

1996

Daniel A. Miller, David M. Kimball v. Martineau & Company, Judge Building Associates, Harold J. Hill, J. Michael Martin, Wilma W. Gardner, Estate of Kenneth N. Gardner : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

Brief of Appellant, *Miller v. Martineau & Company*, No. 960591 (Utah Court of Appeals, 1996).

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BRIEF

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BEFORE THE UTAH COURT OF APPEALS

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DOCKET NO. 960591-CA

DANIEL A. MILLER and DAVID M.
KIMBALL,

Plaintiffs and Appellees,

vs.

MARTINEAU & COMPANY, Certified
Public Accountants, JUDGE BUILDING
ASSOCIATES, a Utah limited partnership;
HAROLD J. HILL; J. MICHAEL
MARTIN; WILMA W. GARDNER, as
personal representative of the ESTATE OF
KENNETH N. GARDNER, Deceased,

Defendants and Appellants.

Case No. 960591-CA

PRIORITY 15

ADDENDA TO BRIEF OF APPELLANT

Appeal from the Third District Court of Salt Lake County,
State of Utah, Honorable Frank G. Noel, District Judge

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Salt Lake City, UT 84101

FILED

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COURT OF APPEALS

BEFORE THE UTAH COURT OF APPEALS

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KIMBALL,

Plaintiffs and Appellees,

vs.

MARTINEAU & COMPANY, Certified
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175 S. West Temple #700
Salt Lake City, UT 84101

ADDENDA

1. The March 6, 1986 Trust Deed, with Assignment of Leases
2. A November 13, 1990 Lease Agreement between Martineau & Company and The Judge Building Associates
3. Default Judgment of March 5, 1993
4. Real Estate Sale and Purchase Agreement of May 28, 1993
5. Special Warranty Deed
6. Deed of Trust/Assignment of Rents and Security Agreement
7. June 18, 1993 Assignment
8. June 18, 1993 Subordination Agreement
9. June 21, 1993 Assignment of Leases
10. June 21, 1993 Letter Agreement
11. Rule 60(b), Utah Rules of Civil Procedure
12. Rule 65A, Utah Rules of Civil Procedure
13. Findings of Fact and Conclusions of Law regarding foreclosure, default judgment and injunctive relief, with objections and rulings
14. Findings of Fact and Conclusions of Law regarding attorney's fees
15. Supplemental Affidavit of Mark Gaylord regarding attorney's fees

ADDENDUM NO. 1

4-6-311

2512

WHEN RECORDED SEND ORIGINAL
RECORDED DOCUMENTS WITH RECORDING
INFORMATION CONTAINED THEREON TO:
Republic Savings and Loan Association
Larry J. Bister, Senior Vice President - Lending
8200 West Brown Deer Road
Milwaukee, Wisconsin 53223

REPUBLIC SAVINGS AND LOAN ASSOCIATION
LARRY J. BISTER
Senior Vice President - Lending
8200 West Brown Deer Road
Milwaukee, Wisconsin 53223

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SALT LAKE COUNTY
CLERK

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DEED OF TRUST WITH ASSIGNMENT
OF RENTS AND LEASES
[UTAH]

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS AND LEASES is made as of the 6th day of March, 1986, by and between JUDGE BUILDING ASSOCIATES, a Utah limited partnership, with principal offices located at #8 East Broadway, Suite 413, Salt Lake City, Utah 84111, as Trustor; RELIABLE TITLE COMPANY, with principal offices located at 465 East 200 South, Salt Lake City, Utah 84111, as Trustee; and REPUBLIC SAVINGS AND LOAN ASSOCIATION OF WISCONSIN, a Wisconsin corporation, with principal offices located at 8200 West Brown Deer Road, Milwaukee, Wisconsin 53223, or its assigns and participants, collectively as Beneficiary.

W I T N E S S E T H:

Trustor, in consideration of the indebtedness herein recited, hereby conveys and warrants to Trustee, in trust, with power of sale, its right, title and interest in and to that certain real property situated in Salt Lake County, State of Utah, to wit:

PARCEL 1:

Jack's

Beginning at the Northwest corner of Lot 5, Block 52 Plat "A", Salt Lake City Survey; and running thence East 148.5 feet; thence South 100.0 feet; thence West 148.5 feet; thence North 100.0 feet to the place of beginning.

Parcel 1 is subject to and together with a nonexclusive right of way over and across the following parcels A and B:

PARCEL A:

Jack's

Beginning 138.50 feet East of the Northwest corner of Lot 5, Block 52 Plat "A", Salt Lake City Survey; and running thence South 100.0 feet; thence South 7 degrees 16 minutes East 168.3 feet; thence East 10.0 feet; thence North 7 degrees 16 minutes West 168.3 feet; thence North 100.0 feet; thence West 10.0 feet to the point of beginning.

PARCEL B:

Jack's

Beginning at a point 55.0 feet East and 160.0 feet South of the Northwest corner of Lot 6, Block 52 Plat "A", Salt Lake City Survey; and running thence East 12.0 feet; thence South 127.0 feet; thence West 72.4 feet; thence North 20.0 feet; thence East 60.4 feet; thence North 87.0 feet; thence North 45 degrees West 14.10 feet; thence West 40.40 feet; thence South 45 degrees West 15.50 feet; thence North 7 degrees 16 minutes West 47.70 feet; thence South 30 degrees 00 minutes East 30.40 feet; thence East 52.0 feet to the point of beginning.

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The use of Parcel R is limited to providing turnaround space for vehicles using the right of way described as Parcel A above.

Sub 1
ALSO: Together with any rights enjoyed in and to a foot-wall upon a strip of land described as follows: Commencing at the bottom of the building at a point 100 feet South of the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey, and at depth of not less than 14 feet beneath the level of Main Street; and running thence East 138-1/2 feet; thence South 2 feet; thence West 138-1/2 feet; thence North 2 feet to the place of beginning, as set forth in Agreement dated March 11, 1907, recorded March 13, 1907, as Entry No. 219820, in Book 2-K of Liens and Leases, at Pages 325 - 327.

The above described property also known by the street address of #8 East Broadway, Salt Lake City, Utah 84111.

together with the following, so long as it is owned by the Trustor: all buildings and improvements and all carpeting, floor coverings, draperies, equipment, sun screens, awnings, implements, goods, fittings, machinery, appliances, furniture, and other personal property of every kind or nature whatsoever, and all fixtures, which are presently, or which are at any time hereafter, attached, installed, placed, located, contained, or used in, about, or in connection with, or procured for purposes of attachment, installation, placing, being contained, or used in, about, or in connection with, and which are necessary for the existence, construction, creation, operation, or maintenance of, any building or other structure now or at any time hereafter erected or situated on, any portion of the above-described real property, together with all construction materials and all plans and specifications of every kind and nature whatsoever which are intended to be used, which are used, or which are procured for use in constructing and completing any of the improvements located or to be located on said real property (including all replacements, products, and proceeds of all of the foregoing).

Notwithstanding the scope of the foregoing, the Property shall not include: (i) personal property which may be owned by lessees or other occupants of improvements on any portion of the above-described real property, rather than by the Trustor, or which may be leased by such a lessee or other occupant from a party other than the Trustor; or (ii) material, equipment, tools, machinery, or other personal property which is brought upon said real property only for use in construction, maintenance, or repair and which is not intended, and which is not necessary for occupancy, maintenance, or use of said real property, to remain after the completion of such construction, maintenance, or repair; or (iii) personal property not owned by the Trustor located at or upon the above-described real property. All of the rights and interests in the real property, fixtures and personal property hereinabove described which are owned by Trustor (collectively referred to herein as the "Property") shall be deemed to constitute a portion of the security hereby given for the payment of the indebtedness and the performance of the obligations evidenced and secured hereby.

This Deed of Trust is given for the purpose of securing payment and performance of each and every obligation of Trustor evidenced by a certain Promissory Note (Secured by Deed of Trust with Assignment of Rents and Leases) (hereinafter referred to as the "Promissory Note") of even date herewith, executed by Trustor in the principal sum of Two Million Three Hundred Thousand Dollars (\$2,300,000.00), the total amount of which, including interest thereon as described therein, is due and payable as therein set forth, and any extensions, renewals, or modifications of said Promissory Note, or of the obligations

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evidenced thereby, and to secure payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Trustor, its successors or assigns, and of any notes, drafts or other instruments representing such further existing or other loans, advances or expenditures together with interest on all such sums at the rate(s) as therein provided. Provided, however, that the making of such further loans, advances, or expenditures shall be optional with the Beneficiary, and provided, further, that it is the express intention of the parties to this Deed of Trust that it shall stand as continuing security until all such advances together with interest thereon have been paid in full.

Trustor covenants that it is lawfully seized of the estate covered by this Deed of Trust and has the right to grant and convey all of its right, title and interest in the Property and, except as expressly set forth and contained in any policy of title insurance issued in favor of the Beneficiary or its assigns incident and relating to the loan transactions contemplated herein, the Property is subject to no interest, encumbrance or lien superior in priority or claim to this Deed of Trust and the lien created hereby.

A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. Maintenance of Property. To keep said Property in good condition and repair; not to remove or demolish any buildings thereon; to complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all valid claims for labor performed and materials furnished therefor; provided, however, that the Trustor shall have the right to contest in good faith the validity, amount and enforceability of any such claim and to post a bond or other security as the Beneficiary may reasonably require to protect the interest of the Beneficiary in the Property and any building or improvement thereon; to comply with all laws affecting said Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Property in violation of law; to irrigate, fertilize, fumigate, prune, maintain, repair, secure and do all other acts which from the character or use of said Property may be reasonably necessary, the specific enumerations herein not excluding the general; and to allow Beneficiary to inspect the Property upon reasonable notice at all reasonable times during the term hereof. Further, except in the ordinary course of the Trustor maintaining and leasing the Property, the Trustor shall obtain the prior written consent of the Beneficiary to the construction of any improvement on the Property or any alternation or addition thereto, and shall provide the Beneficiary with accurate copies of plans, specifications and contracts relating to the same.

2. Hazard Insurance Coverage. To keep the improvements now existing or hereafter erected on the Property insured against loss by fire, or hazards included within the terms "extended coverage", and "all risk" coverage, and such other hazards, in such amounts and for such periods during the term of the Promissory Note and any extensions thereof and until a reconveyance of the Property by the Beneficiary as Beneficiary may require. The insurance required under this Deed of Trust shall include coverage which shall cover loss or damage to the Property which results from wind, fire, vandalism, lightning, storm damage and similar causes in an amount equal to Two Million Three Hundred Thousand Dollars (\$2,300,000.00) or the full replacement value of the improvements constructed and to

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be constructed on the Property. Full replacement cost, as used herein, means, with respect to the improvements, the cost of replacing the improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations, and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment, and other items, the cost of replacing same.

Trustor shall provide, at Trustor's sole cost and expense, insurance on Trustor's personal property purchased for installation or use in the improvements on the Property. This coverage shall include, but shall not be limited to, heating and air conditioning equipment, structural elements, elevators, escalators, windows, doors, door controls and other fixtures, and shall insure the personal property against loss by theft, vandalism, fire, wind and similar risks. Trustor shall also provide worker's compensation insurance as provided by law.

3. Public Liability and Property Damage Insurance. To secure and pay for and provide to Beneficiary evidence of comprehensive general liability insurance for personal injury, including, without limitation, bodily injury and death, and property damage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) on a per person basis and in an amount not less than One Million Dollars (\$1,000,000.00) on a per accident basis.

4. Title Insurance. To secure, pay for, and maintain with Trustee until the indebtedness and the obligations secured hereby have been fully paid and performed, a policy of title insurance on a 1970 ALTA form of Lender's Title Policy (or, where ALTA forms are not available, such other forms acceptable to Beneficiary) together with (1) Comprehensive Endorsement No. 1 (or its equivalent) and (b) an endorsement insuring that the interests of all lessees under all leases effecting the Subject Property are as lessees only, with no options to purchase, or rights of first refusal to purchase, the Subject Property, insuring the lien of this Deed of Trust as a first and valid lien, and any declarations, easements, restrictions or other exceptions to title outlined in such title insurance policy which are acceptable to Beneficiary. Any such title insurance policy shall insure the legal description of the Property and shall insure over and against liens of mechanics, materialmen, suppliers and similar claims for all work on or supplies and materials provided to the Property prior to the issuance thereof and shall otherwise be in such form, including extended coverage, and issued by such title insurance company or companies as are acceptable to Beneficiary and shall be in an amount not less than the original principal sum evidenced by the Promissory Note secured hereby.

5. Business Interruption Insurance. To secure, pay for and maintain with Trustee until the indebtedness and the obligations secured hereby have been fully paid and performed, business interruption, loss of income and rental interruption insurance against loss of income by reason of any hazard covered under paragraphs A.2., A.3., or A.6., hereof, in an amount sufficient to avoid any co-insurance penalty but, in any event, for not less than six (6) months taxes, insurance, and debt service on the Property.

6. Flood Insurance. To secure, pay for and maintain, flood and mudslide insurance in an amount equal to the lesser of (i) Two Million Three Hundred Thousand Dollars (\$2,300,000.00); or (ii) the maximum limit of coverage made available with respect to the Property under the Federal Flood Insurance Program; provided that such flood and mudslide

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insurance shall not be required if Trustor provides Beneficiary with written evidence satisfactory to Beneficiary that the Property is not situated within an area identified by the Secretary of Housing and Urban Development or any other governmental department, agency, bureau, board, or instrumentality as an area having special flood or mudslide hazards, and that no flood insurance is required on the Property by any regulations by which Beneficiary is governed.

7. Miscellaneous Insurance Provisions. The premiums for the policies of the above-described insurance shall be prepaid at least one (1) year in advance upon execution hereof and the insurance hereinabove described and required shall be in such amounts (except as hereinabove specifically set forth), for such periods, and issued by such insurance companies, as shall be approved by and satisfactory to the Beneficiary, for the benefit of the Trustor and the Beneficiary, as their respective interests may appear, and Trustor agrees to pay the premiums therefor promptly when due, and such original policies of insurance (or certified copies of any original policies) shall be held by the Beneficiary, it being understood, however, that the Beneficiary shall in no event be responsible for the sufficiency or form or substance of any policy of insurance, or for the solvency or sufficiency of any insurance company or other insurer with respect to the insurance herein required and provided.

All insurance policies shall be in a form with such endorsements and for a term acceptable to Beneficiary, and shall include a standard non-contributory mortgagee clause in favor of and in a form acceptable to Beneficiary. Beneficiary shall have the right to hold the original or certified copies of such policies and renewals and Trustor shall promptly furnish to Beneficiary all renewal notices and all receipts evidencing payment of premiums therefor. The Trustor and the Beneficiary shall jointly approve the settlement and/or compromise of insurance claims in the event of a loss covered by insurance as set forth herein. In the event of a disagreement between the parties hereto with respect to such settlement and/or compromise, the Trustor shall have the right to post and pledge with and for the benefit of the Beneficiary such bond or security as the Beneficiary shall determine, both as to form thereof and amount necessary to protect the interests of the Beneficiary in and to the Property, this Deed of Trust and the repayment of the indebtedness secured hereby and to thereupon litigate, compromise and/or settle any such claim. In the event such bond or security shall not be posted or pledged by the Trustor as hereinabove set forth, upon written notice from the Beneficiary to the Trustor, the Beneficiary is hereby authorized to settle all insurance claims and collect all insurance funds or proceeds accruing to the benefit of the Trustor and/or Beneficiary hereunder, and to facilitate the collection of such insurance funds or proceeds, the Trustor hereby appoints the Beneficiary as Attorney-in-Fact of said Trustor in the name, place and stead of such Trustor, to execute, sign and deliver all necessary and proper proofs of loss, claims, waivers and all other documents necessary for the collection of such insurance funds or proceeds, and if necessary to institute such proceedings in law or equity in the name or names of the Trustor as may be necessary for the collection thereof, to receive all insurance funds or proceeds payable to the Trustor and to execute all necessary and proper releases, receipts or acquittances; to make such compromises and/or settlements as may be deemed necessary and advisable; to sign, endorse and cash any and all drafts, checks or other instruments delivered in payment of any insurance funds or proceeds due. So long as no event of default exists under this

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Deed of Trust or the Promissory Note secured hereby, all monies collected by the Trustor or the Beneficiary on any insurance policy or from any insurer or other source with respect to and covering the Property shall be devoted to the repair or reproduction of the Property. If an event of default exists at the time such monies are collected, at Beneficiary's option, such monies shall be devoted to the repair or reproduction of the Property or applied and credited to the indebtedness secured hereby if the same are not so devoted to the repair or reproduction of the Property. All monies collected by the Beneficiary in excess of the amounts then owing from the Trustor under the Promissory Note and other Loan Documents secured by this Deed of Trust shall be paid to the Trustor by the Beneficiary. The Trustor hereby revokes any and all powers of attorney heretofore executed, as far as the same may, in any way, conflict with the powers herein granted to the Beneficiary, and this power of attorney being coupled with an interest, is hereby declared to be irrevocable and no future power of attorney executed by the Trustor shall impair in any way the powers herein granted so long as this Deed of Trust shall be in force.

All renewals of policies of insurance or other insurance contracts on the Property, including construction activities, shall be for a term agreed to by the Beneficiary. In the event the Trustor shall not provide and maintain insurance coverage during the term hereof as required hereby, the Beneficiary may secure at Trustor's expense necessary and appropriate insurance coverage for the required term and any extensions thereof.

In the event the Trustor or any subsequent owner or purchaser of the Property, improvements or premises above described shall desire to substitute for a then existing policy of insurance, a policy of insurance issued by another insurance carrier, the Beneficiary will be entitled to charge and collect from the Trustor a reasonable substitution fee for each substitution in an amount not to exceed One Hundred Dollars (\$100.00) to compensate the Beneficiary for additional clerical and record keeping services occasioned by such substitution. Said fee shall be payable on demand, and if not so paid, shall become part of the indebtedness due from Trustor and payment thereof will be and is hereby secured by this Deed of Trust. All substituted policies of insurance or other insurance contracts shall be in such amount, in such forms and shall be issued by such insurance carriers or other, as may be approved by Beneficiary.

8. Appearance in Proceedings Affecting Security. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including costs of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding, including any proceeding instituted by or against Trustor under the Bankruptcy Reform Act of 1978, as amended, in which Beneficiary may appear.

9. Payments Protecting Against Liens. To pay or cause to be paid before delinquent all taxes and assessments affecting the Property (including assessments on appurtenant water stock and/or rights and costs, interest and penalties thereon); and all encumbrances, charges and liens, with interest and penalties, on said Property or any part thereof, which appear to be or are prior or superior to the lien created by this Deed of Trust. It is understood and agreed that Trustor shall have the right to contest in good faith the validity, amount and enforceability of any such encumbrance, charge or lien, and to

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post a bond or other security, as the Beneficiary may reasonably require, to protect the interest of the Beneficiary in the Property and any building or improvement thereon.

10. Taxes and Insurance Budget Payments. In addition to the payments as provided in the Promissory Note, agrees to pay to the Beneficiary monthly budget payments in an amount equal to one-twelfth (1/12) of the annual real property taxes on the real property and improvements described in this Deed of Trust and with respect thereto the Trustor further acknowledges and agrees that said taxes may be estimated by the Beneficiary. Trustor further agrees that upon receipt of written request of the Beneficiary to do so, it shall pay to Beneficiary monthly budget payments in an amount equal to one-twelfth (1/12th) of the annual casualty insurance premiums on the real property and improvements described in this Deed of Trust. In the event the Trustor is in default under the Promissory Note, this Deed of Trust or the other Loan Documents, the Beneficiary may at any time, without notice, apply said budget payments to the payment of any sums due under the terms of this Deed of Trust and the Promissory Note secured hereby or either of them. Trustor's failure to pay said budget payments shall constitute a default under this Deed of Trust. If the amount of said funds held by Beneficiary shall be insufficient to pay taxes and assessments (and, if required by the Beneficiary, insurance premiums) as they fall due, Trustor shall pay to Beneficiary any amounts necessary to make up the deficiency immediately following receipt of notice of such deficiency which shall be mailed by Beneficiary to Trustor as hereinafter set forth in paragraph R.11.

Upon payment in full of all sums secured by this Deed of Trust, Beneficiary shall promptly refund to Trustor any funds held pursuant to this paragraph by Beneficiary.

If, after the date of this Deed of Trust, any law is passed imposing upon the Trustee or Beneficiary hereof any tax or assessment upon the Promissory Note or Deed of Trust or any other instrument given by the Trustor to secure the repayment of the indebtedness evidenced by the Promissory Note, or any liability to pay any part of the tax against the Property, or changing in any way the laws for taxation of Deeds of Trust or debts secured thereby, the Trustor shall immediately reimburse the Trustee and/or Beneficiary for the amount of such taxes or assessments. In the event said taxation is imposed and the Beneficiary does not waive the requirement for reimbursement, then in that event, the Trustor shall have the right during said period of taxation to prepay the then outstanding principal balance plus accrued interest under the Promissory Note without any additional charge or other penalty.

11. Trustee's and Attorney's Fees. To pay all costs, expenses and fees, including costs and reasonable attorneys fees incurred in any proceeding instituted by or against Trustor under the Bankruptcy Reform Act of 1978, as amended, which are in any way related to, or which are in any way incurred in connection with this Deed of Trust, the obligations secured hereby, or the enforcement or protection of Beneficiary's or Trustee's rights and interests hereunder, including Trustee's and reasonable attorney's fees (together with costs as shall be permitted by law) as follows: (a) in the event Beneficiary's rights are enforced or in any way protected through the services of an attorney, but not in conjunction with acceleration of the maturity of the obligations secured hereby, attorney's fees actually incurred; (b) in the event Beneficiary accelerates the maturity of the obligations secured hereby and thereafter reinstatement occurs, Trustee's and attorney's fees actually incurred; (c) in the

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event a sale of the Property is effected by Trustee pursuant to the Power of Sale available hereunder, such Trustee's and attorney's fees as are actually incurred; (d) in the event an action is commenced to obtain judgment for a deficiency remaining after the exercise of the Power of Sale, or the foreclosure hereof as a mortgage if permitted by law, attorney's fees as determined and awarded by a court of competent jurisdiction; and (e) in the event a decree of foreclosure is entered in proceedings to foreclose this Deed of Trust as a mortgage, attorney's fees as are determined and awarded by a court of competent jurisdiction.

12. Repayment of Advances. To pay immediately and upon demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the rate of the higher of eighteen and one-half percent (18.50%) per annum or three (3) points (on a scale of 100%) above the prime rate of interest then charged by First Wisconsin National Bank of Milwaukee, as published and announced from time to time by First Wisconsin National Bank of Milwaukee.

13. Beneficiary's Performance in Trustor's Stead. Should Trustor fail to make any payment or do any act herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Beneficiary or Trustee being authorized to enter upon said Property for such purposes); (b) appear in and defend any action or proceeding purporting to affect the security hereof or the right or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, (c) in exercising any such power, or in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay attorney's fees, including costs and reasonable attorneys fees incurred in any proceeding instituted by or against Trustor under the Bankruptcy Reform Act of 1978, as amended.

14. Late Charge and Events of Default. In the event: (i) any installment provided for under the Promissory Note is not paid in full within ten (10) days after its scheduled due date or the principal balance is not paid in full and when due; or (ii) the Trustor defaults in the performance of any covenant or promise (other than Trustor's promise to pay the installment payments and the principal balance provided for under the Promissory Note) contained herein or in any instrument given to secure the payment of the obligations evidenced by the Promissory Note and does not cure such default within thirty (30) days of receipt by the Trustor of written notice from the Beneficiary of such default; or (iii) a petition is filed seeking that the Trustor or any Guarantor be adjudged a bankrupt, and such petition is not dismissed within forty-five (45) days after the filing of the petition; or (iv) the Trustor or any Guarantor makes a general assignment for the benefit of creditors under state or federal law; or (v) the Trustor or any Guarantor suffers the appointment of a receiver under State or Federal law; or (vi) the Trustor or any Guarantor becomes insolvent; or (vii) the voting control of the undersigned (i.e., 50% or more of the interest in the profits and losses of the undersigned) is changed without the prior written consent of the Beneficiary; then, in any of such events, the entire remaining unpaid balance of both principal and interest owing hereunder and under the Promissory Note (including prepayment penalties described in the Promissory Note) shall, at the option of the Beneficiary and without notice or demand, become

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immediately due and payable. Thereafter, until the Trustor cures any event of default to the satisfaction of the Beneficiary, said unpaid balance, including accrued interest, shall, until paid and both before and after judgment, earn interest at the rate of the higher of eighteen and one-half percent (18-1/2%) per annum or three (3) percentage points (on a scale of 100%) above the prime rate of interest then charged by First Wisconsin National Bank of Milwaukee, as published and announced from time to time by First Wisconsin National Bank of Milwaukee. The acceptance of any installment or payment after the occurrence of a default or event giving rise to the right of acceleration provided for in this paragraph shall not constitute a waiver of such right of acceleration with respect to any future default or event.

15. Annual Financial Statements.

(a) Trustor shall maintain full, complete and correct books and records showing in detail the earnings and expenses of the Property, until the indebtedness evidenced by the Promissory Note has been paid in full, and will permit Beneficiary and its representatives to examine said books and records, and all supporting vouchers and data, including the current rent roll, if any, during normal business hours and from time to time upon request by Beneficiary.

(b) Trustor, at Trustor's sole cost and expense, shall deliver to Beneficiary within one hundred and twenty (120) days after the expiration of each fiscal year of Trustor, a balance sheet of Trustor and a statement of annual income and expenses with respect to the Property prepared and in a form satisfactory to Beneficiary. Said statement of annual income and expenses shall be in such detail as the Beneficiary shall reasonably require. In addition, in the event Trustor is in default hereunder, or under the Promissory Note or any of the other Loan Documents, Trustor shall, within said one hundred and twenty (120) day period, deliver to Beneficiary a current rent roll and statement of gross rental income and other income. Trustor also shall, within said one hundred and twenty (120) day period, when and as applicable, deliver to Beneficiary a statement of real estate taxes due and paid, a statement of insurance, a statement of operating expenses, copies of federal income tax returns, including depreciation schedules, all with respect to the Property, and all certified as to accuracy by Trustor. In the event such statements are not prepared in a usual and customary form and in accordance with generally accepted accounting principles and otherwise reasonably acceptable to the Beneficiary, the Beneficiary shall have the right to audit the respective books and records of the Trustor related to the Property or cause the same to be audited at the sole cost and expense of the Trustor. Such costs shall be immediately due and payable to Beneficiary and, until paid, shall become a part of the indebtedness due from Trustor and payment thereof shall be secured by this Deed of Trust.

16. Inspection. Beneficiary and Trustee shall have the right, upon reasonable notice, at all reasonable times to inspect the Property until the indebtedness evidenced by the Promissory Note has been fully paid.

B. TRUSTOR AND TRUSTEE MUTUALLY AGREE THAT:

1. Application of Awards and Proceeds. Any award of damage in connection with any condemnation or appropriation for public use of or injury to said Property or any part thereof to the extent of the outstanding principal balance and accrued and unpaid interest owing to the Beneficiary by or from the Trustor is hereby assigned to and shall be paid to Beneficiary who may

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reasonably apply or release such moneys received by it in the same manner, with the same effect and without the imposition of any additional charge or prepayment penalty, as above provided for disposition of proceeds of fire and other insurance. Trustor agrees to execute and deliver to Beneficiary such further assignments of such compensation, awards, damages, rights of action, proceeds or other payments as Beneficiary may from time to time require.

2. Late or Insufficient Payments. By accepting payments of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured. If Beneficiary receives or obtains any sum secured hereby which is less than the entire amount then due under said Promissory Note or under this Deed of Trust, Beneficiary shall, notwithstanding any instructions which may be given by Trustor, have the right to apply such payment, installment, or sum, or any part thereof, to such of the items or obligations then due as Beneficiary may in its sole discretion determine.

3. Assignment of Rents, Lease Agreements, Income and Management. As additional security for the obligations secured hereby, Trustor hereby assigns to Beneficiary, during the term of this Deed of Trust, all of Trustor's right, title and interest in and to any lease or rental agreement entered into between the Trustor and any lessee, sub-lessee or tenant of all or any portion of the Property together with all rents, issues, royalties, income, and profits of and from the Property. Until Trustor defaults in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to manage the Property and to collect and use all such contract payments, lease payments, deposits, rents, issues, royalties, income and profits earned prior to default. Upon any such default, Trustor's right to manage the Property and to collect or use any of such proceeds shall cease and Beneficiary shall have the right, with or without taking possession of the Property, and either in person, by agent, or through a court-appointed receiver (Trustor hereby consenting to the appointment of Beneficiary as such receiver), to assume management of the Property and to sue for or otherwise collect all such contract payments, lease payments, deposits, rents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected shall, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including attorney's fees, be applied toward the payment of the obligations secured hereby. Such right of management and of collection and use of such proceeds by Beneficiary shall obtain both before and after the initiation of proceedings preparatory to exercise of the Power of Sale available hereunder or, if this instrument is foreclosed as a mortgage, both before and after such foreclosure and throughout any period of redemption. The rights granted under this paragraph shall in no way be dependent upon, and shall apply without regard to, whether the Property is in danger of being lost, removed, or materially injured, or whether the Property or any other security is adequate to discharge the obligations secured by this Deed of Trust. Beneficiary's failure or discontinuance at any time to manage the Property and to collect any of such proceeds shall not in any manner affect the right, power, and authority of Beneficiary thereafter to collect the same. Nothing contained herein, nor Beneficiary's exercise of its right to manage the Property and to collect such proceeds hereunder, shall be, or be construed to be, an affirmation by Beneficiary or Trustee of any tenancy, lease, option, or other interest in the Property,

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or an assumption of liability under, or a subordination of the lien or charge of this Deed of Trust to, any tenancy, lease, option, or other interest in the Property. All lessees, sub-lessees, tenants and other persons having any obligation to make any payment in connection with the Property or any portion thereof are hereby authorized and directed to pay the lease payments, deposits, rents, issues, royalties, income, and profits payable by them with respect to the Property, or any part thereof, directly to Beneficiary upon the demand of Beneficiary, and Trustor agrees to so notify each such lessee and tenant at Beneficiary's request. Beneficiary's receipt of lease payments, deposits, rents, issues, royalties, income, and profits shall be a good and sufficient discharge of the obligation of the lessee, tenant or other person concerned to make the payment connected with the amount so received by Beneficiary.

Trustor shall execute and deliver to Beneficiary in form and substance satisfactory to Beneficiary's counsel, assignments of all future rents, profits and leases, including all deposits made by the obligors thereunder, as collateral and security and the interest therein as to all payments, deposits, income, rents or management of the Property, the right of Beneficiary under such assignments to be exercisable in the event of Trustor's default under the terms of the Promissory Note and this Deed of Trust. Except in the ordinary course of its leasing business, the Trustor shall not cancel, surrender or terminate any of said agreements or leases, or exercise any option which might lead to such termination or change, alter or modify them or consent to the release of any party liable thereunder or to the assignment of the purchaser's or lessees' interest therein without the prior written consent of Beneficiary in each such case. The Trustor shall execute and cause to be executed by any lessees or tenants of or on the Property and deliver to the Beneficiary a certification, estoppel letter or such other acceptance of the Property and/or the improvements therein by each such lessee or tenant as the Beneficiary may reasonably require. All such certifications, estoppel letters and acceptances shall be in a form and substance satisfactory to Beneficiary's counsel.

4. Acceleration. Time is the essence hereof. Upon the occurrence of any default hereunder or under any instrument securing the repayment of said Promissory Note and the indebtedness evidenced thereby and the failure by the Trustor to cure such default in accordance with, and within the time limitations set forth in, the terms and provisions hereof, all sums secured hereby shall, at the option of Beneficiary and without notice or demand, immediately become due and payable and Beneficiary may either: (a) cause the Trustee to accomplish any necessary prerequisites and to sell the Property at public auction to the highest bidder; or (b) proceed to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages covering real property. All procedural matters relating to exercise of the power of sale available under this Deed of Trust shall be governed by the statutory law which is in effect at the time said power is exercised.

5. Trustee's Sale. Any person, including Trustor, Trustee and Beneficiary, may bid and purchase at the Trustee's sale. Upon receipt of payment, Trustee shall execute and deliver its deed to the purchaser. The Trustee's deed may contain recitals of compliance with any requirements of applicable law relating to exercise of the power of sale or to the sale. Such recitals shall constitute conclusive evidence of such compliance in favor of bona fide purchasers and encumbrancers for value and prima facie evidence thereof in favor of all other persons.

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The Trustee's deed shall operate to convey to the grantee, not subject to any right of redemption, the Trustee's title and all right, title, interest and claim of Trustor, of Trustor's successors in interest, and of all persons claiming by, through or under them, in and to that part of the Property sold, including any and all right, title, interest or claim in and to such part of the Property which may have been acquired by Trustor or its successors in interest subsequent to the execution of this Deed of Trust. Trustee shall apply the proceeds of sale toward payment of the following, and in the order indicated: (a) all costs and expenses incurred in connection with exercise of the power of sale or with the sale, including appraisal reports, surveys, deposition costs and expenses, witness fees, costs of notices, posting and publication, Trustee's, sheriff's constable's and attorney's fees and the cost of any evidence of title procured in connection with the sale; (b) each sum the payment of which is secured by this Deed of Trust, together with accrued interest thereon at the applicable rate stated in said Promissory Note or herein; and (c) the balance, if any, to those entitled thereto, or at Trustee's discretion, such remainder may be deposited with the county clerk or similar official of the county in which the sale takes place. If a deficiency remains as determined by law after proper application of the proceeds of sale of the Property, Trustor shall, immediately after determination of the amount thereof, pay the same to Beneficiary. Beneficiary may, within the time provided by law, commence an action to recover such deficiency and interest thereon if and as provided by law.

6. Foreclosure as Mortgage. In any proceeding brought to foreclose this Deed of Trust as a mortgage under either Title 78 Chapter 37 of the Utah Code Annotated of 1953, as amended, or Title 57, Chapter 1, Section 23 of the Utah Code Annotated of 1953, as amended, Beneficiary shall be entitled to recover all costs and expenses (whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including those costs, expenses, charges and fees, including court costs and attorney's fees, set forth in Paragraph A. 11 above. Trustor expressly understands and agrees that among the remedies available to the Beneficiary hereunder is included the right to foreclose this Deed of Trust as a mortgage under either Title 78, Chapter 37 of the Utah Code Annotated of 1953, as amended, or Title 57, Chapter 1, Section 23 of the Utah Code Annotated of 1953, as amended, and that if the Trustor elects to foreclose this Deed of Trust as a mortgage under Title 78, Chapter 37 of the Utah Code Annotated of 1953, as amended, rather than Title 57, Chapter 1, Section 23 of the Utah Code Annotated of 1953, as amended, the Trustor shall have no right, and hereby waives any such right, to cure any such default or otherwise reinstate this Deed of Trust by bringing the payments and other obligations of the Trustor to the Beneficiary hereunder and under the Promissory Note current. Trustor hereby waives any right it or its successors in interest may have in the event of the entry of a decree of foreclosure to obtain a partial release of the Property from the lien of this Deed of Trust by paying less than the entire amount then secured hereby.

7. Limitations on Transferability, Alienation or Encumbrancing and Fees. To induce Beneficiary to make the loan secured by this Deed of Trust and as an integral part of said loan transaction, Trustor agrees that, except for leasing all or a portion of the Property in the ordinary course of Trustor's trade or business, in the event Trustor, without the prior written consent of Beneficiary, sells, contracts to sell, transfers, assigns, conveys, or otherwise alienates or further encumbers or hypothecates all or any portion of the estate

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covered by this Deed of Trust or any interest therein, whether voluntarily, involuntarily, or by operation of law, then the same shall constitute an event of default and Beneficiary may, at Beneficiary's sole option, without notice or demand, accelerate the maturity of all the obligations of Trustor under the Promissory Note, this Deed of Trust and any other instrument given to secure the payment and performance of the obligations evidenced by the Promissory Note, demand the immediate payment and performance of said obligations in full, and exercise any and all available remedies to collect the entire indebtedness owed to Beneficiary by Trustor. Beneficiary's consent to one or more of such transactions if given, shall not be deemed to be a future or successive transaction, whether or not such subsequent transaction is of a similar type and whether or not it involves Trustor or a successor in interest to Trustor.

Except for leasing all or a portion of the Property in the ordinary course of business, each time all or any portion of the Trustor's ownership of the Property is transferred, the Beneficiary may, as a condition to its consent and to compensate it for additional clerical and record keeping services occasioned by such transfer, charge and collect from Trustor upon demand a reasonable processing fee for each such transfer.

In the event the Beneficiary consents and agrees to the sale, transfer, assignment or conveyance of the Property and elects to accept any such assignee or transferee as an additional obligor under the Promissory Note, this Deed of Trust and the other Loan Documents, and such assignee or transferee expressly assumes all of the obligations and responsibilities of the Trustor under the Promissory Note, this Deed of Trust and the other Loan Documents, Trustor shall also pay Beneficiary a loan assumption fee in an amount equal to one percent (1%) of the then existing outstanding principal balance plus accrued interest on the Promissory Note. The above-described processing fee and loan assumption fee shall be payable by the Trustor to the Beneficiary on demand, and if not paid shall become a part of the indebtedness due from Trustor and payment thereof shall be secured by this Deed of Trust.

In the event of the occurrence of one or more of the transactions hereinabove described and unless otherwise agreed in writing between the Trustor and the Beneficiary, the Trustor shall not be released from the Trustor's obligations to the Beneficiary hereunder and the Trustor shall remain jointly and severally liable to the Beneficiary for all obligations of the Trustor under said Promissory Note, this Deed of Trust and any other instrument given to secure the payment and performance of the obligations evidenced by the Promissory Note.

8. Substitution of Trustee. Beneficiary, at its election and on successive occasions, and upon written notice to Trustor, may substitute a Trustee or Trustees to act hereunder as provided for by applicable law. Such new Trustee or Trustees shall succeed to all powers, duties, authority and title of the Trustee named herein and of any successor Trustee.

9. Loan Documents. This Deed of Trust is executed simultaneously with a Promissory Note, security agreement, financing statements, an assignment of rents, profits and leases as collateral and security, and other documents deemed necessary by Beneficiary to secure its interests in consideration of granting and making the loan evidenced thereby. All of said documents are hereby referred to as the "Loan Documents". In the event that provisions of this Deed of Trust are found to be inconsistent with the provisions of any

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of the Loan Documents, the terms of this Deed of Trust shall be controlling.

10. No Waiver of Rights by Collection of Proceeds. The entering upon and taking possession of the Property or the collection of lease payments, deposits, rents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Property, or the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the amount of, the regularly scheduled installments or payments of interest or principal provided for in the Promissory Note, the repayment of which is secured hereby. In the event of receipt by the Beneficiary of substantial insurance proceeds or awards in condemnation (i.e., proceeds or awards in excess of One Hundred Thousand Dollars (\$100,000.00)), the regularly scheduled installments or payments of interest and principal provided for in the Promissory Note shall be reduced and adjusted to reflect the then existing outstanding principal balance of the Promissory Note, and shall be amortized over a period of time equal to thirty (30) years less the number of full loan years completed as of the date of actual receipt by the Beneficiary of any such substantial insurance proceeds or awards in condemnation.

11. Notice of Default and Other Notices. A copy of any notice of default and a copy of any notice of sale hereunder be mailed to the Trustor at the address for Trustor set forth at the beginning of this instrument. Except for any notice required under applicable law to be given in any other manner, any notice to Trustor provided for in this Deed of Trust shall be given by mailing such notice by Registered or Certified mail addressed to the Trustor at the address hereinafter set forth, or such other address as Trustor may designate by notice in writing to Beneficiary. Any notice to Beneficiary shall be given by Registered or Certified mail at Beneficiary's address as set forth below, or any other address as Beneficiary may designate by written notice to the Trustor. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or to Beneficiary three (3) days following the mailing as provided above or at the time of actual receipt thereof, if earlier. Any notice provided for herein shall be mailed to the Trustor or the Beneficiary, as the case may be, as follows:

IF TO TRUSTOR, TO:

JUDGE BUILDING ASSOCIATES
a Utah limited partnership
#8 East Broadway, Suite 413
Salt Lake City, Utah 84111

WITH A COPY TO:

HAROLD J. HILL
8931 Tracy Circle
Sandy, Utah 84092

IF TO BENEFICIARY, TO:

REPUBLIC SAVINGS AND LOAN ASSOCIATION OF WISCONSIN
a Wisconsin corporation
8200 West Brown Deer Road
Milwaukee, Wisconsin 53223
Attn: Larry J. Bister, Senior Vice President - Lending

Doc: 5742701 1438

WITH A COPY TO:

SESSIONS & MOORE
505 East 200 South, Suite 400
Salt Lake City, Utah 84102
Attn: Robert C. Woodcock

12. Rights Cumulative and Not Waived. The rights and remedies accorded by this Deed of Trust shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Deed of Trust or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently, or successively. The failure on the part of Beneficiary or Trustee to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver of any default shall not constitute a waiver of any subsequent or other default.

13. Severability. In the event that any provision of this Deed of Trust is held to be invalid, the remaining provisions hereof shall not be affected thereby.

14. Interpretation. This Trust Deed shall be binding upon and shall inure to the benefit of the respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns of the parties hereto. The term "Beneficiary" as used herein shall mean the owner and holder, including any pledgee, of the obligations secured hereby. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include all other genders. In the event there is more than one Trustor hereunder, the liability of each shall be joint and several. The invalidity or unenforceability of any portion or provision of this Deed of Trust shall in no way affect the validity or enforceability of the remainder hereof. This instrument shall be governed by and construed in accordance with the laws of the State of Utah.

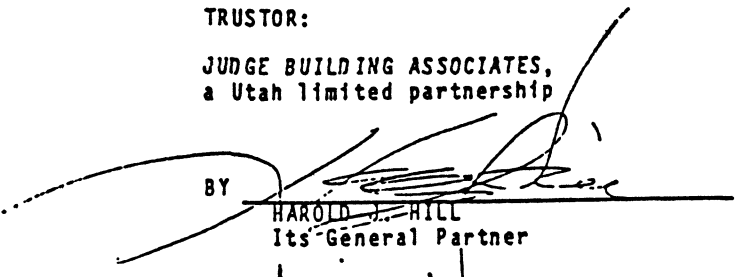
15. Commercially Reasonable Manner. The Trustor and the Beneficiary understand and agree that in dealing with matters incident and relating to the transactions governed by this Deed of Trust, each of them shall at all times act in a commercially reasonable manner, influenced and guided in part by the standards and guidelines employed by them when dealing with third parties in similar facts and circumstances.

IN WITNESS WHEREOF, the parties hereto have executed this Deed of Trust With Assignment of Rents and Leases as of the day and year first above written.


TRUSTOR:

JUDGE BUILDING ASSOCIATES,
a Utah limited partnership

BY


HAROLD J. HILL
Its General Partner

BY


J. MICHAEL MARTIN
Its General Partner

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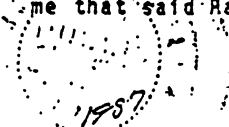
BENEFICIARY:

REPUBLIC SAVINGS AND LOAN ASSOCIATION
OF WISCONSIN,
a Wisconsin corporation

[Signature]
BY LARRY J. BISTER
Its Senior Vice President - Lending

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On this 6th day of March, 1986, personally appeared before me HAROLD J. HILL and J. MICHAEL MARTIN, who being by me first duly sworn, did say they are the sole General Partners of JUDGE BUILDING ASSOCIATES, a Utah limited partnership, and that the foregoing instrument was signed in behalf of said Partnership by authority of the unanimous consent of the General Partners, and said HAROLD J. HILL and J. MICHAEL MARTIN acknowledged to me that said Partnership executed the same.



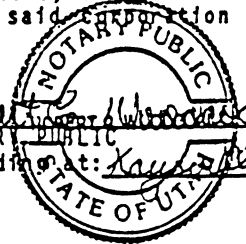
[Signature]
NOTARY PUBLIC
Residing at: Provo, Utah

My Commission Expires:

7-7-87

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On this 6th day of March, 1986, personally appeared before me LARRY J. BISTER, who being by me first duly sworn, did say that he is the Senior Vice President - Lending of REPUBLIC SAVINGS AND LOAN ASSOCIATION OF WISCONSIN, a Wisconsin corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said LARRY J. BISTER further acknowledged to me that said corporation executed the same.



[Signature]
NOTARY PUBLIC
Residing at: Kaysville, Utah

My Commission Expires:

September 17, 1989

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ADDENDUM NO. 2

JUDGE BUILDING
OFFICE LEASE

LA This Office Lease (the "Lease") is made this ¹³~~29~~th day of ~~October~~ November, 1990, by and between Judge Building Associates (the "Lessor") and Martineau & Company, Certified Public Accountants (the "Lessee").

1. FUNDAMENTAL LEASE PROVISIONS

- (a) Location of Premises: # 8 East Broadway
Salt Lake City, UT 84111
5th Floor, Suite No. 500 *LA*
- (b) Agreed Square Footage to outside walls.
Premises: 4006 Rentable Square Feet
See Addendum No 1.
- (c) Term: Three (3) years with Two (2)
Options To Renew See Addendum
No. 2
- (d) Commencement Date: December 1, 1990
- (e) Termination Date: November 30, 1993
- (f) Initial Rent: Twenty Six Thousand Four Hundred
Dollars (\$26,400) per year payable at Two Thousand
Two Hundred Dollars (\$2,200) per month. See Exhibit C.
- (g) CPI Adjustment to be made effective as of December 1
of each year (Paragraph 6).
- (h) Security Deposit: N/A (\$ 00).
(Does not include advance rental for the first full
calendar month) (Paragraph 32).
- (i) Addresses for Notice:

LESSOR:

Judge Building Associate
c/o Hill Real Estate, Inc.
#8 East Broadway, Suite 720
Salt Lake City, UT 84111
Phone: (801) 531-7770

LESSEE:

Martineau & Company
#8 East Broadway, Suite 500
Salt Lake City, Ut 84111
Phone: (801) 364-0700 *LA*

(j) Rider No. 1 entitled Rider No. 1 to Office Lease consisting of 3 pages is attached hereto and made a part hereof.

(k) The foregoing fundamental lease provisions are for reference purposes only and, in the event of any conflict between the foregoing summary and any other language contained in this Lease, such other language shall control.

2. PREMISES

Lessor hereby rents to Lessee and Lessee hereby leases from Lessor those certain premises outlined in red on the floor plan attached hereto as Exhibit A, or otherwise described therein (the "Premises"), in the Judge Building in Salt Lake City, Utah (the "Building").

3. PURPOSE

The Premises are to be used by Lessee for general business offices and for no other purpose without the prior written consent of Lessor.

4. TERM AND POSSESSION

The term of this Lease and the payment of rent shall commence on the "Commencement Date" and shall expire at midnight on the "Termination Date".

5. RENT

(a) Lessee agrees to pay to Lessor as rental for the Premises, the sum indicated in Subparagraph 1(f) above per month payable in advance on the first day of each calendar month during the term of this Lease the ("Initial Rent"). The Initial Rent shall be adjusted in accordance with Paragraph 6 below. Rent for any partial month occurring during the term hereof shall be prorated on a per diem basis.

(b) Lessee shall be charged a five percent (5%) late fee on all rental payments which are received by Lessor more than thirty (30) days after their due date. Any rental payments which are not paid within fifty (50) days of their due date shall bear interest at the rate of one and one-half percent (1½) per month retroactive from their due date.

6. RENTAL ADJUSTMENT

See Paragraph 6 in Rider No. 1 to this lease.

7. RESTRICTIONS ON USE

(a) Lessee shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which in any way increase the existing rate of, or adversely affect, any fire or other insurance covering the Building.

(b) Lessee shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy any of them, nor shall Lessee permit the Premises to be used for any immoral or unlawful purpose. Lessee shall keep the Premises free of loud music, vibrations, odors, or other nuisances which are objectionable to Lessor, other occupants of the Building or other occupants of adjacent buildings.

(c) Lessee shall not overload the floors nor permit or allow any waste, abuse, or destructive use of the Premises to occur.

(d) The plumbing facilities within the Building shall not be used by Lessee for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein. The expense of any breakage, stoppage or damage to such plumbing lines resulting from a violation of this provision shall be borne by Lessee.

(e) Without the prior consent of Lessor, no portion of the Building or the Common Areas shall be used to distribute handbills, circulars, or other political, charitable or similar material or to seek members for any organization, or to solicit contributions, or for any demonstration or other conduct which may tend to interfere with or impede the normal use of the Common Areas by Lessor or other tenants, or their respective employees, customers and invitees.

(f) Lessee shall not, without Lessor's prior written consent, (i) make any changes to the exterior of the Premises or Common Areas, nor (ii) install any exterior lighting, canopies or awning, or any exterior decorations or paintings, nor (iii) install any sign, window or door lettering, placards, decorations or advertisement of any type which can be viewed from the exterior of Premises, nor (iv) place any object near exterior windows and doors which may appear unsightly from outside of the Premises. All signs, awnings, canopies, decorations, lettering or other items approved by Lessor and installed by Lessee shall be kept in good repair and in proper operating condition at all times, shall be removed at the termination of the Lease and any damage caused by such items or their removal shall be repaired at Lessee's expense. Any items installed or maintained in violation of this subparagraph may be promptly removed by Lessor at Lessee's expense. Use of the roof on the Building is reserved to Lessor.

(g) Lessee shall not alter any lock nor install any new or additional locks or any bolts on any door of the Premises.

(h) Safes and any other heavy equipment or objects shall be located within the Premises only with prior consent from Lessor and only in those areas on such supports as are designated by Lessor.

(i) Lessee shall not install any telephone or other special utility lines within the Premises without first obtaining Lessor's consent. Lessor hereby consents to initial installation of Lessee's owned telephone and computer systems and to "pull the wire" for Lessee's owned telephone and computer systems during remodel.

(j) Lessee shall securely close and lock all doors and windows in the Premises before leaving the Building each day and shall insure that all water faucets and water apparatus and other equipment within the Premises are shut off so as to prevent any waste or damage.

(k) Lessee shall not install any vending machines within the Premises or the interior Common Areas.

(l) Lessee shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor.

(m) Lessee shall not use the Premises in any way which will violate any law, statute, ordinance or governmental rule or regulation now in force or which may hereinafter be enacted or promulgated.

8. ALTERATIONS

Lessee shall not make or permit to be made any alterations, additions or improvements to the Premises or any part thereof without the written consent of Lessor. Any request for Lessor's consent shall be accompanied by plans and specifications showing in detail Lessee's proposed alterations, additions or improvements. Any alterations, additions or improvements to the Premises made by Lessee, except for removable trade fixtures, shall at once become a part of the realty and belong to Lessor. Alterations, additions or improvements to the Premises by Lessee shall be made at Lessee's sole cost and expense. Lessee shall cause any permitted alterations, additions or improvements to be constructed in a good and workmanlike manner free of any liens for labor and materials and in strict accordance with the plans and specifications approved by Lessor. Lessee agrees to indemnify, hold Lessor harmless from and defend Lessor against any loss, liability, injury, mechanic's, materialman's or other liens resulting from such work, and shall cause any lien filed

9. SURRENDER

Upon the expiration or termination of this Lease, Lessee shall surrender the Premises in the same condition as they were in on the Commencement Date, reasonable wear and tear excepted. Before surrendering the Premises, Lessee shall remove all of its personal property and removable trade fixtures and shall repair any damage caused by such property or the removal thereof and shall leave the Premises in a clean and orderly condition. On or prior to the expiration date of this Lease, Lessee shall surrender to the Lessor all keys to the Premises and to the Building and all keys to interior locks within the Premises.

10. REPAIRS

Lessee shall repair, at its expense, any damage to the Building or the Premises caused by, or resulting from, any act of Lessee, its employees, agents, licensees or contractors. Lessee shall also, at its sole cost and expense, maintain in good order, condition and repair all wall, window and floor coverings, all trade fixtures and all equipment and other personal property of Lessee within the Premises.

~~11. ABANDONMENT~~

~~Lessee shall not vacate or abandon the Premises at any time during the term hereof, and if Lessee shall so abandon, vacate or surrender the Premises, or be dispossessed by process of Law, or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned and shall become the property of Lessor.~~

12. ASSIGNMENT AND SUBLETTING

Lessee shall not assign, transfer, mortgage, pledge, hypothecate or encumber 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 person other than the agents and employees of Lessee to occupy or use the Premises, or any portion thereof, without the prior written consent of Lessor. The consent by Lessor to any such transfer of interest shall not operate as a waiver of the necessity to obtain such consent to any subsequent transfer of interest. Any such assignment or subletting without such consent shall be void, and shall, at the option of Lessor, terminate this Lease. Any sublease or assignment consented to by Lessor shall in no way relieve or release Lessee from liability hereunder or from any of the terms, covenants and obligations required to be performed by Lessee under this Lease.

13. COMMON AREAS

(a) As used in this Lease, "Common Areas" means those areas

Lessor, Lessee and other tenants in the Building (and their respective employees, agents and invitees) as may be designated from time to time by Lessor. Common Areas include without limitation public hallways, ground floor lobby, stairs, air conditioning and fan rooms, janitorial closets, elevators, and restrooms designated for common use.

(b) Lessee and its employees, agents and invitees, shall have the nonexclusive right in common with Lessor and other present and future tenants in the Building (and their respective employees, agents and invitees) to use the Common Areas for ingress, egress and convenience, and for such other uses as Lessor may permit in writing, and for no other purposes. Lessor shall have the right, through reasonable rules, regulations and restrictive covenants promulgated by it, to control the use and operation of the Common Areas, and such, if and when promulgated, shall become a part of this Lease to the same extent as if set forth herein.

(c) Lessor shall maintain and repair the Common Areas.

14. CONDITION OF PREMISES

Lessor shall provide Lessee with the right to inspect the premises for completion as per the Workletter, final construction drawings, and finish schedule. Lessee shall have five (5) days following occupancy or delivery of possession of the premises, whichever first occurs, to notify Lessor in writing setting forth specifically any construction work which Lessor had agreed in writing to cause to be performed within the Premises and which through no fault or request of Lessee or its agents has been omitted. Upon receipt of such written notice, Lessor shall cause such specified omitted work to be completed. Failure by Lessee to so notify Lessor within the time specified shall constitute acceptance of the Premises by Lessee.

15. INDEMNITY AND WAIVER OF SUBROGATION

(a) Lessee and all those claiming through or under Lessee shall store their property in and shall occupy and use the Premises and the Common Areas solely at their own risk. Lessee shall defend and indemnify Lessor and hold Lessor harmless from and against any and all liability, damages, cost or expenses, including attorney's fees, arising from any act, omission, or negligence of said parties, or the officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of said parties in or about the Leased Premises.

(b) Lessee hereby waives any rights it may have against Lessor on account of any loss or damage occasioned to Lessor or Lessee, as the case may be, to their respective property, the Leased Premises or its contents or to adjoining property or other

~~the Lessee, on behalf of its insurance company insuring the property of either Lessor or Lessee against any loss, waives any right of subrogation that it may have against Lessor. This provision is applicable only to the extent that the loss or damage is covered by insurance and only so long as this provision does not affect the right of the insured to recover under the policy.~~

16. INSURANCE

(a) Lessor shall procure insurance coverage insuring Lessor against loss of, or damage to, the Building by reason of fire and other casualties. Such insurance shall be underwritten by a responsible insurance company qualified to do business in the State of Utah and shall be in the face amount equal to at least 80% of the insurable value of the Building, as determined by Lessor. Such insurance shall cover loss or damage by fire, and loss or damage arising out of the normal extended coverage perils which are windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke. Lessor shall also obtain extended coverage on the Building insuring against loss or damage arising from vandalism and malicious mischief within the Building. The proceeds of any such insurance in case of loss of or damage to the Building, or to such boilers and machinery shall be paid to Lessor to be applied on account of the obligations of Lessor to repair and rebuild the Building pursuant to this lease agreement. Any proceeds not required for such purpose shall be the sole property of Lessor.

(b) Lessor and Lessee each agree to secure for themselves and keep in force from and after the date Lessor shall deliver possession of the Premises to Lessee and throughout the term of this Lease, comprehensive general liability insurance coverage against death, bodily or personal injury or property damage occurring within the Building or the Common Areas. Such insurance as obtained by each party shall be in the combined single limit amount of \$1,000,000. Lessee's liability insurance coverage shall include a personal injury endorsement covering such wrongful acts as false arrest, false imprisonment, malicious prosecution, libel and slander. Lessee shall also keep in force, at its sole cost and expense, fire and extended coverage insurance and insurance against water damage and against vandalism and malicious mischief covering Lessee's improvements, trade fixtures, furnishings, equipment and contents within the Premises in the full replacement value thereof.

(c) Each of the parties hereby waives any rights it may have against the other party on account of any loss or damage to its property (including the Building, the contents of such, and property located on the Common Areas) which arises from any risk generally covered by fire and extended coverage insurance, whether or not such party may have been negligent or at fault in causing such loss or damage. Each of the parties shall obtain a clause or endorsement in the policies of such insurance obtained by it to

right of subrogation against the other party for loss covered by such insurance.

17. OPERATING EXPENSES.

See Paragraph 17 in Rider No. 1 to this Lease.

18. SERVICES AND UTILITIES; PERSONAL PROPERTY TAXES

(a) Lessor shall not be liable for, and Lessee shall not be entitled to, any abatement or reduction of rental by reason of, Lessor's failure to furnish any of the services or utilities herein described when such failure is caused by accidents, breakage, repairs, lockouts, shortages, strikes or other labor disturbance or dispute of other cause beyond the reasonable control of Lessor. Lessor shall not be liable under any circumstances for injury to persons or damage to property arising directly or indirectly out of Lessors failure to durnish any of the utilities herein described.

(b) Janitorial service shall include daily vacuuming, oridinary dusting and cleaning and the emptying of wastebaskets by the janitor assigned to such work and shall not include moving or polishing furniture, cleaning of carpets and rugs, except spot cleaning as requested (other than normal vacuuming), or other special services.

19. HOLDING OVER

If, with Lessor's consent, Lessee holds possession of the Premises after the term of this Lease, Lessee shall become a tenant from month-to-month upon the terms herein specified at a monthly rental equivalent to the then prevailing rental paid by Lessee at the expiration of the term of this Lease. Rent shall be payable in advance on the first day of each month. Lessor shall have the right to increase or decrease the rent payable by Lessee while Lessee is a holdover tenant at any time with respect to any succeeding calendar month, provided that no such increase or decrease shall take effect except upon thirty (30) days prior written notice by Lessor. Lessee shall continue in possession until such tenancy shall be terminated by either party giving the other party thirty (30) days prior written notice of its election to terminate.

20. ENTRY BY LESSOR

Lessor and its authorized representatives shall have the right to enter upon the Premises at all reasonable times during normal business hours to inspect or exhibit the same to prospective purchasers, mortgagees and tenants, and to make such repairs, additions, alterations or improvements as Lessor may reasonably deem desirable, provided Lessor does not unreasonably interfere with Lessee's business operations. Lessor shall be allowed to take all material upon the Premises that may be reasonably required to accomplish the foregoing without the same

constituting an actual or constructive eviction of Lessee and the rents reserved herein shall not abate while any such work herein described is in progress. Lessor shall have the right to enter at any time to remove items in violation or to otherwise prevent violations of Paragraph 7 of this Lease.

21. DEFAULT

The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessee:

(a) Lessee fails to pay when due any rental or any other sum required to be paid hereunder and such failure is not cured within fifteen (15) days following the date when due.

(b) Lessee abandons or vacates the Premises or violates the provisions dealing with Purpose or Assignment and Subletting.

(c) Lessee fails to observe and perform any other provision of this Lease to be observed or performed by Lessee, where such failure continues for fifteen (15) days after written notice is given to Lessee; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such fifteen day period, Lessee shall not be deemed to be in default if Lessee shall within such period commence such cure and thereafter diligently prosecute the same to completion.

22. REMEDIES

Upon the occurrence of any event of default described above, Lessor shall have the option to take any or all of the following action, without further notice or demand of any kind to Lessee, or to any other person:

(a) Lessor may immediately re-enter and remove all persons from the Premises, all without service of notice or resort to legal process and without being deemed guilty of, or liable in, trespass, forcible entry or damages resulting from such re-entry and removal. No such re-entry or taking possession of the Premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given by Lessor to Lessee.

(b) Lessor may, and shall use it's best efforts to relet the Premises or any portion thereof at any time or from time to time and for such term or terms and upon such conditions and at such rental as is reasonably prudent under the circumstances. If Lessor relets the Premises, or any portion thereof, such reletting shall not relieve Lessee of any obligation hereunder, except that Lessor shall apply the rent or other proceeds actually collected by it as a result of such reletting against the costs of removing Lessee and reletting the Premises and against those sums due from Lessee hereunder. Lessor shall not by any such reletting or any other act be deemed to have accepted any surrender by Lessee of the Premises, or any portion thereof, or to be deemed to have

otherwise terminated this Lease, unless Lessor shall have given Lessee express written notice of Lessor's election to do so.

(c) Lessor may collect by legal action or otherwise, without reletting the Premises, each installment of rent or other sum as it becomes due hereunder.

(d) Lessor may terminate this Lease by written notice to Lessee. In the event of such termination, Lessee agrees to immediately surrender possession of the Premises.

(e) The remedies given to Lessor in this paragraph shall be cumulative and shall be in addition to and supplemental to all the rights and remedies which Lessor may have at equity or under the laws then in force.

23. DESTRUCTION

(a) If the Building shall be partially damaged by fire or other casualty insured against under Lessor's property damage insurance policies, Lessor shall, upon receipt of the insurance proceeds, repair the Building to a condition which is substantially similar to the condition in existence prior to such casualty.

(b) Notwithstanding the foregoing, if the Building is damaged as a result of flood, earthquake, nuclear radiation or contamination, act of war, or other risk which is not covered by Lessor's insurance, or if the Premises or the Building are damaged to the extent of fifty percent (50%) or more of their then replacement value, or if the repair of the Premises, or the Building would require more than forty-five (45) days, Lessor shall either terminate this Lease upon written notice given to Lessee within fifteen (15) days following such casualty or commence as soon as is reasonably possible the restoration of the building.

(c) In the event this Lease is not terminated and Lessor undertakes to repair any portion of the Premises, until such repair is complete, rental shall abate proportionately as to the portion of the Premises rendered untenable. Notwithstanding the foregoing, however, if the damage being repaired was caused by the negligence of Lessee or its employees, agents, licensees or concessionaires, there shall be no abatement of rent during the repair period.

(d) Unless this Lease is terminated, Lessee shall, at its expense, repair the fixtures and improvements installed by it within the Premises and repair or replace any of Lessee's furniture or equipment damaged by such casualty.

24. EMINENT DOMAIN

If all or any part of the Premises or all or a material portion of the Common Areas shall be taken or appropriated by any

public or quasipublic authority under the power of eminent domain, or transfer in lieu thereof, either party hereto shall have the right, at its option, to terminate this Lease, and Lessor shall be entitled to any award, or other payment made in connection therewith, and Lessee shall have no claim against Lessor or the condemning entity for the value of any unexpired term of this Lease. If a part of the Premises shall be so taken or appropriated and neither party hereto shall elect to terminate this Lease, the rental thereafter to be paid shall be equitably reduced.

25. SALE BY LESSOR

In the event of a sale or conveyance by Lessor of the Building, the same shall operate to release Lessor from any future liability upon any of the covenants or conditions, express or implied, herein contained in favor of Lessee, and in such event Lessee agrees to look solely to the successor-in-interest of Lessor for performance of such covenants and conditions. This Lease shall not be affected by any such sale, and Lessee agrees to recognize and attorn to Lessor's successor-in-interest as the landlord hereunder.

26. ATTORNEY'S FEES

If any legal action is commenced to recover any rental under this Lease; or for recovery of possession of the leased premises; or on account of any breach of or to enforce any of the terms, covenants, or conditions of this Lease by either of the parties hereto, the prevailing party shall be entitled to recover from the losing party all costs and a reasonable attorney's fee, the amount of which shall be fixed by the court, and made part of any judgement rendered.

27. LESSEE'S CERTIFICATE

From time to time after the Commencement Date and when requested by Lessor, Lessee shall execute and deliver to Lessor within fifteen (15) days following such request a written certificate ratifying this Lease; the terms thereof, and other provisions usually found in such certificates.

28. WAIVER

The waiver by Lessor of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition in the event of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

29. NOTICES

All notices and demands which may or are required to be given by either party to the other under this Lease shall be delivered in person or sent by United States mail; postage prepaid, and shall be addressed to the last known principal place of business of the party to receive such notice. Any such notice or demand shall be deemed given on the date personally delivered, or on the date deposited in the United States mail, if properly addressed and stamped.

30. INTERPRETATION


The words "Lessor" and "Lessee" as used herein shall include plural as well as the singular where appropriate. Words used in one gender shall be deemed to include the other genders. If there be more than one Lessee, such Lessees shall be jointly and severally obligated for performance hereunder. Paragraph headings are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. The laws of the State of Utah shall govern the validity, performance, enforcement and interpretation of this Lease. In the event of a conflict between the terms of this Lease and those of any rider attached hereto, the terms of such rider shall supercede those of this Lease and shall be controlling.

31. SUCCESSORS AND ASSIGNS

The covenants and conditions herein contained shall, subject to the provisions of this Lease relating to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

32. SECURITY DEPOSIT

~~Lessee has deposited with Lessor a security deposit, receipt of which is hereby acknowledged, to secure the faithful performance by Lessee of all of the terms, covenants and conditions of this Lease to be kept and performed by Lessee during the term hereof. If Lessee defaults with respect to any provision of this Lease, Lessor may (but shall not be required to) use, apply or retain all or any part of this security deposit for the payment of any rent or any damages, or other sum in default, or for the payment of any other amount for losses which Lessor may suffer by reason of Lessee's default. If any portion of said deposit is so used or applied, Lessee shall, upon demand therefor, deposit cash with Lessor in an amount sufficient to restore the security deposit to its original amount and Lessee's failure to do so shall be a material breach of this Lease. Lessor shall not be required to keep such security deposit separate from its general funds, and Lessee shall not be entitled to interest on such deposit. If Lessee shall fully and faithfully comply with every provision of this Lease, the security deposit or any balance thereof shall be returned to Lessee following the expiration of the Lease term.~~



~~Interest in this Lease, Lessor shall transfer said deposit to Lessor's successor-in-interest and, upon notice to Lessee of such transfer, Lessor shall be relieved of any further liability for such deposit.~~

33. FINANCING AND SUBORDINATION

(a) Lessee agrees that from time to time it shall, if so requested by Lessor and if doing so will not materially and adversely affect Lessee's economic interests under this Lease or its use of the Premises, join with Lessor in amending the terms of this Lease so as to meet the reasonable needs or requirements of any lender who is considering furnishing, or who has furnished any financing which is, or will be, secured by the Building and the land underlying such.

(b) Lessee hereby subordinates its rights in this Lease to the lien of any mortgage or deed of trust of lien or other security interest resulting from any method of financing or refinancing which encumbers or is intended to encumber the Building or the land underlying such and to all advances subsequently made upon the strength of such security. So long as Lessee is not in default under the terms of this Lease, however, this Lease shall remain in full force and effect for the full term hereof and shall not be terminated as a result of any foreclosure (or transfer in lieu thereof) of such mortgage or other security instrument to which Lessee has subordinated its rights pursuant to this Subparagraph.

34. QUIET POSSESSION

Lessee, upon paying the rents and observing and performing all of the terms, covenants, and conditions on its part to be performed hereunder, shall peaceably and quietly enjoy the Premises for the term hereof.

35. ENTIRE AGREEMENT

(a) This Lease and the attachments hereto constitute the entire agreement between the parties. Any prior conversations or writings are merged herein and are extinguished. No subsequent amendment to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed.

(b) The invalidity or unenforceability of any provision hereof shall not affect or impair any other provision of this Lease.

36. ACCORD AND SATISFACTION

No payment by Lessee or receipt by Lessor of an amount less than that is due hereunder shall be deemed to be other than payment toward or on account of the earliest portion of the amount then due, nor shall any endorsement or statement on any check or payment (or any letter accompanying any check or payment) be

deemed an "accord and satisfaction" (or payment in full) and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such amount or pursue any other remedy provided herein.

37. RELOCATION OF LESSEE

Lessee understands that Lessor intends over the next several years to renovate and remodel the Building and to improve the quality of tenants within the building. Thus, Lessor may subsequently desire to relocate Lessee to alternate space within the Building in order to accommodate the creation of a larger office suite for a neighboring tenant or to facilitate Lessor's renovation. In such event, Lessee agrees to cooperate with such relocation, and to not withhold its consent to such relocation, provided (i) that Lessor reimburses Lessee for its direct moving expenses and (ii) the proposed alternative space is reasonably comparable in size to the Premises; provided, that Lessee may, at Lessee's option, terminate the Lease if it is dissatisfied with the alternative space offered and Lessor nevertheless requires such relocation.

38. AUTHORITY OF SIGNATORIES

Each person executing this Lease individually and personally represents and warrants that he is duly authorized to execute and deliver the same on behalf of the entity for which he is signing (whether a corporation, general or limited partnership, or otherwise) and that this Lease is binding upon said entity in accordance with its terms.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the day and year first above written.

LESSOR:

LESSEE:

By: Judge Building Associates

By: Martineau & Company

Its: 

Its: 

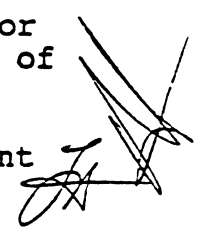
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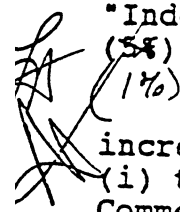
RIDER NO. 1 TO OFFICE LEASE

6. RENTAL ADJUSTMENT

(a) On the first anniversary of the Commencement Date and on each anniversary of the Commencement Date thereafter which occurs during the term of this Lease, the Initial Rent shall be increased by the percentage increase, if any, which has occurred in the Consumer Price Index between the Commencement Date and the anniversary date then in question.

(b) The percentage increase in the Consumer Price Index and the resulting rental increase shall be determined as follows:

(1) The parties shall use the Consumer Price Index for All Urban Consumers as issued by the Bureau of Labor Statistics of the United States Department of Labor, or its successor, as published for "All Items", "U.S. City Average" (1967=100) (the "Index"). Any such annual increase shall not exceed ~~five~~ percent ^{one} annually. 

 (1%)
(2) The adjusted rent shall equal the Initial Rent increased by the percentage increase which has occurred between (i) the Index number in effect for the month in which the Commencement Date of this Lease occurred, and (ii) the Index number in effect on the applicable anniversary date.

(3) In no event shall the rent to be adjusted hereunder be adjusted downward. Should the computation described above result in a percentage decrease, the then existing rent shall remain unchanged.

(4) In the event the Index described above shall hereafter be converted to a different standard reference base or otherwise be revised, the determination of percentage increase shall be made with the use of such conversion factors, formulas or tables as may be published by the Bureau of Labor Statistics or its successor for such purpose. Should such conversion factors, formulas or tables not be available or should the Index cease to be published, the parties shall utilize other available indices or means to determine comparable "cost of living" increases, and if the parties cannot agree on the means for such determination, the matter shall be resolved by arbitration in accordance with the rules of the American Arbitration Association.

(c) The Index numbers to be used for the purposes of this Paragraph 6 shall be the last Index numbers published prior to each of the dates described above so as to permit an equitable calculation of the rental adjustment required herein on or about the anniversary date in question (without waiting several weeks or months for the Index to be published for the month in which


such anniversary actually occurs). Regardless of when the rental adjustment is determined pursuant to this Lease, such adjustment shall be effective (retroactively, if necessary) as of the first day of the month following the month in which such anniversary occurs and such adjusted rental shall remain in effect until the effective date of the next adjustment.

(d) By way of example only, if the Initial Rent hereunder were \$100, the index number last published prior to the Commencement Date were 300, the Index number last published prior to an anniversary date (which required a rental adjustment hereunder) were 330, then the adjusted rent would be \$110.00, calculated as follows:

$330 - 300 = 30$ (increase in the Index)
 30 divided by $300 = 10\%$ (percentage increase in the Index)
 $\$100 \times 110\% = \110.00 (adjusted rent)

17. OPERATING EXPENSES

(a) As used herein, the term "Operating Expenses" shall mean and include all costs, expenses and amounts, determined through the accrual method of accounting, which are incurred by Lessor during the period in question or which are allocable to said period in connection with Lessor's ownership, operation, management or maintenance of the Building, the Common Areas, or any portion or portions thereof. Said costs, expenses and amounts shall be determined in accordance with the accounting procedures and business practices customarily employed by Lessor, and shall include, but not be limited to, the cost of all of the following: real estate taxes and installments on special assessments; any tax or other charge levied or assessed upon Lessor or upon the rent payable under this Lease in lieu, in whole or in part, or real estate taxes or special assessments; all insurance which Lessor is required to maintain under the terms of this Lease or which Lessor deems necessary or advisable to obtain and maintain; permit and inspection fees; electricity; gas; heating; air-conditioning; water; sewer; other utilities; supplies and materials; labor; maintenance and repair of the Building, including, but not limited to, the Common Areas and the Premises; refurbishing; reasonable reserves for replacement or repair of components of the Building; landscaping; janitorial and security services; snow removal; professional fees; and reasonable management fees. Notwithstanding the breadth of the foregoing, Operating Expenses shall not include principal or interest paid by Lessor on any mortgage or deed of trust affecting the Building or the underlying land. In the event the exact amount of any ingredient of Operating Expenses is not known at the time it is necessary to determine such Operating Expenses, Lessor's reasonable estimate of the amount of such ingredient shall be used.



(b) In addition to all other payments by Lessee to Lessor required by this Lease, Lessee shall pay to Lessor, for each year or portion thereof during the term of this Lease, Lessee's Proportionate Share of the amount of annual Operating Expenses in excess of \$ _____ per year per square foot of total square footage in the Building, which total is agreed to be _____ square feet. Lessee's Proportionate Share shall be _____ percent (____%)

(c) At a time convenient for Lessor after the end of each calendar year (or, at Lessor's option, at or about the end of the term of this Lease), Lessor shall provide Lessee a statement of Lessee's Proportionate Share of excess Operating Expenses. Within 30 days after its receipt of such statement, Lessee shall pay the entire amount shown to be due. However, Lessor reserves and shall have the right at any time to reasonably estimate Lessee's Proportionate Share of excess Operating Expenses for any current calendar year or portion thereof and to require that Lessee pay to Lessor, on a monthly basis at the same time that rent is payable under this Lease, the total amount of the estimate divided by the total number of months included in the period covered by the estimate. If Lessor exercises such right, Lessee shall thus pay the necessary amount monthly, and within three months after the end of each calendar year during which Lessee has paid to Lessor such estimated payments, Lessor shall render a statement to Lessee showing the difference between Lessee's actual Proportionate Share of excess Operating Expenses for such year or portion thereof and the total amount of Lessor's estimate for the year or portion thereof collected from Lessee. Lessee shall pay any shortage to Lessor within 10 days after Lessee's receipt of such statement. Correspondingly, Lessee shall receive a credit in the amount of any overpayment, which credit may be applied by Lessee to subsequent payments due under Paragraph 17, so long as Lessee is not in default under this Lease.

(d) Lessee shall be required to make the annual payment called for in this Paragraph 17 even though the term of this Lease has expired or terminated prior to the time Lessor renders a statement for such payment. However, if the term of this Lease has not been in effect for the entirety of the annual or other period covered by a statement contemplated hereby, the amount required to be paid by Lessee shall be determined through a proration which takes into account the length of time that the term has been or was in effect. Lessee shall also be required to make the annual payment called for in this paragraph 17 or a proration for any portion of said calendar year space is occupied, regardless if Lessor is occupying the space at the close of said year or at the time of billing or adjustment.

(e) Each of the final statements and determinations provided for above shall become absolutely binding on Lessee, and not subject to challenge by Lessee, ninety days after the time the statement in question is furnished to Lessee, unless prior to the expiration of such ninety day period Lessee furnishes Lessor with a

EXHIBIT B

BUILDING RULES AND REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside of the Building or Premises without the prior written consent of the Lessor, and Lessor shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of the responsible Lessee.

All approved signs or lettering on doors including signing or lettering on glass doors, shall be printed, painted, affixed or inscribed at the expense of the respective Lessees by a person approved by Lessor.

No Lessee shall place anything or allow anything to be placed near the glass of any window, door partition or wall which may appear unsightly from outside any Premises.

2. The bulletin board or directory of the Building will be provided exclusively for the display of the names and location of Lessees, and Lessor reserves the right to change names and location of directory.

3. The sidewalks, halls, passages, exits, entrances, elevators (where applicable), and stairways shall not be obstructed by any of the Lessees or used by them for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, exits, entrances, elevators, stairways, and roof are not for use of the general public, and the Lessor shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgement of the Lessor, shall be prejudicial to the safety, character, reputation and interests of the Building and its Lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom a Lessee normally deals in the ordinary course of Lessee's business unless such persons are engaged in illegal activities. No Lessee and no employees or invitees of any Lessee shall go upon the roof of the Building.

4. No Lessee shall alter any lock or install any new or additional locks or any bolts on any door in any Premises without the written consent of Lessor.

5. The toilet rooms, urinals, washbowls, and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the violator.

6. No furniture, freight or equipment of any kind shall be brought into the Building without the consent of Lessor and all moving of the same into or out of the Building shall be done at such time and in such manner as Lessor shall designate. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Building. Safes or other heavy objects shall, if considered necessary by Lessor, stand on wood strips of such thickness as is necessary to properly distribute the weight. Lessor will not be responsible for loss of or damage to any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of the responsible Lessee. There shall not be used in any space, or in the public halls of the Building, either by any Lessee or other party, any trucks except those equipped with rubber tires and side guards.

7. Lessee shall not use, keep or permit to be used or kept any noxious gas or substance in any Premises, or suffer any Premises to be occupied or used in a manner offensive or objectionable to the Lessor or to the occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other Lessees or those having business therein, nor shall any animals or birds be brought in or kept in or about any Premises of the Building. No firearms shall be brought in or kept in or about any Premises of the Building. No Lessee shall make or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring Buildings or Premises or those having business with them whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No Lessee will throw anything out of doors or down the passageways.

8. Without written permission from Lessor, premises may not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the use of the Premises for general office purposes. Premises shall not be used for lodging or sleeping or for any illegal purposes.

9. No Lessee shall overload any electrical circuits of the Building.

10. Lessees shall not use or keep in the Premises or the Building any kerosene, gasoline, or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Lessor.

11. All keys to offices, rooms and toilet rooms shall be obtained from Lessor's Building Management Office and Lessee shall not from any other source duplicate, obtain keys or have keys made. Lessee's, upon termination of their tenancies, shall deliver to the Lessor the keys to the offices, rooms and toilet rooms which shall have been furnished or shall pay the Lessor the cost of replacing same or of changing the lock or locks opened by such lost key if Lessor deems it necessary to make such change.

12. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down the elevators, except between such hours and in such elevators as shall be designated by Lessor.

13. Lessor reserves the right to close and keep locked all entrance and exit doors of the Building on Saturdays, Sundays, legal holidays, and other days between the hours of 7:00 p.m. and 7:00 a.m., the following day, and during such further hours as Lessor may deem advisable for the adequate protection of said Building and the property of its Lessees; however, after 7:00 p.m. on weekdays and between 7:00 a.m. and 7:00 p.m. on Saturdays, Lessor will provide access to building tenants by use of a security pass code.

14. Lessees shall see that the doors of their Premises and, if applicable, the Building, are closed and securely locked before leaving the Building and must observe strict care that all electricity shall be carefully shut off, so as to prevent waste or damage, and for any default or carelessness, the responsible Lessee shall make good all injuries sustained by Lessor and other Lessees or occupants of the Building.

15. Lessor reserves the right to exclude or expel from the Building any person who, in the judgement of Lessor, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building, but is not obligated to do so.

16. The requirements of Lessees will be attended to only upon application at the Office of the Building. Employees of Lessor shall not perform any work or do anything outside of their regular duties unless under special instructions from the Lessor.

17. No vending machine or machines of any description shall be installed, maintained or operated upon any Premises without the written consent of the Lessor.

18. Lessor shall have the right, exercisable without notice and without liability to Lessees, to change the name of the Building.

19. Lessees agree to comply with all fire and security regulations that may be issued from time to time by Lessor and each Lessee also shall provide Lessor with the name of a designated responsible employee to represent that Lessee in all matters pertaining to such fire or security regulations.

20. Lessor reserves the right by written notice to all Lessees, to reasonably rescind, alter or waive any rule or regulation at any time prescribed for the Building and to add reasonable rules and regulations, when, in Lessor's judgement, it is necessary, desirable or proper for the best interest of the Building and its Lessees.

21. Lessees shall not disturb, solicit, or canvass any occupant of the Building and shall cooperate to prevent same.

22. Without the written consent of Lessor, Lessees shall not use the name of the Building in connection with or in promoting or advertising any business, except as Lessee's address. Consent by Lessor shall not be unreasonably withheld.

23. Lessor shall make available heating and air conditioning during the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and 7:00 a.m. to 1:00 p.m. Saturday, except for holidays. In the event a Lessee desires heating and/or air conditioning during off hours, Sundays, or holidays, said Lessee shall submit a written request to Lessor. If Lessor grants such request, said Lessee shall pay the entire cost of providing such service.

Addendum No 1.

Option For Adjoining Space

Lessor agrees to add to the premises the adjoining space designated on Exhibit A as "Expansion Space" containing approximately 324 rentable square feet. The total base rental for suite 500 will not be adjusted with the addition of said adjoining space. Lessor agrees to deliver the adjoining space by ~~June 1, 1991~~ *July 1, 1991*. All other terms and conditions of this Lease shall apply to the additional premises.

[Handwritten signature]
~~APR 1 1990~~
~~APR 1 1991~~
[Handwritten signature]

Addendum No 2.

Renewal Option

If this Lease remains in full force and effect, Tenant shall have option to renew this lease for ~~two (2)~~ *five (5)* additional three (3) year terms commencing on expiration date. Option must be exercised by written notice to Landlord by July 1st or six (6) months prior to expiration date and once exercised is irrevocable. Base rent for each renewal term shall remain flat reflecting only standard CPI escalation.

[Handwritten signature]

Addendum No 3.

Parking

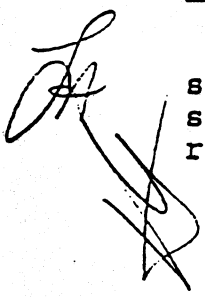
Landlord shall make available to Tenant a total of ten (10) parking spaces (three (3) reserved, seven (7) non-reserved) as needed at a Parking Structure adjacent to the Judge Building on a self-parking basis during hours of normal business operation throughout the term of this lease. Tenant shall comply with all rules and regulations established by the operator of the parking facility. It is understood that Landlord will use it's best efforts to provide said parking at the Harver Garage and upon completion, in the new parking facility to be located adjoining the Judge Building. If, for any reason, Landlord is unable to provide parking space to Tenant in either specifically designated facility such failure or inability shall not be deemed to be a default by Landlord as to permit Tenant to terminate this lease, Tenant agrees to pay for all incurred parking costs. Landlord will obtain said parking at his cost and invoice parking with monthly base rents to be remitted as specified for monthly base rents. Any delinquency in parking cost remittance will result in Landlord's ability to cancel tenant's parking being charged on Landlord's account.

provided Landlord provides said parking within one and one-half (1 1/2) blocks from the Judge Building.

[Handwritten signature]

Addendum No 4.

Storage Area



Landlord agrees to provide to Tenant approximately 400 square feet of storage space designated as "Storage Room No. 6" situated in the Judge Building (Basement Level). The total base rental for suite 50D is inclusive of designated storage space.

EXHIBIT A
FLOOR PLAN

EXHIBIT B
BASE RENT SCHEDULE

LA
LA

4,006 ~~3,582~~ RENTABLE SQUARE FEET

RATE	BASE MONTHLY RENTAL	BASE ANNUAL RENTAL	ABATEMENT	TOTAL	EFFECTIVE RATE
Year 1 \$ 7.17 6.59	2,200.00	26,400.00	5	15,400.00	4.18 \$3.84
Year 2 \$ 7.17 6.59	2,200.00	26,400.00		26,400.00	7.17 \$6.59
Year 3 \$ 7.17 6.59	2,200.00	26,400.00		26,400.00	7.17 \$6.59
			TOTAL	\$ 68,200.00	

LA
LA

Average Effective Rate \$ ~~6.17~~ 5.68 *LA*

The above figures do not include the CPI adjustment which is to be made each year.

This base rent schedule will not increase with the expansion of 324 rentable square feet as referenced in Addendum No. 1.

PROVIDED BY LANDLORD:

1. Carpeted public corridors.
2. Building standard carpet in tenant area.
3. Walls
4. Building standard window coverings.
5. Acoustic tile lay-in ceiling.
6. Central heat and air conditioning.
7. Initial Tenant suite sign.
8. Initial building directory strip.

STANDARD TENANT FINISH:

1. Base: Painted wood trim around all walls.
2. Carpet: 28 oz. carpet throughout.
3. Partitions: 5/8" drywall on 2.5" metal studs, taped and painted both sides.
4. Sound insulation: 2.5" batt in demising walls.
5. Doors: Solid core 7 ft. stained oak finish.
6. Hardware: Privacy or passage.
7. Ceiling: 2' X 4' lay-in acoustical grid.
8. Light fixtures: 2' X 4' fluorescent fixtures with paracube lenses.
9. Levelor window shades throughout.
10. HVAC: 1 zone/700 s.f. (approximately).
11. Electrical duplex outlets.
12. Electrical isolated ground outlets.
13. Telephone outlets.
14. Lessor shall use high quality materials to construct all of the interior improvements and all improvement shall be constructed in a womanlike manner.
15. Lessor guarantees the work done pursuant to this workletter for one year, or the applicable warranty period obtained from a contractor or manufacturer, if any.
6. Lessor shall provide cost estimates on Tenant Special Finish Items or Tenant Improvements Work which is to be paid for by Lessee.

7. Lessor shall remove & replace all paracube lenses from 710 Boston

EXHIBIT D

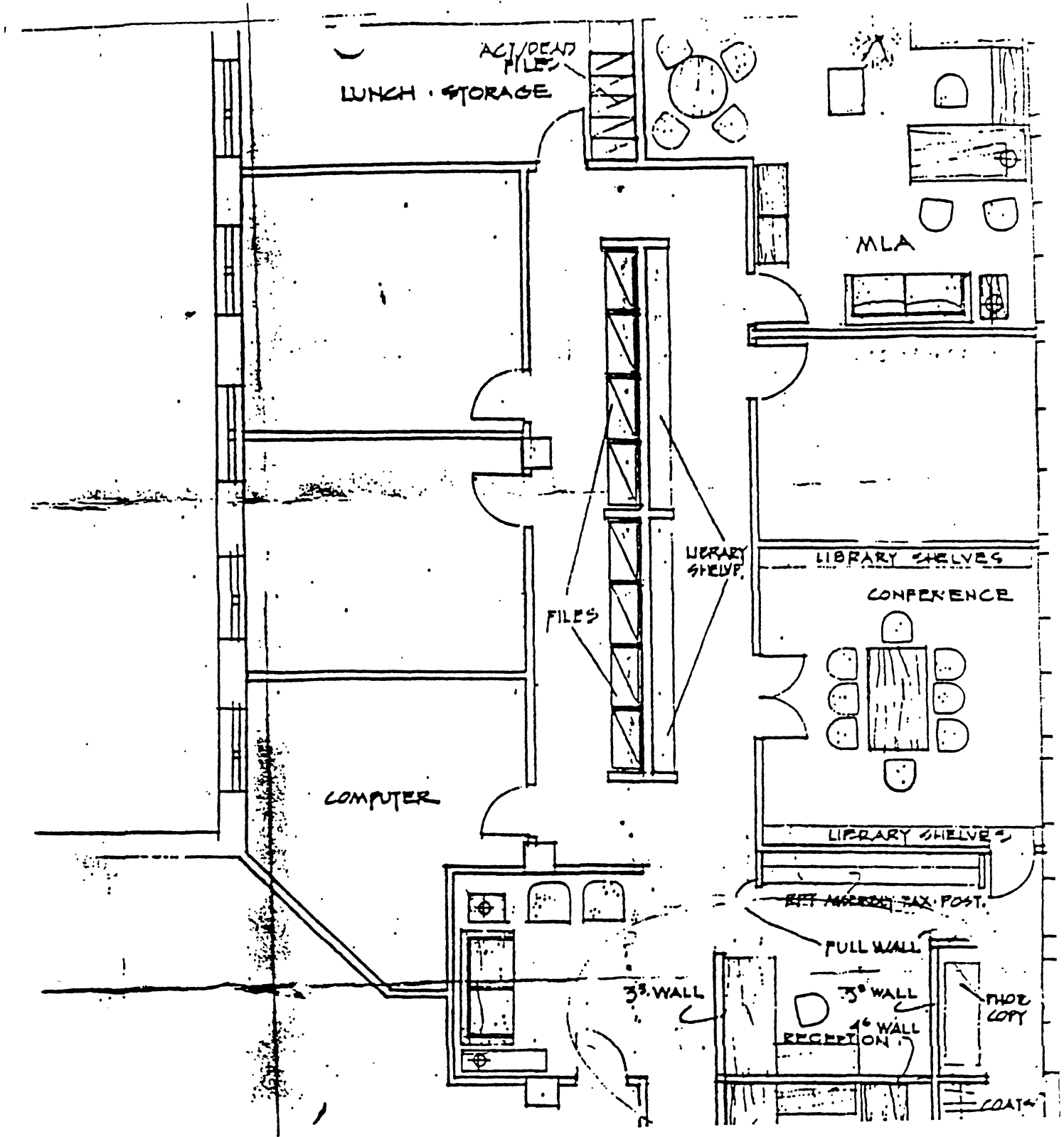
TENANT STANDARD FINISH ALLOWANCES

Landlord will provide in addition to Standard Tenant Finish the following upgrades:

N/A

Upgrade items to be provided by or charged to Lessee.

Shelving
Counter work space
Up-Graded Signage
Additional Paracube Lenses



ADDENDUM NO. 3

MAR 05 1993

VAN COTT, BAGLEY, CORNWALL & McCARTHY
Robert D. Merrill, #2244
Attorneys for Republic Capital Bank
50 South Main Street, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145
(801) 532-3333

Handwritten signature

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

REPUBLIC CAPITAL BANK, F. S. B.)
(Formerly known as REPUBLIC)
SAVINGS AND LOAN ASSOCIATION)
OF WISCONSIN, a WISCONSIN)
corporation))

Plaintiff,)

vs.)

JUDGE BUILDING ASSOCIATES, a)
Utah Limited Partnership;)
HAROLD J. HILL; J. MICHAEL)
MARTIN; WILMA W. GARDNER, as)
personal representative of the)
ESTATE OF KENNETH N. GARDNER,)
Deceased; MARTINEAU & COMPANY,)
Certified Public Accountants,)

Defendants.)

DEFAULT JUDGMENT AGAINST
DEFENDANTS MARTINEAU &
COMPANY, CERTIFIED PUBLIC
ACCOUNTANTS

Civil No. 920900094PR

Honorable Frank G. Noel

Upon motion of plaintiff and the affidavit of Robert
D. Merrill, and the Court having previously duly entered the
default certificate of defendant Martineau & Company, Certified
Public Accountants, upon the Amended Complaint of the plaintiff
on file herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff is awarded judgment against defendant Martineau & Company, Certified Public Accountants, in accordance with its Amended Complaint to the effect that the lien or interest, if any, of the defendant Martineau & Company, Certified Public Accountants is inferior, junior and subordinate to the lien of plaintiff upon the real property at issue herein, which property is located at #8 East Broadway, Salt Lake City, Salt Lake County, Utah, and more particularly described as follows (the "Property").

PARCEL A:

Beginning 138.50 feet East of the Northwest corner of Lot 5, Block 52 Plat "A", Salt Lake City Survey; and running thence South 100.0 feet; thence South 7 degrees 16 minutes East 168.3 feet; thence East 10.0 feet; thence North 7 degrees 16 minutes West 168.3 feet; thence North 100.0 feet; thence West 10.0 feet to the point of beginning.

PARCEL B:

Beginning at a point 55.0 feet East and 160.0 feet South of the Northwest corner of Lot 6, Block 52 Plat "A", Salt Lake City Survey; and running thence East 12.0 feet; thence South 127.0 feet; thence West 72.4 feet; thence North 20.0 feet; thence East 60.4 feet; thence North 87.0 feet; thence North 45 degrees West 14.10 feet; thence West 40.40 feet; thence South 45 degrees West 15.50 feet; thence North 7 degrees 16 minutes West 47.70 feet; thence South 30 degrees 00 minutes East 30.40 feet; thence East 52.0 feet to the point of beginning.

The use of Parcel B is limited to providing turnaround space for vehicles using the right of way described as Parcel A above.

ALSO: Together with any rights enjoyed in and to a foot-wall upon a strip of land described as follows: Commencing at the bottom of the building at a point 100 feet South of the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey, at depth of not less than 14 feet beneath the level of Main Street; and running thence East 138-1/2 feet; thence South 2 feet; thence West 138-1/2 feet; thence North 2 feet to the place of beginning, as set forth in Agreement dated March 11, 1907, recorded March 13, 1907, as Entry No. 219820, in Book 2-K of Liens and Leases, at Pages 325 - 327.

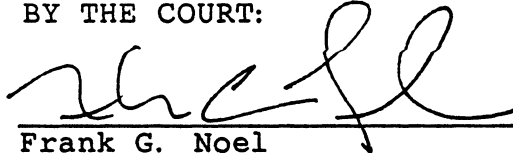
The above described property also known by the street address of #8 East Broadway, Salt Lake City, Utah 84111.

2. The defendant Martineau & Company is not a judgment debtor in the above-entitled action, is not a creditor having a lien by judgment or mortgage on the Property and is not a successor in interest to any such person or entity, and is not entitled to redeem the Property or any part thereof from any sale of the Property pursuant to Rule 69, Utah Rules of Civil Procedure.

3. Upon any execution sale of the Property pursuant to order of this Court in the above entitled action any interest or lien claimed by the defendant Martineau & Company shall be forthwith extinguished and terminated.

DATED this 5th day of ~~February~~ ^{March}, 1993.

BY THE COURT:



Frank G. Noel
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the within and foregoing DEFAULT JUDGMENT to be mailed, postage prepaid, this 5 day of ~~February~~ ^{MARCH}, 1993 to the following:

William R. Russell, Esq.
Attorney for Harold Hill and Judge Building Associates
8 East Broadway, Suite 213
Salt Lake City, Utah 84111

William C. Halls, Esq.
Attorney for J. Michael Martin
#9 Exchange Place, Suite 900
Salt Lake City, Utah 84111

Martineau & Company
8 East Broadway, Suite 500
Salt Lake City, Utah 84111



ADDENDUM NO. 4

REAL ESTATE SALE AND PURCHASE AGREEMENT
AND ESCROW INSTRUCTIONS

This Real Estate Sale and Purchase Agreement and Escrow Instructions (the "Agreement") is made and entered into by and between JUDGE BUILDING ASSOCIATES, a Utah general partnership, (the "Seller"), and DANIEL A. MILLER and DAVID M. KIMBALL (the "Purchaser"), and is effective as of this 28 day of MAY, 1993 (the "Effective Date"). This Agreement is also consented to and joined in by TCF BANK WISCONSIN, F.S.B., formerly Republic Capital Bank, F.S.B.), a federal savings bank ("TCF") as its interests may appear.

W I T N E S S E T H :

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Seller hereby agrees to sell and Purchaser hereby agrees to purchase and pay for that certain property hereinafter described in accordance with the following terms and conditions.

1. PROPERTY

1.1 The conveyance by Seller to Purchaser shall consist of all of the real property described in Exhibit "A" attached to this Agreement (the "Real Property"), together with all right, title, and interest, if any, of Seller in and to any and all rights to use parking facilities, all roads, easements, streets, and ways bounding the Real Property, and rights of ingress and egress thereto and public or private utility connection thereto.

1.2 The conveyance by Seller to Purchaser also shall include all improvements (the "Improvements") of any kind whatsoever situated upon the Real Property, including, but not limited to, the building now known as the Judge Building located at 8 East Broadway, Salt Lake City, Utah 84111, and fixtures located on the Real Property (the "Building").

1.3 The conveyance by Seller to Purchaser also shall include all tangible personal property, if any, located on or in the Improvements owned by Seller (the "Personal Property").

The Real Property, Improvements, and Personal Property are hereinafter sometimes collectively called the "Property."

At Closing the following shall be transferred and assigned by Seller to Purchaser:

1.4 The Tenant Leases, as more fully described in Paragraph 3.1(g) below, and any refundable security deposits made by the tenants thereunder;

1.5 The Contracts, as more fully described in Paragraph 3.1(f) below;

1.6 Any assignable warranties and guarantees in conjunction with the Property;

1.7 All trade names, trademarks, and names owned and assignable by Seller including the use of the name "Judge Building", and telephone numbers used in connection with the Property, and all intangible property rights related to the same; and

1.8 The plans and drawings and the engineering reports more fully described in Paragraph 3.2 below.

2. PURCHASE PRICE

2.1 The purchase price for the Property shall be Seven Hundred Fifty Thousand Dollars (\$750,000.00), which is payable to TCF in the following manner:

(a) Twenty Five Thousand Dollars (\$25,000.00) transferred by Purchaser to Associated Title Company (the "Escrow Agent") as an Earnest Money deposit at the same time as this fully executed Agreement is delivered to the Escrow Agent. Prior to Closing (the term is defined in paragraph 9.1 below) Purchaser shall deposit the additional sum of One Hundred Seventy Five Thousand Dollars (\$175,000.00) for a total of Two Hundred Thousand Dollars (\$200,000.00) in the form of immediately available funds with the Escrow Agent. The Earnest Money shall be placed in an interest bearing account at a federally-insured bank selected by Escrow Agent. If the \$25,000.00 Earnest Money is forfeited to Seller as provided in this Agreement, Seller shall be paid the interest earned thereon. If the Earnest Money becomes credited to Purchaser or otherwise payable to Purchaser due to Seller's failure to timely perform, then the interest earned thereon shall be paid to Purchaser at Closing.

(b) The balance of the purchase price shall be paid by Purchaser in the form of:

(i) Purchaser's execution at Closing of a Promissory Note in favor of TCF in the original principal amount of Five Hundred Fifty Thousand Dollars (\$550,000.00 (the "Note"), providing for interest on the unpaid balance at the rate of Eight and One-Half percent per annum (8 1/2%) and payable in equal monthly installment payments amortized over a 25 year term with a final payment due seven years after the date of the Note, secured by a deed of trust, assignment of rents, and security agreement (the "Deed of Trust") encumbering the Property, and such additional documents (the "Loan Documents") as may be usual, customary and proper in the opinion of TCF and its counsel to evidence and secure Purchaser's obligations to TCF.

3. PRE-CLOSING OBLIGATIONS AND CONDITIONS

3.1 As of the Effective Date of this Agreement, Seller or TCF has delivered to Purchaser, at TCF's sole cost and expense, each of the following:

(a) A current commitment (the "Title Commitment") for the issuance of an ALTA standard owner's policy of title insurance from Associated Title Company (the "Title Company") together with good and legible copies of all documents referenced therein as exceptions to Seller's title. If Purchaser elects to obtain extended coverage Purchaser shall satisfy all obligations of the Title Company in connection therewith, including without limitation the updating or recertification of any survey;

(b) ALTA surveys of the Real Property and Improvements meeting the accuracy standards of a Class A survey as defined by ALTA/ACSM and prepared by a surveyor or engineer licensed in the state of Utah (the "Survey");

(c) Drafts of the Note, Deed of Trust and Loan Documents in the usual form used by TCF for review and approval by Purchaser within Five (5) working days after the effective date of this Agreement;

(d) An inventory of the Personal Property, which is located at the Property;

(e) Copies of all existing warranties and/or guaranties affecting the Building or any features thereon and any Personal Property located therein or thereon which shall be assigned to Purchaser at Closing;

(f) Copies of all management, employment, services, operations, maintenance and supply contracts affecting or pertaining to the Property or the business conducted thereon, together with a description of any or all undertakings and/or modifications which are not in writing (the "Contracts"). Purchaser shall assume Contracts except for those which Purchaser shall notify Seller in writing within ten (10) days after the Effective Date that Purchaser will not assume at Closing;

(g) Copies of rental agreements with those tenants at the Property listed on Exhibit "B" attached to this Agreement (the "Tenant Leases");

(h) Copies of 1992 real property tax statements for the Property; and

(i) Copies of all periodic reports prepared by Wallace Associates, the Court appointed receiver of the Property (the "Receiver").

Purchaser acknowledges that the documents referred to in Paragraph 3.1(d), (e), (f), (g), (h) and (i) have not been prepared by Seller or TCF or at their direction and no warranty is made as to the accuracy or completeness of these documents.

3.2 As of the Effective Date of this Agreement, TCF has delivered to Purchaser, at TCF's sole cost and expense, each of the following to the extent that any such items which pertain to the Property exist and are in the control or possession of TCF: copies of any and all studies, engineering data, site analysis, architectural drawings, tenant office floor plans, floor plate drawings, reports, results of tests and statements or records reflecting the expenses incurred in connection with the operation of the Properties during the years 1989 to date, if available.

3.3 Within fifteen (15) days after the Effective Date of this Agreement, Purchaser shall deliver to TCF such information concerning Purchaser as TCF shall reasonably request including, without limitation, Purchaser's tax returns for the

two tax years immediately preceding the Effective Date of this Agreement, Purchaser's current financial statements, which shall be true, accurate, and complete in all material respects, together with a complete listing of each of Purchaser's assets, an authorization to TCF to obtain a credit report of Purchaser, and Purchaser's organizational documents.

3.4 (a) Seller's and TCF's obligations under this Agreement are subject to and conditioned, First, upon the entry of a final order by the Third Judicial District Court of Salt Lake County, State of Utah in the foreclosure action commenced by TCF and entitled "Republic Capital Bank, F. S. B. v. Judge Building Associates, et. a.," Civil No. 92090094PR (the "Action") approving this Agreement, releasing the Receiver and approving either the dismissal or other disposition of the Action, and, second, the approval of this Agreement by the TCF's board of directors within ten (10) days after the Effective Date. TCF shall notify Escrow Agent and Purchaser in writing within five (5) days following the expiration of the foregoing 10-day period that corporate approval has been obtained, then this condition shall be deemed fulfilled or be waived. If TCF gives timely notice of disapproval of this condition, then neither party shall have any further obligation to the other hereunder, Escrow Agent promptly shall return the Earnest Money to Purchaser and Escrow Agent shall return to Seller or TCF any documents delivered to escrow by them.

(b) TCF's obligations under this Agreement are further subject to and conditioned upon approval by TCF's loan committee and board of directors within ten (10) days after Purchaser's submittal of the information as set forth in paragraph 3.3 above, of Purchaser's Obligations and entering into the Loan Documents. TCF shall notify Escrow Agent, Seller and Purchaser in writing within five (5) days following the expiration of the foregoing 10-day period that corporate approval obtained, then this condition shall be deemed fulfilled or waived. If TCF gives timely notice of disapproval of this condition, then no party shall have any further obligation to the other hereunder; Escrow Agent promptly shall return the Earnest Money to Purchaser and Escrow Agent promptly shall return the Earnest Money to Purchaser and Escrow Agent shall return to Seller or TCF any documents delivered to escrow by Seller.

3.5 Seller or TCF shall deliver tenant estoppel statements to Purchaser for all tenants occupying more than 1000 square feet of leased space within five (5) days after the effective date of this Agreement.

4. TITLE REVIEW

4.1 Purchaser shall have a period of five (5) days after the Effective Date (the "Title Review Period") to provide written disapproval to Escrow Agent and TCF of the condition of title to the Property as disclosed by the Title Commitment and thereby to terminate this Agreement. All exceptions to Seller's title which are shown on Schedule B of the Title Commitment and to which no written objection is timely made shall be considered "Permitted Exceptions." If the Title Company amends the Title Commitment after the expiration of the Title Review Period to provide for exceptions in addition to the Permitted Exceptions, then the Purchaser shall either accept by written notice provided to Seller and Escrow Agent within five (5) days after receipt thereof the additional exceptions as Permitted Exceptions or elect in the same period by written notice to Seller and Escrow Agent to terminate this Agreement. If Purchaser shall timely disapprove the Title Commitment in writing or thereafter shall timely disapprove in writing any additional exceptions in accordance herewith, this Agreement shall be deemed terminated and the Earnest Money and all interest earned thereon shall be promptly returned to the Purchaser, any documents delivered to escrow by Seller or TCF shall be returned to them and thereafter no party shall have any further rights or obligations under this Agreement.

5. FEASIBILITY STUDY AND INSPECTIONS

5.1 Purchaser represents and acknowledges that Purchaser has conducted a feasibility study of the Property, and reviewed and inspected the items delivered by Seller or TCF pursuant to this Agreement.

5.2 During this Feasibility Period, Purchaser and its duly authorized agents and representatives have been entitled to enter upon the Real Property and Improvements at all reasonable times to inspect the operation of the Property and to conduct whatever other inspections Purchaser has deemed necessary or advisable with respect to the structural integrity of the Building or otherwise, including the conduct of environmental assessments. Seller or TCF shall not be required to take any action or effect any remediation of defects alleged to have been discovered by Purchaser during the Feasibility Period.

6. DAMAGE OR DESTRUCTION PRIOR TO CLOSING

6.1 In the event that the Improvements, or any of them, are damaged by any casualty prior to Closing, the cost of

repairing such damage shall be estimated by an architect retained by TCF.

6.2 If the cost of repairing such damage as estimated in accordance with Paragraph 6.1 above is less than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), then the Seller or TCF shall repair such damage as promptly as is reasonably possible, restoring the damaged property at least to its condition, immediately prior to such damage; and, in the event such repairs have not been completed prior to Closing, then the Closing shall nevertheless proceed as scheduled, and Purchaser may have the Escrow Agent withhold from TCF the funds necessary to make such repairs until Seller or TCF has repaired such damage pursuant to the provisions hereof, at which time such funds shall be distributed to TCF.

6.3 If the cost of repairing such damage as estimated in accordance with Paragraph 6.1 above is greater than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.000), then Purchaser may elect to terminate this Agreement and receive a refund of the Earnest Money and the interest earned thereon. alternatively, with the approval of Purchaser and TCF, TCF shall, at TCF's sole expense, repair the damage as promptly as is reasonably possible, restoring the damaged property at least to its condition immediately prior to the casualty, and Closing hereunder shall be deferred until such repair is made; or at TCF's and Purchaser's Agreement, Seller shall pay to Purchaser, at Closing, all insurance proceeds payable for such damage, and the sale shall be closed without Seller's repairing such damage.

7. REPRESENTATIONS AND WARRANTIES; RELEASE

7.1 Representations and Warranties of Seller.
Seller represents and warrants to Buyer that:

(a) Upon satisfaction or waiver of the conditions set forth in Paragraph 3.4 above and the conditions set forth in Paragraph 9.3 below, Seller has the full power and authority to enter into and perform this Agreement to the terms hereof;

(b) Except for the Action, Seller has not received written notice of any litigation pending or threatened (including without limitation proposed or threatened condemnation) affecting the Property or Seller's ability to consummate this transaction, or of any violations of any laws, regulations, ordinances or

statutes in connection with the use and ownership of the Property;

(c) Seller has not received notice of any violation of any applicable laws, regulations, or ordinances with respect to the Property; and

(d) Seller and TCF make no representation or warranty as to the transfer to Purchaser of title to any item of personal property, it being understood by Purchaser that the personal property being acquired by Purchaser "as is, where is."

7.2 Release. Except with respect to the representations and warranties set forth in Paragraph 7.1 above:

Except for those matters which Seller is or may be liable for due to its ownership of the Property, during its ownership of the Property, Seller, the Receiver and TCF are hereby released from all responsibility and liability regarding the condition of materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws and regulations;

Seller, Receiver and TCF are hereby released from all liability with respect to all matters with regard to the valuation or utility of the Property or its suitability for any purpose whatsoever;

Purchaser expressly acknowledges that Purchaser has not relied on any warranties, promises, understandings or representations, express or implied, of Seller, Receiver or TCF or RCB or of any agent of Seller or TCF, relating to the Property which are not contained in this Agreement, and that Purchaser is acquiring the Property in its present condition and state of repair, "AS IS," with all defects, latent or apparent, and subject to all matters which an accurate inventory, survey or physical inspection of the Property would disclose;

Purchaser acknowledges that any information of any type which Purchaser has received or may receive from Seller, Receiver or TCF or their agents is furnished on

the express condition that Purchaser shall make an independent verification of the accuracy of such information, all such information being furnished without any warranty whatsoever and Purchaser agrees that Purchaser will not attempt to assert any liability against Seller, Receiver or TCF for furnishing such information.

Purchaser acknowledges having inspected the Property, having observed its physical characteristics and existing conditions and having had the opportunity to conduct such inventory, investigation and study on and of said Property and adjacent areas as it deems necessary and hereby waives any and all objections to, complaints about or claims (including, without limitation, federal, state or common law based actions and any private right of action under state or federal law including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, and any state environmental statute, to which the Property is, or may be, subject) regarding physical characteristics and existing conditions, including, without limitation, subsurface soil and water conditions and solid and hazardous waste and hazardous substances on, under or adjacent to the Property; and

Purchaser further hereby assumes the risk of changes in applicable laws and regulations relating to environmental conditions, so long as such changes do not occur before the Closing, on the Property and the risk that adverse physical characteristics and conditions, including, without imitation, the presence of hazardous substances or other contaminants, may not have been revealed by its investigation.

7.3 Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller and TCF that as of the date hereof, the individuals executing this Agreement on behalf of Purchaser are authorized to do so, and as of the Closing the persons executing all documents to effect the transfer and transactions contemplated hereby shall be fully authorized to do so.

7.4 Re-Certification; Survival. All representations set forth in this Paragraph 7 are deemed to have been re-certified as of Closing by the party making such representation. The representations and warranties shall not be

deemed to have merged in the delivery of any deed, assignment or bill of sale but shall survive the Closing.

8. ESCROW PERIOD

8.1 From and after the Effective Date of this Agreement until the earlier of the termination of this Agreement or the Closing, Seller and/or TCF shall:

(a) Maintain and manage the Property through the Receiver in its present condition, ordinary wear, tear and casualty excepted, and will punctually perform every obligation and undertaking of lessor or landlord under any Tenant Leases;

(b) Continue to actively promote the Property for lease, and Not enter into any new Tenant Leases or modifications of existing Tenant Leases without the written consent of Purchaser; and

(c) Be responsible for obtaining the final billing for utilities as of Closing, and Purchaser shall be required to have all utilities transferred to Purchaser's name as of the Closing; provided, however, Purchaser shall be entitled to have all utilities transferred to Purchaser's name as of the Closing in order that there shall be no interruption of utility services. Utilities, including, without imitation, telephone, gas, water and electricity, shall be apportioned on the basis of the final meter reading the final invoice to be obtained by Receiver. Purchaser shall be responsible for all utility charges from and after the Closing. All utility deposits shall be paid over to TCF at Closing and Purchaser shall make new utility deposits at Closing.

9. CLOSING

9.1 The Closing or Close of Escrow shall take place at the office of the Escrow Agent no later than June, 1993, subject to such reasonable extension as may be necessary for TCF to complete the process described in paragraph 3.4 above. If Closing fails to timely occur by June, 1993, or as may be extended by TCF as a result of the failure of the conditions set forth in this Agreement then this Agreement shall terminate and the Earnest Money and all interest earned shall be promptly returned to Purchaser any documents delivered to escrow by Seller

emptly returned to Seller and therefore neither party
urther rights or objections hereunder.

9.2 At Closing, Seller shall deliver or cause to
to Purchaser, at Seller's sole cost and expense,
following items:

(a) A Special Warranty Deed executed and
acknowledged on behalf of Seller, in recordable form,
conveying good and indefeasible fee simple title to the
properties to Purchaser in the form attached hereto as
Exhibit "C," subject to all current taxes, reservations
and patents, all easements, rights-of-way, covenants,
conditions, and restrictions as may appear of record,
all leases and all matters which an accurate survey or
physical inspection of the Property would disclose;

(b) A certificate of non-foreign status in
the form attached hereto as Exhibit "D";

(c) An ALTA standard Owner's Policy of Title
Insurance or, if timely requested by Purchaser, an ALTA
Extended Owner's Policy of Title Insurance (the "Title
Policy") issued by the Title Company in the full amount
of the purchaser price insuring good and indefeasible
title to the Real Property in the Purchaser subject
only to the Permitted Exceptions; the cost of a
Standard Owner's Title Policy shall be paid by TCF;

(d) All original warranties and guaranties,
if any, and the keys pertaining to or affecting the
Property or any portion thereof and an assignment, duly
executed and acknowledged by Seller, assigning to
Purchaser all of Seller's right, title and interest, if
any, in all warranties and guaranties applicable to the
Properties, or any part thereof in the form of Exhibit
"E" hereto;

(e) A bill of sale duly executed and
acknowledged by Seller, transferring and assigning the
Personal Property free and clear of all liens in the
form of Exhibit "F" hereto;


(f) The originals of the Tenant Leases and
all amendments thereto, together with an assignment
duly executed and acknowledged by Seller, assigning all
of Seller's interest in and to said Tenant Leases to
Purchaser in the form of Exhibit "G" hereto;

(g) Duly executed Estoppel Certificates with respect to each Tenant Lease or the certification by Seller or the Receiver as to the status of each Tenant Lease;


(h) An assignment, duly executed and acknowledged by Seller, assigning to Purchaser (who shall assume Seller's obligations thereunder) all of Seller's rights under the Contracts in the form of Exhibit "H";

(i) All additional documents and instruments, including those documents described in paragraphs 1 and 3.2 above, this Agreement requires to be provided by Seller at Closing, and all additional documents and instruments as in the reasonable opinion of the Title Company or Escrow Agent are reasonably necessary for the proper consummation of this transaction.

9.3 At Closing, Purchaser shall deliver or cause to be delivered to TCF, the following items:

OR SELLER 
(a) The duly executed Loan Documents referred to in Paragraph 2.1(b) above;

(b) The premium differential to obtain ALTA extended title insurance coverage if such has been timely requested by Purchaser and the cost to obtain the extended title insurance and the premium for any special or other endorsements as may have been requested by Purchaser; and

(c) All additional documents and instruments this Agreement requires to be provided by Purchaser at Closing and all additional documents and instruments as in the reasonable opinion of the Title Company or Escrow Agent are reasonably necessary for the proper consummation of this transaction. 

(d) TO SELLER, A RELEASE OF PURCHASER'S RIGHT TO PURSUE DEFICIENCY

9.4 At Closing, the following items shall be paid, adjusted or prorated between Seller and Purchaser: *JUDICIAL AGO*

(a) Ad valorem taxes and any general or special assessments for the Property for the current calendar year shall be prorated as of the date of Closing on the basis of the latest available tax bill and shall not be subject to subsequent adjustment; *SELLER, SON SALPINOS, LOR J. HILL, DE J. MICHAEL H. DEWING JR. THE ACTIC*

(b) Charges for the Title Policy shall be made as provided in paragraph 9.2(c) above and 9.3(d) above;

(c) All rent will be apportioned as of 11:59 p.m. on the day preceding the Closing. No prorations shall be made for delinquent rents existing as of the Closing. With respect to such delinquent rents, Purchaser shall make a reasonable attempt to collect the same for Seller's benefit after Closing in the usual course of operation of the Property, and any such collection shall be remitted to Seller promptly upon receipt by Purchaser; provided, however, that nothing contained herein shall opt or to require Purchaser to institute any lawsuit or other collection procedure to collect such delinquent rents. In this regard, the first money is collected from tenants owing delinquent rents shall be applied to the current month's rent and retained by Purchaser and any overage shall be forthwith paid by Purchaser to TCF for the delinquent rents;

(d) All prepaid rents and refundable security deposits actually collected and received by Seller shall be credited to Purchaser. Non-refundable deposits shall remain the property of Seller; and

(e) All other Closing costs (except as otherwise set forth in this Agreement and professional fees which shall be the responsibility of the party employing the professional except as otherwise set forth in this Agreement and in the event of litigation concerning this Agreement), including, but not limited to, recording and escrow fees, shall be shared by the parties according to local custom.

9.5 Without limitation, it shall be the obligation of the Escrow Agent at Closing or promptly thereafter as the case may be:

(a) To record the Special Warranty Deed delivered hereunder and upon recordation the Special Warranty Deed shall be delivered to Purchaser;

(b) To deliver to Purchaser those items specified in Paragraph 9.2(d)-(j) above;

(c) To perform the prorations specified in Paragraph 9.4 hereof; and

(d) To deliver to TCF the funds referred to in Paragraph 9.3(a) above, and the Loan Documents which are not recorded and to record TCF Loan Documents as directed by TCF and upon recordation they shall be delivered to TCF.

9.6 Possession of the Property and keys thereto shall be delivered to Purchaser by Seller or the Receiver at Closing.

9.7 Purchaser agrees to indemnify and hold TCF, the Receiver and Seller harmless of and from any and all liabilities, claims, demands, and expenses, of any kind or nature (except those items which by the terms of this Agreement specifically remain the obligation of Seller, TCF or the Receiver) arising or occurring subsequent to the date of Closing and which are in any way related to the ownership, maintenance, or operation of the Property, including, but not limited to, court costs and attorneys' fees. TCF agrees to indemnify and hold Purchaser harmless of and from any and all liabilities, claims, demands, and expenses of any kind or nature (except those which by the terms of this Agreement specifically become the obligation of Purchaser) arising or occurring prior to the date of Closing that are in any way related to the ownership, maintenance, or operation of the Property, including but not limited to court costs and attorneys' fees.

9.8 In the event any party hereto receives notice of a claim or demand which results or may result in indemnification pursuant to Paragraph 9.7 above, such party shall immediately give notice thereof to the other. The party receiving such notice shall immediately take such measures as may be reasonably required to properly and effectively defend such claim, and may defend same with counsel of its own choosing. In the event the party receiving such notice fails to properly and effectively defend such claim, and in the event such party is liable therefor, the party so giving such notice may defend such claim at the expense of the party receiving such notice.

10. REMEDIES UPON DEFAULT

10.1 In the event that Seller or TCF fails to timely comply with all conditions, covenants, and obligations Seller or TCF has hereunder, such failure shall be an event of default and Purchaser shall have the option (a) to terminate this

Agreement and receive immediately without further instruction or consent of Seller or TCF the Earnest Money and all interest earned thereon, or (b) grant Seller and TCF additional time within which to comply.

10.2 In the event all conditions of this Agreement are satisfied and all covenants and agreements to be performed prior to Closing are fully performed, but the sale is not consummated through a default on the part of Purchaser, then Seller shall have the option (a) to terminate this Agreement and to receive from Escrow Agent upon demand liquidated damages in the amount of the Earnest Money and all interest earned thereon, such amount being agreed upon by the between the Seller or TCF and the Purchaser as liquidated damages due to the difficulty and inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof; or (b) to sue to enforce this Agreement by specific performance.

11. MISCELLANEOUS

11.1 Any notice to be given or served upon any party hereto in connection with this Agreement must be in writing and shall be deemed to have been given (including by courier and electronic facsimile transmission) and received and served personally on the party to whom notice was given or on the second day after mailing if mailed to the party to whom notice is to be given by first class mail, certified or registered, postage prepaid, return receipt requested and property addressed to Purchaser, Seller and Escrow Agent as follows:

To Seller: Judge Building Associates
c/o Harold J. Hill
366 South 500 East
Salt Lake City, Utah 84111

With Copies to: William C. Halls, Esq.
9 Exchange Place, Suite 900
Salt Lake City, Utah 84111

William R. Russell, Esq.
#8 East Broadway, Suite 213
Salt Lake City, Utah 84111

To TCF: TCF Bank Wisconsin, F. S. B.
500 West Brown Deer Road
Milwaukee, Wisconsin 53223
Attn: Richard C. Thiermann,
Senior Vice President
Fax No.: (414) 351-8680

With copy to: Robert D. Merrill, Esq.
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
P. O. Box 45340
Salt Lake City, Utah 84145
Fax No.: (801) 534-0058

To Purchaser: Daniel A. Miller
c/o D.M. Properties Incorporated
13601 Ventura Blvd, Suite 93
Sherman Oaks, California 91423

David M. Kimball
Kimball Investments
999 South Main Street
Salt Lake City, Utah 84111

With copy to: David R. Olsen, Esq.
Switter Axland Armstrong & Hanson
175 South West Temple, Seventh Floor
Salt Lake City, Utah 84101-1480

To Escrow Agent: Associated Title Company
349 South 200 East
Salt Lake City, Utah 84111

11.2 Any representations and warranties contained in Paragraph 7.1 above shall be true and correct on the date of Closing, and Purchaser shall have no obligation to close if such representations and warranties are not true and correct as of such date. Any representations and warranties contained in Paragraph 7.3 above shall be true and correct on the date of Closing, and Seller shall have no obligation to close if such representations and warranties are not true and correct as of such date. It is further understood and agreed that any and all representations, warranties, covenants, and agreements contained herein, whether to be performed before or after the time of Closing, shall not be deemed to be merged into or waived by the instruments of Closing, but shall expressly survive Closing and shall be binding upon the party obligated thereby.

11.3 This Agreement shall be construed and interpreted in accordance with the laws of the State of Utah. Venue for any action shall be Salt Lake County, Utah only and the parties hereby submit to the jurisdiction of any federal or state court in such county.

11.4 Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms "heirs, executors, administrators, and assigns" shall include "successors, legal representatives, and assigns."

11.5 This Agreement may not be modified or amended, except by an agreement in writing signed by each of the parties signing below. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

11.6 Purchaser may not assign its right, title and interest under this Agreement without the prior written consent of Seller and TCF which may be granted or denied in Seller's and TCF's sole and absolute discretion.

11.7 In the event any party files a suit in connection with this Agreement or any provisions contained herein, then the substantially prevailing party in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and costs of court incurred in such suit.

11.8 The descriptive headings of the several articles, sections, and paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

11.9 This Agreement (and the items to be furnished in accordance herewith) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representations, warranties, covenants, agreements, or conditions not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change, or restrict the provisions of this Agreement; provided, however, that all certifications, representations, and warranties of Seller contained in the statements and schedules to be furnished

herewith, shall become a part of this Agreement as though set forth herein.

11.10 Numerous copies of this Agreement may be executed by the parties hereto. Each such executed copy shall have the full force and effect of any original executed instrument.

11.11 This Agreement shall be of no force and effect unless Purchaser shall execute and deliver the Agreement to Seller by 5:00 p.m. local time, May 28, 1993 and unless Seller shall have executed this Agreement and delivered it to Escrow Agent on or before 5:00 p.m. local time, May 28, 1993. The deliveries required herein may be made by facsimile provided ink originals are delivered within forty-eight hours after the facsimile transmission.

11.12 Time is of the essence in the performance of each of the provisions of this Agreement, however, in the event the provisions of this Agreement require any act to be done or action to be taken hereunder on the date which is a Saturday, Sunday or legal holiday observed by Escrow Agent, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding day which is not a Saturday, Sunday or legal holiday observed by Escrow Agent.

11.13 In the event any provision or part of this Agreement is deemed invalid, illegal or unenforceable, prior to Closing, such invalidity, illegality or unenforceability will not affect the remaining provisions of this Agreement provided that if the change materially affects the terms of this Agreement, then either party may elect to terminate this Agreement, in which event the Earnest Money and all interest earned thereon, will be returned to Purchaser with all interest earned thereon and thereupon this Agreement shall be null and void and of no further force and effect.

11.14 All exhibits to this Agreement are fully incorporated herein as though set forth at length.

11.15 In the event that eminent domain or condemnation proceedings are commenced or notice is given of any such proceedings or if any easements or dedications are sought on or against any portion of the Real Property prior to Closing, Purchaser shall have the right (a) to cancel this Agreement or (b) to close the transaction contemplated hereunder, in which event Purchaser shall be entitled to receive any and all condemnation or eminent domain proceeds.

11.16 Seller and TCF shall pay Wallace Associates a commission which is equal to six percent (6%) of the purchase price as computed in Paragraph 2.1 above for services rendered on behalf of Seller, TCF and Purchaser in this transaction. The foregoing commissions shall be deemed to have been earned and is due and payable only upon the Closing of this transaction and recordation of the Special Warranty Deed. Except for the payment of the foregoing commission, each party warrants to the other that it has not entered into any agreement that would subject the other to the payment of any real estate commissions or fees due or allegedly due any broker by reason of such agreement. Wallace Associates shall pay Kimball Investments fifty percent (50%) of said commission through escrow.

11.17 Nothing in this Agreement shall confer upon any person, firm or corporation not party to this Agreement, or the legal representatives of such person, firm or corporation, any rights or remedies of any nature or kind whatsoever under or by reason of this Agreement, except as expressly set forth herein.

11.18 The terms and provisions of this Agreement represent the results of negotiations between Seller and Purchaser, each of which has been represented by counsel of its own choosing, and neither or which have acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Seller and Purchaser hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement including (without limitation) any rule of law to the effect that ambiguous or conflicting terms or provisions contained in the executed draft of this Agreement shall be interpreted or construed against the party whose attorney prepared the executed draft or any earlier draft of this Agreement.

11.19 TCF agrees to be responsible for the proper and timely construction and installation of all required improvements and equipment in connection with the new Judge Cafe lease, and pay for all improvement and leasing costs, in connection therewith. Purchaser shall have no responsibility or liability in connection therewith.

[Handwritten signature]
[Handwritten initials]
[Handwritten initials]
[Handwritten initials]
INCL. in
2010
CONCESSION

11.20 It is a condition of purchase and Purchaser's obligations hereunder, that prior to the close of escrow, there be executed a new parking agreement with the owner

of the Exchange Parking Terrace, utilizing proper and current legal descriptions, that reaffirms the right of the Judge Building and its tenants to certain minimum parking privileges in the Exchange Parking Terrace. It is understood that Seller and TCF make no warranty or representation to Purchaser in connection with such parking privileges or rights, but shall assist Purchaser in obtaining such rights.

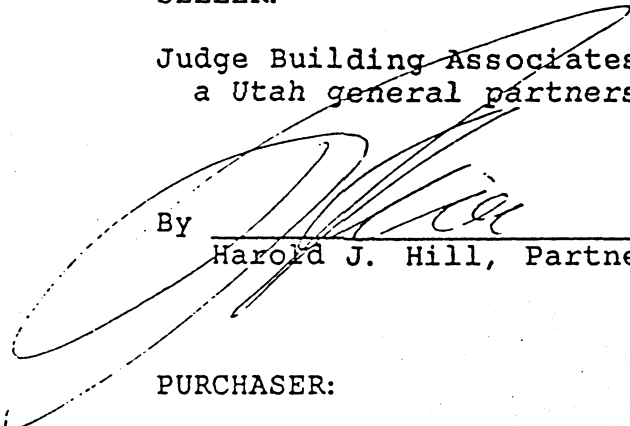
11.21 In connection with the settlement of the Action and the sale of the Property to Purchaser, TCF agrees to preserve and assign to Purchaser the right to foreclose on the leasehold interest of Martineau & Company.

DATED this 28 day of May, 1993.

SELLER:

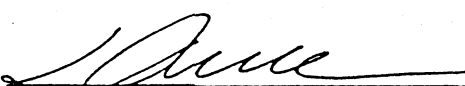
Judge Building Associates,
a Utah general partnership

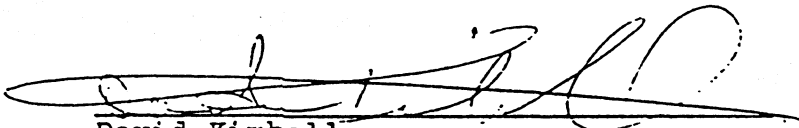
By


Harold J. Hill, Partner

6/10/93

PURCHASER:


Daniel A. Miller


David Kimball

CONSENT AND JOINDER

TCF consents to and joins in the foregoing Agreement and agrees to be bound by and perform those provisions pertaining to TCF.

DATED this 28 day of May, 1993

TCF

TCF Bank, fsb, formerly
Republic Capital Bank, FSB

By 

Its VICE - PRESIDENT

EXHIBIT "A"

The following tract of real property lying in Salt Lake County, State of Utah:

PARCEL 1;

BEGINNING at the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence East 148.50 feet; thence South 100 feet; thence West 148.50 feet; thence North 100 feet to the point of BEGINNING.

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way over and across the following:

BEGINNING 138.5 feet East of the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence South 100.0 feet; thence South 7° 16' East 168.3 feet; thence East 10.0 feet; thence North 7° 16' West 168.3 feet; thence North 100.0 feet; thence West 10.0 feet to the point of BEGINNING.

PARCEL 2: (Foot-Walls)

A perpetual right to maintain and erect a Foot-Wall upon a strip of land described as follows:

BEGINNING at the bottom of the building at a point 100 feet South of the Northwest corner of Lot 5, Block 52, Plat, Plat "A", Salt Lake City Survey, at depth of not less than 14 feet beneath the level of Main Street; and running thence East 138 1/2 feet; thence South 2 feet; thence West 138 1/2 feet; thence North 2 feet to the place of BEGINNING.

EXHIBIT "B"

List of tenant leases to be provided at Closing.

EXHIBIT "C"

SPECIAL WARRANTY DEED

WHEN RECORDED, MAIL TO:

Daniel A. Miller
David M. Kimball
c/o Kimball Investment Company
999 South Main Street
Salt Lake City, Utah 84111

SPECIAL WARRANTY DEED

JUDGE BUILDING ASSOCIATES, Utah general partnership, Grantor, of 8 East Broadway, Salt Lake City, Utah 84111, hereby CONVEYS AND WARRANTS against those claiming by, through, or under said Grantor, but not otherwise, to DANIEL A. MILLER and DAVID M. KIMBALL, as tenants in commons, c/o Kimball Investment Company, 999 South Main Street, Salt Lake City, Utah 84111, Grantee, for the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the following described real property in Salt Lake County, State of Utah:

The following tract of real property lying in Salt Lake County, State of Utah:

PARCEL 1;

BEGINNING at the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence East 148.50 feet; thence South 100 feet; thence West 148.50 feet; thence North 100 feet to the point of BEGINNING.

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way over and across the following:

BEGINNING 138.5 feet East of the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence South 100.0 feet; thence South 7°16' East 168.3 feet; thence East 10.0 feet; thence North 7°16' West 168.3 feet; thence North 100.0 feet; thence West 10.0 feet to the point of BEGINNING.

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SUBJECT TO:

WITNESS the hand of said Grantor as of the ____ day of _____, 1993.

JUDGE BUILDING ASSOCIATES, a Utah general partner

By _____
Harold J. Hill
General Partner

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of _____, 1993, by Harold J. Hill, the General Partner of Judge Building Associates, a Utah general partnership.

NOTARY PUBLIC
Residing at: _____
My Commission Expires: _____

The undersigned hereby acknowledges and affirms to the below named notary public that (1) [s]he appeared before such notary public, holds the position or title set forth above, and, on behalf of the above named corporation by proper authority, either executed the foregoing document before such notary public or acknowledged to such notary public that the undersigned executed the foregoing document, and that (2) the foregoing document was the act of such corporation for the purpose stated in it.

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of _____, 19____, by _____, of _____, a _____ corporation.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

EXHIBIT "E"

Assignments of warranties to be provided at Closing.

EXHIBIT "F"

BILL OF SALE
(Without Warranties)

JUDGE BUILDING ASSOCIATES, Utah general partnership, SELLER, of 8 East Broadway, Salt Lake City, Utah 84111, for and in consideration of the sum of Ten and no/100 hundred dollars (\$10.00), and other good and value of consideration, hereby sells, transfers and assigns, without warranty and "AS IS" all of Seller's right, title and interest in and to that certain personable property located at 8 East Broadway, Salt Lake City, Utah 84111 as more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

The Seller makes no representation as to title to said property, the right to sell same or whether said property is subject to any liens or encumbrances, the same being sold to Seller without warranty and "AS IS."

DATED this ____ day of June, 1993.

JUDGE BUILDING ASSOCIATES, a
Utah general partnership

By _____
Harold J. Hill
General Partner

EXHIBIT "G"

Original tenant leases to be delivered at Closing.

EXHIBIT "H"

Assignments of contracts to be delivered at Closing.

ADDENDUM NO. 5

1300

5543957
01 JULY 93 09:27 AM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
ASSOCIATED TITLE
REC BY: DIANE KILPACK , DEPUTY

SPECIAL WARRANTY DEED

WHEN RECORDED, MAIL TO:

Daniel A. Miller
David M. Kimball
c/o Kimball Investment Company
999 South Main Street
Salt Lake City, Utah 84111

5543957

SPECIAL WARRANTY DEED

JUDGE BUILDING ASSOCIATES, Utah limited partnership, Grantor, of 8 East Broadway, Salt Lake City, Utah 84111, hereby CONVEYS AND WARRANTS against those claiming by, through, or under said Grantor, but not otherwise, to DANIEL A. MILLER and DAVID M. KIMBALL, as equal tenants in commons, c/o Kimball Investment Company, 999 South Main Street, Salt Lake City, Utah 84111, Grantee, for the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the following described real property in Salt Lake County, State of Utah:

The following tract of real property lying in Salt Lake County, State of Utah:

PARCEL 1;

BEGINNING at the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence East 148.50 feet; thence South 100 feet; thence West 148.50 feet; thence North 100 feet to the point of BEGINNING.

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way over and across the following:

BEGINNING 138.5 feet East of the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence South 100.0 feet; thence South 7°16' East 168.3 feet; thence East 10.0 feet; thence North 7°16' West 168.3 feet; thence North 100.0 feet; thence West 10.0 feet to the point of BEGINNING.

D-130 920

BK6700P60927

ADDENDUM NO. 6

Re-recorded
@BK 6714
P. 401

5700

5543958
01 JULY 93 09:27 AM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
ASSOCIATED TITLE
REC BY: DIANE KILPACK, DEPUTY

WHEN RECORDED MAIL TO:

TCF BANK WISCONSIN, fsb
500 West Brown Deer Road
Milwaukee, Wisconsin 53217
Attn: Richard Thiermann

5543958

**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

THIS DEED OF TRUST (herein "Instrument") is made as of this 21 day of June, 1993 among the Trustors/Grantors, DAVID M. KIMBALL AND DANIEL A. MILLER, whose address is c/o Kimball Investment Company, 999 South Main Street, Salt Lake City, Utah, 84111 (jointly the "Borrower"), ASSOCIATED TITLE COMPANY, (the "Trustee"), whose address is 349 South 200 East, Salt Lake City, Utah, 84111-2811, and the Beneficiary, TCF BANK WISCONSIN, fsb, A Federal Savings Bank, 500 West Brown Deer Road, Milwaukee, Wisconsin, 53217 (the "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the following property, rights, privileges and interests, to-wit:

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That certain tract of real property (hereinafter referred to as the "Tract") lying in Salt Lake County, State of Utah, which said property is more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein.

Together with all rights-of-way, easements, tenements, hereditaments, appurtenances, royalties, mineral, oil and gas rights and profits, water, water rights and water stock of Borrower belonging to or in any way appertaining to the Tract.

Together with all right, title and interest of Borrower, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Tract.

Together with all right, title and interest of Borrower, now owned or hereafter acquired, in and to any and all sidewalks and alleys, and all strips and gores of land, adjacent to or used in connection with the Tract.

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II.

All of Borrower's interests presently owned or hereafter acquired in all buildings, structures, and improvements now or at any time hereafter erected, constructed, or situated upon the Tract or any part thereof, and all apparatus, fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, and used, or intended to be used in connection with the Tract including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, attached floor coverings, antennas, trees and plants, including replacements and additions thereto, and proceeds and products thereof, all of which shall be deemed to be and remain a part of the real property covered by this Instrument, together with any and all replacements of any of the foregoing and any and all additions thereto.

III.

All of Borrower's interests in all permits, contracts, and related rights and benefits associated with the development and use of the Tract including construction contracts, rights to plans and specifications for construction, and governmental permits relating to the construction of improvements on the Tract, or occupancy or use of the Tract, and all names by which the Tract may be known, trademarks and goodwill, and all proceeds from any of the foregoing.

IV.

All of Borrower's interests presently owned or hereafter acquired in personal property used and useful in the operation of the Tract, including, but not limited to, goods, including building materials located on or off the Tract, equipment, machinery, tools, office equipment, supplies, furniture and furnishings, and all items listed in II or III above to the extent such items are deemed to be personal property under the Utah Uniform Commercial Code, and in the proceeds and products of any of the foregoing.

V.

Subject to the terms of paragraphs 5 and 11 of this Instrument, all awards for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of the Tract or of any improvements now or hereafter situated thereon or any estate or easement therein, and all proceeds of insurance paid on account of partial or total destruction of improvements on the Tract, all of which

awards and proceeds are hereby assigned to Lender, which is hereby authorized to collect and receive such awards and proceeds and to give proper receipts and acquittances therefor.

VI.

All right, title and interest of Borrower in and to any and all present and future leases, rental agreements and tenancies of any portion of the Tract or of any space in any building erected upon the Tract, and the rents, issues and profits therefrom and of any improvements now or hereafter situated on the Tract.

VII.

All right, title and interest of Borrower in and to all unearned premiums accrued, accruing, or to accrue under any and all insurance policies now or hereafter obtained by Borrower pursuant to the provisions hereof.

All of the real and personal property, rights, privileges and interests described in the foregoing items I through VII and hereby granted, conveyed and assigned are hereinafter collectively referred to as the "Property."

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by Borrower's Promissory Note dated on even date herewith (the "Note"), in the principal sum of FIVE HUNDRED FIFTY THOUSAND Dollars (\$550,000.00), or so much of such amount as may be disbursed, with interest thereon, with the balance of the indebtedness, if not sooner paid, due and payable on _____; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower pursuant to paragraph 32 hereof ("Future Advances"); (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument; (d) the performance of the covenants and agreements of Borrower herein contained, and (e) the payment and performance of any other indebtedness, obligation or agreement which recites by its own terms that it is secured by this Instrument. The foregoing items (a) through (e) are sometimes referred to herein as the "Obligations."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant, convey and assign the Property, that the Property, except as previously disclosed to Lender, is free and clear of all liens, claims and encumbrances, and that Borrower will warrant and defend generally the title to the Property against all claims and demands.

Borrower and Lender covenant and agree as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by

the Note, any prepayment and late charges provided in the Note and all other sums secured by this instrument.

2. FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal or interest are payable under the Note (or on another day designated in writing by Lender), until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of (i) the yearly taxes and assessments which may be levied on the Property, (ii) the yearly ground rents, if any, (iii) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Lender may require pursuant to paragraph 5 hereof, and (iv) if this Instrument is on a leasehold, the yearly fixed rents, if any, under the ground lease, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Lender of a requirement that Borrower pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower, Lender may require Borrower to pay to Lender, in advance, such other funds for other taxes, charges, premiums, assessments, and impositions in connection with Borrower or the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid by Borrower in a lump sum or in periodic installments, at Lender's option.

The Funds shall be held in an institution(s) time deposits or accounts of which are insured or guaranteed by a federal or state agency (including an affiliate of Lender). Lender shall apply the Funds to pay the rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as Borrower is not in breach of any covenant or agreement of Borrower in this Instrument. Lender shall make no charge for so holding and applying the Funds, analyzing the account, or for verifying and compiling the assessments and bills, unless Lender pays Borrower interest, earnings or profits on the funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Instrument that interest on the Funds shall be paid to Borrower, and unless such agreement is made, Lender shall not be required to pay Borrower any interest, earnings or profits on the Funds or to account to Borrower for any earnings or profits made by Lender from any use of the funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds in Lender's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. Borrower hereby grants Lender a security interest in the Funds as additional security for the sums secured by this Instrument.

If the amount of the Funds held by Lender at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, such excess shall be credited to Borrower in accordance with Lender's

usual practices. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty days after notice from Lender to Borrower requesting payment thereof.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any funds held by Lender at the time of application (i) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions which are now and will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

3. APPLICATION OF PAYMENTS. Unless applicable law or the Note provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower under paragraph 2 hereof; (ii) interest payable on the Note; (iii) interest payable on advances made pursuant to paragraph 8 hereof; (iv) principal of advances made pursuant to paragraph 8 hereof; (v) principal of the Note; (vi) interest payable on any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion may determine; and (viii) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to paragraph 8 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this paragraph 3.

4. CHARGES; LIENS. Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums and Other Impositions attributable to the Property at Lender's option in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due directly to the payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph 4, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Except as otherwise provided in Paragraph 20 hereof, without Lender's prior written permission, Borrower shall not allow any lien

inferior to this Instrument to be perfected against the Property. Notwithstanding the foregoing, Borrower shall have the right to contest in good faith the validity, amount and enforceability of any such lien so long as Borrower shall post a bond, or such other security as Lender may reasonably require, to protect the interest of Lender in the Property.

5. HAZARD INSURANCE. Borrower shall keep the improvements now existing or hereafter erected on the Tract and all Borrower's tangible personal property presently owned or hereafter acquired and wherever located insured by carriers at all times satisfactory to Lender against loss by fire, theft, hazards included within the term "extended coverage," rent loss and such other hazards, casualties (excluding earthquake and flood insurance), liabilities and contingencies as Lender (and, if this Instrument is on a leasehold, the ground lease) shall require and in such amounts and for such periods as Lender shall require. All premiums on insurance policies shall be paid, at Lender's option, in the manner provided under paragraph 2 hereof, or by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgagee clause in favor of and in form acceptable to Lender. Lender shall have the right to hold true and correct copies of the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender. If this Instrument is on a leasehold, Borrower shall furnish Lender a duplicate of all policies, renewal notices, renewal policies and receipts of paid premiums if, by virtue of the ground lease, the originals thereof may not be supplied by Borrower to Lender.

In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. In the event Borrower is in default, Borrower hereby authorizes and empowers Lender, at Lender's option, as attorney-in-fact for Borrower, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (i) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property or (ii) to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof (subject, however, to the rights of the lessor under the ground lease if this Instrument is on a leasehold).

Notwithstanding any inconsistent terms in the preceding paragraph, in the event of destruction of a portion of the Property which is less than 50 percent of the replacement cost of improvements located on the real property described in Exhibit "A"

as estimated by Lender in good faith, and provided Borrower is not in default hereunder or under the Note, Lender shall hold the balance of insurance proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property; provided, however, if Lender determines that the insurance proceeds shall not be sufficient to reconstruct or repair the Property to Lender's reasonable satisfaction, Borrower shall deposit in a noninterest bearing account maintained by Lender, within thirty days of Lender's request, an amount determined by Lender which, when added to the insurance proceeds, shall be sufficient to restore the Property to the equivalent of its original condition or such other condition as Lender may approve in writing.

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amounts of such installments. If the Property is sold pursuant to paragraph 27 hereof, or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. PRESERVATION AND MAINTENANCE OF PROPERTY; INJURY TO PROPERTY; LEASEHOLDS. Borrower (i) shall not commit waste or permit impairment or unusual deterioration of the Property, (ii) shall not abandon the Property, (iii) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (v) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (vi) shall provide for professional management of the Property by Borrower, or an affiliate of Borrower, or a rental property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, (vii) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (viii) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purported

to affect the Property, the security of this Instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind, or incident to the alteration by Borrower or a tenant of any leasehold improvements or fixtures in any tenant space resulting in the installation of improvements and fixtures with a comparable or greater value than those removed.

Provided Borrower is in default, all causes of action of Borrower, whether accrued before or after the date of this Instrument, for damage or injury to the Property or any part thereof, or in connection with the transaction financed in whole or in part by the funds loaned to Borrower by Lender or in connection with or affecting the Property or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are, at Lender's option to be exercised reasonably, assigned to Lender, and the proceeds thereof shall be paid to Lender who, after deducting therefrom all its expenses, including reasonable attorney's fees, may apply such proceeds to the sums secured by this Instrument or to any deficiency hereunder or may release any moneys so received by it or any part thereof, as Lender may elect. Lender may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Borrower agrees to execute such further assignments and other instruments as from time to time may be necessary to effectuate the foregoing provisions and as Lender shall request.

7. **USE OF PROPERTY.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

8. **PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in paragraph 5 hereof, and (iv) if this Instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the ground lease.

Any amounts disbursed by Lender pursuant to this paragraph 8, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable laws, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this paragraph 8 shall require Lender to incur any expense or take any action hereunder.

9. INSPECTION. Lender may make or cause to be made reasonable entries upon and inspections of the Property.

10. BOOKS AND RECORDS. Borrower shall keep and maintain at all times at Borrower's address stated herein, or such other place as Lender may approve in writing, complete and accurate books of accounts and records in accordance with generally accepted accounting principles adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, budgets, change orders, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Upon Lender's reasonable request, Borrower shall furnish to Lender, within ninety (90) days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant. Borrower shall furnish, together with the foregoing financial statements and at any other time upon Lender's request, a rent schedule for the Property, certified by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid.

11. CONDEMNATION. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Provided Borrower is in default, Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject, if this Instrument is on a leasehold, to the rights of lessor under

the ground lease, and subject to the rights of any tenants of the Property for relocation expenses awarded exclusive to such tenants.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts to restoration or repair of the Property or to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

Notwithstanding any inconsistent terms in the preceding paragraph, in the event of destruction of a portion of the Property which is less than 50 percent of the replacement cost of improvements located on the real property described in Exhibit "A" as estimated by Lender in good faith, and provided Borrower is not in default hereunder or under the Note, Lender shall hold the balance of any such condemnation awards, proceeds, payments or damages to be used to reimburse Borrower for the cost of reconstruction and repair of the Property; provided, however, if Lender determines that the condemnation awards, proceeds, payments or damages shall not be sufficient to reconstruct or repair the Property to Lender's reasonable satisfaction, Borrower shall deposit in an interest bearing account maintained by Lender, within thirty days of Lender's request, an amount determined by Lender which, when added to the condemnation awards, proceeds, payments or damages, shall be sufficient to restore the Property to the equivalent of its original condition or such other condition as Lender may approve in writing.

12. **BORROWER AND LIEN NOT RELEASED.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of the indebtedness or any part thereof, reduce the payments thereon, release anyone liable on the Obligations, accept a renewal note or notes therefor, modify the terms of the Obligations, including the time of payment or performance, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not

affect the guaranty of any person, corporation, partnership or other entity for payment or performance of the Obligations secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred, at Lender's option, for any such action if taken at Borrower's request.

13. **FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under paragraphs 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

14. **ESTOPPEL CERTIFICATE.** Borrower shall within fifteen days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

15. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Utah Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Utah Uniform Commercial Code, and Borrower hereby grants lender a security interest in these items and in the proceeds and products of such items to secure the Obligations of Borrower to Lender as defined herein. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to the items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements which Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Utah Uniform Commercial Code any other security interest in the items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this

Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Utah Uniform Commercial Code or other applicable law, and, at Lender's option, may also invoke the remedies provided in paragraph 27 of this Instrument as to such items. In exercising any of these remedies, Lender may proceed against the real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Utah Uniform Commercial Code or of the remedies provided in paragraph 27 of this Instrument.

16. LEASES OF THE PROPERTY. As used in this paragraph 16, the word "lease" shall mean "sublease" if this Instrument is on a leasehold. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. All leases of the Property shall specifically provide that such leases are subordinate to this Instrument: that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property: that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request: that the attornment of the tenant shall not be terminated by foreclosure: and that Lender may, at Lender's option, accept or reject such attornments. Borrower shall not, without Lender's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease now existing, or hereafter made, of all or any part of the Property providing for a term of five years or more for more than 5,000 square feet in which the average annual rent rate is less than \$6.50 per square foot, permit an assignment or sublease of such a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Instrument. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right or set-off against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Lender thereof and of the amount of the set-offs, and (iii) within ten days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

Upon Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all leases now existing or hereafter made of all or any part of the Property and all security deposits made by tenants in connection with such leases of the Property. Upon assignment by Borrower to Lender of any leases of the property, and upon Borrower's default hereunder or under the Note, Lender shall have all of the rights and powers possessed by Borrower prior to such assignment and Lender shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Lender's sole discretion.

17. **REMEDIES CUMULATIVE.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity and may be exercised concurrently, independently or successively, in any order whatsoever.

18. **ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.** If Borrower shall voluntarily file a petition under the federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor federal statute relating to bankruptcy, insolvency arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower within ninety days of the date of filing of such proceedings, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within twenty days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by paragraph 27 of this Instrument. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to paragraph 8 hereof.

19. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; ASSUMPTION; FURTHER ENCUMBRANCE.** On sale or transfer of (i) all or any part of the Property, or any interest therein (excluding leases of tenant space which do not include options or rights to acquire any ownership or operating interest in the Property), or (ii) beneficial interests in Borrower or any approved successor in interest to Borrower in the ownership of the Property (if Borrower or any such successor is not a natural person or persons but is a corporation, partnership, trust or other legal entity), Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by paragraph 26 of this Instrument. This option shall not apply in case of:

(a) transfers by devise or descent or by operation of law upon the death of a joint tenant;

(b) sales or transfers of beneficial interest in Borrower provided that such sales or transfers, together with any prior sales or transfers of beneficial interests in Borrower, but excluding sales or transfers under subparagraph (a) above, do not result in more than 49% of the beneficial interests in Borrower having been sold or transferred since the execution of this Instrument and sales or transfers of the property,

within twelve (12) months of the date of this Instrument, to a partnership in which the Borrowers are the majority managing partners and in which they shall continue to guarantee the obligations. All loan terms shall remain the same in the event of such transfer. Such transfer is subject to Lender's approval and underwriting. Borrower shall reimburse Lender for costs incurred for such transfer;

(c) Borrower shall have a one-time right to sell the Property and have the new buyer assume the loan. All loan terms shall remain the same in the event of such transfer. Such transfer is subject to Lender's approval and underwriting. Borrower shall reimburse Lender for costs incurred for such transfer. Such transfer shall be subject to lender's approval which will be based upon its underwriting and due diligence of the proposed transfer, taking into account its credit policies in effect at that time. Items to be reviewed shall include, but not be limited to, new buyer's credit worthiness and management ability, Borrower's credit history, if the loan is in good standing and no default exists, physical condition of the Property, Property's valuation, and financial performance. The new buyer shall execute written documents as may be required by Lender. A transfer fee of 1% of the loan balance shall be paid, plus reimbursement of costs incurred by Lender; and

(d) sales or transfers of fixtures or any personal property pursuant to the first paragraph of paragraph 6 hereof.

20. Borrower shall have a one-time right to further encumber the Property with a junior trust deed for the purpose of providing funds for improvements at the Property. Such encumbrance shall be subject to Lender's approval which will be based upon its underwriting and due diligence of the proposed encumbrance taking into account Lender's credit policies in effect at that time. Items to be reviewed shall include, but not be limited to, Borrower's credit history, the good standing of Borrower's Obligations, physical condition of the Property, Property's valuation and financial performance, the proposed terms and conditions of the encumbrance, the terms, conditions and credit worthiness of proposed tenant leases (unless the further encumbering the Property have lease approval procedures acceptable to Lender) and the appropriate safeguards to assure that such funds are invested in improvements for the Property. Lender shall also give due consideration to the fact that the Property has a high vacancy factor and substantial improvements are required to lease vacant spaces and increase the rental income of the Property.

21. NOTICE. Except for any notice required under applicable law to be given in another manner, any notice or other communication required or permitted to be given hereunder and any approval by any party shall be in writing and shall be personally delivered or delivered by overnight courier in each case with receipt acknowledged, or deposited in an official depository of the United States Postal Service, postage prepaid, by registered or certified mail, return receipt requested, to the other party or parties at the addresses listed below. All notices and other communications shall be deemed to have been duly given on (a) the date of receipt thereof (including

all required copies thereof as set forth below) if delivered personally or by overnight courier or (b) five (5) business days after the date of mailing thereof (including all required copies thereof as set forth below) if transmitted by mail. Each party may change its address for receipt of notices by a notice given to the other parties in accordance with this provision. Notices shall be addressed as follows:

To the Borrower:

David M. Kimball
c/o Kimball Investment Co.
999 South Main Street
Salt Lake City, Utah 84111

With a copy to:

Daniel A. Miller
c/o D.M. Properties Incorporated
13601 Ventura Blvd., Suite 93
Sherman Oaks, California 91423

To the Lender:

TCF Bank Wisconsin, F.S.B.
Attention: Richard Thiermann
A Federal Savings Bank
500 West Brown Deer Road
Milwaukee, Wisconsin 53217

With a copy to:

Van Cott, Bagley, Cornwall & McCarthy
Attention: Robert D. Merrill
50 South Main Street, Suite 1600
Salt Lake City, Utah 84144

22. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 19 hereof. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

23. **GOVERNING LAW; SEVERABILITY.** The loan secured by this Instrument is made pursuant to the laws of the State of Utah and the rules and regulations promulgated thereunder, and the loan contract between the parties, including this Instrument, the Note and any other obligation which this Instrument secures, and shall be construed and governed by such laws, rules and regulations. In the event that any provision or clause of this Instrument or the Note is invalid, such invalidity shall not affect other provisions of this Instrument or the Note which can be given effect without the invalid provision, and to this end the provisions of this Instrument and the Note are declared to be severable. The procedures to be applied by Lender in the event of default of Borrower shall be those procedures required by the jurisdiction where the Property or any portion thereof is located.

24. **WAIVER OF STATUTE OF LIMITATIONS.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

25. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interest in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waive any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

26. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property (including security deposits), including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this instrument in the order provided in paragraph 3 hereof with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the

breach by Borrower of any covenant of Agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this paragraph 26 as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its right to such rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally by mail or by delivering such demand to each rental unit, without any liability on the part of the tenant to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph 26, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than two months prior to the due dates of such rents. Except with respect to those leases with agencies of the State of Utah providing for the payment of annual rents in advance, Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than two months prior to the due dates of such rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of

Borrower in this Instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessment and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this paragraph 25.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to paragraph 8 hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or as provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

27. ACCELERATION; REMEDIES. Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, or upon Borrower's breach of any covenant or agreement of Borrower, Lender, at Lender's option, may declare all of the sums secured by this Instrument to be immediately due and payable, and may invoke the power of sale and other remedies permitted by applicable law or provided herein; provided, however, that in the case of a breach relating to a failure by Borrower to make payment of any sum secured by this Instrument when due, Lender shall give Borrower written notice of the breach, and Borrower shall have ten (10) days from the date of such notice to cure the breach before the remedies provided herein or by law shall be exercised, and provided further that in the case of a breach relating to the failure of Borrower to perform any other covenant or agreement of Borrower in the Note, this Instrument, or any other agreement or obligation secured by this Instrument, the remedies provided hereunder or by law shall not be exercised unless Lender shall have given Borrower written notice stating the nature of the breach and (i) Borrower shall not have cured the breach within thirty (30) days after notice of the breach was

given or (ii) where such breach cannot be reasonably cured within the thirty (30) day period, Borrower shall not have commenced corrective action within the thirty (30) day period or shall not have prosecuted any corrective action commenced diligently to conclusion. Borrower acknowledges that the power of sale herein granted may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees and costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Trustee shall give notice of default and notice of sale and shall sell the Property according to applicable law. Trustee may sell the Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as trustee may determine. Trustee may postpone sale of all or any parcel of the property by public announcement at the time and place of any previously scheduled sale to the extent permitted by law. Lender or Lender's designee may purchase the Property at any sale. Borrower agrees to surrender possession of the Property to the Purchaser immediately after such sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, express or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including, but not limited to, Trustee's and attorney's fees and costs of title evidence; (ii) to all sums secured by this Instrument in such order as Lender, in Lender's sole discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled thereto.

28. **RECONVEYANCE.** Upon payment of all sums secured by this Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Instrument and all notes evidencing indebtedness secured by this Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

29. **SUBSTITUTE TRUSTEE.** Lender, at Lender's option, may from time to time, by an instrument in writing, appoint a successor trustee to any Trustee appointed hereunder, which instrument when executed and acknowledged by Lender and recorded in the office of the Recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law upon recordation of the instrument. Said instrument shall contain the name of the original

Lender, Trustee and Borrower hereunder, the book and page where this instrument is recorded, and the name and address of the successor trustee.

30. **REQUEST FOR NOTICES.** Borrower requests that copies of any notice of default and notice of sale hereunder be sent to Borrower at Borrower's address stated herein.

31. **STATEMENT OF OBLIGATION.** Lender may collect a fee not to exceed the maximum allowed by applicable law for furnishing any statement of obligation or statement regarding the condition of or balance owing under the Note or secured by this Instrument.

32. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option, so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby.

33. **OFFSETS.** No indebtedness secured by this Instrument shall be deemed to have been offset or to be offset or compensated by all or part of any claim, cause of action, counterclaim or part of any claim, cause of action, counter-claim or crossclaim, whether liquidated or unliquidated, which Borrower now or hereafter may have or may claim to have against Lender. In respect to the indebtedness now or hereafter secured hereby, Borrower waives, to the fullest extent permitted by law, the benefits of any applicable law, regulation or procedure which substantially provides that, where cross-demands for money have existed between persons at any point in time when neither demand was barred by the applicable statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in his answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting his claim would at the times of filing his answer be barred by the applicable statute of limitations.

34. **JUDICIAL FORECLOSURE.** Upon the occurrence of a default hereunder, Lender shall have the option to declare all sums secured by this Instrument immediately due and payable and foreclose this Instrument as a Mortgage, to the extent permitted by law.

35. **TRUSTEE.** The Trustee shall accept the trust created under this Instrument when this Instrument is duly executed, acknowledged and recorded in accordance with law. To the extent required by law, any right or remedy granted to Lender hereunder shall be deemed to be granted to Trustee where such right or remedy must be held or enforced by Trustee, and any action which Lender is authorized by this Instrument to take and which is taken by Trustee shall have the same effect and protections contained in this Instrument as if such action had been taken by Lender.

36. **FINANCING STATEMENT.** This Instrument is intended to be a financing statement complying with the formal requisites therefore as set forth in the Utah Uniform Commercial Code. For that purpose, the name and address of the debtor is the name and address of Borrower set forth on page 1 of this Agreement and the name and address of the secured party is the name and address of the Lender as set forth on page 1 of this Instrument. This financing statement covers those types of items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Utah Uniform Commercial Code, and in which Borrower has granted to Lender a security interest under paragraph 15 of this Instrument, including the proceeds and products from any and all such Property. This financing statement also covers goods which are or may become fixtures on the real property described in Exhibit "A" hereto and is to be recorded in the real estate records of the county recorder in each county in which a portion of the Property is located. The Borrower is the record owner of the real estate described in Exhibit "A" hereto. Lender is a purchase money seller or lender of the Property.

37. **ENVIRONMENTAL LAWS.** Borrower warrants and represents the following to its best knowledge:

(a) Borrower is not aware of any environmental law violations at the Property other than those that may relate to information contained in the environmental report dated December 14, 1993, a copy of which has been provided to Borrower (the "Report").

(b) Borrower is not aware of any hazardous substances or materials at the Property other than what is described in the Report.

(c) Borrower covenants and agrees to comply with all applicable environmental laws in connection with improvements it makes to the Property.

(d) Within 18 months after the date of this Instrument, Borrower agrees to replace the roof of the Property and remove all asbestos on the roof at such time.

(e) Borrower will provide Lender with copies of all notices, complaints, citations, etc., it receives that assert a violation of any environmental law.

38. **INDEMNIFICATION.** a) Borrower shall defend, indemnify and hold harmless Lender, its directors, officers, employees and agents, from all loss, costs (including reasonable attorneys' fees and legal expenses), liability, damage and claims whatsoever directly or indirectly resulting from, arising out of or based upon, (i) any conduct or management of the Property; (ii) any work or thing whatsoever done in and on the Property, including but not limited to any condition of the Property, or of any sidewalk adjoining the Property, or of any vaults, passageways, or space in or on or appurtenant to or adjoining the Property; (iii) any breach or default on the part of

Borrower in the performance of any covenant or agreement to be performed pursuant to the Note, this Instrument, or any other agreement given in connection therewith; (iv) any act of negligence or alleged act of negligence of Borrower, or any occupant of the property or any part thereof, or of its or their agents, contractors, servants, employees, invitees, licensees, or of trespassers or arising from any accident, injury, or damage whatsoever caused to any person or property occurring during the continuance of this Instrument in or about the Property, and from and against all judgments, costs, expenses, losses, damages, and liabilities incurred in or about any such claim or action or proceeding brought therein; (v) the presence, use, storage, deposit, treatment, recycling or disposal, at any time of any hazardous substance on, under, in or about the property, or the transportation of any hazardous substances to or from the Property; (vi) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any hazardous substance on, under, in or about the Property, or the transportation of any hazardous substance to or from the Property; or (vii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. If any action or proceeding is brought against Lender by reason of any claim described in this paragraph Borrower, upon notice from Lender, shall defend such action or proceeding with counsel reasonably satisfactory to Lender, at Borrower's sole expense. The provisions of this paragraph shall survive the release of this Instrument.

Notwithstanding anything contained hereinabove to the contrary, such indemnity shall apply only to acts, conduct, work, and actions of Borrower with respect to its management and maintenance of the Property that occur or arise after the effective date of this Instrument and any environmental law violations that may ensue from the information contained in the Report.

39. AMERICANS WITH DISABILITIES ACT. Borrower hereby indemnifies and agrees to hold Lender harmless from any loss, cost or damage by reason of any violation at the Property of the American with Disabilities Act and all regulations promulgated thereunder, other than any such violations of which Lender had knowledge prior to the effective date of this Instrument.

IN WITNESS WHEREOF, BORROWER has executed this Instrument.

BORROWER:



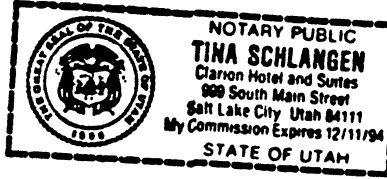
David M. Kimball



Daniel A. Miller

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

: ss.



The foregoing instrument was acknowledged before me this 15 day of June, 1993, by David M. Kimball.

Tina Schlangen
NOTARY PUBLIC
Residing at: Salt Lake City, Utah
My Commission Expires: 12-11-93

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

: ss.

The foregoing instrument was acknowledged before me this 11th day of June, 1993, by Daniel ^{Miller} Miller.



Dana Sutton
NOTARY PUBLIC
Residing at: 1690 Eaglepeak Ave. Simi Valley, CA
My Commission Expires: April 5, 1994

EXHIBIT "A"

Utah: The following tract of real property lying in Salt Lake County, State of

PARCEL 1;

BEGINNING at the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence East 148.50 feet; thence South 100 feet; thence West 148.50 feet; thence North 100 feet to the point of **BEGINNING**.

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way over and across the following:

BEGINNING 138.5 feet East of the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence South 100.0 feet; thence South 7°16' East 168.3 feet; thence East 10.0 feet; thence North 7°16' West 168.3 feet; thence North 100.0 feet; thence West 10.0 feet to the point of **BEGINNING**.

PARCEL 2: (Foot-Walls);

A perpetual right to maintain and erect a Foot-Wall upon a strip of land described as follows:

BEGINNING at the bottom of the building at a point 100 feet South of the Northwest corner of Lot 5, Block 52, Plat, Plat "A", Salt Lake City Survey, at depth of not less than 14 feet beneath the level of Main Street; and running thence East 138 1/2 feet; thence South 2 feet; thence West 138 1/2 feet; thence North 2 feet to the place of **BEGINNING**.

ADDENDUM NO. 7

1700

5543954
01 JULY 93 09:26 AM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
ASSOCIATED TITLE
REC BY: DIANE KILPACK, DEPUTY

When Recorded Return to:

Daniel A. Miller
David M. Kimball
c/o Kimball Investment Co.
900 South Main Street
Salt Lake City, Utah 84111

5543954

ASSIGNMENT

THIS ASSIGNMENT is made and executed this 12 day of June, 1993 by TCF Bank Wisconsin, fsb, a Federal Savings Bank ("TCF"), 500 West Brown Deer Road, Milwaukee, Wisconsin 53217 to and in favor of Daniel A. Miller and David M. Kimball, c/o Kimball Investment Co., 999 South Main Street, Salt Lake City, Utah 84111.

RECITALS:

A. TCF, previously known as Republic Capitol Bank, F.S.B., is the successor in interest to Republic Savings and Loan Association, a Wisconsin corporation.

B. TCF is the holder and owner of all of the interest of the beneficiary under and all of the indebtedness secured by a certain Deed of Trust with Assignment of Rents and Leases [Utah] dated March 6, 1986 (the "March 6, 1986 Trust Deed"), having Judge Building Associates, a Utah limited partnership ("JBA"), as Trustor, Reliable Title Company, as Trustee, and TCF as Beneficiary. The March 6, 1986 Trust Deed was recorded on March 6, 1986 as Entry No. 4211233 in Book 5742 at Page 1425 of the Salt Lake County Recorder's Office. Immediately prior to the execution and recording of this Assignment, Associated Title Company has been substituted as the Trustee of the March 6, 1986 Trust Deed. The March 6, 1986 Trust Deed covers the following described tracts of land located in Salt Lake County, State of Utah (the "Property"):

D 130920

PARCEL 1:

BEGINNING at the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence East 148.50 feet; thence South 100 feet; thence West 148.50 feet; thence North 100 feet to the point of **BEGINNING**.

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way over and across the following:

BR6700P60918

BEGINNING 138.5 feet East of the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence South 100.0 feet; thence South 7°16' East 168.3 feet; thence East 10.0 feet; thence North 7°16' West 168.3 feet; thence North 100.0 feet; thence West 10.0 feet to the point of BEGINNING.

PARCEL 2: (Foot-Walls)

A perpetual right to maintain and erect a Foot-Wall upon a strip of land described as follows:

BEGINNING at the bottom of the building at a point 100 feet South of the Northwest corner of Lot 5, Block 52, Plat, Plat "A", Salt Lake City Survey, at depth of not less than 14 feet beneath the level of Main Street; and running thence East 138 1/2 feet; thence South 2 feet; thence West 138 1/2 feet; thence North 2 feet to the place of BEGINNING.

C. TCF is also the holder and owner of all of the interest of the Assignee under a certain Assignment of Rents, Profits and Leases as Collateral and Security dated March 6, 1986 having JBA, as Assignor and TCF as Assignee, which was recorded March 6, 1986 as Entry No. 4211234 in Book 5742 at Page 1441 of the Salt Lake County Recorder's Office (the "March 6, 1986 Assignment of Rents"). The March 6, 1986 Assignment of Rents also covers the Property.

D. TCF is also the holder and owner of all of the interest of the secured party under a UCC-1 Financing Statement executed by JBA as Debtor, in favor of TCF, as Secured Party, regarding certain rights and collateral associated with the Property, recorded March 6, 1986 as Entry No. 4211235, in Book 5742, at Page 1448, of the Salt Lake County Recorder's Office (the "March 6, 1986 Financing Statement"). The March 6, 1986 Financing Statement also covers the Property and was continued by a UCC-1 Financing Statement recorded on February 26, 1991 as Entry No. 5031268 in Book 6292, at Page 2957 of the Salt Lake County Recorder's Office.

E. The March 6, 1986 Trust Deed, Assignment of Rents and the Financing Statement, the loan secured thereby and any other amendments, supplements and/or related documents are hereinafter collectively referred to as the "March 6, 1986 Loan Documents."

F. On January 8, 1992, TCF filed a verified Foreclosure Complaint in the District Court of Salt Lake County, State of Utah against JBA and others, Case No. 9290094PR to foreclose the March 6, 1986 Trust Deed (the "Foreclosure Action").

G. TCF has entered into a Settlement Agreement with JBA for the propose of settling the Foreclosure Action in accordance with the terms of the Stipulation filed with the Court and approved by an Order entered by the Court on June __, 1993 (the "Settlement").

H. In conjunction with the Settlement, TCF has agreed to assign all of its right, title and interest under the Foreclosure Action and the March 6, 1986 Loan Documents to Daniel A. Miller and David M. Kimball (the "Purchasers"), as the purchasers of the Property.

I. TCF has agreed, pursuant to the Settlement Agreement and in order to accommodate the contemplated loan to the Purchasers to be secured by the Property, to execute a Subordination Agreement.

J. The Purchasers also have agreed in conjunction with their purchase of the Property to execute a Deed of Trust, Assignment of Rents and Security Agreement, as Borrower, in favor of TCF, as Lender, and other loan documents to further evidence and secure the Purchasers obligations to TCF (the "Purchasers' Loan Documents"). The Purchasers' Loan Documents will be recorded in the Salt Lake County Recorder's Office concurrently with the recordation of the Subordination Agreement and this Assignment.

NOW, THEREFORE, for such purposes and in consideration of the mutual promises and covenants contained in the Settlement and related documents, TCF agrees as follows:

1. TCF hereby transfers and assigns to the Purchasers the March 6, 1986 Loan Documents and all of the right, title and interest of TCF in, to and arising under the March 6, 1986 Loan Documents. Concurrently with the execution of this Assignment, and as part of the transaction evidenced hereby, TCF has endorsed the Note which is secured by the March 6, 1986 Loan Documents without recourse and delivered the same to Purchasers. TCF shall also execute and file a standard form UCC-3 showing Purchasers as assignees of the rights of TCF under the March 6, 1986 Financing Statements.

2. This Assignment of the March 6, 1986 Loan Documents is and shall remain junior and subordinate to the first priority lien against the property created by the Purchasers' Loan Documents.

Executed the day and year first above written.

TCF BANK WISCONSIN, fsb,
a Federal Savings Bank

By [Signature]
Its Vice-President

STATE OF WISCONSIN)
) : ss.
COUNTY OF MILWAUKEE)

The foregoing instrument was acknowledged before me this 18th day of
JUNE, 1993, by RICHARD C. THIERMANN, VICE PRESIDENT of
TCF BANK WISCONSIN, fsb, a Federal Savings Bank.



Dana A. English
NOTARY PUBLIC
Residing at: MILWAUKEE, WI
My Commission Expires: 10/17/93

ADDENDUM NO. 8

When Recorded Return to:

TCF BANK WISCONSIN, fsb
500 West Brown Deer Road
Milwaukee, Wisconsin 53217
Attn: Richard Thiermann

2/100

5543953
01 JULY 93 09:26 AM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
ASSOCIATED TITLE
REC BY: DIANE KILPACK , DEPUTY

SUBORDINATION AGREEMENT

5543953

THIS SUBORDINATION AGREEMENT is made and executed this 10 day of June, 1993 by TCF Bank Wisconsin, fsb, a Federal Savings Bank in its capacity as beneficiary ("Beneficiary") and Associated Title Company in its capacity as the successor trustee ("Trustee") under the March 6, 1986 Trust Deed referred to below (Beneficiary and Trustee being hereinafter sometimes collectively referred to as the "Undersigned Parties"), in favor of TCF Bank Wisconsin, fsb, a Federal Savings Bank, 500 West Brown Deer Road, Milwaukee, Wisconsin 53217 ("TCF").

RECITALS:

A. TCF, previously known as Republic Capitol Bank, F.S.B., is the successor in interest to Republic Savings and Loan Association, a Wisconsin corporation.

B. Beneficiary is the holder and owner of all of the interest of the beneficiary under and all of the indebtedness secured by a certain Deed of Trust with Assignment of Rents and Leases [Utah] dated March 6, 1986 (the "March 6, 1986 Trust Deed"), having Judge Building Associates, a Utah limited partnership ("JBA"), as Trustor, Reliable Title Company, as Trustee, and TCF as Beneficiary. The March 6, 1986 Trust Deed was executed to secure a note in the sum of \$2,300,000.00 in favor of Beneficiary and was recorded on March 6, 1986 as Entry No. 4211233 in Book 5742 at Page 1425 of the Salt Lake County Recorder's Office. The March 6, 1986 Trust Deed covers the following described tracts of land located in Salt Lake County, State of Utah (the "Property"):

D-130920

PARCEL 1:

BEGINNING at the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence East 148.50 feet; thence South 100 feet; thence West 148.50 feet; thence North 100 feet to the point of BEGINNING.

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way over and across the following:

BM6700PG0912

BEGINNING 138.5 feet East of the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence South 100.0 feet; thence South 7°16' East 168.3 feet; thence East 10.0 feet; thence North 7°16' West 168.3 feet; thence North 100.0 feet; thence West 10.0 feet to the point of BEGINNING.

PARCEL 2: (Foot-Walls)

A perpetual right to maintain and erect a Foot-Wall upon a strip of land described as follows:

BEGINNING at the bottom of the building at a point 100 feet South of the Northwest corner of Lot 5, Block 52, Plat, Plat "A", Salt Lake City Survey, at depth of not less than 14 feet beneath the level of Main Street; and running thence East 138 1/2 feet; thence South 2 feet; thence West 138 1/2 feet; thence North 2 feet to the place of BEGINNING.

C. Beneficiary is also the holder and owner of all of the interest of the Assignee under a certain Assignment of Rents, Profits and Leases as Collateral and Security dated March 6, 1986 having JBA, as Assignor and Beneficiary as Assignee, which was recorded March 6, 1986 as Entry No. 4211234 in Book 5742 at Page 1441 of the Salt Lake County Recorder's Office (the "March 6, 1986 Assignment of Rents"). The March 6, 1986 Assignment of Rents also covers the Property.

D. Beneficiary is also the holder and owner of all of the interest of the secured party under a UCC-1 Financing Statement executed by JBA as Debtor, in favor of Beneficiary, as Secured Party, regarding certain rights and collateral associated with the Property, recorded March 6, 1986 as Entry No. 4211235, in Book 5742, at Page 1448, of the Salt Lake County Recorder's Office (the "March 6, 1986 Financing Statement"). The March 6, 1986 Financing Statement also covers the Property and was continued by a UCC-1 Financing Statement recorded on February 26, 1991 as Entry No. 5031268 in Book 6292, at Page 2957 of the Salt Lake County Recorder's Office.

E. The March 6, 1986 Trust Deed, Assignment of Rents and the Financing Statement, the loan secured thereby and any other amendments, supplements and/or related documents are hereinafter collectively referred to as the "March 6, 1986 Loan Documents."

F. On January 8, 1992, Beneficiary filed a verified Foreclosure Complaint in the District Court of Salt Lake County, State of Utah against JBA and others, Case No. 9290094PR to foreclose the March 6, 1986 Trust Deed (the "Foreclosure Action").

G. Beneficiary has entered into a Settlement Agreement with JBA for the propose of settling the Foreclosure Action in accordance with the terms of the Stipulation filed with the Court and approved by an Order entered by the Court on June __, 1993 (the "Settlement").

H. In conjunction with the Settlement, Beneficiary has agreed to assign all of its right, title and interest under the Foreclosure Action and the March 6, 1986 Loan Documents to Daniel A. Miller and David M. Kimball (the "Purchasers"), as the purchasers of the Property.

I. The Purchasers have agreed in conjunction with their purchase of the Property to execute a Deed of Trust, Assignment of Rents and Security Agreement, as Borrower, in favor of TCF, as Lender, and other loan documents to further evidence and secure the Purchasers obligations to TCF evidenced by a note in favor of TCF in the amount of \$550,000 (the "Purchasers' Loan Documents"). The Purchasers' Loan Documents will be recorded in the Salt Lake County Recorder's Office concurrently with the recordation of this Subordination Agreement.

J. The Undersigned Parties have agreed, pursuant to the Settlement Agreement and in order to accommodate the contemplated loan to the Purchasers to be secured by the Property, to execute this Subordination Agreement. It is a condition precedent to obtaining said loan that the Purchasers' Loan Documents shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the lien or charge of the March 6, 1986 Loan Documents.

NOW, THEREFORE, for such purposes and in consideration of the mutual promises and covenants contained in the Settlement and related documents, the undersigned agree as follows:

1. Validity and Priority. The Purchasers' Loan Documents, and any amendment or supplement to the Purchasers' Loan Documents or the obligations secured thereby, constitute valid and enforceable liens and charges against the Property which are prior and superior to the lien or charge of the March 6, 1986 Loan Documents and the Assignment of the March 6, 1986 Loan Documents to Purchasers.

2. Subordination. The Undersigned Parties hereby subordinate the lien or charge of the March 6, 1986 Loan Documents to the lien or charge of the Purchasers' Loan Documents.

3. Foreclosure Action. The Foreclosure Action initiated by Beneficiary and any foreclosure of the March 6, 1986 Loan Documents shall not, operate to diminish, defeat, foreclose or in any way impair the lien of the Purchasers' Loan Documents.

4. Only Agreement. This agreement shall be the only agreement with regard to the subordination of the lien or charge of the March 6, 1986

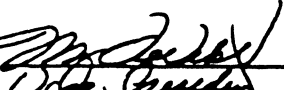
Loan Documents to the lien or charge of the Purchasers' Loan Documents and shall supersede and cancel, but only insofar as would affect the priority between the Deeds of Trust hereinbefore specifically described, any prior agreements as to such subordinations, including, but not limited to, those provisions, if any, contained in the March 6, 1986 Loan Documents, which provide for the subordination of the lien or charge thereof to another Deed or Deeds of Trust or to another Mortgage or Mortgages.

5. Endorsement. An endorsement has been placed upon the March 6, 1986 Note that the March 6, 1986 Trust Deed has by this instrument been subordinated to the line or charge of the Purchasers' Loan Documents.

Executed the day and year first above written.

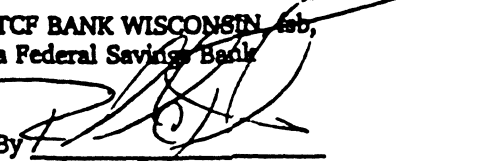
"TRUSTEE"

ASSOCIATED TITLE COMPANY,
a Utah corporation

By 
Its Utah Corporation

"BENEFICIARY"

TCF BANK WISCONSIN, SSB,
a Federal Savings Bank

By 
Its Vice President

STATE OF WISCONSIN)
 : ss.
COUNTY OF MILWAUKEE)

The foregoing instrument was acknowledged before me this 18th day of June, 1993, by RICHARD C. THIERMAN a VICE PRESIDENT of TCF BANK WISCONSIN, fsb, a Federal Savings Bank.



Dana A. Endlich
NOTARY PUBLIC
Residing at: MILWAUKEE, WI
My Commission Expires: 10/17/93

STATE OF Utah)
 : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 30th day of June, 1993, by Mary Lou Webster a Vice President of ASSOCIATED TITLE COMPANY, a Utah corporation.

Barbara L. Dumas
NOTARY PUBLIC
Residing at: Salt Lake
My Commission Expires: 11-25-95



CONSENT AND ACKNOWLEDGEMENT

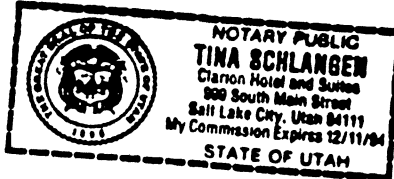
The undersigned Purchasers, Daniel A. Miller and David M. Kimball, hereby consent to and acknowledge the foregoing Subordination Agreement.

Executed the day and year first above written.

[Signature]
DAVID M. KIMBALL

[Signature]
DANIEL A. MILLER

STATE OF UTAH)
) : ss.
COUNTY OF SALT LAKE)



The foregoing instrument was acknowledged before me this 21 day of June, 1993, by David M. Kimball.

Tina Schlangen
NOTARY PUBLIC
Residing at: Salt Lake City, Utah
My Commission Expires: 12-11-94

STATE OF CALIFORNIA)
) : ss.
COUNTY OF Los Angeles)



The foregoing instrument was acknowledged before me this 18th day of June, 1993, by Daniel A. Miller.

[Signature]
NOTARY PUBLIC
Residing at: 1690 Eaglepeak Ave, Simi Valley, CA
My Commission Expires: 04/05/94

ADDENDUM NO. 9

Recording Requested by and
When Recorded Return to:

TCF BANK WISCONSIN, fsb
500 West Brown Deer Road
Milwaukee, Wisconsin 53217
Attn: Richard Thiermann

2100

5543959
01 JULY 93 09:27 AM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
ASSOCIATED TITLE
REC BY: DIANE KILPACK, DEPUTY

ASSIGNMENT OF LEASES

5543959

FOR VALUE RECEIVED, DAVID M. KIMBALL AND DANIEL A. MILLER, whose address is c/o Kimball Investment Co., 999 South Main Street, Salt Lake City, Utah 84111, ("Assignor"), hereby grants, transfers and assigns to TCF BANK WISCONSIN, fsb, a Federal Savings Bank, (the "Assignee") the entire lessor's interest in and to all leases (the "Leases") now existing or hereafter entered into for all or any part of the premises (the "Premises") more particularly described on Exhibit A attached hereto, which exhibit is incorporated herein by this reference, together with all rents, income, deposits, issues and profits arising from the Leases, and any renewals and modifications thereof, and together with all rents, income, issues and profits for the use and occupation of the Premises and from any property covered by the Leases, whether real, personal, mixed or intangible.

D-130920

This Assignment is intended to be, and shall be construed as creating, an absolute assignment unto Assignee, and not as an assignment as security, and to such extent shall be unconditional and irrevocable except as hereinafter provided to the contrary. In connection with and as a part of this Assignment, Assignor hereby warrants, represents and agrees, to and with Assignee, as follows:

1. Assignor warrants that there has been no prior assignment of the Leases which is now in effect.

2. Assignor agrees:

(a) To observe and perform all obligations imposed upon the lessor under the Leases;

(b) Without the prior written consent of Assignee, not to collect any rent, income or profits accruing under the Leases or from the Premises more than three months in advance of the time when they shall become due unless required by government agencies;

(c) Not to execute any other assignment of lessor's interest in the Leases or assignment of rents, accruing under the Leases or from the Premises;

BK6700P60953

(d) Not to do any act which constitutes a breach under any of the Leases or do any other act which would result in the termination of any of the Leases;

(e) To execute and deliver to Assignee such further assurances and assignments of Leases on the Premises as Assignee shall from time to time reasonably require.

3. Assignee agrees and Assignor further agrees as follows:

(a) Assignor has contemporaneously herewith executed and delivered to Assignee a certain Note Secured by Deed of Trust (the "Note") in the principal amount of \$550,000.00 or so much as may be advanced thereunder. In order to secure payment of said note, Assignor, as trustor, has contemporaneously executed a certain deed of trust to Associated Title Company, as trustee, and in favor of Assignee, as beneficiary. Unless and until there shall have occurred a default in the performance by Assignor of any of its duties or obligations, including but without limitation the payment of money, arising under the aforesaid note or deed of trust, Assignor may collect, not more than three months in advance of the date provided for payment, unless required by government agencies, all rents, income and profits arising under the Leases and retain the use of and enjoy the same. Upon or at any time after any such default, Assignee may, at its option, without notice and without regard to the adequacy of any security for the payment or performance of any duties and obligations arising under the aforesaid note and deed of trust, either in person or by agent, with or without bringing any action or proceeding, or by receiver appointed by a court, take possession of the Premises and hold, manage, let, and operate the same on such terms and for such period of time as Assignee may deem proper and, with or without taking possession of the Premises, demand, sue for, or otherwise collect all rents, income and profits of the Leases and the Premises, including those past due and unpaid, with full power to make from time to time all such alterations, renovations, repairs and replacement as may seem proper to Assignee, and apply such rents, income and profits to the payment of all expenses of managing, operating and maintaining the Leases and the Premises, all expenses incident to taking and retaining possession of the Premises, and the principal, interest and other indebtedness evidenced and/or secured by the aforesaid note and deed of trust, together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph as Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Exercise or nonexercise by Assignee of the options granted in this paragraph, or collection and application of rents, income and profits by Assignee or its agent shall not be considered a waiver of any default by Assignor under this Assignment, the aforesaid note or the aforesaid deed of trust.

(b) Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or any part thereof or from any other act or omission of Assignee in managing the Premises, unless such loss is caused by the willful misconduct, gross negligence or bad faith of Assignee. Assignee

shall not be obligated to perform or discharge nor does Assignee undertake to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Assignor agrees to indemnify Assignee for, and to hold Assignee harmless from, any liability, loss or damage which may be incurred under the Leases or under or by reason of this Assignment and from any claims and demands which may be asserted against Assignee by reason of any alleged obligations or undertakings to perform or discharge any of the terms, covenants or agreements contained in the Leases, except for such liability, loss or damage caused by Assignee's gross negligence, willful misconduct or bad faith. Should Assignee incur any such liability under the Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be reimbursed by Assignor to Assignee immediately upon demand, and upon failure of Assignor to make such reimbursement within fifteen (15) days of the date of such demand, the unpaid portion thereof, while still immediately due and payable, shall bear interest at the rate provided in the Note until paid. This Agreement shall not operate to place responsibility for the control, care, maintenance or repair of the Premises upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed on the Premises by any tenants or any other parties, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises.

(c) Upon payment in full of the principal, interest and all other indebtedness evidenced by the aforesaid note and deed of trust, this Assignment shall cease, terminate and be of no further effect; provided, however, that the affidavit, certificate, letter or statement of Assignee or any officer, agent or attorney of Assignee showing any part of the principal, interest or other indebtedness being unpaid shall constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. Assignor hereby authorizes and directs each and every lessee named in a Lease or any other or future lessee or occupant of the Premises or any part thereof, upon receipt of written notice from Assignee, to pay to Assignee all rents, income, issues and profits accruing under the Leases or from the Premises, and to continue to do so until otherwise notified in writing by Assignee.

(d) Subject only to the provisions of part (c) of this Paragraph 3, no action undertaken by Assignee with respect to any of the obligations of Assignor evidenced by the aforesaid note and deed of trust, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to said obligations shall in any manner affect, impair or prejudice any of Assignee's rights and privileges under this Assignment or discharge, release or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and Assignee to create, and shall be construed as creating, an absolute assignment unto Assignee, subject only to the terms and provisions hereof, and not as an assignment as security for the performance of the obligations evidenced by the aforesaid note and deed of trust, or any other indebtedness of Assignor.

4. Except for any notice required under applicable law to be given in another manner, any notice or other communication required or permitted to be given hereunder and any approval by any party shall be in writing and shall be personally delivered or delivered by overnight courier in each case with receipt acknowledged, or deposited in an official depository of the United States Postal Service, postage prepaid, by registered or certified mail, return receipt requested, to the other party or parties at the addresses listed below. All notices and other communications shall be deemed to have been duly given on (a) the date of receipt thereof (including all required copies thereof as set forth below) if delivered personally or by overnight courier or (b) five (5) business days after the date of mailing thereof (including all required copies thereof as set forth below) if transmitted by mail. Each party may change its address for receipt of notices by a notice given to the other parties in accordance with this provision. Notices shall be addressed as follows:

To the Assignor:

David M. Kimball
c/o Kimball Investment Co.
999 South Main Street
Salt Lake City, Utah 84111

With a copy to:

Daniel A. Miller
c/o D.M. Properties Incorporated
13601 Ventura Blvd., Suite 93
Sherman Oaks, California 91423

To the Assignee:

TCF Bank Wisconsin, fsb
Attention: Richard C. Thiermann
A Federal Savings Bank
500 West Brown Deer Road
Milwaukee, Wisconsin 53217

With a copy to:

Van Cott, Bagley, Cornwall & McCarthy
Attention: Robert D. Merrill
50 South Main Street, Suite 1600
Salt Lake City, Utah 84144

5. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law but, if any provision of this Assignment shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6. This Assignment, together with the agreements and warranties herein contained, shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon Assignor and its respective heirs, successors and assigns as to all or any part of the Premises.

IN WITNESS WHEREOF, this Assignment has been executed this 21 day of June, 1993.

ASSIGNOR:

David M. Kimball
DAVID M. KIMBALL

Daniel A. Miller
DANIEL A. MILLER

STATE OF UTAH)
COUNTY OF SALT LAKE)

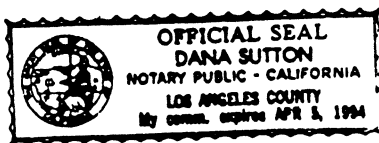


The foregoing instrument was acknowledged before me this 15 day of June, 1993, by David M. Kimball.

Tina Schlangen
NOTARY PUBLIC
Residing at: Salt Lake City, Utah
My Commission Expires: 12-11-93

STATE OF CALIFORNIA)
: ss.
COUNTY OF Los Angeles)

The foregoing instrument was acknowledged before me this 11th day of June, 1993, by Daniel A. Miller.



Dana Sutton
NOTARY PUBLIC
Residing at: 1690 Eaglepeak Ave. Simi Valley, CA
My Commission Expires: April 5, 1994

EXHIBIT "A"

Utah: The following tract of real property lying in Salt Lake County, State of

PARCEL 1;

BEGINNING at the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence East 148.50 feet; thence South 100 feet; thence West 148.50 feet; thence North 100 feet to the point of BEGINNING.

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way over and across the following:

BEGINNING 138.5 feet East of the Northwest corner of Lot 5, Block 52, Plat "A", Salt Lake City Survey; and running thence South 100.0 feet; thence South 7°16' East 168.3 feet; thence East 10.0 feet; thence North 7°16' West 168.3 feet; thence North 100.0 feet; thence West 10.0 feet to the point of BEGINNING.

PARCEL 2: (Foot-Walls)

A perpetual right to maintain and erect a Foot-Wall upon a strip of land described as follows:

BEGINNING at the bottom of the building at a point 100 feet South of the Northwest corner of Lot 5, Block 52, Plat, Plat "A", Salt Lake City Survey, at depth of not less than 14 feet beneath the level of Main Street; and running thence East 138 1/2 feet; thence South 2 feet; thence West 138 1/2 feet; thence North 2 feet to the place of BEGINNING.

ADDENDUM NO. 10

TCF BANK WISCONSIN, fsb
500 West Brown Deer Road
Milwaukee, Wisconsin 53217

June 21, 1993

Daniel A. Miller
DM Properties, Inc.
13601 Ventura Blvd., Suite 93
Sherman Oaks, California 91423

David M. Kimball
Kimball Investment Company
999 South Main Street
Salt Lake City, Utah 84111

Re: First Trust Deed Loan in the Amount of \$550,000 on
Judge Building, 8 East Broadway, Salt Lake City,
Utah 84111

Dear Mr. Miller and Mr. Kimball:

This letter agreement is executed as part of the loan documents evidencing the loan of TCF Bank Wisconsin, fsb (the "Lender") to you (the "Borrower") on even date herewith. The following items are considered to be covenants or agreements of the Borrower under the terms of the Promissory Note, Assignment of Leases, Deed of Trust, Assignment of Rents and Security Agreement, or other documents executed to evidence the above referenced loan (the "Loan Documents").

1. Deferred Maintenance Projects. Within 18 months from date hereof Borrower will fully complete the following deferred maintenance projects with respect to the Judge Building:

- a. Installation of an emergency lighting system throughout the Judge Building.
- b. Installation of a new fire protection system throughout the Judge Building.
- c. Installation of a new roof for the Judge Building
- d. Installation of fire escape ladders.
- e. Installation of solid core doors, mailboxes and door closures for fire protection.

These deferred maintenance projects shall be completed in a manner acceptable to the Salt Lake City, Utah Fire Marshal.

2. Lease With Martineau & Company. Within ^{five (5)} ~~six (6)~~ months from date hereof the Borrower shall have either entered into a revised lease with Martineau & Company in a form satisfactory to Lender and Borrower or shall have completed the foreclosure of the interest of Martineau & Company in the Judge Building property pursuant to the foreclosure action assigned by Lender to Borrower and entitled "Daniel A. Miller and David M. Kimball, Plaintiffs v. Judge Building Associates, et al., Civil No. 920900094PR.

DM
AK
Used its best efforts to

3. Borrower also agrees to reimburse Lender at Closing in the total amount of \$4,033.73 representing commissions and tenant improvements paid by Lender with respect to tenant leases negotiated with Len Lund (\$2,256.23) and Financial Capital Management, Inc. (\$1,777.50).

4. Lender's responsibility with respect to completion and payment of tenant improvements under the new Judge Cafe Lease is limited to the terms set forth in said Lease.

This letter and the referenced Loan Documents constitute the entire agreement between the Lender and the Borrower. No representations, warranties, covenants, agreements or conditions not expressed in this letter or in the loan documents shall be binding upon the parties hereto or shall effect or be effective to interpret, change, or restrict the provisions of this letter or the Loan Documents.

Please sign a copy of this letter in the space provided and return it to Lender as your acknowledgment and agreement to the foregoing

Very truly yours,

TCF BANK WISCONSIN, fsb

By _____
Its _____

The foregoing is acknowledged and agreed to by the undersigned this 21 day of June, 1993.

"BORROWER"

[Signature]

Daniel A. Miller
[Signature]

David M. Kimball

These deferred maintenance projects shall be completed in a manner acceptable to the Salt Lake City, Utah Fire Marshal.

2. Lease With Martineau & Company. Within six (6) months from date hereof the Borrower shall have either entered into a revised lease with Martineau & Company in a form satisfactory to Lender and Borrower or shall have completed the foreclosure of the interest of Martineau & Company in the Judge Building property pursuant to the foreclosure action assigned by Lender to Borrower and entitled "Daniel A. Miller and David M. Kimball, Plaintiffs v. Judge Building Associates, et al., Civil No. 920900094PR.

3. Borrower also agrees to reimburse Lender at Closing in the total amount of \$4,033.73 representing commissions and tenant improvements paid by Lender with respect to tenant leases negotiated with Len Lund (\$2,256.23) and Financial Capital Management, Inc. (\$1,777.50).

4. Lender's responsibility with respect to completion and payment of tenant improvements under the new Judge Cafe Lease is limited to the terms set forth in said Lease.

This letter and the referenced Loan Documents constitute the entire agreement between the Lender and the Borrower. No representations, warranties, covenants, agreements or conditions not expressed in this letter or in the loan documents shall be binding upon the parties hereto or shall effect or be effective to interpret, change, or restrict the provisions of this letter or the Loan Documents.

Please sign a copy of this letter in the space provided and return it to Lender as your acknowledgment and agreement to the foregoing

Very truly yours,

TCF BANK WISCONSIN, fsb

By 

Its Vice-President

The foregoing is acknowledged and agreed to by the undersigned this _____ day of June, 1993.

"BORROWER"

Daniel A. Miller

David M. Kimball

ADDENDUM NO. 11

Rule 60. Relief from judgment or order.

(a) **Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Compiler's Notes. — This rule is similar to Rule 60, F.R.C.P.

ADDENDUM NO. 12

(a) **Preliminary injunctions.**

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of hearing. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) **Temporary restraining orders.**

(1) Notice. No temporary restraining order shall be granted without notice to the adverse party or that party's attorney unless (A) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (B) the applicant or the applicant's attorney certifies to the court in writing as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required.

(2) Form of order. Every temporary restraining order shall be endorsed with the date and hour of issuance and shall be filed forthwith in the clerk's office and entered of record. The order shall define the injury and state why it is irreparable. The order shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

(3) Priority of hearing. If a temporary restraining order is granted, the motion for a preliminary injunction shall be scheduled for hearing at the earliest possible time and takes precedence over all other civil matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the temporary restraining order shall have the burden to show entitlement to a preliminary injunction; if the party does not do so, the court shall dissolve the temporary restraining order.

(4) Dissolution or modification. On two days' notice to the party who obtained the temporary restraining order without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification. In that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

(c) **Security.**

(1) Requirement. The court shall condition issuance of the order or injunction on the giving of security by the applicant, in such sum and form as the court deems proper, unless it appears that none of the parties will incur or suffer costs, attorney fees or damage as the result of any wrongful order or injunction, or unless there exists some other substantial reason for dispensing with the requirement of security. No such security shall be required of the United States, the State of Utah, or of an officer, agency, or subdivision of either; nor shall it be required when it is prohibited by law.

(2) Amount not a limitation. The amount of security shall not establish or limit the amount of costs, including reasonable attorney fees incurred in connection with the restraining order or preliminary injunction, or damages that may be awarded to a party who is found to have been wrongfully restrained or enjoined.

(3) Jurisdiction over surety. A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) **Form and scope.**

Every restraining order and order granting an injunction shall set forth the reasons for its issuance. It shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. It shall be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice, in person or through counsel, or otherwise, of the order. If a restraining order is granted without notice to the party restrained, it shall state the reasons justifying the court's decision to proceed without notice.

(e) **Grounds.** A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

(1) The applicant will suffer irreparable harm unless the order or injunction issues;

(2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;

(3) The order or injunction, if issued, would not be adverse to the public interest; and

(4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

(f) **Domestic relations cases.**

Nothing in this rule shall be construed to limit the equitable powers of the courts in domestic relations cases.

ADDENDUM NO. 13

Set Aside Default Judgment. Martineau was represented by Jeffrey M. Jones, Esq. and Bruce J. Nelson, Esq., and its representative, LeLand Martineau, was present during the hearing. Plaintiffs Daniel A. Miller and David M. Kimball (substituted as parties plaintiff in the place of Republic Capital Bank, F.S.B., formerly known as Republic Savings and Loan Association of Wisconsin) were represented by David R. Olsen, Esq. and Mark R. Gaylord, Esq., and both were present during the hearing.

After Martineau presented its case-in-chief and rested, plaintiffs moved the Court to dismiss and/or deny all motions pursuant to *Utah Rules of Civil Procedure*, Rule 41(b). Having heard the testimony of Harold J. Hill, David M. Kimball, Daniel A. Miller and LeLand Martineau, having reviewed the exhibits received into evidence, having reviewed the supporting and opposing memoranda, and the oral argument of counsel, and good cause appearing, the Court denies all pending motions of Martineau and issues these Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On March 6, 1986, Judge Building Associates ("Associates") became the owner of certain real property located at 8 East Broadway, Salt Lake City, Utah, which is commonly known as the Judge Building (the "Property").

2. On March 6, 1986, Associates executed a Deed of Trust with Assignment of Rents and Lease in favor of Republic Savings and Loan Association ("Republic") to secure a \$2,300,000

note, which trust deed was recorded in the Salt Lake County Recorder's Office on March 6, 1986 as Entry No. 4211233, in Book 5742 at Page 1425 (the "1986 Trust Deed").

3. On November 13, 1990, Associates entered into a lease agreement with Martineau, whereby Martineau leased approximately 4,500 square feet located on the fifth floor of the Property and 504 square feet of storage space. Martineau's lease was negotiated between Associates' general partner, Harold J. Hill ("Hill"), and Martineau's principal, LeLand Martineau. The terms of the lease were such that the parties to the lease, Associates and Martineau, had a gentlemen's agreement not to discuss the terms with other tenants or anyone else. Martineau's lease was never recorded with the Salt Lake County Recorder's Office or approved by Republic. Nor was a non-disturbance agreement requested by Martineau or Associates nor signed by Republic.

4. Associates became delinquent in its obligation to Republic in the fall of 1991 when Associates stopped making payments.

5. In December 1991, Hill informed Martineau that Associates was in default on its obligations to Republic under the terms of the \$2.3 million note.

6. On January 8, 1992, Republic filed a complaint against Associates and its principals, Hill and J. Michael Martin, seeking to judicially foreclose the 1986 Trust Deed.

7. On January 10, 1992, this Court entered an order appointing David L. Jewkes as receiver of the Property and that he shall be vested with all the powers and rights enumerated in the 1986 Trust Deed.

8. On February 11, 1992, Republic filed an Amended Complaint adding Martineau and Wilma W. Gardner, as personal representative of the Estate of Kenneth N. Gardner, as party-defendants, and reserving the right to add additional parties. Martineau was served with the Amended Complaint on February 14, 1992.

9. Upon being served with a copy of the Amended Complaint, Martineau consulted with and was advised by counsel as to his respective rights and obligations as a tenant of the Judge Building. Martineau knew with absolute certainty that his lease interest was inferior, junior and subordinate to the lien of Republic and that, in the event of foreclosure, any and all rights and/or interest he had as a leasehold tenant in the Property would be extinguished and terminated.

10. Martineau or his counsel never sought nor were given an extension of time in which to file either an answer and/or counterclaim to the Amended Complaint. Martineau did not file an answer and/or counterclaim to the Amended Complaint.

11. On March 5, 1993, this Court entered a Default Judgment Against Defendant Martineau & Company, Certified Public Accountants, which default states that the "lien or interest, if

any, of the defendant Martineau & Company, Certified Public Accountants is inferior, junior and subordinate to the lien of plaintiff upon the real property at issue herein, . . ." The Default Judgment further provides that

2. The defendant Martineau & Company is not a judgment debtor . . ., is not a creditor having a lien by judgment or mortgage on the Property and is not a successor in interest to any such person or entity, and is not entitled to redeem the Property or any part thereof from any sale of the Property pursuant to Rule 69, Utah Rules of Civil Procedure.

3. Upon any execution sale of the Property pursuant to order of this Court in the above entitled action any interest or lien claimed by the defendant Martineau & Company shall be forthwith extinguished and terminated.

Understanding and knowing that its interest was inferior, junior and subordinate to Republic's, Martineau never appealed the Default Judgment.

12. Following the entry of the Default Judgment against Martineau, Martineau had a couple oral conversations with plaintiff, David M. Kimball, concerning the Property. These conversations were informal in nature and addressed issues, such as Mr. Martineau's impressions about the Property, Mr. Kimball's intentions to purchase the Property, and Mr. Martineau's desire to remain as a tenant. Mr. Kimball stated he was not in the business of "throwing people out."

13. Martineau's and Kimball's oral communications in March and April 1993 were informal and did not give rise to a

promise by Kimball to retain Martineau as a tenant.

14. There was no evidence that Mr. Martineau changed his position with regard to the lease, his tenancy or lawsuit as a result of these conversations. Any reliance placed on these conversations was unreasonable.

15. On March 16, 1993, on Kimball's behalf, Hill submitted a purchase offer to Dennis Bush of Republic Savings and Loan Association to purchase the Property. Republic never accepted the offer.

16. Plaintiffs had not received or reviewed the Martineau lease, or knew the terms thereof, when Kimball made his offer to purchase the Property to Republic or spoke to LeLand Martineau about the Property.

17. On March 18, 1993, Republic sent a letter of intent to Mr. Martineau, offering to sell the Property to him for \$850,000 cash, which Mr. Martineau never accepted.

18. Prior to plaintiffs' purchase of the Property on June 23, 1993, Mr. Martineau knew that, as a condition of the purchase of the Property by plaintiffs, his lease was rejected and that Republic and plaintiffs intended to proceed with the foreclosure.

19. Prior to plaintiffs' purchase of the Property on June 23, 1993, Martineau knew with absolute certainty that his leasehold interest in the Property would be foreclosed. Upon learning that his leasehold interest would be foreclosed, Martineau

took no steps to prevent the foreclosure until November 24, 1993, a week before the scheduled foreclosure sale.

20. On May 28, 1993, the culmination of negotiations between Associates, Republic and plaintiffs resulted in the execution of the Real Estate Sale and Purchase Agreement ("Purchase Agreement"), whereby plaintiffs acquired the Property. Pursuant to paragraph 3.4 of the Purchase Agreement, plaintiffs purchased the property, subject to and conditioned upon "the entry of a final order by the Third Judicial District Court of Salt Lake County, State of Utah, in the foreclosure action commenced by [Republic] and entitled Republic Capital Bank, F.S.B. v. Judge Building Associates, et al., Civil No. 920900094 PR." The parties further expressly agreed to preserve and assign to the plaintiffs the right to foreclose Martineau's leasehold interest.

21. As part of their agreement, Associates (and its general partners), Republic and plaintiffs agreed to several significant terms and conditions, including the following:

a. First, Associates, Hill, Martin and Republic entered into a stipulation, whereby the plaintiffs could be substituted for Republic in this action and proceed to foreclose the 1986 Trust Deed. In particular, the Stipulation provided that:

[T]he parties stipulate that Daniel A. Miller and David M. Kimball may be substituted in the above entitled action as parties' plaintiff in place of and as successor to the Bank as plaintiff for the sole purpose of completing the foreclosure of any interest Martineau may have in the Property and on the condition that

no deficiency judgment will be sought against Judge Building Associates, Hill or Martin.

. . .

The parties acknowledge that Miller and Kimball, or their designated assignees, may proceed with the above-entitled foreclosure action or proceed with the non-judicial foreclosure of the trust deed, provided Hill and Martin are dismissed as party defendants, no deficiency judgment is sought against Judge Building Associates, Hill or Martin after any sheriff's or trustee's sale of the property and that purchaser indemnify and hold the Bank harmless of or from any claims which may hereafter be asserted against Bank by reason of any further actions taken in this matter.

b. Second, Associates transferred the Property to plaintiffs by Special Warranty Deed, dated June 21, 1993, and assigned the leases in the Building to plaintiffs, which was recorded in the Salt Lake County Recorder's Office on July 1, 1993 as Entry No. 5543957, Book 67 at Page 927.

c. Third, plaintiffs obtained a new loan from Republic, which loan was secured by a Deed of Trust and Assignment of Rents and Security Agreement in favor of TCF Bank of Wisconsin, F.S.B. (fka Republic), dated June 21, 1993, and recorded in the Salt Lake County Recorder's Office on July 1, 1993 as Entry No. 5543958, Book 67 at Page 929 ("1993 Trust Deed"). The 1986 Trust Deed was subordinated to the 1993 Trust Deed, pursuant to a Subordination Agreement, which was recorded in the Salt Lake County Recorder's Office on July 1, 1993 as Entry No. 5543953, Book 67 at Page 912.

d. As part of the loan, plaintiffs executed an Assignment of Leases in favor of TCF Bank Wisconsin, fsb, dated June 23, 1993 , which was recorded in the Salt Lake County Recorder's Office on July 1, 1995 as Entry No. 5543959, Book 6700 at page 0953.

e. Fourth, plaintiffs and Republic entered into a letter agreement, whereby plaintiffs agreed to either enter into a revised lease with Martineau in a form satisfactory to Republic or use their best efforts to complete the foreclosure action against Martineau. This letter agreement expressly, and by its terms, became part of the loan documents executed by plaintiffs.

22. On June 22, 1993, this Court entered an Order Approving Stipulation and Motion Regarding Partial Settlement, Assignment of Cause of Action, Substitution of Plaintiff and Dismissal of Certain Defendants. The Court's order provided as follows:

2. Daniel A. Miller and David M. Kimball are substituted as parties plaintiff in place of Republic Capital Bank, F.S.B. (formerly known as Republic Savings and Loan Association of Wisconsin, a Wisconsin corporation). All pleadings filed hereafter shall reflect this substitution.

3. Daniel A. Miller and David M. Kimball are substituted as parties plaintiff for the sole purpose of completing the foreclosure of any interest Martineau & Company, Certified Public Accountants, may have in the property which is the subject matter of the Complaint and on the condition that no deficiency judgment will be sought or granted against Judge Building

Associates, a Utah limited partnership, Harold J. Hill or J. Michael Martin.

23. On October 7, 1994, approximately 18 months after the entry of default judgment against Martineau, Martineau moved to set aside the default judgment.

24. Martineau's eighteen month delay in moving to set aside the Default Judgment was not reasonable.

25. Martineau's rights in the Property were not violated or diminished by plaintiffs, Associates and Republic entering into the Purchase Agreement. The purchase of the Property by plaintiffs from Associates was a transaction which the parties did not intend to be a merger of their legal title and their lien on the Property.

26. Plaintiffs Associates and Republic did not intend the two interests (Associates' title and Republic's lien) to merge. Likewise, plaintiffs (the holders of both the trust deed and the Property) are benefited by keeping the estates distinct.

27. Martineau's leasehold interest is an intervening interest between the plaintiffs' interest under the 1986 Trust Deed and their interest under the 1993 Trust Deed.

28. Martineau suffered no harm as a result of the transaction between Associates, Republic and plaintiffs which resulted in the sale of the Judge Building to plaintiffs.

29. Martineau will not suffer any irreparable harm if an injunction is not issued.

30. Martineau did not establish a substantial likelihood of success on the merits since it readily admits its interest is junior and subordinate to plaintiffs'.

31. At no time did plaintiffs intentionally relinquish their rights to foreclose Martineau's leasehold interest in the Property.

32. At no time prior to Martineau's application for injunctive relief in November 1993 did plaintiffs neglect to assert their rights in the Property, causing any prejudice to Martineau. Plaintiffs, within a reasonable amount of time following the purchase of the Property, sought to foreclose Martineau's leasehold interest as contemplated by the express terms of the Purchase Agreement and letter agreement.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. Martineau's only right was a leasehold interest in the Property.

2. There was no merger of the legal title and lien.

3. Any oral promise made to Martineau, even if made, is barred by the statute of frauds pursuant to *Utah Code Ann. §§ 25-5-1 and 25-5-3*.

4. Plaintiffs have no contractual obligation under the Martineau lease to recognize the continuing validity of the lease following foreclosure.

5. Plaintiffs have not waived their right to foreclose Martineau's leasehold interest.

6. Plaintiffs' right to foreclose Martineau's leasehold interest is not barred by laches.

7. Plaintiffs are not promissory estopped from foreclosing Martineau's leasehold interest.

8. Plaintiffs are not equitably estopped from foreclosing Martineau's leasehold interest.

9. Plaintiffs will not be unjustly enriched by the foreclosure of Martineau's interest.

10. Martineau is not entitled to a temporary restraining order, preliminary and/or permanent injunction.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED that

1. The temporary restraining order is vacated;
2. Martineau's motion to set aside default is denied;
3. Martineau's motion to dismiss is denied;
4. Martineau's motion for preliminary injunction is denied;

5. Plaintiffs are entitled to proceed with the foreclosure of the 1986 Trust Deed in accordance with Rule 69 of the *Utah Rules of Civil Procedure*.

6. Plaintiffs shall file a motion concerning damages, which motion and memorandum shall be filed on or before Friday, February 3, 1995;

7. Martineau's reply shall be filed within ten (10) days thereafter; and

8. Plaintiffs reply memorandum shall be filed within five (5) days thereafter.

DATED this _____ day of August, 1995.

BY THE COURT:

HONORABLE FRANK G. NOEL
THIRD JUDICIAL DISTRICT COURT

NOTICE TO ATTORNEYS OF RECORD

TO: Jeffrey M. Jones, Esq.
 J. Mark Gibb, Esq.
 DURHAM, EVANS & JONES

 Bruce J. Nelson, Esq.
 Robert L. Payne, Esq.
 ALLEN NELSON RASMUSSEN & CHRISTENSEN

 You will please take notice that the undersigned, attorneys for Daniel A. Miller and David M. Kimball, will submit the above and foregoing Findings of Fact, Conclusions of Law and Order to the Honorable Frank G. Noel for his signature, upon the expiration of five (5) days from the date of this notice, unless written objection is filed prior to that time, pursuant to Rule 4-504 of the *Rules of Judicial Administration*.

 DATED this _____ day of August, 1995.

SUITTER AXLAND & HANSON

By _____
 David R. Olsen, Esq.
 Mark R. Gaylord, Esq.
 Attorney for Plaintiffs Daniel A.
 Miller and David M. Kimball

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of August, 1995,
I caused to be hand delivered a true and correct copy of the
foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**, to the
following:

Jeffrey M. Jones, Esq.
J. Mark Gibb, Esq.
DURHAM, EVANS & JONES
50 South Main Street, Suite 850
Salt Lake City, Utah 84144

Bruce J. Nelson, Esq.
Robert L. Payne, Esq.
ALLEN NELSON RASMUSSEN & CHRISTENSEN
215 South State Street, Suite 900
Salt Lake City, Utah 84111

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Jeffrey M. Jones (1741)
JAY Mark Gibb (5702)
DURHAM, EVANS, JONES & PINEGAR, P.C.
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Salt Lake City, Utah 84144
(801) 538-2424

Bruce J. Nelson
Robert L. Payne
ALLEN, NELSON, RASMUSSEN & CHRISTENSEN
215 South State Street, Suite 900
Salt Lake City, Utah 84111

Attorneys for Defendant
Martineau & Company

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

DANIEL A. MILLER and DAVID M.)
KIMBALL (substituted as)
parties plaintiff in the place)
of REPUBLIC CAPITAL BANK,)
F.S.B., Formerly known as)
REPUBLIC SAVINGS AND LOAN)
ASSOCIATION OF WISCONSIN,)
a Wisconsin Corporation),)

Plaintiff,)

vs.)

JUDGE BUILDING ASSOCIATES,)
a Utah Limited Partnership;)
HAROLD J. HILL; J. MICHAEL)
MARTIN; WILMA W. GARDNER, as)
personal representative of the)
ESTATE OF KENNETH N. GARDNER,)
Deceased; MARTINEAU & COMPANY,)
Certified Public Accountants,)

Defendants.)

**DEFENDANT MARTINEAU & CO.'S
OBJECTIONS TO PLAINTIFFS'
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER**

CIVIL NO.: 920900094

Judge Frank G. Noel

Defendant Martineau & Company ("Martineau"), by and through its counsel of record, hereby objects to plaintiffs' proposed findings of fact, conclusions of law and order.

OBJECTIONS TO PROPOSED FINDINGS OF FACT

Martineau hereby objects to the following findings of fact and submits the following changes:

Page 4, paragraph 9: Martineau submits that the second sentence should be changed to read, "Martineau ~~knew with absolute certainty~~ believed that his lease interest was inferior, junior and subordinate to the lien of Republic and that, in the event of foreclosure by Republic, any and all rights and/or interest he had as a leasehold tenant in the Property would be extinguished and terminated."

Page 5, paragraph 11: Martineau submits that the last sentence should be changed to read, "~~Understanding and knowing that its interest was inferior, junior and subordinate to Republic's,~~ Martineau never appealed the Default Judgment."

Page 5, paragraph 12: "Following the entry of the Default Judgment against Martineau, Martineau had ~~a couple oral~~ several conversations with plaintiff, David M. Kimball, concerning the Property. Kimball stated he was not in the business of "throwing people out." These conversations were ~~informal in nature~~ and addressed issues, such as Mr. Martineau's impressions about the Property, Mr. Kimball's intentions to purchase the Property, and Mr. Martineau's desire to remain as a tenant."

Page 5, paragraph 13: ~~"Martineau's and Kimball's oral communications in March and April 1993 were informal and did not give rise to a Kimball's representations to Martineau in March and April 1993 do not constitute a promise by Kimball to retain Martineau as a tenant."~~

Page 6, paragraph 14: ~~"There was no evidence that Mr. Martineau did not change his position with regard to the lease, his tenancy or lawsuit as a result of these conversations. Any reliance placed on these conversations was unreasonable."~~

Page 6, paragraph 18: ~~"Within six weeks after his oral conversations with Kimball, Mr. Martineau knew did not know until the notice of foreclosure sale that, as a condition of the purchase of the Property by plaintiffs, his lease was rejected and that Republic and plaintiffs intended to proceed with the foreclosure."~~

Page 6, paragraph 19: "Within six weeks after talking to Kimball, Martineau knew ~~with absolute certainty~~ that his leasehold interest in the Property ~~would~~ might be foreclosed. Upon learning that his leasehold interest would be foreclosed, Martineau took no steps to prevent the foreclosure until November 24, 1993, a week before the scheduled foreclosure sale. This was because Martineau was not aware of the change of ownership to plaintiffs and when he became aware of such change, he entered into settlement negotiations with the plaintiffs and their counsel."

Page 8, paragraph 21b: "Second, Associates transferred the Property to plaintiffs by Special Warranty Deed, dated June 21, 1993, and assigned the leases in the Building to plaintiffs, which

was recorded in the Salt Lake County Recorder's Office on July 1, 1993 as Entry No. 5543957, Book 67 at Page 927.

Page 9, paragraph 23: "On October 7, 1994, approximately 18 months after the entry of default judgment against Martineau ~~(and almost three (3) years after this action was commenced and Martineau was served with the Amended Complaint)~~, Martineau moved to set aside the default judgment. Martineau was not aware of the change of ownership to plaintiffs and when he became aware of such change, he entered into settlement negotiations with the plaintiffs and their counsel."

Page 10, paragraph 25: The second sentence of paragraph 25 should read, "The purchase of the Property by plaintiffs from Associates was a ~~legal~~ transaction which the parties did not intend to be a merger of their legal title and their lien on the Property."

Page 10, paragraph 30: This paragraph should be stricken in its entirety as the Court never made any such finding.

Page 11, paragraph 33: "At no time did plaintiffs neglect to assert their rights in the Property, ~~causing prejudice to Martineau.~~ Plaintiffs, within a reasonable amount of time"

OBJECTIONS TO PROPOSED CONCLUSIONS OF LAW

Martineau hereby objects to the following proposed conclusions of law and submits the following changes:

Page 11, paragraph 1: "Martineau held no ~~vested~~ recorded rights in the Property."

Martineau submits that the Court never made any such ruling with regard to the equitable issues, rather the Court denied the Motion to Set Aside the Default because of "an unreasonable delay."

Page 11, paragraph 2: This paragraph should be stricken in its entirety as the Court never made any such ruling.

Page 11, paragraph 4: This paragraph should be stricken in its entirety as the Court never made any such ruling.

Page 11, paragraph 5: This paragraph should be stricken in its entirety as the Court never made any such ruling.

Page 11, paragraph 6: This paragraph should be stricken in its entirety as the Court never made any such ruling.

Page 12, paragraph 7: This paragraph should be stricken in its entirety as the Court never made any such ruling.

Page 12, paragraph 8: This paragraph should be stricken in its entirety as the Court never made any such ruling.

Page 12, paragraph 9: This paragraph should be stricken in its entirety as the Court never made any such ruling.

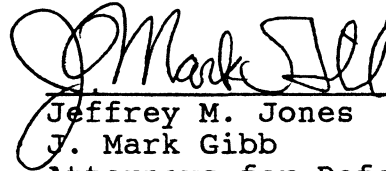
OBJECTIONS TO PROPOSED ORDER

Martineau hereby objects to the following paragraphs of the proposed order and submits the following changes:

Page 12, paragraph 1: This paragraph should be stricken in its entirety as a temporary restraining order was never entered by the Court. Further, if any such order were entered, it expired by its terms ten (10) days after its entry.

DATED this 2nd day of March, 1995.

DURHAM, EVANS, JONES & PINEGAR

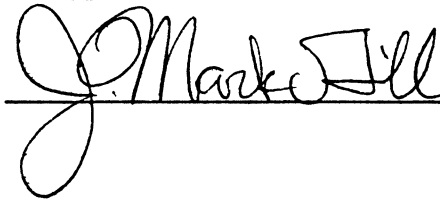


Jeffrey M. Jones
J. Mark Gibb
Attorneys for Defendant
Martineau & Company

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the within and foregoing Defendant Martineau & Co.'s Objections to Proposed Findings of Fact, Conclusions of Law and Order to be hand-delivered, this 2nd day of March, 1995, to the following:

David R. Olsen, Esq.
Bruce T. Jones, Esq.
175 S West Temple, #700
Salt Lake City, Utah 84101



jmg\martinea.obj

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

	:	
Daniel A. Miller and David Kimball	:	MINUTE ENTRY
(substituted as parties plaintiff in the	:	
place of Republic Capital Bank, F.S.B.,	:	
formerly known as Republic Savings and	:	
Loan Association of Wisconsin, a	:	
Wisconsin corporation),	:	
Plaintiffs,	:	
	:	Civil No. 920900094 PR
vs.	:	
	:	JUDGE FRANK G. NOEL
Judge Building Associates, a Utah limited	:	
partnership, Harold J. Hill; J. Michael	:	
Martin, Wilma W. Gardner, as personal	:	
representative of the Estate of Kenneth N.	:	
Gardner, deceased; Martineau & Company,	:	
certified public accountants,	:	
Defendants.	:	

The court has reviewed the memos submitted by the parties in connection with the issue of plaintiffs' entitlement to damages. After hearing oral argument thereon the court took the matter under advisement and now rules as follows:

The plaintiffs argue that they are entitled to damages measured by the difference between the rent paid by Mr. Martineau and the fair rental value after November of 1993. The court is of the opinion that under the circumstances of this case and where the parties agreed and stipulated that there would be no sale pending a hearing on the preliminary injunction motion, and for the other reasons stated by defendant Martineau, it would be unjust to allow damages

to be calculated as urged by plaintiffs. The court is further of the opinion that the measure of damages should be the costs and attorneys fees incurred by plaintiffs in defending against the temporary restraining order and the Motion for Preliminary Injunction. Counsel are instructed to consult with one another to determine if the matter of attorney's fees and costs can be submitted to the court upon affidavit or whether an evidentiary hearing will be necessary. If an evidentiary hearing is necessary then the parties are instructed to contact the court's clerk to obtain a date for the hearing.

Also before the court is the matter of the defendants' objections to the plaintiffs' proposed Findings of Fact, Conclusions of Law and Order. The court rules on those objections as follows:

FINDINGS OF FACT:

Page 4, Paragraph 9:

Objection will be sustained and paragraph 9 will read as proposed by defendant.

Page 5, Paragraph 11:

Objection overruled.

Page 5, Paragraph 12

Paragraph 12 will remain as proposed by plaintiffs with the exception that the following sentence will be included as proposed by defendant. "*Kimball stated he was not in the business of 'throwing people out'.*"

Page 5, Paragraph 13:

Objection overruled.

Page 6, Paragraph 14:

Objection overruled.

Page 6, Paragraph 18:

Objection overruled.

Page 6, Paragraph 19:

Objection overruled.

Page 8, Paragraph 21b:

The objection is sustained. The paragraph will read as proposed by defendants.

Page 9, Paragraph 23:

Objection overruled.

Page 10, Paragraph 25:

Objection sustained.

Page 10, Paragraph 30:

Objection overruled.

Page 11, Paragraph 33:

Paragraph 33 should read as follows:

"At no time prior to Martineau's application for injunctive relief in November of 1993 did plaintiffs' neglect to assert their rights in the property causing any prejudice to Martineau."

The remainder of that paragraph will remain as proposed by plaintiffs.

CONCLUSIONS OF LAW:

Page 11, Paragraph 1:

Objection overruled.

Page 11, Paragraph 2:

Objection overruled.

Page 11, Paragraph 4 through 9:

Objections overruled.


ORDER:

Page 12, Paragraph 1:

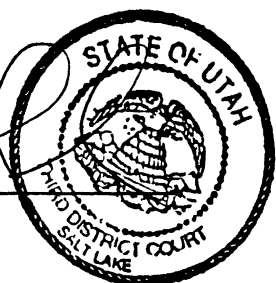
Objection overruled.

Counsel for plaintiff is to prepare a new set of Findings of Fact, Conclusions of Law and an Order consistent with this ruling.

Dated this 29 day of June, 1995.



Frank G. Noel
District Court Judge



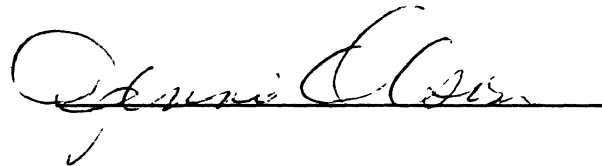
MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following on this 29 day of June, 1995.

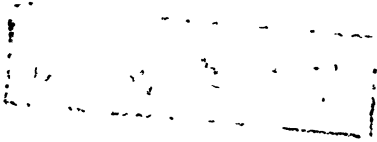
David R. Olsen
Bruce R. Gaylord
SUITTER AXLAND & HANSON
Attorney for Plaintiffs
175 South West Temple, Suite 700
Salt Lake City, UT 84101-1480

Jeffrey M. Jones
J. Mark Gibb
DURHAM, EVANS, JONES & PINEGAR
Attorney for Defendants
50 South Main Street, Suite 850
Salt Lake City, UT 84144

Bruce J. Nelson
Robert L. Payne
ALLEN, NELSON, RASMUSSEN & CHRISTENSEN
Attorney for Defendants
215 South State Street, Suite 900
Salt Lake City, UT 84111



ADDENDUM NO. 14



FILED DISTRICT COURT
Third Judicial District

MAY 24 1996

By *[Signature]*
SALT LAKE COUNTY
Deputy Clerk

BRUCE T. JONES, Esq. (#1732)
MARK R. GAYLORD, Esq. (#5073)
of and for
SUTTER AXLAND & HANSON
175 South West Temple, Suite 700
Salt Lake City, Utah 84101-1480
Telephone: (801) 532-7300

Attorneys for Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DANIEL A. MILLER and DAVID)
KIMBALL (substituted as parties)
plaintiff in the place of REPUBLIC)
CAPITAL BANK, F.S.B., formerly)
known as REPUBLIC SAVINGS AND)
LOAN ASSOCIATION OF WISCONSIN,)
a Wisconsin corporation,)
)
Plaintiffs,)
)
)
vs.)
)
JUDGE BUILDING ASSOCIATES, a Utah)
limited partnership, HAROLD J.)
HILL; J. MICHAEL MARTIN, WILMA W.)
GARDNER, as personal representative)
of the ESTATE OF KENNETH N.)
GARDNER, deceased; MARTINEAU &)
COMPANY, certified public)
accountants,)
)
Defendants.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

2207512

Civil No. 920900094 PR
Honorable Frank G. Noel

This matter came on for an evidentiary hearing before the Honorable Frank G. Noel on Wednesday, February 7, 1996, for oral argument on the issue of attorneys fees. By agreement, the parties submitted the matter on affidavit and oral argument. Plaintiffs Daniel A. Miller and David M. Kimball (substituted as parties plaintiff in the place of Republic Capital Bank, F.S.B., formerly known as Republic Savings and Loan Association of Wisconsin) were represented by Mark R. Gaylord, Esq. Defendant Martineau & Company was represented by Bruce J. Nelson, Esq. After presentation of the Affidavit of Mark R. Gaylord, dated September 21, 1996, and Supplemental Affidavit of Mark R. Gaylord, dated February 7, 1996, and after oral argument of counsel, and good cause appearing, the Court issues the following findings of fact, conclusions of law and order:

FINDINGS OF FACTS

1. The law firm of Suttter Axland & Hanson represented the plaintiffs in the above-captioned action and represented plaintiffs in connection with defending against defendant Martineau & Company's Motion for Temporary Restraining Order and Preliminary Injunction.
2. On January 17, 1995, this Court found that, as a matter of law, defendant was not entitled to a temporary restraining order, preliminary and/or permanent injunction.
3. On June 29, 1995, the Court concluded, as a matter of law, that plaintiffs' counsel was entitled to recover damages which "should be the costs and attorneys fees incurred by plaintiffs in defending against the temporary restraining order, and the motion for preliminary injunction."

4. The Court instructed counsel to consult with one another to determine if the matter of attorneys fees and costs could be submitted to the Court upon affidavit or whether an evidentiary hearing would be necessary.

5. On September 21, 1995, counsel for plaintiffs, Mark R. Gaylord, submitted his affidavit in support of plaintiffs' claim to recovery of attorneys fees.

6. On February 7, 1996, counsel for plaintiffs, Mark R. Gaylord, submitted a supplemental affidavit in further support of plaintiffs' claims to the recovery of attorneys fees.

7. The plaintiffs seek to recover \$23,280.50, which represents only 162 hours of time expended on defending against the wrongfully issued temporary restraining order and preliminary injunction.

8. The Court has reviewed the Affidavit of Mark R. Gaylord and Supplemental Affidavit of Mark R. Gaylord, has considered the experience of the attorneys, the amount of time spent, and the complexity of this matter.

9. A substantial portion of the amount of time spent by plaintiffs' counsel after the issuance of the temporary restraining order on November 24, 1993, was spent in defense of the temporary restraining order, motion for preliminary injunction, and motion to set aside default judgment.

10. The billing statements of Switter Axland & Hanson contain some duplication of effort in this matter, and deductions have been made for time spent for specific items where deemed appropriate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court makes the following conclusions of law:

1. Plaintiffs are entitled to recover reasonable attorneys fees based upon the wrongfully issued temporary restraining order.

2. Plaintiffs are entitled to an award of attorneys fees of \$20,000 for having defended against the wrongfully issued temporary restraining order which included plaintiffs' defense against the motion to set aside default judgment.

3. The award of \$20,000 in attorneys fees is reasonable based upon the experience of the attorneys, the amount of time spent, and the complexity of this matter.

ORDER


Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED that

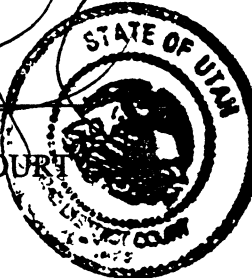
Plaintiffs are entitled to recover attorneys fees in the amount of \$20,000 from defendant Martineau & Company.

DATED this 24 day of May, 1996.

BY THE COURT:

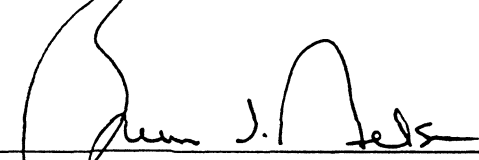


HONORABLE FRANK G. NOEL
THIRD JUDICIAL DISTRICT COURT



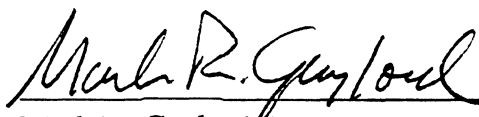
APPROVED AS TO FORM AND CONTENT:

ALLEN NELSON RASMUSSEN & CHRISTENSEN



Bruce J. Nelson, Esq.

SUITTER AXLAND & HANSON



Mark R. Gaylord, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of May, 1996, I caused to be hand delivered a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**, to the following:

Jeffrey M. Jones, Esq.
J. Mark Gibb, Esq.
DURHAM, EVANS & JONES
50 South Main Street, Suite 850
Salt Lake City, Utah 84144

Bruce J. Nelson, Esq.
Robert L. Payne, Esq.
ALLEN NELSON RASMUSSEN & CHRISTENSEN
215 South State Street, Suite 900
Salt Lake City, Utah 84111

ADDENDUM NO. 15

FILED
 2020-07-21 10:43
 BK [Signature]

BRUCE T. JONES, Esq. (#1732)
 MARK R. GAYLORD, Esq. (#5073)
 of and for
 SUITTER AXLAND & HANSON
 175 South West Temple, Suite 700
 Salt Lake City, Utah 84101-1480
 Telephone: (801) 532-7300

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT
 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DANIEL A. MILLER and DAVID)	
KIMBALL (substituted as parties)	
plaintiff in the place of REPUBLIC)	SUPPLEMENTAL
CAPITAL BANK, F.S.B., formerly)	AFFIDAVIT OF
known as REPUBLIC SAVINGS AND)	MARK R. GAYLORD
LOAN ASSOCIATION OF)	
WISCONSIN, a Wisconsin corporation),)	
)	
Plaintiff,)	
)	
)	
vs.)	
)	
JUDGE BUILDING ASSOCIATES, a)	
Utah limited partnership, HAROLD J.)	
HILL; J. MICHAEL MARTIN, WILMA)	Civil No. 920900094 PR
W. GARDNER, as personal)	
representative of the ESTATE OF)	
KENNETH N. GARDNER, deceased;)	Honorable Frank G. Noel
MARTINEAU & COMPANY, certified)	
public accountants,)	
)	
Defendants.)	

5. As evidenced by the attached statement, attorneys spent a total of 289.30 hours performing services on behalf of plaintiffs in connection with this action, resulting in an amount charged of \$35,017.

6. Of the 289.30 hours expended in rendering legal services to plaintiffs, only nine hours were spent prior to defendant Martineau & Company began its efforts to forestall the foreclosure of its leasehold interest in the Judge Building. The remaining time spent by counsel was directly related to defense against the wrongfully issued temporary restraining order and motion for preliminary injunction.

7. Finally, although plaintiffs' counsel expended over 280 hours conducting research, meeting with prospective witnesses and experts, conferring with opposing counsel, drafting legal memoranda, communicating with the Court, and preparing for two separate trials, plaintiffs' counsel are only seeking to recover \$23,280.50, which represents only 162 hours of time expended on defending against the wrongfully issued temporary restraining order and preliminary injunction.

DATED this 7th day of February, 1996.



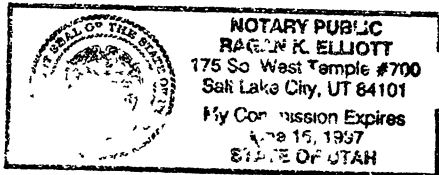
MARK R. GAYLORD

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 7th day of February, 1996, before me, the undersigned notary, personally appeared MARK R. GAYLORD, who is personally known to me or who proved to me his identity through documentary evidence in the form of a driver's license to be the person who signed the preceding document in my presence, and who swore and affirmed to me that the signature is voluntary and the document truthful.


NOTARY PUBLIC
Residing at Salt Lake County

My Commission Expires:



SUITTER AXLAND & HANSON

A UTAH PROFESSIONAL LAW CORPORATION

175 SOUTH WEST TEMPLE

SEVENTH FLOOR

SALT LAKE CITY, UTAH 84101-1480

TELEPHONE (801) 532-7300

CABLE ADDRESS: SAXLAW
FACSIMILE: (801) 532-7355

LEROY S. AXLAND
(1941-1990)

FRANCIS H. SUITTER
WILLIAM L. PRATER
DAVID R. OLSEN
BRUCE T. JONES
JEROLD G. OLDROYD
FRANCIS J. CARNEY
J. MICHAEL HANSEN
CARL F. HUEFNER
ANDREW W. BUFFMIRE
MICHAEL W. HOMER
DAN W. EGAN
MICHAEL L. ALLEN
CHARLES P. SAMPSON
JESSE C. TRENTADUE
PAUL M. SIMMONS
CLAUDIA F. BERRY
GARY R. HENRIE
H. MICHAEL DRAKE
MARK R. GAYLORD
LORIN E. PATTERSON
JILL L. DUNYON-HANSEN
DANNELLE BURTON

OF COUNSEL
STEWART M. HANSON, JR.

D M Properties, Inc.
13601 Ventura Blvd.
Suite 93
Sherman Oaks, CA 91423

July 31, 1994

LITIGATION
Judge Building

ITEMIZED STATEMENT

PREVIOUS BALANCE \$0.00

PROFESSIONAL SERVICES RENDERED

July, 1993

30 Review documents and pleadings in file;
1.00 hours

August, 1993

2 Review of documents and pleadings;
1.00 hours

September, 1993

8 Review pleadings; preparation of Motion
for Entry of Judgment, Judgment by
Default and Decree of Foreclosure; con-
ference regarding same; conference with
client regarding same;
3.25 hours

15 Review pleadings; conference with
attorney for Judge Building Associates;
revise Decree of Foreclosure;
1.00 hours

21 Conference with attorney for Judge

D M Properties, Inc.

July 31, 1994

Judge Building

Page 2

PROFESSIONAL SERVICES RENDERED (Continued)

- Building Associates regarding proposed Decree of Foreclosure; 0.25 hours
- 23 Present ex parte motion to enter decree of foreclosure to Judge Noel; 1.00 hours
- 27 Contact court to determine status of Decree of Foreclosure previously presented to Judge Noel; 0.25 hours

November, 1993

- 1 Have Decree of Foreclosure signed by Judge Noel; have Third District court issue Order of Sale; 1.25 hours
- 17 Conference with counsel for Martineau regarding postponement of sale; 0.25 hours
- 18 [REDACTED]; 1.75 hours
- 24 Review of pleadings regarding status of foreclosure proceedings; review of pleadings filed by Martineau & Company to stop foreclosure; [REDACTED]; 3.25 hours
- 29 Preparation for hearing on Temporary Restraining Order; review in response to Motion for Temporary Restraining Order and Memorandum; preparation of Opposition Memorandum; [REDACTED]; correspondence to Court including Opposition Memorandum and Authorities; conference with opposing counsel; conference with Court; 6.20 hours
- 29 [REDACTED]

D M Properties, Inc.

July 31, 1994

Judge Building

Page 3

PROFESSIONAL SERVICES RENDERED (Continued)

- [REDACTED]; preparation of Memorandum of Points and Authorities in Opposition to Martineau & Company's Motion to Dismiss;

4.50 hours

30 [REDACTED]

[REDACTED]

[REDACTED];

1.00 hours

30 Hearing on Motion for Temporary Restraining Order before Judge Noel; conference with opposing counsel regarding form of Order and hearing on Preliminary Injunction; review of Order; [REDACTED];

2.90 hours

30 Attendance at hearing regarding Temporary Restraining Order; preparation of correspondence to Sheriff's office giving notice of stay of Sheriff's Sale;

2.75 hours

December, 1993

- 1 [REDACTED] f

[REDACTED];

0.50 hours

2 [REDACTED]

[REDACTED];

0.50 hours

8 [REDACTED] t-

[REDACTED];

[REDACTED]; conference with opposing counsel;

2.20 hours

22 Conference with opposing counsel regarding setting of hearing date, subpoena of files and documents of former owner; modification of Temporary Restraining Order;

3.20 hours

D M Properties, Inc.

July 31, 1994

Judge Building

Page 4

PROFESSIONAL SERVICES RENDERED (Continued)

29 Review with opposing counsel of documentation from former owner; discussion of modified lease terms; additional conference with opposing counsel respecting issues and evidence to be elicited at Preliminary Injunction Hearing; conference with Court regarding date;

2.40 hours

January, 1994

3 [REDACTED]
[REDACTED] 1.00 hours

4 [REDACTED]
[REDACTED]; 2.50 hours

5 [REDACTED]
[REDACTED]; 0.50 hours

5 Preparation of argument and ordering of evidence for hearing, history [REDACTED]
[REDACTED]
[REDACTED] s-
[REDACTED] 1.80 hours

6 [REDACTED] e;
7.50 hours

7 [REDACTED]
[REDACTED]; 3.50 hours

10 [REDACTED]
[REDACTED]; 1.50 hours

10 Conference with opposing counsel regarding scheduling of hearing; conference with Court regarding available calendar dates;

0.90 hours

11 [REDACTED]

D M Properties, Inc.

July 31, 1994

Judge Building

Page 5

PROFESSIONAL SERVICES RENDERED (Continued)

- [REDACTED]
[REDACTED];
- 11 Conference with [REDACTED] and [REDACTED]; conference with opposing counsel; review provisions of lease; discuss continuance of hearing; negotiation of provisions with opposing counsel; discussion with [REDACTED] of potential concerns in connection with continuance of hearing; review of form of Temporary Restraining Order; 0.50 hours
- 25 Conference with [REDACTED]; conference with opposing counsel regarding continuance of hearing date; 2.20 hours
- 27 Comparison of property description on deed and title policies; 0.40 hours
- 0.25 hours

February, 1994

- 15 [REDACTED], potential lease provision square footage dispute, history of lease modifications and provisions; conference with leasing agents regarding meaning of gross square footage, typical lease provisions at relevant periods of time;
- 17 Conference [REDACTED] regarding gross square footage rental provision; conference regarding RDA loan on Judge Building; 2.20 hours
- 0.80 hours

April, 1994

- 25 Conference with [REDACTED] regarding meeting with Martineau; draft correspondence to Bruce Nelson; review of file in regard to status of Preliminary

D M Properties, Inc.

July 31, 1994

Judge Building

Page 6

PROFESSIONAL SERVICES RENDERED (Continued)

- Injunction Hearing; 2.80 hours
- 27 Conference with [REDACTED] regarding notice and letter to Bruce Nelson; review of status [REDACTED] in regard to Preliminary Injunction Hearing; conference with opposing counsel respecting scheduling of hearing; 2:36 hours
- May, 1994
- 2 Conference [REDACTED] regarding Judge Building [REDACTED] potential rescheduling of hearing for preliminary injunction; conference with Bruce Nelson regarding lease negotiations and status; 2.90 hours
- 16 Conference [REDACTED] regarding evidence for hearing; preparation of potential outline of testimony and evidence for hearing, potential testimony of Bob Merrill; [REDACTED]; review of documents subpoenaed from Hill records; 2.60 hours
- 16 Conference [REDACTED] regarding provisions of Martineau Lease; discussion of advisability of expert testimony regarding below market provisions of Martineau Lease; 1.00 hours
- 25 Preparation of argument and motion outline, untimeliness of restraining order, default judgment [REDACTED], testimony of [REDACTED] potential testimony of appraiser or lease expert, equities involved in below market lease; 0.90 hours

D M Properties, Inc.
 Judge Building

July 31, 1994
 Page 7

PROFESSIONAL SERVICES RENDERED (Continued)

June, 1994

13 Conference with opposing counsel re-
 garding potential witnesses, necessary
 documents for hearing, scheduling of
 hearing; conference [REDACTED]; con-
 ference with Court regarding available
 dates;
 2.10 hours

July, 1994

20 Conference with opposing counsel re-
 garding potential witnesses at eviden-
 tiary hearing; conference with the
 Judge respecting setting for hearing,
 necessary time; [REDACTED]
 [REDACTED] review of memorandum [REDACTED]
 [REDACTED];
 1.70 hours

TOTAL SERVICES

 \$7198.50

DISBURSEMENTS

September, 1993

8 Copies - Third District Court 6.00

November, 1993

1 Order of Sale - Salt Lake County
 Sheriff's Office 225.00
 30 Long Distance Costs 17.55

December, 1993

31 Long Distance Costs 18.98

D M Properties, Inc.

July 31, 1994

Judge Building

Page 8

DISBURSEMENTS (Continued)

February, 1994

28		118.47
----	---	--------

March, 1994

31	Long Distance Costs	12.56
----	---------------------	-------

April, 1994

29	Telecopies	2.00
----	------------	------

May, 1994

31	Long Distance Costs	17.81
31	Telecopies	5.00

July, 1994

31	Long Distance Costs	2.11
----	---------------------	------

TOTAL DISBURSEMENTS	\$425.48

	=====
BALANCE DUE	\$7623.98
	=====

IG. ATTORNEY: DRD RESP. ATTORNEY: BTJ
IENT ID: 002157 SUFFIX: 10020
IENT NAME: D M Properties, Inc.
TTER STAT: A (ACTIVE)
TTER CODE: LI LITIGATION
TTER DESC: Judge Building

S/U DATE: 05/03/93
FILE #: DM Property
SURCHARGE: NO
BILLING RATE: NO RATE
BUDGET: NONE

BILLING OPTIONS:
(1) PRIOR BALANCE ONLY
(2) PRIOR BALANCE & DISBURSEMENTS
(3) PRIOR BALANCE, FEES & DISBURSEMENTS
(4) PRIOR BALANCE, ITEMIZED FEES & DISBURSEMENTS
(5) NO PRIOR BAL. CURR CREDITS, FEES & DISB
(A) LIST FEE DATES
(B) LIST FEE DOLLARS
(C) LIST FEE HOURS
(D) LIST CODE OF PRODUCING ATTORNEY

TE OF LAST STATEMENT: 07/31/94
OUNT OF LAST STATEMENT: \$7623.98
ANSFER \$ FROM ADVANCE

REPORTED BY: MATTER (002157 10020)
CURRENT STATEMENT MESSAGE CODE: NONE
CURRENT BILLING CYCLE CODE: D

TRANSACTION DATE OF PRODUCING HOURS RATE AMOUNT OF TRANSACTION CORRECTIONS
NUMBER TRANSACTION ATTORNEY CHARGED CHARGED TRANSACTION DESCRIPTION AND/OR COMMENTS

D V A N C E S

[REDACTED]
411950 09/16/94 [REDACTED]
416206 10/19/94 [REDACTED]
420140 11/18/94 [REDACTED]
424667 12/16/94 [REDACTED]

E E S

410546 08/11/94 BTJ 1.00 [REDACTED] Conference regarding potential testi-
mony at hearing of appraiser, probable
testimony of Bob Merrill, notice of
hearing; conference with Court Clerk;
410558 08/15/94 BTJ 0.75 161.00 [REDACTED] Conference [REDACTED] regarding
status;
414742 09/12/94 DWE 0.25 150.00 [REDACTED] Commence review [REDACTED]
issues;
414746 09/17/94 DWE 0.75 150.00 [REDACTED] Review of materials regarding purchase
of Judge Building and foreclosure of
Martineau lease;
417604 09/14/94 JDB 1.00 0.00 0.00 Meeting [REDACTED] regarding
injunction hearing; review of files on
same;
417945 09/16/94 PMS 0.10 145.00 [REDACTED] Conference regarding documents;
415974 09/18/94 BTJ 0.75 0.00 0.00 Conference regarding Hearing Brief; [REDACTED]
[REDACTED]; con-
ference with Bob Merrill;
417952 09/26/94 PMS 0.80 0.00 0.00 Conference regarding [REDACTED]
hearing brief;
414765 09/26/94 DWE 1.50 0.00 0.00 Office conference regarding strategies
for preliminary injunction hearing;
415975 09/20/94 BTJ 2.20 161.00 [REDACTED] Conference with Bob Merrill; review of
PCF Bank documents; review of real
estate sale and purchase agreement;
413958 09/21/94 PMS 2.20 0.00 0.00 Review documents at Mr. Bob Merrill's
office;
415976 09/21/94 BTJ 5.20 [REDACTED] [REDACTED] Production of documents at Bob

TRANSACTION NUMBER	DATE OF TRANSACTION	PRODUCING ATTORNEY	HOURS CHARGED	RATE CHARGED	AMOUNT OF TRANSACTION	TRANSACTION DESCRIPTION	CORRECTIONS AND/OR COMMENTS
						Merrill's office; conference with Ray Unrath; [REDACTED]; review of Judge Building Martineau Lease; review of correspondence between Harold Hill and Martineau; conference with opposing counsel; conference with Bob Merrill regarding correspondence to various parties involved in transaction;	
415977	09/22/94	BTJ	3.20	160.00	[REDACTED]	Conference with Harold Hill; preparation for hearing; conference with opposing counsel; review of correspondence from Harold Hill; preparation of exhibit lists for hearing; review of correspondence and agreements with lender respecting continuation of foreclosure proceedings; preparation of trial book;	
413968	09/24/94	PMS	1.90	145.00	[REDACTED]	Review files; draft bench memorandum;	
413970	09/26/94	PMS	5.50	145.00	[REDACTED]	[REDACTED]; draft and revise hearing memorandum; conferences regarding same;	
414789	09/26/94	DWE	1.00	150.00	[REDACTED]	Review of Hearing Memorandum [REDACTED];	
415978	09/26/94	BTJ	2.8	160.00	[REDACTED]	Conference [REDACTED]; conference with receiver; preparation for hearing;	
413976	09/27/94	PMS	2.5	145.00	[REDACTED]	Conferences regarding hearing memorandum; [REDACTED];	
414790	09/27/94	DWE	0.75	150.00	[REDACTED]	Discussions regarding Hearing Memorandum and hearing strategy;	
415979	09/27/94	BTJ	2.4	160.00	[REDACTED]	[REDACTED]; review of materials from Bob Merrill's office; preparation of exhibit lists and selection of documents to be used at hearing;	
415980	09/28/94	BTJ	8.2	160.00	[REDACTED]	[REDACTED]; review of documents [REDACTED]; preparation of correspondence to Bruce Nelson; conference with Bob Merrill in preparation for testimony; conference with David Jewes; [REDACTED]; obtaining of documents from Harold Hill; review of Hearing Brief; conference with Court; preparation for hearing;	
414406	09/28/94	DWE	1.5	150.00	[REDACTED]	[REDACTED] conference regarding effect of foreclosure sale on tenants in building and issues raised by Martineau at Pre-	

TRANSACTION NUMBER	DATE OF TRANSACTION	PRODUCING ATTORNEY	HOURS CHARGED	RATE CHARGED	AMOUNT OF TRANSACTION	TRANSACTION DESCRIPTION	CORRECTIONS AND/OR COMMENTS
415981	09/29/94	BTJ	8.30	160.00	[REDACTED]	liminary Injunction Hearing; Hearing on Preliminary Injunction; conference with Court respecting limitation of issues, ruling as a matter of law, limitation of witnesses, statutory foreclosure scheme; [REDACTED]	
417679	10/13/94	BTJ	3.80	160.00	[REDACTED]	[REDACTED] oral argument at court regarding merger doctrine; Preparation and modification of Memorandum in Opposition; conference with client; [REDACTED]	
417834	10/14/94	PMS	4.50	145.00	[REDACTED]	[REDACTED] conference with opposing counsel regarding new issues and scheduling of hearing; Review defendant's motion to set aside default judgment and hearing memorandum; conference regarding same; [REDACTED]	
417826	10/15/94	PMS	4.90	145.00	[REDACTED]	[REDACTED] draft memorandum in opposition to motion to set aside default judgment; [REDACTED]	
417658	10/17/94	DWE	3.75	150.00	[REDACTED]	[REDACTED] draft and revise memorandum in opposition to motion to set aside default judgment; Review of Martineau's brief; [REDACTED]	
417837	10/17/94	PMS	7.20	145.00	[REDACTED]	[REDACTED]; office conference [REDACTED]; Review law [REDACTED]; [REDACTED] conference re [REDACTED]	
420018	11/16/94	BTJ	1.20	160.00	[REDACTED]	[REDACTED] revise memorandum in opposition to motion to set aside default judgment; conferences regarding same; conference regarding rule 60(b); [REDACTED]	
420760	01/05/95	MKG	2.75	120.00	[REDACTED]	Correspondence regarding witnesses availability; review of documents; status of negotiations between client and Martineau; Review files; [REDACTED]	
420770	01/06/95	MKG	1.75	120.00	[REDACTED]	Conference regarding issues of case; review files; [REDACTED]	
420771	01/09/95	MKG	0.5	120.00	[REDACTED]	Research; conference regarding case; [REDACTED]	
420780	01/10/95	MKG	1.25	120.00	[REDACTED]	Conference regarding strategy; review documents; [REDACTED]	
420781	01/11/95	MKG	2.15	120.00	[REDACTED]	Review files; [REDACTED] review documents; trial preparation; letter to Mr. Harold J. Hill regarding issuance of subpoena to compel his attendance at preliminary injunction hearing; [REDACTED]	
420792	01/12/95	MKG	5.75	120.00	[REDACTED]	Review files; [REDACTED] trial [REDACTED]	

TRANSACTION NUMBER	DATE OF TRANSACTION	PRODUCING ATTORNEY	HOURS CHARGED	RATE CHARGED	AMOUNT OF TRANSACTION	TRANSACTION DESCRIPTION	CORRECTIONS AND/OR COMMENTS
430794	01/13/95	MRS	6.20	120.00	[REDACTED]	preparation; conference regarding same; draft Preliminary Injunction Hearing Memorandum;	
430795	01/13/95	BTJ	1.70	160.00	[REDACTED]	Trial preparation; conference with Mr. Harold J. Hill; conference regarding case; prepare memorandum to file regarding conference with Mr. Harold J. Hill; conference with Jeffrey M. Jones, Esq.; review documents;	
430796	01/16/95	MRS	7.00	120.00	[REDACTED]	Review correspondence and documents; preparation for trial; preparation of memorandum;	
430798	01/17/95	MRS	12.00	120.00	[REDACTED]	Review documents; trial preparation; draft and revise Hearing Memorandum;	
430800	01/18/95	MRS	14.00	120.00	[REDACTED]	Review documents; conference regarding upcoming hearing; draft and revise Hearing Memorandum;	
430801	01/18/95	MRS	12.00	120.00	[REDACTED]	Compile trial exhibits; conference with Jeffrey M. Jones, Esq. and J. Mark Gibb, Esq.; [REDACTED]; prepare for hearing; finalize Preliminary Injunction Hearing Memorandum; draft letter to Jeffrey M. Jones, Esq. regarding same; letter to the Honorable Frank G. Noel regarding same; travel to Court; [REDACTED];	
430805	01/20/95	MRS	2.5	120.00	[REDACTED]	[REDACTED] prepare for and attend preliminary injunction hearing; conference regarding same;	
430806	01/20/95	MRS	1.25	120.00	[REDACTED]	Draft Findings of Fact, Conclusions of Law and Order;	
430818	01/24/95	MRS	2.50	120.00	[REDACTED]	Revise Findings of Fact, Conclusions of Law and Order; conference regarding same;	
430841	01/24/95	MRS	1.00	120.00	[REDACTED]	Draft letter to Mr. Leland Martineau; revise Findings of Fact, Conclusions of Law and Order;	
430847	1/24/95	MRS	1.25	120.00	[REDACTED]	Revise Findings of Fact, Conclusions of Law and order; conference regarding same; draft letter to Jeffrey M. Jones, Esq.;	
430868	01/31/95	DRD	35.00	170.00	[REDACTED]	Draft Memorandum of Points and Authorities in Support of Damages;	
430879	01/31/95	DRD	5.00	170.00	[REDACTED]	1/1/95 - 1/31/95: Preparation for trial; [REDACTED] preparation and revising of trial briefs and Findings of Fact and Conclusions of Law;	
					[REDACTED]	1/1/95 - 1/31/95: Revise Findings of Fact and Conclusions of Law and	

TRANSACTION NUMBER	DATE OF TRANSACTION	PRODUCING ATTORNEY	HOURS CHARGED	RATE CHARGED	AMOUNT OF TRANSACTION	TRANSACTION DESCRIPTION	CORRECTIONS AND/OR COMMENTS
434691	02/01/95	MRS	1.25	130.00	[REDACTED]	Judgment; conference with opposing counsel; Revise Memorandum of Points and Authorities in Support of Damages; letter to Jeffrey M. Jones, Esq. regarding damages; finalize Findings of Fact, Conclusions of Law and Order; letter to Jeffrey M. Jones, Esq. and Bruce J. Nelson, Esq. regarding same;	
434669	02/02/95	MRS	3.50	130.00	[REDACTED]	Draft Affidavit of David M. Kimball and send via facsimile to Mr. Kimball; revise memorandum; research regarding Rule 65A(c) security; conference regarding same; conferences with Messrs. Danny A. Miller and David M. Kimball;	
434674	02/03/95	MRS	2.50	130.00	[REDACTED]	Revise and finalize Memorandum of Points and Authorities in Support of Damages; conference regarding same;	
434698	02/08/95	MRS	0.30	130.00	[REDACTED]	Draft and finalize Notice of Submittal of Findings of Facts, Conclusions of Law and Order; letter to the Honorable Frank B. Noel regarding proposed Findings of Fact, Conclusions of Law and Order;	
434727	02/14/95	MRS	0.25	130.00	[REDACTED]	Letter to J. Mark Gibbs, Esq.;	
434744	02/17/95	MRS	0.25	130.00	[REDACTED]	Conference with J. Mark Gibbs, Esq.;	

DISBURSEMENTS

415012	09/22/94				82.05	Copies - Van Cott, Bagley, Cornwall & McCarthy	
415239	09/30/94				27.58	Long Distance Costs	
415240	09/30/94				28.00	Telecopies	
415241	09/30/94				-20.87	Deliveries/Errands	
419030	10/31/94				51.80	Reproduction Costs	
419031	10/31/94				16.55	Long Distance Costs	
419032	10/31/94				104.86	[REDACTED]	
423447	11/09/94				10.85	Federal Express	
423453	11/10/94				8.00	Pedal Express Couriers, Inc.	
422540	11/30/94				7.20	Long Distance Costs	
422541	11/30/94				2.50	Telecopies	
422542	11/30/94				67.88	[REDACTED]	
428210	01/18/95				5.50	Copies - Third District Court	
428212	01/19/95				29.54	[REDACTED]	
430962	01/31/95				141.80	Reproduction Costs	
430963	01/31/95				19.44	Long Distance Costs	
430964	01/31/95				10.50	Telecopies	
430965	01/31/95				3.15	Deliveries/Errands	
434297	02/28/95				55.40	Reproduction Costs	
434298	02/28/95				4.36	Postage	
434299	02/28/95				6.50	Telecopies	
434300	02/28/95				24.01	Deliveries/Errands	

ANSACTION NUMBER	DATE OF TRANSACTION	PRODUCING ATTORNEY	HOURS CHARGED	RATE CHARGED	AMOUNT OF TRANSACTION	TRANSACTION DESCRIPTION	CORRECTIONS AND/OR COMMENTS
434301	02/28/95				10.82	[REDACTED]	

MATTER SUMMARY				CURRENT ATTORNEY SUMMARY			
	FEE	DISB	SURCHG	TOTAL	ATTY CODE	HOURS CHARGED	AMOUNT CHARGED
VIDUOUS BALANCE	7198.50	[REDACTED]	[REDACTED]	[REDACTED]	BTJ	44.30	5916.00
DITS & ADJUST	6548.47	[REDACTED]	[REDACTED]	[REDACTED]	DWE	8.50	1050.00
RENT CHARGES	27489.50	[REDACTED]	[REDACTED]	[REDACTED]	JDH	1.00	0.00
TOTALS	28139.53	[REDACTED]	[REDACTED]	[REDACTED]	PMS	29.70	3857.00
					MRG	81.55	9866.50
					DRD	40.00	6800.00
RENT ADVANCE BALANCE:	\$0.00				TOTAL	205.05	\$27489.50

ATTORNEY TOTALS TO DATE				
ATTY CODE	HOURS CHARGED	[REDACTED]	[REDACTED]	[REDACTED]
ADM	0.00	[REDACTED]	[REDACTED]	[REDACTED]
BTJ	85.80	[REDACTED]	[REDACTED]	[REDACTED]
CFB	6.75	[REDACTED]	[REDACTED]	[REDACTED]
CS	1.00	[REDACTED]	[REDACTED]	[REDACTED]
DRD	42.00	[REDACTED]	[REDACTED]	[REDACTED]
DWE	39.00	[REDACTED]	[REDACTED]	[REDACTED]
HMD	2.50	[REDACTED]	[REDACTED]	[REDACTED]
JDH	1.00	[REDACTED]	[REDACTED]	[REDACTED]
MRG	81.55	[REDACTED]	[REDACTED]	[REDACTED]
PMS	29.70	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL	289.30	\$35017.00	[REDACTED]	[REDACTED]

CERTIFICATE OF HAND DELIVERY

I hereby certify that on this 7th day of February, 1996, I caused to be hand delivered, a true and correct copy of the foregoing **SUPPLEMENTAL AFFIDAVIT OF MARK R. GAYLORD**, to the following:

Jeffrey M. Jones, Esq.
J. Mark Gibb, Esq.
DURHAM, EVANS & JONES
50 South Main Street, Suite 850
Salt Lake City, Utah 84144

Bruce J. Nelson, Esq.
Robert L. Payne, Esq.
ALLEN NELSON RASMUSSEN & CHRISTENSEN
215 South State Street, Suite 900
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