on behalf of the Lessee by an Authorized Lessee Representative stating that, except for amounts retained by the Trustee for Series 2000A Project costs not then due and payable as provided in Section 4.3(j) hereof, (i) the acquisition, construction and installation of the Series 2000A Project has been substantially completed and all labor, services, materials and supplies used in such acquisition, construction and installation have been paid for, and (ii) the Series 2000A Project has been acquired, constructed and installed to the Lessee's satisfaction and all costs and expenses incurred in connection therewith have been paid, and (iii) all permissions required of governmental authorities for the occupancy of the Series 2000A Project have been obtained, including a certificate of occupancy. Notwithstanding the foregoing, such certificate of the Lessee shall state that it is given without prejudice to any rights against third parties which exist on the date of such certificate or which may subsequently come into being. The Issuer and the Lessee agree to cooperate one with the other in causing such certificate to be furnished to the Trustee.

SECTION 4.6. *Lessee Required to Pay Series 2000A Project Costs in Event Series 2000A Project Fund Insufficient.*

Subject to the Lessee's obligations under the Sublease, in the event that moneys in the Series 2000A Project Fund available for payment of the costs of the Series 2000A Project should not be sufficient to pay the costs thereof in full, and if Additional Bonds are not issued to finance the completion of the Series 2000A Project, the Lessee agrees to complete the Series 2000A Project (or cause the Series 2000A Project to be completed pursuant to the Sublease) and

to pay (or cause to be paid pursuant to the Sublease) all that portion of the costs of the Series 2000A Project as may be in excess of the moneys available therefor in the Series 2000A Project Fund. The Issuer does not make any warranty, either express or implied, that the moneys which will be paid into the Series 2000A Project Fund and which, under the provisions of this Lease, will be available for payment of the costs of the Series 2000A Project, will be sufficient to pay all the costs which will be incurred in that connection. The Lessee agrees that if after exhaustion of the moneys in the Series 2000A Project Fund, the Lessee should pay any portion of the costs of the Series 2000A Project pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer or from the Trustee or from the holders of any of the Series 2000A Bonds nor shall it be entitled to any diminution in or postponement of the rental payments required in Section 5.3 hereof to be paid by the Lessee.

SECTION 4.7. *Issuer to Pursue Remedies Against Suppliers, Contractors and Subcontractors and Their Sureties.*

In the event of any default of any supplier, contractor or subcontractor under any contract made by it in connection with the Series 2000A Project or in the event of breach of warranty with respect to any material, workmanship or performance guaranty, the Issuer will promptly proceed (only at the direction and sole cost of the Lessee), either separately or in conjunction with others, to exhaust the remedies of the Issuer against any defaulting supplier, contractor or subcontractor and against any surety therefor, for the performance of any contract made in connection with the Series 2000A Project. The Issuer agrees to advise the Lessee of the steps it intends to take in connection with any such default, and will not consent to any settlement agreement without the prior written consent of the Lessee. If the Lessee shall so notify the Issuer, the Lessee may, in its own name or in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving any such supplier, contractor, subcontractor or surety which the Lessee deems reasonably necessary, and in such event the Issuer hereby agrees to cooperate fully with the Lessee and to take all action necessary to effect the substitution of the Lessee for the Issuer in any such action or proceeding. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing prior to the Completion Date shall be paid to the Lessee.

SECTION 4.8. *Investment of Series 2000A Project Fund Moneys Permitted.*

Any moneys held as part of the Series 2000A Project Fund shall be invested or reinvested by the Trustee upon the written request and direction of the Authorized Lessee Representative in (i) any bonds or other obligations of the United States of America which as to principal and interest constitute direct obligations of, or obligations the principal and interest of which are guaranteed by, the United States of America (including any fund managed by the Trustee comprised of such bonds or other obligations of the United States of America), (ii) certificates of deposit of banks or trust companies, including the Trustee, organized under the laws of the United States or any state thereof, which have a combined capital and surplus of at least $25,000,000, or (iii) commercial paper rated A1 by Standard and Poor's Corporation or P1 by Moody's Investors Service Inc. Such investments shall mature or shall be subject to sale prior to maturity in such amounts and at such times as may be necessary to provide funds when needed to make payments from the Series 2000A Project Fund. The Trustee may make any and all such investments through its own bond department. Any interest or gain received from such

investments of the moneys in the Series 2000A Project Fund shall be credited to and held in the Series 2000A Project Fund and any loss from such investments shall be charged against the Series 2000A Project Fund.

SECTION 4.9. *Issuance of Additional Bonds.*

So long as there shall not have occurred and be continuing an Event of Default hereunder or an event of default under the Indenture, the Issuer shall, from time to time at the request of the Lessee, use its best efforts to issue Additional Bonds in aggregate principal amounts as requested by the Lessee under the terms and conditions provided herein and in the Indenture, but in no event shall the Issuer be liable for not issuing Additional Bonds. Additional Bonds may be issued to finance the cost of (a) completing the acquisition, construction and installation of the Series 2000A Project, (b) providing for the enlargement, improvement, expansion or replacement of the Series 2000A Project, (c) refunding all of the Series 2000A Bonds of any one or more series then outstanding or (d) any combination of the foregoing; provided, in any case, that either prior to or contemporaneously with the issuance of Additional Bonds (i) the terms, conditions, manner of issuance, purchase price, delivery and contemplated disposition of the proceeds of the sale of such Additional Bonds shall have been approved in writing by the Lessee, executed by the chairman of the board, president or any vice president of the Lessee, and (ii) the conditions specified in the Indenture with respect to the issuance of such Additional Bonds shall have been satisfied.

## ARTICLE V
## EFFECTIVE DATE OF THIS LEASE; DURATION OF LEASE TERM; RENTAL PROVISIONS

SECTION 5.1. *Effective Date of this Lease; Duration of Lease Term.*

This Lease shall become effective upon its delivery and the leasehold interest created by this Lease shall then begin, and, subject to the other provisions of this Lease (including particularly Articles X, XI, and XII hereof), shall expire at midnight, December 1, 2015, or if at said time and on said date Payment in Full of the Series 2000A Bonds shall not have been made, then on such date as such payment shall have been made.

SECTION 5.2. *Delivery and Acceptance of Possession.*

The Issuer agrees to deliver to the Lessee sole and exclusive possession of the Series 2000A Project (subject to the right of the Trustee to enter thereon for inspection and other purposes as set forth in Section 8.2 hereof) on the effective date of this Lease and the Lessee agrees to accept possession of the Series 2000A Project upon such delivery; provided, however, that the Lessee shall be permitted full use and occupancy of the Series 2000A Project prior to the Completion Date and the Lessee may install and maintain its own equipment during the Construction Period.

SECTION 5.3. *Rents and Other Amounts Payable.*

Subject to Section 208 of the Indenture, on or before June 1, 2001, and on or before each June 1 and December 1 in each year thereafter until Payment in Full of the Series 2000A Bonds, the Lessee shall pay or cause to be paid to the Trustee for the account of the Issuer as rents for the Series 2000A Project a sum equal to the amount payable on such date as principal of and interest on the Series 2000A Bonds, as provided in the Indenture. Each rental payment under this Section shall be sufficient to pay the total amount of principal and interest payable on such semiannual interest payment date, and if at any semiannual interest payment date the balance in the Series 2000A Bond Fund is insufficient to make required payments of principal and interest on such date, the Lessee shall forthwith pay any such deficiency.

Anything herein to the contrary notwithstanding, any amount at any time held by the Trustee in the Series 2000A Bond Fund shall be credited against the next succeeding rental payment and such credit shall reduce the payment to be then made by the Lessee; and further, if the amount held by the Trustee in the Series 2000A Bond Fund should be sufficient to pay at the times required the principal of and interest on all Series 2000A Bonds then remaining unpaid, the Lessee shall not be obligated to make any further rental payments under the provisions of this Section.

If the Lessee should fail to make any of the payments required in this Section, the item or installment so in default shall continue as an obligation of the Lessee until the same shall have been fully paid, and the Lessee agrees to pay the same with interest thereon, to the extent

legally enforceable, at the Default Rate per annum until paid. The provisions of this Section shall be subject to the provisions of Section 9.6 hereof.

SECTION 5.4. *Place of Rental Payments.*

The rents provided for in the first paragraph of Section 5.3 hereof and the interest on delinquent rents shall be paid directly to the Trustee for the account of the Issuer and will be deposited in the Series 2000A Bond Fund subject to the provisions of Section 208 of the Indenture. The other payments provided for in Section 5.3 hereof shall be paid directly to the Trustee for its own use or for disbursement to any other paying agent on the Series 2000A Bonds, as the case may be.

SECTION 5.5. *Obligations of Lessee Hereunder Absolute and Unconditional.*

Subject to the provisions of Section 9.6 hereof, the obligations of the Lessee to make the payments required in Section 5.3 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional. Until such time as Payment in Full of the Series 2000A Bonds shall have been made, the Lessee (i) will not suspend or discontinue any payments provided for in Section 5.3 hereof except to the extent the same have been prepaid, (ii) will perform and observe all of its other agreements contained in this Lease Agreement, and (iii) except as provided in Sections 11.1 and 11.2 hereof, will not terminate the Lease Term for any cause, including, without limiting the generality of the foregoing, failure of the Issuer to complete the Series 2000A Project, failure of the Issuer's title in and to the Series 2000A Project or any part thereof, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Series 2000A Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Georgia or any political subdivision of either thereof or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease Agreement or the Indenture. Nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part herein contained; and if the Issuer should fail to perform any such agreement, the Lessee may institute such action against the Issuer as the Lessee may deem necessary to compel performance or recover its damages for nonperformance so long as such action shall not conflict with the agreements on the part of the Lessee contained in the preceding sentence. The Lessee may, however, at its own cost and expense and in its own name or in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving third persons which the Lessee deems reasonably necessary or in order to insure the acquisition, construction, installation and completion of the Series 2000A Project or to secure or protect its right of possession, occupancy and use of the Series 2000A Project hereunder, and in such event the Issuer hereby agrees to cooperate fully with the Lessee and to take all lawful action which is required to effect the substitution of the Lessee for the Issuer in any such action or proceeding if the Lessee shall so request.

SECTION 5.6. *Lessee's Performance under Indenture.*

The Lessee agrees, for the benefit of the holders from time to time of the Series 2000A Bonds, to do and perform all acts and things contemplated in the Indenture to be done or performed by it.

## ARTICLE V
## IMAINTENANCE AND MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1. *Maintenance and Modifications of Series 2000A Project by Lessee.*

(a) The Lessee will cause the Series 2000A Project to be maintained, preserved and kept in good repair, working order and condition and will from time to time cause to be made all necessary and proper repairs, replacements and renewal and may make any alterations, improvements and additions to the Series 2000A Project; provided, however, that the Lessee will have no obligation to cause to be maintained, preserved, repaired, replaced or renewed any element or unit of the Series 2000A Project, the maintenance, repair, replacement or renewal of which, in the opinion of the Lessee, becomes uneconomic to the Lessee because of damage or destruction or obsolescence, or change in economic or business conditions, or change in government standards and regulations, or the termination by the Lessee of the operation of the production facilities to which such element or unit of the Series 2000A Project is an adjunct. For purposes of this Section 6.1, the "opinion of the Lessee" shall be expressed to the Issuer and the Trustee by delivery of a certificate of an Authorized Lessee Representative to the effect that the circumstances, situations or conditions described in this Section 6.1 exist to the extent that the Lessee is not required to cause to be maintained any element or unit of the Series 2000A Project.

The Lessee covenants that as long as the Lessee or one of its subsidiaries or affiliates operates the Series 2000A Project, it or one of its subsidiaries or affiliates will cause the Series 2000A Project to be maintained and operated as a "project" within the meaning of the Act as in effect on the date hereof.

(b) The Lessee shall not permit any mechanics' liens, materialmen's liens or other liens to be established and remain against the Series 2000A Project for labor or materials furnished or services rendered in connection with any additions, modifications, improvements, repairs, renewals or replacements so made by it; provided, that if the Lessee shall first notify the Trustee of its intention so to do, the Lessee may in good faith contest any mechanics' liens, materialmen's liens or other liens filed or established against the Series 2000A Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Issuer or the Trustee shall notify the Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items, the Series 2000A Project or any material part thereof or the revenues from the Series 2000A Project will be subject to loss or forfeiture, in which event the Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items. The Issuer will cooperate fully with the Lessee in any such contest.

SECTION 6.2. *Reserved*.

SECTION 6.3. *Taxes, Other Governmental Charges and Utility Charges.*

The Issuer and the Lessee further acknowledge that under present law no part of the Series 2000A Project owned by the Issuer and financed with the proceeds of the Series 2000A Bonds from time to time will be subject to ad valorem taxation by the State of Georgia or by any political or taxing subdivision thereof, and that under present law the income and profits (if any) of the Issuer from such portions of the Series 2000A Project are not subject to either Federal or Georgia taxation and these factors have induced the Lessee to enter into this Lease. However, subject to the Memorandum of Agreement Regarding Lease Structure and Valuation of Leasehold Interest entered into among the Sublessee, the Issuer and the Fulton County Board of Tax Assessors, the Lessee shall pay, as the same become lawfully due and payable, (i) all taxes and governmental charges of any kind whatsoever upon or with respect to the interest held by the Lessee under this Lease, (ii) all taxes and governmental charges of any kind whatsoever upon or with respect to the Series 2000A Project or any machinery, equipment or related property installed or brought by the Lessee therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income or profits of the Issuer from the Series 2000A Project which, if not paid, will become a charge on the rents, revenues and receipts from the Series 2000A Project prior to or on a parity with the pledge or assignment thereof created and made in the Indenture), (iii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Series 2000A Project and (iv) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Series 2000A Project; provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Lease Term.

The Lessee may, at its own expense and in its own name and behalf or in the name and behalf of the Issuer, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Issuer or the Trustee shall notify the Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the rents, revenues or receipts derived from the Series 2000A Project will be materially endangered or the Series 2000A Project or any material part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly. The Issuer shall cooperate fully with the Lessee in any such contest. If the Lessee shall fail to pay any of the foregoing items required by this Section to be paid by the Lessee, the Issuer or the Trustee may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Lessee to the one making the advancement, which amounts, together with interest thereon at the Default Rate the date thereof, the Lessee agrees to pay.

SECTION 6.4. *Insurance Required.*

During the acquisition, construction, installation and equipping of the Series 2000A Project, and throughout the Lease Term, the Lessee shall insure the Series 2000A Project

against such property and personal injury risks as is consistent with its insurance practices in effect from time to time, including self insurance, in any event. In lieu of separate insurance policies, such insurance may be in the form of a blanket insurance policy or policies of the Lessee. Insurance policies may be written with deductible amounts and exceptions and exclusions as the Lessee deems necessary in the normal course of its business.

SECTION 6.5. *Application of Net Proceeds of Insurance.*

The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as provided for in the Sublease and the Project Loan Documents.

SECTION 6.6. *Additional Provisions Respecting Insurance.*

All claims made under any insurance policies carried pursuant to the requirements of Section 6.4 hereof, regardless of amount, may be adjusted by the Lessee with the insurers.

Subject to corresponding requirements under the Sublease, the Lessee shall furnish to the Issuer and the Trustee at closing and annually thereafter a certificate of the Authorized Lessee Representative executed by one of its officials or other evidence satisfactory to the Issuer and the Trustee that it is in compliance with the requirements of Section 6.4 hereof and that such insurance provides coverage of at least $5,000,000 for third party liability.

SECTION 6.7. *Reserved.*

SECTION 6.8. *Advances by Issuer or Trustee*

If the Lessee fails to maintain the full insurance coverage required by this Lease or fails to keep the Series 2000A Project in as reasonably safe condition as its operating conditions will permit, or fails to keep the Series 2000A Project in good repair and good operating condition, the Issuer or the Trustee may (but unless satisfactorily indemnified shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements if the Lessee shall fail to do so within thirty (30) days after written notice of failure to do so has been delivered to Lessee by the Trustee or the Issuer; and all amounts so advanced therefor by the Issuer or the Trustee will become an additional obligation of the Lessee to the one making the advancement, which amounts, together with interest thereon at the Default Rate from the date thereof, the Lessee agrees to pay; provided, however, that if the Lessee has commenced and is pursuing efforts to cure any default under this Section 6.8 and such cure is not susceptible of being accomplished within the aforementioned thirty day period, there shall not be deemed to be a default under this Section 6.8.

SECTION 6.9. *Indemnification of Issuer and Trustee*

The Lessee shall, to the extent permitted by applicable law, indemnify and save the Issuer and the Trustee and the officers, agents, employees and attorneys of each harmless against and from all claims by or on behalf of any person, firm or corporation or governmental

entity arising from the conduct or management of, or from any work or thing done on, the Series 2000A Project during the Lease Term, and against and from all claims arising during the Lease Term from (a) any condition of the Series 2000A Project, (b) any breach or default on the part of the Lessee in the performance of any of its obligations under this Lease, (c) any contract entered into in compliance with the provisions of Section 4.1 hereof in connection with the acquisition, construction and installation of the Series 2000A Project, (d) any act of negligence of the Lessee or of any of its agents, contractors, servants, employees or licensees, (e) any act of negligence of any assignee or sublessee of the Lessee, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Lessee, (f) in the case of the Issuer and the Trustee and the respective officers, agents and attorneys of each, against and from any loss, liability, expense or claim arising under or in connection with the acceptance or administration of the Trust Estate or the performance by the Trustee of its duties and obligations under the Indenture, and (g) including without limiting the generality of the foregoing, any loss, liability or expense arising under the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended, and any other environmental statute, rule or regulation. The Lessee shall indemnify and save the Issuer and the Trustee and the officers, agents, employees and attorneys of each harmless from and against all costs and expenses incurred in or in connection with any action or proceeding brought on such claims, and upon notice from the Issuer or the Trustee, the Lessee shall defend them or either of them in any such action or proceeding. Nothing contained herein shall require the Lessee to indemnify the Issuer and the Trustee and the officers, agents, employees and attorneys of each for any claim or liability resulting from the Issuer's or the Trustee's own willful acts or gross negligence or for any claim or liability which the Lessee was not given the opportunity to contest. The Issuer or the Trustee shall reimburse the Lessee for payments made by the Lessee pursuant to this Section 6.9 to the extent of any proceeds, net of all expenses of collection, actually received by either such party from any insurance covering such claims with respect to the losses sustained. The Issuer or the Trustee, as applicable shall promptly claim any such insurance proceeds and shall assign its rights to such proceeds, to the extent of such required reimbursement, to the Lessee. In case any action shall be brought against the Issuer or the Trustee in respect of which indemnity may be sought against the Lessee, the Issuer or the Trustee, as applicable shall promptly notify the Lessee in writing and the Lessee shall have the right to assume the investigation and defense thereof including the employment of counsel and the payment of all expenses. Failure to give any such notice shall not affect the right of the Issuer or Trustee, as applicable, to receive the indemnification provided herein; unless such failure resulted from the gross negligence or wilful misconduct of the Issuer or the Trustee, such failure could not be remedied and the result of such failure is that the interests of the Lessee were materially and adversely affected as a direct result of such failure. The Issuer or the Trustee, as applicable shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by the Issuer or the Trustee unless (i) the employment of such counsel has been authorized by the Lessee or, (ii) the Lessee shall have failed promptly after receiving notice of such action from the Issuer or the Trustee, as applicable, to assume the defense of such action and employ counsel reasonably satisfactory to the Issuer or the Trustee, as applicable, or (iii) the named parties to any such action (including any impleaded parties) include both the Issuer or the Trustee, as applicable, and the Lessee or an affiliate of the Lessee, and the Issuer or the Trustee, as applicable, shall have been advised by counsel that there may be one or more legal defenses available to such party which are different from or in addition to those available to the Lessee or

affiliate of the Lessee or (iv) the Issuer or the Trustee, as applicable, shall have been advised by counsel that there is a conflict on any issue between the Issuer or the Trustee, as applicable, and the Lessee (in which case, if the Issuer or the Trustee, as applicable, notifies the Lessee in writing that it elects to employ separate counsel at the expense of the Lessee, the Lessee shall not have the right to assume the defense of such action or proceeding on behalf of the Issuer or the Trustee, as applicable). The Lessee shall not be liable for any settlement of any such action without its consent but, if any such action is settled with the consent of the Lessee or if there be a final unappealable judgment for the plaintiff in any such action, the Lessee agrees to indemnify and hold harmless the Issuer and the Trustee and the officers, agents, employees and attorneys of each from and against any loss by reason of such settlement or judgment. Nothing herein shall be construed as requiring the Issuer or the Trustee to acquire or maintain insurance of any form or nature with respect to the Series 2000A Project or any portion thereof or with respect to any phrase, term, provision, condition or obligation of this Lease or any other matter in connection herewith. The obligations of the Lessee under this Section 6.9 shall survive the termination of this Lease and the satisfaction and discharge of the Indenture and shall continue in full force and effect, binding the Lessee to the provisions of this Section 6.9 without regard to the manner of termination of this Lease.

## ARTICLE VII
## DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. *Damage and Destruction.*

Subject to the Project Loan Documents and the Sublease, unless the Lessee shall have exercised its options to prepay the Series 2000A Bonds in whole, terminate the Lease Term and purchase the Series 2000A Project, if prior to Payment in Full of the Series 2000A Bonds the Series 2000A Project is damaged or destroyed by fire or other casualty, the Lessee shall be obligated to continue to make the rental payments specified in Section 5.3 hereof and shall promptly replace, repair, rebuild or restore the property damaged to substantially the same condition as existed prior to the event causing such damage, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair operating unity of the Series 2000A Project or change its character to such an extent that its ownership by the Issuer would not be permitted under the laws pursuant to which the Issuer was created.

SECTION 7.2. *Condemnation.*

Subject to the Project Loan Documents and the Sublease, unless the Lessee shall have exercised its options to prepay the Series 2000A Bonds in whole, terminate the Lease Term and purchase the Series 2000A Project, if the title in and to, or the temporary use of, the Series 2000A Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Lessee shall be obligated to continue to make the rental payments specified in Section 5.3 hereof, and shall cause the restoration of the Series 2000A Project to substantially the same condition as it existed prior to the exercise of the said power of eminent domain, or shall acquire and install other machinery, equipment or related property suitable for the Lessee's operations at the Series 2000A Project, title to which machinery, equipment or related property will be conveyed to the Issuer by bill of sale and which will be deemed a part of the Series 2000A Project and available for use and occupancy by the Lessee without the payment of any rent other than the payments specified in Section 5.3 hereof.

## ARTICLE VIII
## SPECIAL COVENANTS

SECTION 8.1. *No Warranty of Condition or Suitability by the Issuer.*

THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE SERIES 2000A PROJECT OR THAT IT WILL BE SUITABLE FOR THE LESSEE'S PURPOSES OR NEEDS. The Lessee releases the Issuer from, agrees that the Issuer shall not be liable for and agrees, to the extent permitted by applicable law, to hold the Issuer harmless against, any loss that may be occasioned by the condition of the Series 2000A Project or its suitability for the Lessee's purposes or needs.

SECTION 8.2. *Inspection of Series 2000A Project; Right of Access to the Series 2000A Project by the Issuer.*

The Lessee agrees that the Authorized Issuer Representative, the Trustee or either of their duly authorized agents who are acceptable to the Lessee shall have the right at all reasonable times during business hours, to enter upon, examine and inspect the Series 2000A Project, provided that this does not result in any interference or prejudice to the Lessee's operations. Provided that the Lessee is not in default hereunder, such inspection shall only be made in the presence of an official of the Lessee. The Lessee further agrees that the Issuer and its duly authorized agents shall have such rights of access to the Series 2000A Project as may be reasonably necessary to cause to be completed the acquisition, construction and installation provided for in Section 4.1 hereof.

SECTION 8.3. *Lessee to Maintain Its Corporate Existence; Exceptions Permitted.*

The Lessee agrees that as long as the Series 2000A Bonds, or any portion thereof shall remain outstanding, it shall maintain its corporate existence and shall not merge or consolidate with any other corporation and shall not transfer or convey all or substantially all of its property, assets and licenses; provided however, the Lessee may without violating any provisions of this Lease Agreement consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States of America or the District of Columbia) or permit one or more domestic corporations to consolidate with or merge into or transfer or convey all or substantially all of its assets to another domestic corporation, but only on the condition that the assignee corporation or the corporation resulting from or surviving such merger (if other than the Lessee) or consolidation or corporation to which such transfer is made is then solvent and shall expressly assume in writing and agree to pay and to perform all of the Lessee's obligations under the Lease Agreement and enter into a home office payment agreement pursuant to Section 208 of the Indenture. If the Lessee is the surviving corporation in such a merger the express assumption shall not be required.

SECTION 8.4. *Qualification in Georgia.*

The Lessee warrants (except as may be otherwise permitted pursuant to the provisions of Section 8.3 above) that it is and throughout the Lease Term it will continue to be a corporation either organized under the laws of the State of Georgia or duly qualified to do business in the State of Georgia as a foreign corporation, as the case may be.

SECTION 8.5. *Granting and Release of Easements.*

If no event of default shall have happened and be continuing, the Lessee may at any time or times cause to be granted easements, licenses, rights–of–way (temporary or perpetual and including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Series 2000A Project and such grant will be free from the lien or security interests created by the Indenture or this Lease, or the Lessee may cause to be released existing easements, licenses, rights–of–way and other rights or privileges in the nature of easements, held with respect to any property included in the Series 2000A Project with or without consideration, and the Issuer agrees that it shall execute and deliver and will cause the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right–of–way or other right or privilege upon receipt of: (i) a copy of the instrument of grant or release, and (ii) a written application of the Lessee signed by an Authorized Lessee Representative requesting such instrument and stating that such grant or release is not detrimental to the proper conduct of the business of the Lessee.

SECTION 8.6. *Release of Certain Land.*

Notwithstanding any other provision of this Lease, the parties hereto reserve the right at any time and from time to time by mutual agreement to amend this Lease for the purpose of effecting the release of and removal from this Lease of any unimproved part of the Leased Land (on which neither the Building nor any Leased Equipment is located but on which parking, transportation, utility facilities or other support facilities may be located); provided, that if at the time any such amendment is made any of the Series 2000A Bonds are outstanding and unpaid, there shall be deposited with the Trustee the following:

(a) A copy of said amendment in the form attached as Exhibit "E", as executed.

(b) A resolution of the Issuer (i) stating that the Issuer is not in default under any of the provisions of this Lease or the Indenture and that the Lessee is not to the knowledge of the Issuer in default under any of the provisions of this Lease, (ii) giving an adequate legal description of that portion of the Leased Land to be released, (iii) stating the purpose for which the Issuer desires the release, (iv) stating that the improvements which will be constructed or the facilities and services which will be provided, increased or improved will be such as will promote the purposes for which the Issuer was created, and (v) requesting such release.

(c) An opinion of Counsel to the Lessee that all necessary corporate action required under the Certificate of Incorporation and By–laws has been taken to authorize and approve such amendment together with an officer's certificate stating that the Lessee is not in default under any of the provisions of this Lease.

(d) A copy of the agreement wherein the Issuer agrees to construct or install improvements on the portion of the Leased Land so requested to be released and agrees to lease the same to the lessee under said lease agreement, and wherein such lessee agrees to lease the same from the Issuer or a copy of the instrument conveying the title to a railroad, public utility or public or quasi–public body.

(e) A certificate of an Authorized Lessee Representative, dated not more than sixty days prior to the date of the release and stating that, in the opinion of the person signing such certificate, the release so proposed to be made will not materially impair the utility of the Series 2000A Project and will not destroy the means of ingress thereto and egress therefrom.

No release effected under the provisions hereof shall entitle the Lessee to any abatement or diminution of the rents payable under Section 5.3 hereof.

SECTION 8.7. *Preservation of Rights of Mortgagee.*

The Issuer and Lessee acknowledge and agree that Issuer holds fee simple title to the Series 2000A Project subject to the Project Loan Documents and, in addition, that the Series 2000A Lease Agreement (including all rights and obligations under Articles XI and XII hereof) is and shall remain at all times subject to and subordinate in all respects to the Project Loan Documents and the rights of the Mortgagee thereunder. Issuer and Lessee also covenant and agree as follows with respect to the Project Loan Documents as follows:

(a) In the event of a foreclosure sale of the Series 2000A Project pursuant to the power of sale contained in the Project Loan Documents then Mortgagee shall have the right, at its option, to either (i) terminate the Series 2000A Lease Agreement through the occurrence of the foreclosure sale of the Series 2000A Project pursuant to the Project Loan Documents (such termination automatically resulting in the deeming of the Bond as paid in full pursuant to Section 11.1 herein), or (ii) conduct the foreclosure sale of the Series 2000A Project subject to the Series 2000A Lease Agreement and affirm the Series 2000A Lease Agreement, in which event the Issuer, the Lessee and the purchaser at the foreclosure sale, as successor Lessee, shall execute, upon request of such purchaser, such reasonable documentation as is necessary to effectuate the affirmation of the Series 2000A Lease Agreement pursuant to Section 9.1.

(b) Issuer acknowledges and agrees that Lessee (including, without limitation, successors to Mount Vernon Place Partners, LLC, as Lessee) shall have the right to refinance the Series 2000A Project with lenders from time to time, in which event such successor lender shall have the identical rights and priorities as the rights and priorities held by Mortgagee with respect to the Series 2000A Project and this Series 2000A Lease Agreement at the date hereof. All documentation evidencing or securing such loan with

the successor lender shall thereafter constitute the Project Loan Documents and such successor lender shall have identical rights, privileges, and priorities as those of Mortgagee and the Project Loan Documents hereunder. Issuer agrees to execute documentation from time to time as is necessary to effectuate the foregoing, including without limitation, subordination agreements confirming the rights of a successor lender under paragraph (a) above and confirming that the title held by Issuer to the Series 2000A Project shall be subject to such Loan Documents of the successor lender and that the Series 2000A Lease Agreement is likewise subject to and subordinate to such successor Loan Documents.

SECTION 8.8. *Filing of Certain Continuation Statements.*

Pursuant to Section 1214 of the Indenture, from time to time, the Trustee shall duly file or cause to be filed continuation statements for the purpose of continuing without lapse the effectiveness of (i) those Financing Statements which shall have been filed at or prior to the issuance of the Series 2000A Bonds in connection with the security for the Series 2000A Bonds pursuant to the authority of the Uniform Commercial Code of Georgia, and (ii) any previously filed continuation statements which shall have been filed as herein required. The Lessee shall sign (if necessary) and deliver to the Issuer or its designee and the Issuer shall sign and deliver to the Trustee such continuation statements as may be requested of it from time to time by the Trustee. Upon the filing of any such continuation statement the Trustee shall immediately notify the Lessee and the Issuer that the same has been accomplished if so requested.

SECTION 8.9. *Special Environmental Indemnification.*

(a) the Lessee agrees to and shall indemnify, hold harmless, and defend the Issuer and the Trustee, their officers, directors, agents, and employees from and against any and all claims, losses, damages, expenses, causes of action, lawsuits, government regulatory enforcement actions, and liability (individually, a "Claim," collectively, "Claims") asserted against the Issuer or Trustee arising out of alleged or actual "environmental contamination" (hereinafter defined) arising from the Lessee's leasing and operation of the Series 2000A Project.

(b) "Environmental contamination" as used herein shall mean damages to persons or property or violations of state or federal environmental laws or regulations arising out of the Lessee's past operations at the Series 2000A Project or the operations of the Lessee at any time at the Series 2000A Project with respect to but not limited to air emissions, water effluent discharges, and waste generation, transportation, storage, disposal, or the handling of hazardous materials.

(c) The Issuer shall notify the Lessee in writing within thirty (30) days after any Claim is made, brought, or asserted, in any event, in writing, against the Issuer, and as to which the Issuer has actual knowledge by receipt of such written notification. The Lessee shall similarly notify the Issuer in writing within thirty (30) days after any Claim is made, brought, or asserted against the Lessee.

(d) The Issuer shall fully cooperate with the Lessee, including but not limited to, assisting the Lessee in the preparation of a defense to Claims when and as the Lessee fulfills its obligations under this Section of the Lease. In the event the Issuer provides notice to the Lessee under Subsection (c) above, the Lessee shall handle and control the defense of all Claims and the Lessee's decision on litigation and settlement and all other such aspects shall be final; provided, however, no settlement or decision shall impose upon the Issuer by apportionment or otherwise, any loss, damage or liability as a result thereof.

(e) The Issuer shall use its best efforts to deliver the notice specified in subsection (c) above within a period of thirty (30) days after the Issuer has direct knowledge (by receipt of written notice or otherwise) of a Claim.

(f) The provisions of this Section 8.9 shall survive the termination of this Lease and shall continue in full force and effect, binding the Lessee to the provisions of this Section 8.9 without regard to the manner of termination of this Lease.

SECTION 8.10. *Compliance with Laws.*

The Lessee agrees that it will comply with any applicable law, ordinance, rule or regulation of any governmental authority with respect to its use of the Series 2000A Project.

## ARTICLE IX
## ASSIGNMENT, SUBLEASING, PLEDGING AND SELLING; REDEMPTION; RENT PREPAYMENT AND ABATEMENT

SECTION 9.1. *Assignment and Subleasing.*

Subject to the Sublease and any assignments or subleases permitted thereunder, this Lease may be sold or assigned, in whole or in part, and the Series 2000A Project may be subleased, as a whole or in part, by the Lessee without the consent of the Issuer and the Trustee or the Bondholders, but only under the following circumstances:

(a) no sale or assignment (other than pursuant to Section 8.3 hereof) or sublease shall relieve the Lessee from primary liability for any of its obligations hereunder, and if any such assignment occurs the Lessee shall continue to remain primarily liable for payment of the rents specified in Section 5.3 hereof and for performance and observance of the other agreements on its part herein provided to be performed and observed by it unless the Lessee shall have obtained from any purchaser, assignee, or sublessee, as the case may be, an express written assumption of all the obligations of the Lessee hereunder;

(b) the Lessee shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Issuer and to the Trustee a true and complete copy of each such sale, assignment or sublease, as the case may be, together with any instrument of assumption;

(c) the purchaser, assignee or sublessee of the Series 2000A Project shall purchase the Series 2000A Bonds;

(d) the purchaser, assignee or sublessee of the Series 2000A Project shall and enter into a home office payment agreement pursuant to Section 208 of the Indenture;

(e) ISS shall remain as the sublessor under the Sublease; and

(f) the Guaranty Agreement, dated as of September 1, 2000, between ISS and the Trustee shall remain in full force and effect.

SECTION 9.2. *Assignment of Lease to Trustee.*

The Issuer shall assign its interest in and pledge all rents, revenues and receipts derived under this Lease or otherwise arising out of or in connection with its ownership of the Series 2000A Project pursuant to the Indenture, to the Trustee as security for the payment of the principal of and interest on the Series 2000A Bonds, but such assignment shall be subject and subordinate to this Lease and the Project Loan Documents.

SECTION 9.3. *Restrictions on Sale of Series 2000A Project by Issuer.*

The Issuer agrees that, except as provided in Section 11.2 herein, it will not mortgage, sell, assign, transfer, convey or otherwise encumber the Series 2000A Project or any portion thereof during the Lease Term and that it will not take any other action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes on the Series 2000A Project or the Lessee's leasehold interest in the Series 2000A Project. If the laws of the State of Georgia at the time require or permit such action to be taken, nothing contained in this Section shall prevent the consolidation of the Issuer with, or the merger of the Issuer into, or the transfer of the Series 2000A Project as an entirety to, any public corporation whose property and income are not subject to taxation and which has corporate authority to carry on the business of owning and leasing the Series 2000A Project; provided, (a) that no such action shall be taken without the prior written consent of the Lessee, unless such action shall be required or permitted by law, and (b) that upon any such consolidation, merger or transfer, the due and punctual payment of the principal of and interest on the Series 2000A Bonds according to their tenor, and the due and punctual performance and observance of all the agreements and conditions of this Lease to be kept and performed by the Issuer, shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or to which the Series 2000A Project shall be transferred as an entirety.

SECTION 9.4. *Prepayment of Series 2000A Bonds.*

The Issuer, at the request at any time of the Lessee and if the same are then redeemable, shall forthwith take all steps that may be necessary under the applicable prepayment provisions of the Indenture to effect prepayment of all or any portion of the Series 2000A Bonds, as may be specified by the Lessee, on the earliest prepayment date on which such prepayment may be made under such applicable provisions. So long as the Lessee is not in default hereunder and the Issuer is not obligated to prepay the Series 2000A Bonds pursuant to the terms of the Indenture, the Issuer shall not redeem any Series 2000A Bonds prior to their maturity unless requested in writing by the Lessee. The Lessee agrees to give notice to the Issuer and the Trustee of any prepayment at least forty–five (45) days prior to the prepayment date or such shorter period of time as may be acceptable to the Issuer and the Trustee.

SECTION 9.5. *Prepayment of Rents.*

There is expressly reserved to the Lessee the right, and the Lessee is authorized and permitted, at any time it may choose, so long as it is not in default hereunder, to prepay all or any part of the rents payable under Section 5.3 hereof, and the Issuer agrees that the Trustee may accept such prepayment when the same is tendered by the Lessee. All prepaid rents shall be credited on the rents specified in Section 5.3, in the chronological order of their due dates.

SECTION 9.6. *Rent Abatements if Series 2000A Bonds Paid Prior to Maturity.*

If at any time the aggregate moneys in the Series 2000A Bond Fund are sufficient to retire, in accordance with the terms of the Indenture, all of the outstanding Series 2000A Bonds and to pay all Ordinary Expenses of the Trustee due or to become due through the date on

which the last of the Series 2000A Bonds is to be retired, under circumstances not resulting in termination of the Lease Term, and if the Lessee is not at the time otherwise in default hereunder, the Lessee shall be entitled to use and occupy the Series 2000A Project from the date on which such aggregate moneys are in the Series 2000A Bond Fund to and including midnight on December 1, 2012, without the payment of rent during that interval (but otherwise on the terms and conditions hereof).

SECTION 9.7. *Reference to Series 2000A Bonds Ineffective After Series 2000A Bonds Paid.*

Upon Payment in Full of the Series 2000A Bonds and all fees, charges and expenses of the Trustee, all references in this Lease to the Series 2000A Bonds and the Trustee shall be ineffective and neither the Trustee nor the holders of any of the Series 2000A Bonds shall thereafter have any rights hereunder, saving and excepting those that shall have theretofore vested. Reference is hereby made to Section 1002 of the Indenture which sets forth the conditions upon the existence or occurrence of which Payment in Full of the Series 2000A Bonds shall be deemed to have been made.

## ARTICLE X
## EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. *Events of Default Defined.*

The following shall be Events of Default under this Lease:

(a) failure by the Lessee to make any rental payments required under Section 5.3 hereof on or before the date that the payment is due and continuance of such failure for a period of five business days after notice thereof has been given to the Lessee by telephone (to be followed in writing) or telex;

(b) failure by the Lessee to observe and perform any other material covenant, condition or agreement on its part under this Lease (other than as referred to in subsection (a) of this Section), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, shall be given to the Lessee by the Trustee, unless the Issuer and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer and the Trustee will not unreasonably withhold their consent to an extension of such time if it is possible to correct such failure and corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected;

(c) the entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Lessee or adjudging the Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Lessee under Title 11 of the United States Code, as now constituted or as amended or any other applicable Federal or state bankruptcy or other similar law, and such decree or order shall have continued undischarged or unstayed for a period of 90 days; or the entry of a decree or order of a court having jurisdiction of the premises for the appointment of a receiver or liquidator or trustee or custodian or assignee in bankruptcy or insolvency of the Lessee or of all or a major part of its property, or for the winding up or liquidation of its affairs and such decree or order shall have remained in force undischarged or unstayed for a period of 90 days;

(d) the Lessee shall institute proceedings to be adjudicated a bankrupt or insolvent, or shall consent to the filing of a bankruptcy or insolvency proceeding against it, or shall file a petition or answer or consent seeking relief under Title 11 of the United States Code, as now constituted or as amended, or any other applicable Federal or state bankruptcy or other similar law, or shall consent to the institution of proceedings thereunder or to the filing of any such petition, or shall consent to the appointment or taking possession of a receiver or liquidator or trustee or custodian or assignee in bankruptcy or insolvency of it or of all or a major part of its property, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or the failure of the Lessee generally to pay its debts

as such debts become due, or the taking of corporate action by the Lessee in furtherance of any such action; or

(e) The sale, transfer, assignment or other disposal of fifty percent (50%) or more of the voting stock of the Lessee or the sale, transfer, assignment or other disposal of the Series 2000A Project or the Lessee's interest in the Series 2000A Project other than a sale, transfer, assignment or disposal which is permitted under the provisions of Section 9.1 hereof.

The foregoing provisions of this Section are subject to the following limitations: If by reason of force majeure the Lessee is unable in whole or in part to carry out the agreements on its part herein contained, other than the obligations on the part of the Lessee contained in Sections 5.3, 6.3, 6.4 and 8.3 hereof, the Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State of Georgia or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Lessee. The Lessee agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Lessee from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Lessee, and the Lessee shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Lessee, unfavorable to the Lessee.

SECTION 10.2. *Remedies on Default.*

Whenever any Event of Default shall have happened and be subsisting, the Issuer, or the Trustee as provided in the Indenture, may take any one or more of the following remedial steps:

(a) declare all installments of rent payable under Section 5.3 hereof for the remainder of the Lease Term to be immediately due and payable, whereupon the same shall become immediately due and payable. If the Issuer or the Trustee elects to exercise the remedy afforded in this Section 10.2(a) and accelerates all rents payable under Section 5.3 hereof for the remainder of the Lease Term, the amount then due and payable as accelerated rents shall be the sum of (1) the aggregate principal amount of the outstanding Series 2000A Bonds, and (2) all interest on the Series 2000A Bonds accruing to the date of maturity by declaration;

(b) re–enter and take possession of the Series 2000A Project without terminating this Lease and without any liability to the Lessee for such entry and

repossession, and sublease the Series 2000A Project for the account of the Lessee, holding the Lessee liable for the difference in the rents and other amounts payable by such sublessee in such subleasing and the rents and other amounts payable by the Lessee hereunder;

(c) terminate the Lease Agreement; (provided, however, that upon such termination, the options of the Lessee to purchase the Series 2000A Project pursuant to the provisions of Article XI hereof and the obligations of the Lessee to make the rental payments pursuant to Section 5.3 hereof and purchase the Series 2000A Project pursuant to Section 12.1 hereof contained therein shall survive such termination), exclude the Lessee from possession of the Series 2000A Project and use its best efforts to lease the Series 2000A Project to another for the account of the Lessee, holding the Lessee liable for all rent and other payments due up to the effective date of such leasing;

(d) require accounting books and records of the Lessee pertaining exclusively to the Series 2000A Project only for an Event of Default under Section 10.1(a);

(e) take whatever action at law or in equity may appear necessary or desirable to collect the rents then due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease; and

(f) exercise any remedies provided for in the Indenture, or in the Uniform Commercial Code of the State of Georgia.

Any amounts collected pursuant to action taken under this Section shall be paid into the Series 2000A Bond Fund and applied in accordance with the provisions of the Indenture and after Payment in Full of the Series 2000A Bonds and the payment of any costs occasioned by an Event of Default hereunder, any excess moneys in the Series 2000A Bond Fund shall be returned to the Lessee as an overpayment of rent.

SECTION 10.3. *No Remedy Exclusive.*

No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice or notices as may be herein expressly required. Such remedies as are given to the Issuer hereunder shall also extend to the Trustee, and the Trustee and the holders of the Series 2000A Bonds shall be deemed third–party beneficiaries of all covenants and agreements herein contained.

SECTION 10.4. *Agreement to Pay Attorneys' Fees and Expenses.*

Should an Event of Default occur and the Issuer and/or the Trustee should employ attorneys or incur other expenses for collection of rents or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee agrees that it shall on demand therefor pay to the Issuer and/or the Trustee the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Issuer and/or the Trustee.

SECTION 10.5. *No Additional Waiver Implied by One Waiver.*

If any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 10.6 *Waiver of Appraisement, Valuation, Etc.*

If the Lessee should default under any of the provisions of this Lease, the Lessee agrees to waive, to the extent it may lawfully do so, the benefit of all appraisement, valuation, stay, extension or redemption laws now or hereafter in force, and all right of appraisement and redemption to which it may be entitled.

SECTION 10.7. *Reinstatement of Lease.*

Notwithstanding any termination of this Lease in accordance with the provisions of Section 10.2, unless and until the Issuer shall have entered into a valid and binding agreement providing for the reletting of the Series 2000A Project, the Lessee may at any time after such termination pay all accrued unpaid rent, except rent accelerated pursuant to Section 10.2(a) of this Lease, plus any costs to the Issuer and the Trustee occasioned by the default, including all interest required to be paid in accordance with the Indenture on overdue principal and, to the extent lawful, on any overdue interest, or on the principal of Series 2000A Bonds not redeemed in accordance with the Indenture by reason of any default by the Lessee in the payment of rent, and fully cure all other defaults then capable of being cured. Upon such payment and cure and the rescission and annulment of acceleration as provided in Section 1111 of the Indenture, this Lease shall be fully reinstated, as if it had never been terminated, and the Lessee shall be restored to the use, occupancy and possession of the Series 2000A Project and any acceleration pursuant to Section 10.2(a) of this Lease shall thereupon be rescinded and annulled.

## ARTICLE XI
## OPTIONS IN FAVOR OF LESSEE

SECTION 11.1. *Options to Terminate the Lease Term.*

The Lessee (or any assignee including the Mortgagee pursuant to a foreclosure (or deed in lieu of foreclosure or similar instrument) under the Project Loan Documents) shall have the following options to terminate the Lease Term:

(a) At any time prior to Payment in Full of the Series 2000A Bonds, the Lessee may terminate the Lease Term by giving the Issuer and the Trustee notice in writing of such termination and by paying to the Trustee an amount which, when added to the funds in the Series 2000A Bond Fund, will be sufficient to pay, retire and prepay without premium or penalty all of the outstanding Series 2000A Bonds in accordance with the provisions of the Indenture (including, without limiting the generality of the foregoing, principal, interest to maturity or earliest applicable prepayment date, as the case may be, expenses of prepayment and the Trustee's fees and expenses), and, in case of prepayment, making arrangements satisfactory to the Trustee for the giving of the required notice of prepayment; or

(b) At any time after Payment in Full of the Series 2000A Bonds, the Lessee may terminate the Lease Term by giving the Issuer notice in writing of such termination and such termination shall forthwith become effective.

SECTION 11.2. *Option to Purchase Series 2000A Project.*

The Lessee shall have, and is hereby granted, the option to purchase the Series 2000A Project prior to the expiration of the Lease Term and prior to the Payment in Full of the Series 2000A Bonds. To exercise such option, the Lessee shall give written notice to the Issuer specifying the date of closing such purchase, which date shall be not less than forty–five (45) nor more than one hundred eighty (180) days from the date such notice is given, and shall make arrangements for the giving of the required notice of prepayment of the Series 2000A Bonds in accordance with the provisions of the Indenture. The amount which shall be paid to the Trustee by the Lessee in the event of its exercise of the option granted in this Section shall be the sum of the following:

(1) an amount of money which, when added to the funds in the Series 2000A Bond Fund, will be sufficient to retire and prepay all of the then outstanding Series 2000A Bonds at par on the date specified by the Lessee for such prepayment including, without limitation, principal plus accrued interest thereon to said prepayment date, *plus*

(2) an amount of money equal to the Trustee's and the paying agents' fees and expenses under the Indenture accrued and to accrue until such final payment and prepayment of the Series 2000A Bonds; plus

(3) the sum of ten dollars ($10) which shall be paid by the Lessee to the Issuer.

SECTION 11.3. *[Intentionally Omitted]*.

SECTION 11.4. *Conveyance on Purchase*.

At the closing of any purchase pursuant to Article XI or Article XII hereof or pursuant to the exercise of any option to purchase granted herein, the Issuer will upon receipt of the purchase price by it or by the Trustee on its behalf deliver to the Lessee the Quitclaim Deed and Bill of Sale or similar documents satisfactory to the Lessee conveying to the Lessee good and marketable title in and to the property with respect to which such obligation or option was exercised, by quitclaim deed and/or bill of sale without other warranty of title, subject to the following, (i) those liens and encumbrances (if any) to which such title in and to said property was subject when conveyed to the Issuer, (ii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented in writing, (iii) those liens, security interests and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Lease and (iv) Permitted Encumbrances other than the Indenture and this Lease.

SECTION 11.5. *Relative Position of Options and Indenture*.

The options respectively granted to the Lessee in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Lessee is in default hereunder, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option.

## ARTICLE XII
## OBLIGATIONS OF LESSEE

SECTION 12.1. *Obligation to Purchase Series 2000A Project.*

(a) The Lessee hereby agrees to purchase, and the Issuer hereby agrees to sell, the Series 2000A Project for Ten Dollars ($10.00) at the expiration or sooner termination of the Lease Term following Payment in Full of the Series 2000A Bonds. At any time subsequent to the expiration or sooner termination of this Lease as aforesaid upon notice to the Issuer by the Lessee, the Issuer shall upon receipt of the purchase price deliver to the Lessee or cause the Trustee, as the assignee of the Issuer to deliver to the Lessee those documents set forth in Section 11.4 hereof. The obligation specified in this Section shall be and remain prior and superior to the Indenture and may be exercised whether or not the Lessee is in default hereunder provided that such default will not result in nonfulfillment of any condition to this right.

## ARTICLE XIII
## MISCELLANEOUS

SECTION 13.1. *Notices*.

Unless otherwise stated herein, all notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by first class mail or by delivery to physical address, return receipt requested, postage prepaid, addressed as follows or by facsimile with receipt confirmed:

| | |
|---|---|
| (a) If to the Issuer: | Development Authority of Fulton County<br>141 Pryor Street, S.W.<br>Atlanta, Georgia 30303<br>Attention: Chairman |
| (b) If to the Lessee: | Mount Vernon Place Partners, L.L.C.<br>800 Mount Vernon Highway<br>Suite 300<br>Atlanta, Georgia 30328<br>Attention: Rick Bent |
| (c) If to the Trustee: | SunTrust Bank<br>Corporate Trust Department<br>25 Park Place, 24th Floor<br>Atlanta, GA 30303-2900<br>Attention: Bart Donaldson |

A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer, the Lessee or the Trustee shall be given to each of the others. The Issuer, the Lessee and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 13.2. *Binding Effect*.

This Lease shall inure to the benefit of and shall be binding upon the Issuer, the Lessee and their respective successors and assigns.

SECTION 13.3. *Severability*.

If any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 13.4. *Amounts Remaining in Series 2000A Bond Fund.*

It is agreed by the parties hereto that, subject to and in accordance with the terms and conditions of Section 609 of the Indenture certain surplus moneys remaining in the Series 2000A Bond Fund shall belong to and be paid to the Lessee by the Trustee as an overpayment of rents.

SECTION 13.5. *Amendments, Changes and Modifications.*

Except as otherwise provided in this Lease or in the Indenture, subsequent to the initial issuance of the Series 2000A Bonds and prior to Payment in Full of the Series 2000A Bonds, this Lease may only be amended, changed, modified, altered or terminated by the written agreement of the Issuer and the Lessee and may not be effectively amended, changed, modified, altered or terminated without the concurring written consent of the Trustee in accordance with the Indenture.

SECTION 13.6. *Execution Counterparts.*

This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 13.7. *Captions*.

The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Lease.

SECTION 13.8. *Recording of Lease*.

This Lease and every assignment and modification hereof shall be recorded in the office of the Clerk of the Superior Court of Fulton County, Georgia, or in such other office as may be at the time provided by law as the proper place for such recordation.

SECTION 13.9. *Law Governing Construction of Lease*.

This Lease shall be governed by, and construed in accordance with, the laws of the State of Georgia.

SECTION 13.10. *Net Lease*.

This Lease shall be deemed a "net lease", and the Lessee shall pay absolutely net during the Lease Term the rents, revenues and receipts pledged hereunder, without abatement, deduction or set–off other than those herein expressly provided.

SECTION 13.11. *Income Tax Purposes*

The Issuer and Lessee acknowledge and agree that this Lease shall not be treated as an operating lease for Federal and State income tax purposes, but instead shall be treated as a capital lease or financing arrangement, with the Lessee being treated as the owner of the Project for such purposes and as holding all the incidents and attributes of ownership for such purposes.

IN WITNESS WHEREOF, the Issuer and the Lessee have caused this Lease to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized representatives, all as of the date first above written.

DEVELOPMENT AUTHORITY
OF FULTON COUNTY

By: /s/ ILLEGIBLE

**Chairman**

(CORPORATE SEAL)

Attest:

/s/ ILLEGIBLE

**Assistant Secretary**

As to the Issuer, signed
and sealed in the presence
of:

/s/ CAMILE GOOD-----

**Witness**

/s/ IRIS HUNTER-JOHNSON

**Notary Public**

My commission expires: September 11, 2004

(Notarial Seal)

MOUNT VERNON PLACE PARTNERS
ASSOCIATES, L.L.C.

By: /s/ JOEL J. GRIFFIN

**Joel J. Griffin,**
**Manager**

(CORPORATE SEAL)

Attest:

By: /s/ ILLEGIBLE

**Assistant Secretary**

As to the Lessee, signed and
sealed in the presence of:

By: /s/ M. SHANNON ECHOLS

**Witness**

By: /s/ PATRICIA BLANKENSHIP

**Notary Public**

My commission expires: 7-14-02

(NOTARIAL SEAL)

**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**

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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** | |