

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2001

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the Transition Period From ..... to .....

Commission file number 0-19989

## Stratus Properties Inc.

(Exact name of Registrant as specified in Charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

72-1211572  
I.R.S. Employer  
Identification No.)

98 San Jacinto Blvd., Suite 220  
Austin, Texas  
(Address of principal executive offices)

78701  
(Zip Code)

Registrant's telephone number, including area code:(512) 478-5788

### Securities registered pursuant to Section 12(b) of the Act:

None

### Securities registered pursuant to Section 12(g) of the Act:

Common Stock Par Value \$0.01 per Share  
Preferred Stock Purchase Rights  
(Title of Each Class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes X No \_

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$37,400,000 on March 14, 2002.

On March 14, 2002, 7,115,995 shares of Common Stock, par value \$0.01 per share, of the registrant were outstanding.

### DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement to be submitted to the registrant's stockholders in connection with its 2002 Annual Meeting to be held on May 16, 2002, are incorporated by reference into Part III of this Report.

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## PART I

### **ITEM 1. BUSINESS** **OVERVIEW**

We are engaged in the acquisition, development, management and sale of commercial and residential real estate properties. We conduct real estate operations on properties we own and, until February 27, 2002, through unconsolidated affiliates that we jointly owned with Olympus Real Estate Corporation (Olympus) (see "Transactions with Olympus Real Estate Corporation" below). All subsequent references to "Notes" refer to the Notes to Financial Statements located in Item 8 elsewhere in this Annual Report on Form 10-K.

Our principal real estate holdings are currently in the Austin, Texas, area. Our most significant acreage includes 2,039 acres of undeveloped residential, multi-family and commercial property and 34 developed residential estate lots located in southwest Austin within the Barton Creek community and 436 acres of undeveloped residential, multi-family and commercial property and one substantially complete 75,000-square-foot office building located south of and adjacent to the Barton Creek community in an area known as the Lantana project. Our remaining Austin acreage consists of about 1,300 acres of undeveloped commercial and multi-family property within the Circle C community, also located in southwest Austin.

We also own 13 acres of undeveloped commercial property in Houston, Texas, which we expect to sell in 2002 and 21 acres of undeveloped multi-family property located in San Antonio, Texas, which is actively being marketed.

In February 2002, as a result of completing certain transactions with Olympus (see "Transactions with Olympus Real Estate Corporation" below and Note 11), we acquired an additional 22 developed residential lots, including 21 lots that average over 3 acres each in size, in the Barton Creek community. We also acquired a 140,000-square-foot office complex, that consists of two office buildings located in Austin, Texas that are currently leased at more than 95 percent of their capacity.

### **COMPANY STRATEGIES**

Since our formation in 1992, our primary objectives have been to reduce our indebtedness and increase our financial flexibility. Accordingly, we had reduced our debt to \$8.4 million at December 31, 2000 from \$493.3 million in March 1992. As a result of the settlement of certain development related lawsuits (see Note 9) and to an increasing level of cooperation between the City of Austin (the City) and us, we substantially increased our development activities during 2001 (see below), which has resulted in our debt increasing to \$25.6 million at December 31, 2001. Our debt increased to \$46.9 million immediately following our transactions with Olympus in February 2002 (see "Transactions with Olympus Real Estate Corporation" below). We have been able to fund our development activities and our transactions with Olympus primarily through our expanded credit facility (see "Credit Facility" below and Note 5), which was established as a result of the positive financing relationship we have built with Comerica Bank-Texas over the past several years. This newly expanded credit facility, together with other sources of financing, has increased our financial flexibility, allowing us to fully concentrate our efforts on developing our properties and increasing shareholder value. Key factors in accomplishing these goals include:

\* Our overall strategy is to enhance the value of our Austin properties by securing and maintaining development entitlements and developing and building real estate projects for sale or investment, thereby increasing the potential return from our core assets. In recent years, we had significant joint venture development activity (see below).

During 1999, we completed the development of the 75 residential lots at the Wimberly Lane subdivision at Barton Creek and by the end of 2000, 72 of the lots had been sold. We sold two additional Wimberly Lane lots during 2001. Also during 1999, we completed and leased the first 70,000-square foot-office building at the 140,000-square-foot Lantana Corporate Center. Construction and leasing of the second 70,000-square-foot office building was completed during the third quarter of 2000. We are continuing to develop several new subdivisions around the new Tom Fazio designed "Fazio Canyons" golf course, which included the construction of 54 multi-acre residential lots during the first half of 2000 at the Escala Drive subdivision at Barton Creek. We sold 32 of the Escala Drive lots during 2000. We sold one Escala Drive lot during 2001. In February 2002, in connection with certain transactions with Olympus (see "Transactions with Olympus Real Estate Corporation" below) we acquired the remaining residential lots in the Wimberly Lane and Escala Drive subdivisions, as well as the two office buildings at Lantana.

\* Significant progress has been made in our obtaining the permitting necessary for additional Austin-area property development.

We have reached agreement with the City concerning development of a 417-acre portion of the Lantana project. The agreement reflects a cooperative effort between the City and us to allow development based on grandfathered entitlements, while adhering to stringent water quality standards and other enhancements to protect the environment (Note 9). With this most recent agreement, we have now completed the core entitlement process for the entire Lantana project allowing for approximately 2.9 million square feet of office and retail development, approximately 400 multi-family units (previously sold to an unrelated third party, see below) and approximately 330 residential lots.

In the fourth quarter of 2000, we received final subdivision plat approval from the City to develop approximately 170 acres of commercial and multi-family real estate within our Lantana project. The required infrastructure development at the site, known as "Rialto Drive," was completed during the fourth quarter of 2001. Construction of the first of two 75,000- square-foot office buildings at Rialto Drive (7500 Rialto) is substantially complete. Full development of the 170 acres is expected to consist of over 800,000 square feet of office and retail space and 400 multi-family units, which are now being constructed by an apartment developer pursuant to our sale of a 36.4-acre multi-family tract in December 2000 (see "Results of Operations" located in Items 7 and 7A. elsewhere in this Annual Report on Form 10-K).

We continue to work on residential development plans for portions of our Circle C project. We have been meeting with City representatives and with neighborhood and environmental groups to discuss a plan to modify portions of the land plan and provide enhanced water quality protection for portions of the Circle C project. During the fourth quarter of 2001, we received U.S. Fish and Wildlife Service approval for our plan, and City Zoning and Planning Commission approval for a 554- acre planned unit development (PUD) containing 860 residential units. City Council action on the PUD is expected during 2002.

We commenced construction of a new subdivision within the Barton Creek community during the fourth quarter of 2000. This subdivision, Mirador, is now complete and marketing efforts have commenced. Mirador adjoins the Escala Drive subdivision, which was previously owned by the Barton Creek Joint Venture (see "Transactions with Olympus Real Estate Corporation" below). The Mirador subdivision consists of 34 estate lots, averaging approximately 3.5 acres in size.

During the fourth quarter of 2001, we completed the permitting for a 114-acre tract within the Barton Creek community. The plat provides for 54 lots ranging in size from one-third acre to multi-acre lots, some of which overlook the Lost Creek Country Club golf course. We are also continuing our efforts to secure final permitting for a 212-acre tract within the Barton Creek community, which will include 125 single-family lots and nine acres for condominium development. Some of these single-family lots will adjoin the Fazio Canyons golf course. A 19-acre portion of the tract consisting of 66 planned villa units and a fire station received final plat approval in early January 2002. Development of this area is expected to commence by April 2002. Development of the remaining Barton Creek property will be deferred until the Austin-area economy improves (see "Risk Factors" below and "Capital Resources and Liquidity" located in Items 7 and 7A. elsewhere in this Annual Report on Form 10-K).

\* We believe that we have the right to receive over \$30 million of future reimbursements associated with previously incurred Barton Creek utility infrastructure development costs. At December 31, 2001, we had approximately \$14 million of these expected future reimbursements recorded as a component of "Real estate and facilities" on our balance sheet. The remaining reimbursements are not recorded on our balance sheet because they relate to properties previously sold or represent a component of the \$115 million impairment charge we recorded in 1994. Additionally, substantial additional costs eligible for reimbursement will be incurred in the future as our development activities at Barton Creek continue. We received a total of \$7.1 million of Circle C Municipal Utility District (MUD) reimbursements during 2000 (in addition to the \$10.3 million received during 1999) in full and final settlement of our remaining Circle C infrastructure claim against the City (Note 9). In connection with our February 2002 acquisition of certain Barton Creek properties we previously jointly owned with Olympus, we obtained the right to receive approximately \$2 million of additional Barton Creek reimbursables.

\* We will continue to vigorously defend our rights to the development entitlements of all our properties, but aggressive attempts by certain parties to restrict growth in the area of our holdings have had and may continue to have a negative effect on near term development and sales activities.

\* We are expanding our real estate management activities and have been retained by third parties to provide management and development assistance on selective real estate projects, including the Lakeway project, near Austin (see below).

In January 2001, we entered into an expanded development management agreement with Commercial Lakeway Limited Partnership covering a 552-acre portion of the Lakeway development known as Schramm Ranch, and we contributed \$2.0 million as an investment in this project. Under the agreement, we receive enhanced management and development fees and sales commissions, as well as a net profits interest in the project. Lakeway project distributions are made to us as sales installments close. We are currently receiving a 28 percent share of any Lakeway project distributions and that rate will continue until we receive proceeds totaling our initial investment in the project (\$2.0 million) plus a stated annual rate of return, at which time, our share of the Lakeway project distributions will increase to 40 percent. During the second quarter of 2001, we negotiated an agreement to sell the entire Schramm Ranch property to a single purchaser for \$11.0 million, conditioned on obtaining certain entitlements. During 2001, we secured all the entitlements necessary for the future development of the Schramm Ranch property and the purchaser has closed and funded \$5.0 million representing two of the four planned sales installments for the project. In connection with the second sale installment, which occurred in December 2001, the Lakeway project distributed approximately \$1.2 million to us. We expect the remaining two Schramm Ranch sales installments (totaling \$6.0 million) will occur in March 2002 and June 2002 and we expect to receive approximately \$2 million in future cash distributions from the Lakeway project.

\* We also continue to investigate and pursue opportunities for new projects that would require minimal capital from us yet offer the possibility of acceptable returns and limited risk. However, until the Austin real estate market improves, our available cash flow and cash flow requirements may preclude any near-term expansion.

### **CREDIT FACILITY**

We have established a solid banking relationship with Comerica Bank-Texas that has substantially enhanced our financial flexibility. Since December 1999, we have had a minimum of \$30 million of borrowing availability under a credit facility agreement with Comerica, subject to certain conditions. The credit facility has subsequently been amended twice, with each amendment reducing restrictions for borrowing under the facility. The most recent credit facility amendment was finalized in December 2001. Currently, the terms of the credit facility provide for a \$25 million revolving credit facility and a \$5 million loan designed to provide funding for certain development costs. These development costs already have been incurred and the related development loan proceeds are available for borrowing at our discretion. At December 31, 2001, we had borrowed \$12.1 million under the revolving credit facility but had not borrowed any amounts under the development loan facility. The credit facility with Comerica will mature in April 2004. We had \$13.5 million of additional long-term debt at December 31, 2001 representing borrowings associated with two \$5 million unsecured term loans and \$3.5 million of borrowings on a \$9.2 million project loan facility for the 7500 Rialto Drive office building project (see "Company Strategies" above). In February 2002, we borrowed an additional \$7.4 million under our revolving credit facility to fund certain transactions with Olympus Real Estate Corporation (Olympus). In connection with these transactions, we assumed \$12.9 million of debt associated with the construction of two office buildings that we previously jointly owned with Olympus (see "Transactions with Olympus Real Estate Corporation" below). For a further discussion of the credit facility and our other long-term financing arrangements, see Note 5 and "Capital Resources and Liquidity" located in Items 7. and 7A. elsewhere in this Annual Report on Form 10-K.

### **TRANSACTIONS WITH OLYMPUS REAL ESTATE CORPORATION**

On May 22, 1998, we formed a strategic alliance with Olympus to develop certain of our existing properties and to pursue new real estate acquisition and development opportunities. Under the terms of the agreement, Olympus purchased \$10 million of our mandatorily redeemable preferred stock, provided us a \$10 million convertible debt facility and agreed to make available up to \$50 million of additional capital representing its share of direct investments in joint Stratus/Olympus projects.

We subsequently entered into three joint ventures with Olympus, in which we owned approximately 49.9 percent of each joint venture and Olympus owned the remaining 50.1 percent. We also served as the developer and manager for each of the joint venture projects. Accordingly, in addition to partnership distributions, we received various development fees, sales commissions and other management fees for our services.

The first two joint ventures were formed on September 30, 1998. The first provided for the development of a 75 residential lot project at the Barton Creek Wimberly Lane subdivision. We sold the land to the joint venture for approximately \$3.2 million and paid approximately \$0.5 million for our equity interest. The other transaction involved approximately 700 developed lots and 80 acres of platted but undeveloped real estate at the Walden on Lake Houston project, which Olympus purchased in April 1998 and we managed since Olympus' acquisition through February 2002 (see below). We acquired our interest in the related partnership utilizing \$2.0 million of funds available under the Olympus convertible debt facility. During the third quarter of 1999, we formed a third joint venture associated with the construction of the first 70,000-square-foot office building at the Lantana Corporate Center (7000 West). In this transaction, we sold 5.5 acres of commercial real estate to the joint venture for \$1.0

million. In December 1999, we sold 174 acres of our Barton Creek residential property to the joint venture initially formed to develop the lots at the Wimberly Lane subdivision (see above) for \$11.0 million. The land was developed into 54 multi-acre single-family residential lots, which are the largest lots developed to date within the Barton Creek community. In the first quarter of 2000, we sold an additional 5.5 acres of commercial real estate to 7000 West for \$1.1 million. Construction of the second 70,000 square foot office building was completed in the third quarter of 2000. For a detailed discussion of these transactions see "Joint Ventures with Olympus Real Estate Corporation" located in Items 7. and 7A. and Note 4 located elsewhere in this Annual Report on Form 10-K.

We repaid all our borrowings on the convertible debt facility during the second quarter of 2001, and terminated the facility on August 15, 2001 (Note 2). In February 2002 we concluded our business relationship with Olympus, completing the following transactions:

- \* We purchased our \$10.0 million of mandatorily redeemable preferred stock held by Olympus for \$7.6 million.
- \* We acquired Olympus' ownership interest in the Barton Creek Joint Venture for \$2.4 million.
- \* We acquired Olympus' ownership interest in the 7000 West Joint Venture for \$1.5 million. In connection with this acquisition, we have assumed the debt outstanding for 7000 West, which at December 31, 2001 totaled \$12.9 million. Related amounts outstanding will be included in our consolidated balance sheet commencing in the first quarter of 2002.
- \* We sold our ownership interest in the Walden Partnership to Olympus for \$3.1 million.

We funded the \$7.4 million net cash cost for these transactions, which is net of the approximate \$1.0 million of cash we received by acquiring the Barton Creek and 7000 West Joint Ventures, through borrowings available to us under our \$25 million revolving credit facility agreement (see above, "Capital Resources and Liquidity" within Items 7. and 7A. and Note 5 located elsewhere in this Annual Report on Form 10-K.) At February 28, 2002, our long-term debt totaled \$46.9 million, including the \$12.9 million of debt we assumed in connection with the 7000 West acquisition. Our remaining availability under our credit facility totaled approximately \$8.0 million at February 28, 2002.

For a detailed discussion of our Olympus transactions see "Joint Ventures with Olympus Real Estate Corporation" and "Olympus Relationship" located within Items 7. and 7A. and Notes 2, 3, 4 and 10 located elsewhere in this Annual Report on Form 10-K.

## **REGULATION AND ENVIRONMENTAL MATTERS**

Our real estate investments are subject to extensive local, city, county and state rules and regulations regarding permitting, zoning, subdivision, utilities and water quality as well as federal rules and regulations regarding air and water quality and protection of endangered species and their habitats. Such regulation has delayed and may continue to delay development of our properties and result in higher developmental and administrative costs.

We are making, and will continue to make, expenditures for the protection of the environment with respect to our real estate development activities. Emphasis on environmental matters will result in additional costs in the future. Based on an analysis of our operations in relation to current and presently anticipated environmental requirements, we currently do not anticipate that these costs will have a material adverse effect on our future operations or financial condition.

## **EMPLOYEES**

We currently have 26 employees, who manage our operations. We also contract personnel to perform certain management and administrative services, including administrative, accounting, financial, tax, and other services, under a management services agreement. We may terminate this contract at any time upon 90 days notice. These services are provided on a cost reimbursement basis and totaled \$0.4 million in 2001, \$1.0 million in 2000 and \$0.9 million in 1999.

## **RISK FACTORS**

This report includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements are all statements other than statements of historical fact included in this report, including, without limitation, the statements under the headings "Business," "Properties," "Market for Registrant's Common Equity and Related Stockholder Matters," and "Management's Discussion and Analysis of Financial Condition and Results of Operations and Disclosures About Market Risks" regarding our financial position and liquidity, payment of dividends, strategic plans, future financing plans, development and capital expenditures, business strategies, and our other plans and objectives for future operations and activities.

Forward-looking statements are based on our assumptions and analysis made in light of our experience and perception of historical trends, current conditions, expected future developments and other factors that we believe are appropriate under the circumstances. These statements are subject to a number of assumptions, risks and uncertainties, including the risk factors discussed below and in our other filings with the Securities and Exchange Commission, general economic and business conditions, the business opportunities that may be presented to and pursued by us, changes in laws or regulations and other factors, many of which are beyond our control. Readers are cautioned that forward-looking statements are not guarantees of future performance, and the actual results or developments may differ materially from those projected, predicted or assumed in the forward-looking statements. Important factors that could cause actual results to differ materially from our expectations include, among others, the following:

**IF WE ARE UNABLE TO GENERATE SUFFICIENT CASH FROM OPERATIONS, WE MAY FIND IT NECESSARY TO CURTAIL OUR DEVELOPMENT OPERATIONS.** We have made substantial reductions in debt since our formation in 1992. However, significant capital resources will be required to fund our development expenditures. Our performance continues to be dependent on future cash flows from real estate sales, and there can be no assurance that we will generate sufficient cash flow or otherwise obtain sufficient funds to meet the expected development plans for our properties.

Our real estate operations are also dependent upon the availability and cost of mortgage financing for potential customers, to the extent they finance their purchases, and for buyers of the potential customers' existing residences.

**OUR RESULTS OF OPERATIONS AND FINANCIAL CONDITION ARE GREATLY AFFECTED BY THE PERFORMANCE OF THE REAL ESTATE INDUSTRY.** Our real estate activities are subject to numerous factors beyond our control, including local real estate market conditions (both where our properties are located and in areas where our potential customers reside), substantial existing and potential competition, general national, regional and local economic conditions, fluctuations in interest rates and mortgage availability and changes in demographic conditions. Real estate markets have historically been subject to strong periodic cycles driven by numerous factors beyond the control of market participants.

Real estate investments often cannot easily be converted into cash and market values may be adversely affected by these economic circumstances, market fundamentals, competition and demographic conditions. Because of the effect these factors have on real estate values, it is difficult to predict with certainty the level of future sales or sales prices that will be realized for individual assets.

**OUR OPERATIONS ARE SUBJECT TO AN INTENSIVE REGULATORY APPROVAL PROCESS.** Before we can develop a property we must obtain a variety of approvals from local and state governments with respect to such matters as zoning, density, parking, subdivision, site planning and environmental issues. Certain of these approvals are discretionary by nature. Because certain government agencies and special interest groups have expressed concerns about our development plans in or near Austin, our ability to develop these properties and realize future income from our properties could be delayed, reduced, prevented or made more expensive.

Certain special interest groups have long opposed certain of our plans in the Austin area and have taken various actions to partially or completely restrict development in certain areas, including areas where some of our most valuable properties are located. We are actively opposing these actions. We currently do not believe unfavorable rulings would have a significant long-term adverse effect on the overall value of our property holdings. However, because of the regulatory environment that exists in the Austin area and the intensive opposition of certain interest groups, there can be no assurance that such expectations will prove correct.

**OUR OPERATIONS ARE SUBJECT TO GOVERNMENTAL ENVIRONMENTAL REGULATION, WHICH CAN CHANGE AT ANY TIME AND GENERALLY WOULD RESULT IN AN INCREASE TO OUR COSTS.** Real estate development is subject to state and federal regulations and to possible interruption or termination because of environmental considerations, including, without limitation, air and water quality and protection of endangered species and their habitats. Certain of the Barton Creek properties include nesting territories for the Golden Cheek Warbler, a federally listed endangered species. In February 1995, we received a permit from the U.S. Wildlife Service pursuant to the Endangered Species Act, which to date has allowed the development of the Barton Creek and Lantana properties free of restrictions under the Endangered Species Act related to the maintenance of habitat for the Golden Cheek Warbler.

Additionally, in April 1997, the U.S. Department of Interior listed the Barton Springs Salamander as an endangered species after a federal court overturned a March 1997 decision by the Department of Interior not to list the Barton Springs Salamander based on a conservation agreement between the State of Texas and federal agencies. The listing of the Barton Springs Salamander has not affected, nor do we anticipate it will affect, our Barton Creek and Lantana properties for several reasons, including the results of technical studies and our U.S.

Fish and Wildlife Service 10(a) permit obtained in 1995. Our Circle C properties may, however, be affected, although the extent of any impact cannot be determined at this time. Special interest groups provided written notice of their intention to challenge our 10(a) permit and compliance with water quality regulations, but no challenge has yet occurred.

We are making, and will continue to make, expenditures with respect to our real estate development for the protection of the environment. Emphasis on environmental matters will result in additional costs in the future.

**THE REAL ESTATE BUSINESS IS VERY COMPETITIVE AND MANY OF OUR COMPETITORS ARE LARGER AND FINANCIALLY STRONGER THAN WE ARE.** The real estate business is highly competitive. We compete with a large number of companies and individuals, and many of them have significantly greater financial and other resources than we have. Our competitors include local developers who are committed primarily to particular markets and also national developers who acquire properties throughout the United States.

**WE ARE VULNERABLE TO RISKS BECAUSE OUR OPERATIONS ARE CURRENTLY EXCLUSIVE TO THE TEXAS MARKET.** Our real estate activities are located entirely in the Austin, Houston and San Antonio, Texas, areas. Because of our geographic concentration and limited number of projects, our operations are more vulnerable to local economic downturns and adverse project-specific risks than those of larger, more diversified companies.

The performance of the Texas economy and more specifically the Austin economy, affects our sales and consequently the underlying values of our properties. While the Texas economy has remained healthy in recent years, its economy has historically been subject to cyclical downturns primarily as a result of adverse economic conditions within the oil and gas industry. The Austin economy is heavily influenced by conditions in the technology industry. As the technology market weakens, as is the current condition, we experience reduced sales, primarily affecting our "high-end" properties, which can significantly affect our financial condition and results of operations.

Our operations are subject to natural risks. Our performance may be adversely affected by weather conditions that delay development or damage property.

## **ITEM 2. PROPERTIES**

Our acreage to be developed as of December 31, 2001, excluding our holdings in joint ventures, is provided in the following table. The acreage to be developed is broken down into anticipated uses for single-family lots, multi-family units and commercial development based upon our understanding of the properties' existing entitlements. However, there is no assurance that the undeveloped acreage will be so developed because of the nature of the approval and development process and market demand for a particular use

	Potential Development Acreage				
	Developed Lots	Single Family	Multi- Family	Commercial	Total
Austin					
Barton Creek	34	1,117	249	673	2,039
Lantana	-	154	-	282	436
Circle C	-	-	212	1,065	1,277
Houston					
Copper Lakes	-	-	-	13	13
San Antonio					
Camino Real	-	-	21	-	21
Total	34	1,272	482	2,032	3,786

The table does not include the properties acquired in the transactions with Olympus (see "Transaction with Olympus Real Estate Corporation" above, "Capital Resources and Liquidity" located in Items 7. and 7A. and Note 11 located elsewhere in this Annual Report on Form 10-K). In connection with the transactions, we acquired 22 developed residential lots in the Barton Creek community and a 140,000-square-foot office complex in Lantana that consists of two buildings that are leased in excess of 95 percent.

### **ITEM 3. LEGAL PROCEEDINGS**

Various regulatory matters and litigation involving the development of our Austin properties are summarized below. Joint Venture Suits: Stratus ABC West I, L.P. v. Oly ABC West I, L.P. Cause No. GN-104206 (126th Judicial Court of Travis County, Texas filed December 26, 2001); Stratus Ventures I Walden, L.P. v. Oly/Houston Walden, L.P. Cause No. GN-104207 (200th Judicial District Court of Travis County, Texas, filed December 26, 2001); Stratus 7000 West, Ltd. v. Oly Lantana, L.P. Cause No. GN-104208 (201st Judicial District Court of Travis County, Texas, filed December 26, 2001); Oly ABC West I, L.P., Oly/Houston Walden, L.P., Oly Lantana, L.P. v. Stratus ABC West I, L.P., Stratus Ventures I Walden L.P., Stratus 7000 West, Ltd. (191st District Court of Dallas County, Texas, filed December 26, 2001). In November 2001, Olympus Real Estate Corporation notified Stratus that it was exercising the "buy/sell" provisions contained within the three separate joint venture partnership agreements. Olympus offered to either sell Stratus its interest in the each of the three joint ventures or otherwise purchase Stratus' interests in each of the joint ventures. In December 2001, Stratus notified Olympus of its election to purchase Olympus' interests in each of the three joint ventures. A dispute arose over the calculation of the purchase price for each joint venture interest and both Stratus and Olympus filed suits. Stratus and Olympus subsequently settled out of court and closed on multiple transactions in February 2002 that mutually concluded the business relationship between Stratus and Olympus (see "Transactions with Olympus Real Estate Corporation," included in Items 1., 7. and 7A. and Note 11 located elsewhere in this Annual Report on Form 10-K). These cases have been dismissed with prejudice.

Although we are no longer involved in any material litigation, we may from time to time be involved in various legal proceedings of a character normally incident to the ordinary course of our business. We believe that potential liability from any of these pending or threatened proceedings will not have a material adverse effect on our financial condition or results of operations. We maintain liability insurance to cover some, but not all, potential liabilities normally incident to the ordinary course of our business as well as other insurance coverage customary in our business, with such coverage limits as management deems prudent.

### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

Not applicable.

### **EXECUTIVE OFFICERS OF THE REGISTRANT**

Certain information, as of March 14, 2002, regarding our executive officers is set forth in the following table and accompanying text.

Name	Age	Position or Office
William H. Armstrong III	37	Chairman of the Board, President and Chief Executive Officer
Kenneth N. Jones	42	General Counsel
John E. Baker	56	Senior Vice President - Accounting

Mr. Armstrong has been employed by us since our inception in 1992. He has served us as Chairman of the Board since August 1998, Chief Executive Officer since May 1998 and President since August 1996. Previously Mr. Armstrong served as Chief Operating Officer from August 1996 to May 1998 and as Chief Financial Officer from May 1996 to August 1996. He served as Executive Vice President from August 1995 to August 1996.

Mr. Jones has served as our General Counsel since August 1998. Mr. Jones is a partner with the law firm of Armbrust & Brown, L.L.P. and he provides legal and business advisory services under a consulting arrangement with his firm.

Mr. Baker has served as our Senior Vice President - Accounting since May 2001. Previously, he served as our Vice President - Accounting from August 1996 until May 2001.

## PART II

### **ITEM 5. MARKET FOR REGISTRANTS'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS**

Our common stock trades on Nasdaq under the symbol STRS. The following table sets forth, for the periods indicated, the range of high and low sales prices, as reported by Nasdaq. We have restated the stock prices for all periods prior to May 2001 to reflect the effects of the stock split transaction (see Note 8).

	2001		2000	
	High	Low	High	Low
First Quarter	\$ 14.75	\$ 10.00	\$ 9.00	\$ 7.00
Second Quarter	14.00	9.50	10.26	8.00
Third Quarter	11.50	9.00	10.00	8.26
Fourth Quarter	9.88	8.05	10.06	8.00

As of March 14, 2002 there were 1,117 holders of record of our common stock. We have not in the past paid, and do not anticipate in the future paying, cash dividends on our common stock. The decision whether or not to pay dividends and in what amounts is solely within the discretion of our Board of Directors. However, our current ability to pay dividends is also restricted by terms of our credit agreement, as discussed in Note 5

#### **ITEM 6. SELECTED FINANCIAL DATA**

The following table sets forth our selected historical financial data for each of the five years in the period ended December 31, 2001. The historical financial information is derived from our audited financial statements and is not necessarily indicative of our future results. You should read the information in the table below together with Items 7. and 7A. "Management's Discussion and Analysis of Financial Condition and Results of Operations and Disclosures About Market Risks" and Item 8. "Financial Statements and Supplemental Data."

	2001	2000	1999	1998	1997
	(In Thousands, Except Per Share Amounts)				
Years Ended December 31:					
Revenues	\$ 14,829	\$ 10,099	\$ 15,252	\$ 18,535	\$ 31,495
Operating income (loss)	2,794	(3,649)	2,006	(1,829)	2,556
Interest income	1,157	1,203	1,344	1,257	1,351
Equity in unconsolidated affiliates' income(loss)	207	1,372	307	(26)	-
Net income (loss)	3,940	14,222 a	2,871	(2,638)	7,006 b
Basic net income (loss) per share c	0.55	1.99	0.40	(0.37)	0.98
Diluted net income (loss) per share c	0.48	1.74	0.35	(0.37)	0.97
Basic average shares outstanding c	7,142	7,148	7,144	7,144	7,144
Diluted average shares outstanding c	8,204 d	8,351 d	8,114 d	7,144	7,259
At December 31:					
Real estate and facilities, net	110,042	93,005	91,664	96,556	105,274
Total assets	129,478	111,893	115,672	111,829	112,754
Long-term debt	25,576	8,440	16,562	29,178	37,118
Stockholders' equity	84,659	81,080	66,840	63,969	66,607

a. Includes \$14.3 million (\$1.71 per share) gain associated with final settlement of our Circle C Municipal Utility District claim against the City of Austin (see Note 96).

b. Includes a \$4.5 million (\$0.62 per share) gain from sale of all remaining oil and gas property interests.

c. Reflects the effects of the stock split transactions completed in May 2001 (see Note 8).

d. Assumes the redemption of our 1.7 million shares of outstanding mandatorily redeemable preferred stock for 851,000 shares of our common

stock.

ITEMS 7. AND 7A. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS AND DISCLOSURES ABOUT MARKET RISKS

**OVERVIEW**

We are engaged in the acquisition, development, management and sale of commercial and residential real estate properties. We conduct real estate operations on properties we own and, until February 2002, through unconsolidated affiliates we jointly owned with Olympus Real Estate Corporation (Olympus) (see "Joint Ventures with Olympus Real Estate Corporation" below), pursuant to a strategic alliance formed in May 1998.

Our principal real estate holdings are currently in the Austin, Texas, area. Our most significant holdings include 2,039 acres of undeveloped residential, multi-family and commercial property and 34 developed residential

estate lots located in

southwest Austin within the Barton Creek community and 436 acres of undeveloped residential, multi-family and commercial property and one substantially complete 75,000-square-foot office building, located south of and adjacent to the Barton Creek community in an area known as the Lantana project. Our remaining Austin acreage consists of about 1,300 acres of undeveloped commercial and multi-family property within the Circle C community, also located in southwest Austin.

We also own 13 acres of undeveloped commercial property in Houston, Texas, which we expect to sell in 2002, and 21 acres of undeveloped multi-family property located in San Antonio, Texas, which are being actively marketed. In February 2002, in connection with transactions that concluded our business relationship with Olympus (see "Capital Resources and Liquidity" below and Note 11) we acquired 22 additional residential lots within the Barton Creek community and a 140,000-square-foot office complex within the Lantana project consisting of two buildings that are more than 95 percent leased.

Our sales activities, excluding large undeveloped tract sales (see "Results from Operations" below), declined significantly during 2001 reflecting the downturn in the information technology sector, which has negatively affected Austin's business climate. Because of this downturn, we are deferring some of our remaining near-term development plans until the real estate market improves. The weakness in the Austin real estate market during 2001 primarily affected the results of operations of our unconsolidated affiliates (see below).

#### **JOINT VENTURES WITH OLYMPUS REAL ESTATE CORPORATION (OLYMPUS)**

We entered into three joint ventures with Olympus subsequent to a strategic alliance entered into in May 1998 (see Note 2). All subsequent references to "Notes" refer to the Notes to Financial Statements located in Item 8, found elsewhere in this Annual Report on Form 10-K.

Olympus generally owned an approximate 50.1 percent interest and we owned an approximate 49.9 percent interest in each joint venture. The first two joint ventures were formed on September 30, 1998 and the third was formed in the third quarter of 1999. Subsequently, two of the joint ventures were expanded to encompass new projects. See Note 4 for financial information, including condensed income statement and balance sheet data, about our unconsolidated affiliates.

In February 2002, we purchased Olympus' ownership interests in the two Austin joint ventures and agreed to sell our interest in the Houston joint venture (see below). These transactions concluded our business relationship with Olympus (see "Capital Resources and Liquidity," Item 1. "Transactions with Olympus Real Estate Corporation," Item 3. "Legal Proceedings," and Note 11).

#### **Barton Creek Joint Venture**

The first joint venture involved our sale of the Wimberly Lane tract within the Barton Creek community near Austin, Texas, to the Oly Stratus Barton Creek I Joint Venture (Barton Creek Joint Venture) on September 30, 1998. The Barton Creek Joint Venture agreed to pay \$3.3 million for the 28-acre tract. We received \$2.1 million, a note for \$1.2 million and made an equity contribution of \$0.5 million upon formation of the joint venture. In the transaction, we deferred \$1.6 million of revenues and \$0.6 million of related gain associated with our 49.99 percent ownership interest in the joint venture. As manager of the project, we secured a \$3.9 million project loan facility for the joint venture. The initial proceeds from this facility were used to reimburse the \$1.9 million of development costs that we incurred on the project prior to the formation of the joint venture. Subsequent borrowings on the facility were used to complete the development of 75 residential lots at the "Wimberly Lane" subdivision of Barton Creek. As developer, we completed 75 residential lots during the first quarter of 1999 and immediately began marketing the lots. As manager, we sold 42 of the Wimberly Lane lots during 1999 for \$4.8 million, which enabled the joint venture to repay all the borrowings outstanding under the project loan facility and to partially fund the development of 54 additional lots in the "Escala Drive" subdivision of the Barton Creek Joint Venture (see below). We sold 30 additional Wimberly Lane residential lots during 2000 for \$3.5 million. We sold two Wimberly Lane lots during 2001 for \$0.2 million and we currently have one lot remaining for sale in the subdivision.

In December 1999, we sold the Barton Creek Joint Venture 174 acres of land encompassing 54 platted lots, within the "Escala Drive" subdivision of the Barton Creek community. Upon closing of the sale, we received \$6.0 million and a \$5.0 million note. We deferred \$5.5 million of the \$11.0 million of sales proceeds and \$3.0 million of the \$6.0 million related gain attributable to our ownership interest. The 54 lots, completed during the first half of 2000, were developed pursuant to the more restrictive development requirements of the City of Austin (the City). Each lot averages over three acres in size, which together with the similar sized lots in the Mirador subdivision (see "Stratus Development Activities" below), are among the largest lots developed to date within the Barton Creek community. All of the lots have scenic hill country settings and some overlook the "Fazio Canyons" golf course. The development of these lots was funded through the initial equity contributions of the partners

and proceeds from sales of lots at the Wimberly Lane subdivision of the Barton Creek Joint Venture (see above). As manager, we sold 32 Escala Drive lots for \$14.0 million during 2000. We sold one Escala Drive lot for \$0.8 million in 2001. At December 31, 2001, there were 21 lots remaining to be sold at the Escala Drive subdivision.

As manager of the Barton Creek Joint Venture, we receive sales commissions and management fees for our services. We earned fees totaling \$0.1 million in 2001, \$1.2 million in 2000 and \$0.3 million in 1999 related to our Barton Creek Joint Venture activities. We also received a development fee of \$0.2 million in 2000 and \$0.1 million in 1999 upon completing the respective subdivisions.

The Barton Creek Joint Venture distributed approximately \$17.1 million to the partners through December 31, 2001. Our share of these distributions, approximately \$8.6 million, was recorded as a reduction of the related Barton Creek Joint Venture notes receivable (\$6.2 million) and the related accrued interest (\$0.7 million), with the remaining \$1.7 million of distribution proceeds representing a return of equity that reduced our investment in the Barton Creek Joint Venture. Our investment in the Barton Creek Joint Venture at December 31, 2001 was \$3.6 million.

### **Walden Partnership**

The second joint venture, also formed on September 30, 1998, involved us acquiring a 49.9 percent interest in the Oly Walden General Partnership (the Walden Partnership), which owns the Walden on Lake Houston project in Houston, Texas, which Olympus purchased in April 1998. We managed this project on Olympus' behalf under the terms of a management agreement since April 1998 and received management fees and commissions for our services. We paid \$2.0 million for our share of the Walden Partnership, borrowing funds available to us under the \$10 million convertible debt facility with Olympus (see Note 2). At December 31, 2001, the Walden Partnership's remaining assets included 404 developed lots and 80 acres undeveloped real estate. During the second quarter of 1998, we negotiated agreements with homebuilders providing for the sale of approximately 90 percent of the 930 developed lots at that time. These agreements require the purchasers to close on the lots pursuant to a specific schedule that extends through 2002. As of December 31, 2001, 522 lots have closed and funded under these agreements. During 2001, the Walden Partnership repaid the remaining \$1.7 million outstanding on its original \$8.2 million non-recourse project loan established on September 30, 1998. In connection with obtaining the Walden Partnership loan, we were required to make an initial restricted cash deposit of \$2.5 million. At December 31, 2000, the amount remaining in the restricted account totaled \$0.6 million, all of which was released to us during 2001 as the loan was repaid.

### **7000 West**

In August 1999, we sold Olympus a 50.1 percent interest in the first 70,000-square-foot office building (Phase I) of the planned 140,000-square-foot Lantana Corporate Center (7000 West). Upon closing, we received \$1.0 million and recognized a \$0.4 million gain. We deferred our retained interest of the sales proceeds (\$0.5 million) and related gain (\$0.4 million) associated with the sale of the 5.5 acres of commercial real estate associated with Phase I of the project. As developer, we completed construction on Phase I in November 1999, and as manager, we secured third party lease agreements that have fully occupied the building. During the first quarter of 2000, we completed a transaction admitting Olympus as our joint venture partner in the second 70,000-square-foot office building (Phase II) at 7000 West. In this transaction, we sold an additional 5.5 acres of commercial real estate to the joint venture. Revenues from this sale of \$1.1 million and the related gain of \$0.8 million were deferred until construction and leasing of the building was completed, which occurred during the third quarter of 2000. At that time, we recognized Olympus' 50.1 percent ownership interest in the revenues (\$0.5 million) and related gain (\$0.4 million). In connection with the completion of construction of the two office buildings, we received development fees totaling \$0.3 million in 2000 and \$0.2 million in 1999. In our role as manager, we arranged for a \$6.6 million project loan for 7000 West, which was utilized to construct Phase I. The construction of Phase II required additional financing, which was provided when we arranged for an additional \$7.7 million of availability on the 7000 West development loan. The variable rate, non-recourse loan is secured by the 11 acres of land at 7000 West and both 70,000-square-foot office buildings and is guaranteed by us. The loan was scheduled to mature on August 24, 2001; however, as manager we negotiated an extension of the term loan to August 24, 2002, with an option to extend the maturity to August 24, 2003, subject to certain conditions. The borrowings outstanding on this development loan totaled \$12.9 million at December 31, 2001 and \$12.0 million at December 31, 2000. As a result of our February 2002 acquisition of this office complex from Olympus (see "Capital Resources and Liquidity," below and Note 11), we will include this debt on our balance sheet in the future.

### **STRATUS' DEVELOPMENT ACTIVITIES**

We have reached agreement with the City concerning development of a 417-acre portion of the Lantana project. The agreement reflects a cooperative effort between the City and us to allow development based on grandfathered entitlements, while adhering to stringent water quality standards and other enhancements to protect the environment (Note 9). With this most recent agreement, we have now completed the core entitlement process for

the entire Lantana project allowing for approximately 2.9 million square feet of office and retail development, approximately 400 multi-family units (previously sold to an unrelated third party, see below), and approximately 330 residential lots.

In the fourth quarter of 2000 we received final subdivision plat approval from the City to develop approximately 170 acres of commercial and multi-family real estate within our Lantana development. The required infrastructure development at the site, known as "Rialto Drive," was completed during the fourth quarter of 2001. Construction of the first of two 75,000-square foot-office buildings at Rialto Drive (7500 Rialto) is substantially complete. Funding for the construction of the office buildings at Rialto is available to us under a new project development loan (see "Capital Resources and Liquidity" below). Full development of the 170 acres is expected to consist of over 800,000 square feet of office and retail space and 400 multi-family units, which are now being constructed by an apartment developer pursuant to our sale of a 36.4-acre multi-family tract in December 2000 (see "Results of Operations" below).

We continue to work on residential development plans for portions of our Circle C project. We have been meeting with City representatives and with neighborhood and environmental groups to discuss a plan to modify portions of the land plan and provide enhanced water quality protection for the Circle C project. During the fourth quarter of 2001, we received U.S. Fish and Wildlife Service approval for our plan, and City Zoning and Planning Commission approval for a 554-acre planned unit development (PUD) containing 860 residential units. City Council action on the PUD is expected during 2002.

We commenced construction of a new subdivision within the Barton Creek community during the fourth quarter of 2000. This subdivision, Mirador, is now complete and marketing efforts have commenced. Mirador adjoins the Escala Drive subdivision, which was previously owned by the Barton Creek Joint Venture (see above). The Mirador subdivision consists of 34 estate lots, averaging approximately 3.5 acres in size.

During the fourth quarter of 2001, we completed the permitting for a 114-acre tract within the Barton Creek community. The plat provides for 54 lots ranging in size from one-third acre to multi-acre lots, some of which overlook the Lost Creek Country Club golf course. We are also continuing our efforts to secure final permitting for a 212-acre tract within the Barton Creek community, which will include 125 single-family lots and nine acres for condominium development. Some of these single-family lots will adjoin the Fazio Canyons golf course. A 19-acre portion of the tract consisting of 66 planned villa units and a fire station received final plat approval in early January 2002. Development of this area is expected to commence by April 2002. Development of the remaining Barton Creek property will be deferred until the Austin-area economy improves (see "Capital Resources and Liquidity" below).

## RESULTS OF OPERATIONS

We are continually evaluating the development potential of our properties and will continue to consider opportunities to enter into significant transactions involving our properties. As a result, and because of numerous other factors affecting our business activities as described herein, our past operating results are not necessarily indicative of our future results.

Summary operating results follow:

	2001	2000	1999
	-----	-----	-----
	(In Thousands)		
Revenues:			
Undeveloped properties			
Unrelated parties	\$ 9,623	\$ 2,101	\$ 3,279
Olympus	-	533	6,020
Recognition of deferred revenues	3,792	4,026	904
	-----	-----	-----
Total undeveloped properties	13,415	6,660	10,203
Developed properties	-	709	3,692
Commissions, management fees and other	1,414	2,730	1,357
	-----	-----	-----
Total revenues	\$ 14,829	\$ 10,099	\$ 15,252
	=====	=====	=====
Operating income (loss)	\$ 2,794 a	\$ (3,649)b	\$ 2,006 a,b
Net income	3,940	14,222 c	2,871

- a. Includes reimbursement of infrastructure costs expensed in prior years of \$1.3 million in 2001 and \$2.6 million in 1999. There were no reimbursements of infrastructure costs in 2000 except for the Circle C reimbursement as discussed below.
- b. Includes \$0.4 million of recognized gain associated with the 7000 West (Phase II) transaction in 2000, \$3.5 million of recognized gains associated with transactions involving the 7000 West (Phase I) and Barton Creek Joint Ventures in 1999.
- c. Includes \$14.3 million of recognized gains associated with the settlement of our Circle C infrastructure reimbursement claim against the City (see "Non-Operating Results," and Note 9).

Our revenues during 2001 primarily reflect the sale of undeveloped entitled properties to unrelated third parties. During the third quarter of 2001, we sold a 41-acre undeveloped tract in Austin, Texas, for \$3.3 million. During the first half of 2001 our undeveloped property revenues included the sale of 112 acres of undeveloped entitled residential property in Houston, Texas, for \$2.7 million, the sale of 10 acres of undeveloped entitled multi-family property in Dallas, Texas, for \$1.7 million and one 17-acre undeveloped tract sale in Austin, Texas totaling \$2.0 million. In connection with our property sale during the third quarter of 2001, we financed \$2.3 million of the sale by taking a long-term note from the purchaser. The amount outstanding on this note totaled \$2.2 million at December 31, 2001. We also financed \$2.1 million of the undeveloped residential property sale in Houston, of which \$1.9 million was outstanding at December 31, 2001. We currently anticipate these notes will be fully collectible.

The majority of the deferred revenue recognized during 2001 was associated with the sale of a 36.4-acre multi-family tract within the Rialto Drive project in December 2000. In this transaction we sold the property for \$5.3 million but deferred recognition of \$3.6 million of the related sale proceeds. We recognized this deferred revenue pro rata as the required infrastructure construction was completed. As discussed in "Development Activities" above, we recognized the entire \$3.6 million of deferred revenues during 2001 as construction at the Rialto Drive project was completed. The remainder of our deferred revenue recognition was associated with the sale of two Escala Drive lots and one Wimberly Lane lot by the Barton Creek Joint Venture.

Our undeveloped property revenues include both sales of undeveloped real estate to unrelated parties and to our previously unconsolidated affiliates (see "Joint Ventures with Olympus Real Estate Corporation" above). When we sold real estate to an entity owned jointly with Olympus, we deferred recognizing revenue from the sale related to our ownership interest until sales were made to unrelated parties. Our undeveloped properties revenues for 2000 primarily reflect the recognition of previously deferred revenues from the sale of undeveloped real estate to our unconsolidated affiliates. We recognized \$4.0 million of previously deferred revenues as a result of sales of 30 Wimberly Lane lots and 32 Escala Drive lots at the Barton Creek Joint Venture. Our remaining undeveloped properties revenues include the sale of one acre of multi-family property in San Antonio, Texas, and the 36.4-acre multi-family Lantana tract in Austin, which was sold in December 2000 for \$5.3 million. Our sales to Olympus included its 50.1 percent interest in the 5.5 acres of commercial real estate sold to 7000 West for construction of the second 70,000-square-foot building. We sold our 24 remaining developed lots during 2000. We have subsequently added 34 estate lots to our inventory with the completion of the Mirador subdivision within the Barton Creek community during 2001 (see "Stratus Development Activities" above).

Our 1999 undeveloped property revenues to unrelated parties included (1) the sale of 44 acres of residential property in Houston, (2) the sale of 34 acres of multi-family real estate in San Antonio and (3) the sale of 8 acres of multi-family real estate in Dallas. Sales of real estate to joint ventures with Olympus included the sale of 174 acres of residential property to the Barton Creek Joint Venture and the sale of 5.5 acres of commercial real estate to 7000 West (see "Joint Ventures with Olympus Real Estate Corporation" above). Our recognition of deferred revenues resulted from the sale of 42 Wimberly Lane developed lots by the Barton Creek Joint Venture. Sales of 75 single-family homesites represent our 1999 developed property revenues.

Commissions, management fees and other income reflect our efforts to expand our services to third parties over the past three years. The decrease in this type of revenue during 2001 primarily reflects the substantial decrease in sales by our unconsolidated joint ventures, particularly the Barton Creek Joint Venture. The substantial revenues during 2000 primarily reflect our increased sales commissions from the Barton Creek Joint Venture. We sold lots at both the Escala Drive and Wimberly Lane subdivisions during 2000 and we sold the initial Wimberly Lane lots during 1999. Our management fee revenue for the past three years also includes fees associated with our management of the 2,200-acre Lakeway project near Austin.

Costs of sales were \$9.1 million in 2001, \$10.0 million in 2000 and \$9.7 million in 1999. The decrease in 2001 from 2000 primarily reflects the reduced recognition of previously deferred costs related to the sales of land to the Barton Creek Joint Venture, which totaled \$0.1 million in 2001, \$1.9 million in 2000 and \$0.6 million in 1999. Our remaining cost of sales during 2001 reflected the costs associated with the undeveloped properties sold

throughout the year. The increase between the amount of deferred costs recognized during 2000 and those recognized during 1999 was partially offset by a reduction in sales, particularly those related to the sales of developed lots.

Our general and administrative expenses totaled \$2.9 million in 2001, \$3.7 million in 2000 and \$3.5 million in 1999. The substantial decrease in our general and administrative costs during 2001 reflects our implementation of a new information system and other initiatives to reduce costs, especially during 2001 as sales activity declined. Legal expenses totaled \$0.5 million in 2001, \$0.5 million in 2000 and \$0.8 million in 1999. Legal costs decreased in 2000 as a result of our resolving our Circle C disputes with the City (see "Non-Operating Results" and "Capital Resources and Liquidity" below).

### **Non-Operating Results**

Interest expense, net of capitalized interest, totaled \$0.5 million in 2001, \$1.3 million in 2000 and \$0.8 million in 1999 (see Note 5).

Capitalized interest totaled \$1.4 million in 2001, \$1.3 million in 2000 and \$1.2 million in 1999.

In March 2000, the City approved a settlement agreement involving disputes between the City and other Austin-area real estate developers and landowners concerning the Circle C community. Under terms of this settlement, the lawsuits contesting the City's December 1997 annexation of all land within the four Circle C Municipal Utility Districts (MUD) and the dissolution of the four MUDs have been dismissed with prejudice. Accordingly, the City's cumulative partial payments of our Circle C MUD reimbursement claim, totaling \$10.5 million, were no longer subject to a repayment contingency and we recorded approximately \$7.4 million of these previously deferred proceeds in other income during the first quarter of 2000. This amount represents that portion of the reimbursed infrastructure expenditures in excess of our remaining basis in these assets, as well as related interest income on the reimbursements. The remaining \$3.1 million was recorded as a reduction of our investment in Circle C. In December 2000, we received an additional \$6.9 million, including \$0.6 million of interest, from the City as full and final settlement of the City's obligations in this matter. We recorded the proceeds as a gain during the fourth quarter of 2000 (Note 9).

We previously accrued liabilities totaling \$5.1 million in connection with the previous operation of certain oil and gas properties that were sold during 1993. During 2000, management completed a review of these amounts and determined that conditions in effect at the time warranted reversal of \$2.1 million of these accruals. Accordingly, other income of \$2.1 million is reflected in the Statement of Income for the year ended December 31, 2000. The remaining liability represents our indemnification of the purchaser for any future abandonment costs in excess of net revenues received by the purchaser in connection with the sale of one oil and gas property in 1993. We accrued \$3.0 million relating to this liability at the time of the purchase, which is included in "Other liabilities" in the accompanying balance sheet. We periodically assesses the reasonableness of amounts recorded for this liability through the use of information provided by the owner of the property, including its net production revenues. The carrying value of this liability may be adjusted or eliminated, as additional information becomes available. Future changes in the estimates of this liability will be reflected in our earnings.

## **CAPITAL RESOURCES AND LIQUIDITY**

### **Comparison Of Year-To-Year Cash Flows**

Net cash provided by operating activities totaled \$3.2 million in 2001, \$17.9 million in 2000 and \$20.6 million in 1999. The decrease in 2001 compared with 2000 primarily reflects the receipt of certain Circle C reimbursement proceeds (see below) during 2000 and a reduction in distributions received from the Barton Creek Joint Venture, including the receipt of proceeds totaling \$6.5 million on their outstanding notes payable to us in 2000. The decrease was offset in part by our increased revenues from sales of undeveloped properties during the third quarter of 2001 and the Lakeway distribution during the fourth quarter of 2001 (see below). The decrease in 2000 compared with 1999 reflects receipt of \$7.1 million from the City in settlement of our Circle C infrastructure reimbursement claim in 2000 compared with the \$10.3 million we received from the City as partial settlement of our claim during 1999 (see below and Item 3. "Legal Proceedings"). The decrease also reflects our reduced sales activity during 2000. The 2000 decrease was partially offset by receipt of aforementioned Barton Creek Joint Venture proceeds in fulfillment of the joint venture's remaining obligations to us under terms of its initial land purchases in 1999 and 1998 (see "Joint Ventures with Olympus Real Estate Corporation" above). During 2000, we also received income distributions from our unconsolidated affiliates totaling \$1.4 million, which represents a partial return on our equity in the earnings of our previously unconsolidated affiliates.

Net cash used in investing activities totaled \$24.3 million in 2001, \$5.4 million in 2000 and \$8.9 million in 1999. Investing activities for all three years reflect real estate and facilities capital expenditure payments, net of any related capitalized MUD reimbursements. Real estate and facility capital expenditures were moderate during 1999 and 2000, reflecting the constraints on our development activities resulting from disputes with the City and

others, which have subsequently been settled (see below). The increase in our investing activities during 2001 reflects the increase in our net real estate and facilities expenditures (see "Stratus' Development Activities" above) and the \$2.0 million investment in the Lakeway project, near Austin Texas (see "Lakeway Project" below). We received a \$1.2 million distribution from the Lakeway Project during the fourth quarter of 2001, of which \$0.6 million represented our equity earnings in the project and the remaining \$0.6 million represented a partial return of our original investment. We also received \$0.3 million in distributions from the 7000 West Joint Venture during 2001, which represented a return of our investment in the joint venture. Our investing activities during 1999 included a \$0.4 million additional investment in the Walden Partnership. Additionally, our joint ventures' capital expenditures have not been reflected in the accompanying financial statements, because our joint ventures' results have been presented using the equity method of accounting (see Note 1).

Financing activities provided cash totaling \$16.7 million in 2001 and used cash totaling \$8.4 million in 2000 and \$12.9 million in 1999. Our financing activities during 2001 reflect borrowings of \$11.7 million under our amended Comerica credit facility, \$3.5 million of borrowings under our 7500 Rialto Drive project loan facility and a second \$5.0 million unsecured term loan, offset in part by the \$3.2 million repayment of Olympus' convertible debt (see "Credit Facilities and Other Financing Arrangements" below). We reduced our net outstanding borrowings by \$8.5 million in 2000 and \$12.9 million in 1999. Our net reductions in outstanding borrowings included proceeds of \$0.4 million during 1999 from borrowings on our convertible debt facility with Olympus (see Note 2).

On October 29, 1999, the City agreed to pay us \$9.8 million, including interest of \$1.0 million, as partial payment of our Circle C MUD reimbursement claim. We received a total of \$10.3 million of partial payments from the City on our Circle C MUD reimbursement claim through December 31, 1999. We received a total of \$7.1 million of additional settlement proceeds from the City in 2000, including its final settlement payment of \$6.9 million (including interest of \$0.6 million) in December 2000 (see Note 9). We used all \$17.4 million of these proceeds to reduce our borrowings outstanding under the applicable credit facilities.

### **Credit Facilities and Other Financing Arrangements**

In December 1999, we established a new bank credit facility with Comerica Bank-Texas, which provided for a term loan and a revolving line of credit aggregating to \$30 million. We borrowed \$20 million under the facility to repay all borrowings outstanding under our previous credit facility. In December 2000, we used the proceeds from our Lantana multi-family tract sale (see "Results of Operations" above) to repay all remaining borrowings outstanding under the existing Comerica facility and then negotiated an amended credit facility with Comerica, with improved terms and a maturity of December 2002. In December 2001, we established a new bank credit facility with Comerica. Under terms of the current facility, we have established an expanded \$25 million revolving line of credit available for general corporate purposes and an additional \$5 million loan specifically designed to provide funding for certain development costs. These development costs already have been incurred and the development loan proceeds are available for borrowing at our discretion. The new facility will mature in April 2004. At December 31, 2001, we had borrowed \$12.1 million under the revolving credit facility but had not yet borrowed any amount under the development loan facility. During February 2002, we borrowed \$7.4 million under our revolving credit facility to complete transactions that concluded our business relationship with Olympus (see "Olympus Relationship" below and Note 11).

Under the terms of the Comerica facility, we are required to carry an interest reserve account with the bank. The amount in this account must equal the potential debt service for both the project loan facility and the revolving line of credit for the ensuing twelve-month period, adjusted quarterly. At December 31, 2001, the amount required to be included in the interest reserve account totaled approximately \$1.6 million. This amount can be funded directly or treated as a reduction of our availability under the revolving line of credit. The aggregate availability under the \$25 million revolving line was reduced to \$23.4 million to satisfy the interest reserve requirement at December 31, 2001. We are able to withdraw amounts funded into the interest reserve account as needed. Our remaining availability, net of the interest reserve requirement and borrowings outstanding, under our credit facility totaled approximately \$8 million at February 28, 2002.

In December 2000, we borrowed \$5.0 million under a new five- year unsecured term loan from First American Asset Management. In the third quarter of 2001, we obtained an additional \$5.0 million five-year unsecured term loan from First American Asset Management (Note 5). The proceeds of the loans were used to fund our operations and for other general corporate purposes.

In the second quarter of 2001, we secured an \$18.4 million project loan facility with Comerica for the construction of the two office buildings at the 7500 Rialto project (see "Stratus' Development Activities" above). This variable-rate project loan facility matures in June 2003, with an option to extend the maturity by one year. Currently our availability under the project loan is \$9.2 million, which is intended for the construction of the first

75,000-square-foot officebuilding and a related parking garage. At December 31, 2001 we had borrowings totaling \$3.5 million under this project loan facility.

We have pursued various financing arrangements available through our relationship with Olympus. On September 30, 1998, the Walden Partnership, an unconsolidated subsidiary in which we previously owned 49.9 percent (see "Joint Ventures with Olympus Real Estate Corporation" above and Note 4), entered into an \$8.2 million project loan agreement with a commercial bank to fund the remaining development of the Walden on Lake Houston project. In October 1998, the Walden Partnership borrowed \$6.1 million on this loan and used the proceeds to repay its outstanding bank debt associated with land acquisition and development costs incurred on the project. The Walden Partnership repaid the remaining \$1.7 million of borrowings outstanding under this project loan during 2001. Under terms of the project loan, we secured the loan with a restricted cash deposit. All the remaining restricted cash deposited with the bank, which totaled \$0.6 million at December 31, 2000, was released to us during 2001 as the Walden Partnership loan was repaid.

In April 1999, we and one of our wholly owned subsidiaries finalized a \$6.6 million project development loan facility with Comerica for the development of the first 70,000-square-foot office building at the 140,000-square-foot Lantana Corporate Center (7000 West). In the first quarter of 2000, as manager of the 7000 West project, we obtained an additional \$7.7 million of availability under the 7000 West development facility to provide the funding necessary to construct the second 70,000-square-foot office building at the site. The variable rate, nonrecourse loan is secured by the approximate 11 acres of real estate at 7000 West and the two completed office buildings and until recently was guaranteed by us (see "Olympus Relationship" below). The project loan was scheduled to mature on August 24, 2001. However, as manager of 7000 West, we successfully negotiated an extension of the term loan with Comerica to August 24, 2002, with an option to extend the maturity to August 24, 2003, subject to certain conditions. Borrowings outstanding under the 7000 West project loan totaled \$12.9 million at December 31, 2001 and \$12.0 million at December 31, 2000. Effective February 27, 2002, we are now required to consolidate this mortgage debt on our balance sheet as a result of our acquisition of Olympus' 50.1 percent interest in the 7000 West Joint Venture (see "Olympus Relationship" below and Note 11). We currently meet all the conditions necessary to exercise the option to extend the maturity of the term loan to August 24, 2003, and absent any negotiations to further extend the term loan, we plan to exercise our option in July 2002.

### **Lakeway Project**

Since mid-1998, we have provided development, management, operating and marketing services for the Lakeway project near Austin, Texas, which is owned by Commercial Lakeway Limited Partnership, an affiliate of Credit Suisse First Boston, for a fixed monthly fee. In January 2001, we entered into an expanded development management agreement with Commercial Lakeway Limited Partnership covering a 552-acre portion of the Lakeway development known as Schramm Ranch, and we contributed \$2.0 million as an investment in this project. Under the agreement, we receive enhanced management and development fees and sales commissions, as well as a net profits interest in the project. Lakeway project distributions are made to us as sales installments close. We are currently receiving a 28 percent share in any Lakeway project distributions and that rate will continue until we receive proceeds totaling our initial investment in the project (\$2.0 million) plus a stated annual rate of return, at which time, our share of the Lakeway project distributions will increase to 40 percent.

During the second quarter of 2001, we negotiated an agreement to sell the entire Schramm Ranch property to a single purchaser for approximately \$11.0 million, conditioned on obtaining certain entitlements. As manager of the project, we obtained subdivision, annexation, zoning and other entitlements for the first phase of the property. Obtaining these entitlements allowed for the closing of the sale for the first phase of the Schramm Ranch property for \$1.5 million. The proceeds from this initial closing were used to obtain the entitlements necessary to develop the remaining 500-plus acres of the property. In the fourth quarter of 2001, we secured all the remaining necessary entitlements for the Schramm Ranch property and the purchaser closed and funded \$3.5 million, representing the second of four sale installments. In connection with this second sale installment, the Lakeway Project distributed approximately \$1.2 million to us. We recorded \$0.6 million of the distribution as a partial return of our original investment in the project and \$0.6 million as our equity earnings in the project's income for the year, which was reflected in "Equity in unconsolidated affiliates' income." We expect the remaining two Schramm Ranch sales installments (totaling \$6.0 million) to occur in March 2002 and June 2002 and we expect to receive approximately \$2 million in future cash distributions from the Lakeway project.

### **Olympus Relationship**

In May 1998, we formed a strategic alliance with Olympus to develop certain of our existing properties and to pursue new real estate acquisition and development opportunities. Under the terms of the agreement, Olympus made a \$10 million investment in our mandatorily redeemable preferred stock (see Note 3), provided us a \$10 million convertible debt financing facility (see Note 2) and agreed to make available up to \$50 million of additional capital representing its share of direct investments in joint Stratus/Olympus projects.

During the second quarter of 2001, we repaid Olympus the entire \$3.2 million balance under the convertible debt financing facility used to finance our interest in the Walden Partnership in Houston, Texas, purchased in September 1998. Included in the \$3.2 million payment to Olympus was \$0.8 million of accrued interest that had been added to the principal under the terms of the facility, and which represented the stated 12 percent annual rate pursuant to the terms of the convertible debt financing agreement. We also paid an additional \$0.3 million of interest during the third quarter of 2001 to satisfy the minimum annual rate of return provision within the convertible debt facility agreement, which provided that if the combination of interest at 12 percent and the value of the conversion right did not provide Olympus with at least a 15 percent annual return on the convertible debt, we would pay Olympus additional interest upon termination of the convertible debt facility in an amount necessary to yield a 15 percent return. The convertible debt facility was terminated on August 15, 2001.

Through our subsidiaries, we previously were involved in three joint ventures with Olympus (see "Joint Ventures with Olympus Real Estate Corporation"), each was subject to the terms of their respective partnership agreements. The partnership agreements of each of the joint ventures contained similar provisions, including a "buy/sell option" that could be exercised by either Olympus or us. After Olympus commenced the process under the "buy/sell option" for each partnership in mid-November 2001 (see Item 3 "Legal Proceedings"), we initiated additional joint discussions with Olympus about mutually concluding our ongoing business relationship, including the purchase of our \$10.0 million of mandatorily redeemable preferred stock held by Olympus. As a result of these efforts, on February 12, 2002, we agreed to a \$7.4 million transaction with Olympus that included the following key provisions:

\* We purchased our \$10.0 million of mandatorily redeemable preferred stock held by Olympus for \$7.6 million. The amount of the discount will be recorded as \$2.4 million of additional paid in capital in our consolidated balance sheet in the first quarter of 2002.

\* We acquired Olympus' 50.01 percent ownership interest in the Barton Creek Joint Venture for \$2.4 million.

\* We acquired Olympus' 50.1 percent ownership interest in the 7000 West Joint Venture for \$1.5 million. In connection with this acquisition we have assumed the 7000 West debt and accordingly it will be included in our consolidated balance sheet commencing in the first quarter of 2002. At December 31, 2001, borrowings outstanding under this project loan facility totaled \$12.9 million.

\* We sold our 49.9 percent ownership interest in the Walden Partnership to Olympus for \$3.1 million. We expect to record an approximate \$0.3 million gain on the sale during the first quarter of 2002.

\* We received a total of \$1.0 million in net cash from the two joint ventures we acquired.

The transaction closed on February 27, 2002. See Note 11 for additional discussion of these transactions, including the pro forma effects they have on our 2001 results of operations and our December 31, 2001 balance sheet.

### **Common Stock Matters**

In February 2001, our Board of Directors authorized an open market stock purchase program for up to 0.7 million shares of our common stock representing approximately 10 percent of our outstanding common stock, after considering the effects of the stock split transactions described in the following paragraph. The purchases may occur over time depending on many factors, including the market price of our common stock; our operating results, cash flows and financial position; and general economic and market conditions. We have yet to make any open market share purchases under this program as of March 19, 2002 and we are unlikely to make significant open market purchases in the near future.

On May 10, 2001, our shareholders approved an amendment to our certificate of incorporation to permit a reverse 1-for-50 common stock split followed immediately by a forward 25-for-1 common stock split. The effective date of this transaction was May 25, 2001. This transaction resulted in our shareholders holding fewer than 50 shares of common stock having their shares converted into less than one share of our common stock in the reverse 1-for-50 split. Those shareholders received cash payments equal to the fair value of those fractional interests. Our shareholders holding more than 50 shares of our common stock had their number of shares of common stock reduced by one-half immediately after this transaction. Shareholders holding an odd number of shares were entitled to a cash payment equal to the fair value of the resulting fractional share. The fair value of the fractional shares was calculated by valuing each outstanding share of Stratus common stock held at the close of business on the effective date at the average daily closing price per share of Stratus' common stock for the ten trading days immediately preceding the effective date. Accordingly, we funded \$0.5 million into a restricted cash

account to purchase approximately

42,000 shares of our common stock. As of December 31, 2001, fractional shares representing approximately 21,000 shares of our common stock had been purchased for \$0.25 million. We expect this transaction to lower our future reporting and related costs.

### **Outlook**

Our future operating cash flows and, ultimately, our ability to develop our properties and expand our business will be largely dependent on the level of our real estate sales. In turn, these sales will be significantly affected by future real estate market conditions in the area of our properties, regulatory issues, development costs, interest rate levels and our ability to continue to protect our land use and development entitlements. As discussed in "Risk Factors" located elsewhere in this Annual Report on Form 10-K, our financial condition and results of operations are highly dependent upon market conditions in Austin. Currently the Austin real estate market has experienced a slowdown, which has affected and will likely continue to affect our near-term results. We cannot at this time project how long or to what extent this current slowdown will last in Austin.

Significant development expenditures must be incurred and permits secured for certain of our Austin area properties prior to their eventual sale. In June 2000, the Texas Supreme Court ruled that the legislation creating water quality protection zones was unconstitutional (see Item 3. "Legal Proceedings"). This decision primarily affects development of the southern portion of our Barton Creek property. We have initiated plans that will meet development requirements under existing laws and regulations. Certain of our properties benefit from grandfathered entitlements that are not subject to the development requirements currently in effect. We continue to have a positive and cooperative dialogue with the City concerning land use and development permit issues.

We are continuing to pursue additional development and management fee opportunities, both individually and through our existing relationships with institutional capital sources. We also believe that we can obtain bank financing at a reasonable cost for developing our properties. However, obtaining land acquisition financing is generally expensive and uncertain.

### **DISCLOSURES ABOUT MARKET RISKS**

We derive our revenues from the management, development and sale of our real estate holdings. Our net income can vary significantly with fluctuations in the market prices of real estate, which are influenced by numerous factors, including interest rate levels. Changes in interest rates also affect interest expense on our debt. At the present time, we do not hedge our exposure to changes in interest rates. Based on the bank debt outstanding at December 31, 2001, a change of 100 basis points in applicable annual interest rates would have an approximate \$0.3 million impact on year 2002 net income.

### **ENVIRONMENTAL**

Increasing emphasis on environmental matters is likely to result in additional costs. Our future operations may require substantial capital expenditures, which could adversely affect the development of our properties and results of operations. Additional costs will be charged against our operations in future periods when such costs can be reasonably estimated. We cannot at this time accurately predict the cost associated with future environment obligations.

### **CAUTIONARY STATEMENT**

Management's Discussion and Analysis of Financial Condition and Results of Operations and Disclosures about Market Risks contains forward-looking statements regarding future reimbursement for infrastructure costs, future events related to financing and regulatory matters, the expected results of our business strategy, and other plans and objectives of management for future operations and activities. Important factors that could cause actual results to differ materially from our expectations include economic and business conditions, business opportunities that may be presented to and pursued by us, changes in laws or regulations and other factors, many of which are beyond our control, and other factors that are described in more detail under "Risk Factors", located in Item 1.

## **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

### **REPORT OF MANAGEMENT**

Stratus Properties Inc. (Stratus) is responsible for the preparation of the financial statements and all other information contained in this Annual Report. The financial statements have been prepared in conformity with accounting principles generally accepted in the United States and include amounts that are based on management's informed judgments and estimates.

Stratus maintains a system of internal accounting controls designed to provide reasonable assurance at reasonable costs that assets are safeguarded against loss or unauthorized use, that transactions are executed in accordance with management's authorization and that transactions are recorded and summarized properly. The system is tested and evaluated on a regular basis by Stratus.

Our independent public accountants, Arthur Andersen LLP, conduct annual audits of our financial statements in accordance with auditing standards generally accepted in the United States, which include the review of internal controls for the purpose of establishing audit scope, and issue an opinion of the fairness of such statements in accordance with accounting principles generally accepted in the United States.

The Board of Directors, through its Audit Committee composed solely of independent non-employee directors, is responsible for overseeing the integrity and reliability of Stratus' accounting and financial reporting practices and the effectiveness of its system of internal controls. Arthur Andersen LLP meets regularly with, and has access to, this committee, with and without management present, to discuss the results of their audit work.

William H. Armstrong III Chairman of the Board, President and Chief Executive Officer

### **REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS**

#### **TO THE STOCKHOLDERS AND BOARD OF DIRECTORS OF STRATUS PROPERTIES INC.:**

We have audited the accompanying balance sheets of Stratus Properties Inc. (a Delaware Corporation) as of December 31, 2001 and 2000, and the related statements of income, cash flows and changes in stockholders' equity for each of the three years in the period ended December 31, 2001. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Stratus Properties Inc. as of December 31, 2001 and 2000, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2001, in conformity with accounting principles generally accepted in the United States.

*/s/ Arthur Andersen LLP*

*Austin, Texas*

*February 4, 2002 (Except with respect to  
Note 11, as to which the  
date is February 27, 2002)*

STRATUS PROPERTIES INC.  
BALANCE SHEETS

	December 31,	
	2001	2000
	(In Thousands)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents, including restricted cash of \$0.2 million and \$0.6 million, respectively (Notes 4 and 8)	\$ 3,705	\$ 7,996
Accounts receivable	695	596
Current portion of notes receivable from property sales	45	-
Prepaid expenses	73	218
	-----	-----
Total current assets	4,518	8,810
Real estate and facilities, net (Note 6)	110,042	93,005
Investments in and advances to unconsolidated affiliates (Note 4)	8,005	7,596
Notes receivable from property sales, net of current portion (Note 1)	4,083	-
Other assets, including related party receivables (Note 4)	2,830	2,482
	-----	-----
Total assets	\$ 129,478	\$ 111,893
	=====	=====
 <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 2,482	\$ 1,920
Accrued interest, property taxes and other	1,895	1,486
	-----	-----
Total current liabilities	4,377	3,406
Long-term debt (Note 5)	25,576	8,440
Other liabilities (Note 9)	3,002	3,419
Deferred revenues, including related parties (Note 4)	1,864	5,548
Commitments and contingencies (Note 9)		
Mandatorily redeemable preferred stock (Note 3)	10,000	10,000
Stockholders' equity:		
Preferred stock, par value \$0.01, 50,000,000 shares authorized and unissued	-	-
Common stock, par value \$0.01, 150,000,000 shares authorized, 7,155,077 and 14,298,270 shares issued and outstanding, respectively	72	143
Capital in excess of par value of common stock	176,658	176,465
Accumulated deficit	(91,588)	(95,528)
Common stock held in treasury, 42,229 shares at cost	(483)	-
	-----	-----
Total stockholders' equity	84,659	81,080
	-----	-----
Total liabilities and stockholders' equity	\$ 129,478	\$ 111,893
	=====	=====

The accompanying notes are an integral part of these financial statements.

STRATUS PROPERTIES INC.  
STATEMENTS OF INCOME

	Years Ended December 31,		
	2001	2000	1999
	(In Thousands, Except Per Share Amounts)		
Revenues (Note 1)	\$ 14,829	\$ 10,099	\$ 15,252
Costs and expenses:			
Cost of sales, net (Note 1)	9,110	10,013	9,739
General and administrative expenses	2,925	3,735	3,507
Total costs and expenses	12,035	13,748	13,246
Operating income (loss)	2,794	(3,649)	2,006
Gains on settlement of Circle C municipal utility district infrastructure reimbursement claim (Note 9)	-	14,295	-
Interest expense, net of capitalized interest	(456)	(1,280)	(789)
Interest income	1,157	1,203	1,344
Equity in unconsolidated affiliates' income (Note 4)	207	1,372	307
Other income, net (Note 9)	238	2,677	133
Income before income taxes and equity in unconsolidated affiliates	3,940	14,618	3,001
Income tax provision	-	(396)	(130)
Net income	\$ 3,940	\$ 14,222	\$ 2,871
Net income per share of common stock:			
Basic	\$0.55	\$1.99	\$0.40
Diluted	\$0.48	\$1.74	\$0.35
Average shares outstanding:			
Basic	7,142	7,148	7,144
Diluted	8,204	8,351	8,114

The accompanying notes are an integral part of these financial statements.

STRATUS PROPERTIES INC.  
STATEMENTS OF CASH FLOW

	Years Ended December 31,		
	2001	2000	1999
	(In Thousands)		
Cash flow from operating activities:			
Net income	\$ 3,940	\$ 14,222	\$ 2,871
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	133	129	87
Cost of real estate sales	5,928	1,369	10,018
Equity in income of unconsolidated affiliates	(207)	(1,372)	(307)
Recognition of previously deferred gains	(3,684)	(2,079)	(327)
Gain from previously deferred Circle C municipal utility district reimbursements	-	(7,430)	-
Reduction of other liabilities (Note 9)	-	(2,140)	-
(Increase) decrease in working capital:			
Accounts receivable and prepaid expenses	1	1,966	600
Accounts payable, accrued liabilities and other	1,168	839	(7)
Proceeds from Circle C municipal utility district reimbursements	-	10,262	-
Long-term receivables	(4,036)	8,210	(3,631)
Distribution of unconsolidated affiliates' income	969	1,384	-
Other	(967)	2,823	1,044
Net cash provided by operating activities	3,245	17,921	20,610
Cash flow from investing activities:			
Real estate and facilities	(23,097)	(5,447)	(8,554)
Return of investment in unconsolidated affiliates	829	-	-
Investment in Lakeway Project	(2,000)	-	-
Investment in Walden Partnership	-	-	(376)
Net cash used in investing activities	(24,268)	(5,447)	(8,930)
Cash flow from financing activities:			
Borrowings (repayments) on credit facilities, net	11,683	392	(27,118)
Proceeds from term loans	5,000	5,000	20,000
Repayments of term loans	-	(13,852)	(6,143)
Proceeds from construction loan facility	3,496	-	-
Proceeds from the exercise of stock options	35	18	-
Repayment of convertible debt facility	(3,240)	-	-
Proceeds from convertible debt facility	-	-	376
Purchases of Stratus' common stock, at cost	(242)	-	-
Net cash provided by (used in) financing activities	16,732	(8,442)	(12,885)
Net increase (decrease) increase in cash and cash equivalents	(4,291)	4,032	(1,205)
Cash and cash equivalents at beginning of year	7,996	3,964	5,169

Cash and cash equivalents at end of year	\$ 3,705	\$ 7,996	\$ 3,964
	=====	=====	=====
Interest paid	\$ 2,396	\$ 1,631	\$ 1,716
	=====	=====	=====
Income taxes paid	\$ 171	\$ 142	\$ 14
	=====	=====	=====

The accompanying notes, which include information in Notes 2, 4, 7 and, 9 and 10 regarding noncash transactions, are an integral part of these financial statements.

**STRATUS PROPERTIES INC.**  
**STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**  
(In Thousands)

	Preferred Stock	Common Stock	Capital in Excess of Par Value	Accumulated Deficit	Common Stock Held in Treasury	Total
Balance at January 1, 1999	\$ -	\$ 143	\$176,447	\$(112,621)	\$ -	\$63,969
Net income	-	-	-	2,871	-	2,871
Balance at December 31, 1999	-	143	176,447	(109,750)	-	66,840
Stock options exercised	-	-	18	-	-	18
Net income	-	-	-	14,222	-	14,222
Balance at December 31, 2000	-	143	176,465	(95,528)	-	81,080
Effective two for one reverse stock split (Note 8)	-	(71)	71	-	-	-
Purchase of 42,299 shares of Stratus common stock	-	-	-	-	(483)	(483)
Stock options exercised and other	-	-	122	-	-	122
Net income	-	-	-	3,940	-	3,940
Balance at December 31, 2001	\$ -	\$ 72	\$176,658	\$ (91,588)	\$ (483)	\$84,659

The accompanying notes are an integral part of these financial statements.

**STRATUS PROPERTIES INC.**  
**NOTES TO FINANCIAL STATEMENTS**

1. Summary of Significant Accounting Policies Operations and Basis of Accounting. The real estate development and marketing operations of Stratus Properties Inc. (Stratus), a Delaware Corporation, are conducted in Austin and other urban areas of Texas through its wholly owned subsidiaries and, until February 2002, through certain unconsolidated joint ventures (see "Investments in Unconsolidated Affiliates" below and Notes 4 and 10). The consolidated financial statements include accounts of those subsidiaries where Stratus has more than 50 percent of the voting rights and for which the right to participate in significant management decisions is not shared with other shareholders. Stratus consolidates its wholly owned subsidiaries, which include: Stratus Properties Operating Co., L.P.; Circle C Land Corp.; Austin 290 Properties, Inc.; Stratus Management L.L.C.; Stratus Realty Inc.; Longhorn Properties Inc.; Stratus Investments LLC and STRS L.L.C. All significant intercompany transactions have been eliminated in consolidation.

Investment in Unconsolidated Affiliates. Stratus' investment in less than 50 percent owned joint ventures and partnerships are accounted for under the equity method in accordance with the provisions of the American Institute of Certified Public Accountants (AICPA) Statement of Position 78-9, "Accounting for Investments in Real Estate Ventures." Stratus owns approximately a 49.9 percent interest in each of its three unconsolidated affiliates (Note 4). Stratus' real estate sales to these entities are deferred to the extent of its ownership interest in the unconsolidated affiliate. The deferred revenues subsequently are recognized ratably as the unconsolidated affiliates sell the real estate to unrelated third parties. Although Stratus serves as manager for these unconsolidated affiliates, all significant decisions are either shared with its partner or made entirely by its partner. Stratus also has a net profits interest in the Lakeway project, as further described in Note 4, in which its share of the project's earnings or loss is calculated using the hypothetical liquidation at book value approach. This approach compares the value of the investment at the beginning of the year to that at the end of the year, assuming that the project's assets were liquidated or sold at book value. The difference represents Stratus' share of the project's earnings or loss.

Reclassifications. Certain prior year amounts have been reclassified to conform to the year 2001 presentation. The earnings per share information and the weighted average shares outstanding have been retroactively adjusted to reflect the effect of the stock split, which occurred in May 2001 (see Note 8), for all periods presented.

Use of Estimates. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in these financial statements and accompanying notes. The more significant estimates include valuation allowances for deferred tax assets, estimates of future cash flows from development and sale of real estate properties, capitalization of certain indirect costs, and useful lives for depreciation and amortization. Actual results could differ from those estimates.

Cash and Cash Equivalents. Highly liquid investments purchased with a maturity of three months or less are considered cash equivalents.

Financial Instruments. The carrying amounts of receivables, notes receivable, accounts payable and long-term borrowings reported in the balance sheet approximate fair value. Stratus periodically evaluates its ability to collect its receivables. Stratus provides an allowance for estimated uncollectible amounts if its evaluation provides sufficient evidence that amounts of its receivable may be uncollectible. Stratus believes all its outstanding receivables are collectible and no allowances for doubtful accounts are included in the accompanying balance sheets.

Notes Receivable from Property Sales. In 2001, Stratus received two notes totaling \$4.4 million, related to two undeveloped property sales whose gross sale price was \$5.9 million. The purchasers made cash down payments in excess of 20 percent of the sales price at the closing of each transaction. Both notes have an annual interest rate of 8 percent and mature in 20 06. One note requires principal and interest payments of \$0.2 million per year, payable monthly; the other note requires quarterly interest payments and a \$1.5 million principal payment in 2004.

Investment in Real Estate. Real estate assets are stated at the lower of cost or net realizable value and include acreage, development, construction and carrying costs, and other related costs through the development stage. Capitalized costs are assigned to individual components of a project, as practicable, whereas interest and other common costs are allocated based on the relative fair value of individual land

parcels. Certain

carrying costs are capitalized on properties currently under active development. Stratus recorded capitalized interest of \$1.4 million in 2001, \$1.3 million in 2000 and \$1.2 million in 1999.

In accordance with Statement of Financial Accounting Standards (SFAS) No. 121, "Accounting for the Impairment of Long-Lived Assets and Long-Lived Assets to be Disposed of" when events or circumstances indicate that an asset's carrying amount may not be recoverable, an impairment test is performed. If projected undiscounted cash flow from the asset is less than the related carrying amount then a reduction of the carrying amount of the long-lived asset to fair value is required. Measurement of the impairment loss is based on the fair value of the asset. Generally, Stratus determines fair value using valuation techniques such as discounted expected future cash flows. No impairment losses are reflected in the accompanying financial statements.

Depreciation. Office buildings are depreciated on a straight-line basis over their estimated 30 year life.

Revenue Recognition. Revenues from property sales are recognized in accordance with SFAS No. 66, "Accounting for Sales of Real Estate" when the risks and rewards of ownership are transferred to the buyer, the consideration received can be reasonably determined and when Stratus has completed its obligations to perform certain supplementary development activities, if any exist, at the time of the sale. Notes received in connection with the land sales have not been discounted, as the purchase price was not significantly different from similar cash transactions. Stratus recognizes sales commissions and management and development fees as lots or acreage is sold or when the services are performed. A summary of Stratus' revenues follows:

	Years Ended December 31,		
	2001	2000	1999
	(In Thousands)		
Revenues:			
Undeveloped properties			
Unrelated parties	\$ 9,623	\$ 2,101	\$ 3,279
Olympus	-	533	6,020
Recognition of deferred revenues	3,792	4,026	904
	-----	-----	-----
Total undeveloped properties	13,415	6,660	10,203
Developed properties	-	709	3,692
Commissions, management fees and other	1,414	2,730	1,357
	-----	-----	-----
Total revenues	\$ 14,829	\$ 10,099	\$ 15,252
	=====	=====	=====

Cost of Sales. Cost of sales includes the cost of real estate sold as well as costs directly attributable to the properties sold such as marketing and depreciation. A summary of Stratus' cost of sales follows:

	For Years Ended December 31,		
	2001	2000	1999
	(In Thousands)		
Cost of property sales	\$ 6,261	\$ 1,335	\$ 4,902
Cost of lots sales	-	614	3,166
Recognition of previously deferred cost of sales	108	1,946	575
Allocation of indirect costs	4,200	6,198	4,651
Municipal utility district reimbursements	(1,312)	-	(2,589)
Depreciation	133	129	87
Other	(280)	(209)	(1,053)
	-----	-----	-----
Total cost of sales	\$ 9,110	\$ 10,013	\$ 9,739

=====

Advertising Costs. Advertising costs are expensed as incurred and are included as a component of Cost of Sales. Advertising costs totaled \$0.3 million in 2001 and \$0.1 million in 2000. The advertising costs for 1999 were not significant.

Income Taxes. Stratus follows the liability method of accounting for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes." Under this method, deferred assets and liabilities are recorded for future tax consequences of temporary differences between the financial reporting and tax basis of assets and liabilities. See Note 7.

Earnings Per Share. The following table is a reconciliation of net income and weighted average common shares outstanding for purposes of calculating basic and diluted net income per share (in thousands, except per share amounts):

	Years Ended December 31,		
	2001	2000	1999
Basic net income per share of common stock:			
Net income	\$ 3,940	\$ 14,222	\$ 2,871
Weighted average common shares outstanding	7,142	7,148	7,144
Basic net income per share of common stock	\$0.55	\$1.99	\$0.40
Diluted net income per share of common stock:			
Net income	\$ 3,940	\$ 14,222	\$ 2,871
Add: Interest expense from assumed conversion of convertible debt, net of income tax effect	-	331	-
	\$ 3,940	\$ 14,553	\$ 2,871
Weighted average common shares outstanding	7,142	7,148	7,144
Dilutive stock options	211	144	119
Assumed redemption of preferred stock	851	851	851
Assumed conversion of convertible debt	-	208	-
Weighted average common shares outstanding for purposes of calculating diluted net income per share	8,204	8,351	8,114
Diluted net income per share	\$0.48	\$1.74	\$0.35

Stratus repaid all borrowings under its convertible debt facility during 2001 (Note 2). Interest expensed on the convertible debt outstanding totaled approximately \$338,000 in 2000 and \$270,000 in 1999. Although the debt was convertible into 370,000 shares in 1999, it was excluded from the diluted net income per share calculation because the effect of an assumed redemption of convertible debt was anti-dilutive. There have been no dividends accrued on Stratus' mandatorily redeemable preferred stock through December 31, 2001.

Stock options outstanding to purchase approximately 106,000 shares of common stock at an average exercise price of \$12.38 per share in 2001, 273,000 shares of common stock at an average exercise price of \$10.96 per share in 2000, and approximately 148,000 shares of common stock at an average exercise price of \$12.28 per share in 1999, were excluded from the diluted net income per share calculations because their

average exercise prices were higher than the average market price for the years presented.

**Recent Accounting Pronouncements.** In June 1998, the Financial Accounting Standards Board (FASB) issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities". SFAS 133, as subsequently amended, is effective for fiscal years beginning after June 15, 2000 and establishes accounting and reporting standards requiring that every derivative instrument (including certain derivative instruments embedded in other contracts) be recorded in the balance sheet as either an asset or liability measured at its fair value. The accounting for changes in the fair value of a derivative depends on the intended use of the derivative and the resulting designation. Stratus adopted SFAS 133 effective January 1, 2001, with its adoption having no impact on its financial position or results of operations. Stratus currently has no derivative instruments, as defined by SFAS 133.

In June 2001, the FASB issued SFAS No. 141, "Business Combinations," and SFAS No. 142, "Goodwill and Other Intangible Assets." SFAS 141 requires that all business combinations subsequent to June 30, 2001 be accounted for under the purchase method of accounting. The pooling-of-interests method is no longer allowed. SFAS 142 requires that upon adoption, amortization of goodwill will cease and instead, the carrying value of goodwill will be evaluated for impairment on at least an annual basis. SFAS 142 is effective for fiscal years beginning after December 15, 2001. The adoption of these standards did not have any affect on Stratus' financial position and results of operations.

In August 2001, the FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations," and SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." SFAS 143, effective for fiscal years beginning after June 15, 2002, requires the fair value of liabilities for asset retirement obligations to be recorded in the period they are incurred. SFAS 144 establishes a single accounting model, based on the framework established in SFAS 121, for long-lived assets to be disposed of by sale. SFAS 144 also broadens the presentation of discontinued operations to include more disposal transactions, and provides additional implementation guidance for SFAS 121. SFAS 144 is effective for fiscal years beginning after December 15, 2001. Stratus does not anticipate the adoption of these standards will have a material impact on its financial position or results of operations.

2. **Olympus Relationship** On May 22, 1998, Stratus and Olympus Real Estate Corporation (Olympus) formed a strategic alliance to develop certain of Stratus' existing properties and to pursue new real estate acquisition and development opportunities. Under the terms of the agreement, Olympus made a \$10 million investment in Stratus' mandatorily redeemable preferred stock, provided a \$10 million convertible debt financing facility to Stratus and agreed to make available up to \$50 million of additional capital representing its share of direct investments in joint Stratus/Olympus projects. Olympus has the right to nominate one member or up to 20 percent of Stratus' Board of Directors, whichever is greater. Through December 31, 2001, Stratus had fixed the number of members of its Board of Directors at four, with one member being nominated by Olympus.

The \$10 million mandatorily redeemable preferred stock was issued at a stated value of \$5.84 per share, the average closing price of Stratus' common stock during the 30 trading days ended March 2, 1998. Stratus used the proceeds from the sale of these securities to reduce its debt. In May 2001, in connection with the stock split transactions (Note 8), the conversion price of the mandatorily redeemable preferred stock was automatically adjusted to \$11.75 per share. For further discussion about the mandatorily redeemable preferred stock, see Note 3 below.

The \$10 million convertible debt facility was available to Stratus in whole or in part until May 22, 2004 and was intended to fund Stratus' equity investment in new Stratus/Olympus joint venture opportunities involving properties not owned by Stratus in May 1998. On September 30, 1998, Stratus borrowed \$2.0 million under this convertible debt facility to fund its investment in the Oly Walden General Partnership (Walden Partnership) (see Note 4). During the third quarter of 1999, Stratus borrowed an additional \$0.4 million under the convertible debt facility to fund its share of an additional capital contribution to the Walden Partnership. During the second quarter of 2001, Stratus repaid Olympus the entire \$3.2 million balance under the convertible debt financing facility. Included in the \$3.2 million payment to Olympus was \$0.8 million of accrued interest that had been added to the principal under the terms of the facility, and which represented the stated 12 percent annual rate pursuant to the terms of the convertible debt financing agreement. Stratus paid an additional \$0.3 million of interest during the third quarter of 2001 to satisfy the minimum annual rate of return provision within the convertible debt facility agreement, which provided that if the combination of interest at 12 percent and the value of the conversion right did not provide Olympus with at least a 15 percent annual return on the convertible debt, Stratus would pay Olympus additional interest upon termination of the convertible debt facility in an amount necessary to yield a 15 percent return. The convertible debt facility was terminated on August 15, 2001.

Olympus also agreed to make available up to \$50 million through May 22, 2001, of which it invested approximately \$13.4 million, for its share of capital for direct investments in Stratus/Olympus joint acquisition and development activities (Note 4). In return, Stratus provided Olympus with a right of first refusal to participate for no less than a 50 percent interest in all new acquisition and development projects on properties not currently owned by Stratus, as well as development opportunities on existing properties in which Stratus sought third-party equity participation.

In February 2002, Olympus and Stratus concluded their business relationship (Note 11).

3. Mandatorily Redeemable Preferred Stock At December 31, 2001 and 2000, Stratus had outstanding 1,712,328 shares of mandatorily redeemable preferred stock, stated value of \$5.48 per share. The conversion price of the mandatorily redeemable preferred stock was automatically adjusted to \$11.75 per share in May 2001 as a result of the stock split transactions (Note 8). Each share of preferred stock would share dividends and distributions, if any, ratably with Stratus' common stock. The preferred stock became redeemable at the holder's option at any time after May 22, 2001, for cash in an amount per share equal to 95 percent of the average closing price per share of common stock for the 10 trading days preceding the redemption date (the "common stock equivalent value") or, at Stratus' option, after May 22, 2003 for the greater of the common stock equivalent value or their stated value per share, plus accrued and unpaid dividends, if any. The preferred stock was required to be redeemed no later than May 22, 2004. Stratus had the option to satisfy the redemption with shares of its common stock on a one-for-one share basis, subject to certain limitations.

In February 2002, Stratus purchased all of its outstanding mandatorily redeemable preferred stock in connection with the transactions that concluded Stratus' business relationship with Olympus (Note 11).

4. Investment in Unconsolidated Affiliates Until February 2002, Stratus had investments in three joint ventures. Stratus owned an approximate 49.9 percent interest in each joint venture and Olympus owned the remaining 50.1 percent interest. Accordingly, Stratus has accounted for its investments in the joint ventures using the equity method of accounting (Note 1). Stratus served as developer and manager for each project undertaken by the joint ventures and received development fees, sales commissions, and other management fees for its services. In February 2002, Stratus and Olympus reached an agreement in which Stratus purchased Olympus' ownership interests in the jointly owned Austin, Texas, properties and Olympus purchased Stratus' ownership interest in the jointly owned Houston, Texas, property (see below and Note 11).

On September 30, 1998, Stratus entered into two separate joint ventures with Olympus. The first provided for the development of 75 residential lots at the Wimberly Lane subdivision located within the Barton Creek community in Austin, Texas. In this transaction, Stratus sold land to the Oly Stratus Barton Creek I Joint Venture (Barton Creek Joint Venture), for approximately \$3.3 million. Stratus deferred recognizing revenues to the extent of its equity interest in the sale, or \$1.6 million, for financial accounting purposes, which was being recognized ratably as the developed lots were sold to unrelated third parties. Upon closing, Stratus received \$2.1 million and a \$1.2 million note and invested approximately \$0.5 million in the now fully developed project. In December 1999, Stratus sold 174 acres of land encompassing 54 platted lots within the Barton Creek Escala Drive subdivision to the Barton Creek Joint Venture for \$11.0 million. Upon the closing of the sale, Stratus received \$6.0 million and a \$5.0 million note. Stratus deferred recognizing revenues on \$5.5 million of the \$11.0 million of sales proceeds and \$3.0 million of the \$6.0 million related gain attributable to its ownership interest. Stratus recognized a portion of these deferred amounts as the lots in the fully developed Escala Drive project were sold to unrelated third parties. Stratus, as manager of the project, sold two Wimberly Lane lots and one Escala Drive lot during 2001, 30 Wimberly Lane lots and 32 Escala Drive lots in 2000 and 42 Wimberly Lane lots during 1999. Stratus recognized previously deferred gains totaling \$0.1 million in 2001, \$2.1 million in 2000 and \$0.3 million in 1999 as a result of the Barton Creek Joint Venture's lot sales. Deferred gains remaining to be recognized from Barton Creek Joint Venture lot sales totaled \$1.1 million at December 31, 2001 and are included in "Deferred revenues" on the accompanying balance sheet (see Note 11 for disclosure of the disposition of the deferred gain as part of the transaction that concluded Stratus' business relationship with Olympus in February 2002).

In connection with its lot sales, the Barton Creek Joint Venture has distributed a total of \$17.1 million to the partners. Stratus' portion of the distributions, approximately \$8.6 million, have been recorded as a repayment of the Barton Creek notes receivable and related accrued interest (\$6.9 million) and a reduction of its investment in the Barton Creek Joint Venture (\$1.7 million). In February 2002, Stratus purchased Olympus' 50.01 percent interest in the Barton Creek Joint Venture and its future operations will be consolidated in Stratus' financial statements.

The second transaction on September 30, 1998 involved approximately 700 developed lots and 80 acres of platted but undeveloped real estate at the Walden on Lake Houston project (Walden). Olympus originally purchased Walden in April 1998 when it contained 930 developed lots and 80 acres of undeveloped property. Stratus has served as manager of this project since Olympus' purchase. Stratus acquired its 49.9 percent interest in the Walden Partnership with \$2.0 million of borrowings under its convertible debt facility with Olympus (see Note 2). On September 30, 1999, Stratus borrowed an additional \$0.4 million under the convertible debt facility to fund its share of an additional

capital contribution to the Walden Partnership. The Walden Partnership had 404 developed lots and 80 acres of undeveloped property remaining at December 31, 2001. Through December 31, 2001, the Walden Partnership had not made any distributions to the partners. In February 2002, Stratus sold its 49.9 percent interest in the Walden Partnership to Olympus (Note 11).

Stratus negotiated an \$8.2 million project development loan for the Walden Partnership, which was nonrecourse to the partners and secured by the Walden Partnership's assets. At December 31, 2000, borrowings of \$1.7 million were outstanding on the project loan. The loan also required that a wholly owned subsidiary of Stratus deposit a total of \$2.5 million of restricted cash with the bank as additional collateral. The project loan agreement for the Walden Partnership permitted a \$0.30 reduction of this restricted cash deposit for every \$1.00 of principal repaid on the Walden Partnership loan. At December 31, 2000, Stratus had approximately \$0.6 million of restricted cash associated with this agreement. The loan was repaid in full during 2001, and the remaining restricted cash deposited with the bank was released to Stratus.

At December 31, 2001, Stratus has \$0.4 million in interest receivable from the Walden Partnership related to compensation for the collateral deposit (discussed above). Stratus also has \$1.3 million in accrued interest receivable on its \$2.1 million Walden Partnership note receivable. The \$2.1 million note receivable is included in "Investments and advances to unconsolidated affiliates" in the accompanying balance sheets. Stratus has recorded the \$1.7 million of accrued interest due from related parties in "Other assets" in the accompanying balance sheet. In January 2002, Stratus received the \$0.4 million of interest from the Walden Partnership, representing the remaining amount due for providing the collateral deposit. For a discussion of the settlement of these interest receivable amounts, see Note 11.

On August 16, 1999, Stratus sold Olympus a 50.1 percent interest in the Stratus 7000 West Joint Venture (7000 West) which owned a 70,000-square-foot office building, which was the first phase of the 140,000-square-foot Lantana Corporate Center located in Austin, Texas. Stratus received \$1.0 million upon closing and recognized a \$0.4 million gain relating to Olympus' ownership interest in the building. Stratus deferred recognizing revenues on its retained interest of the sales proceeds (\$0.5 million) and related gain (\$0.4 million) resulting from the sale of the 5.5 acres of commercial real estate associated with Phase I of the project. As developer, Stratus completed construction on the first building in November 1999 and as manager has secured lease agreements which have fully occupied the building. During the first quarter of 2000, Stratus completed a second sale of 5.5 acres of commercial real estate to 7000 West for \$1.1 million, which was used as the site for the second 70,000-square-foot office building (Phase II). Upon completion and leasing of Phase II during the second quarter of 2000, Stratus recognized the revenues (\$0.5 million) and related gain (\$0.4 million) associated with Olympus' ownership interest in 7000 West. Deferred gains from the sales of land for both phases totaled \$0.8 million and are included in "Deferred revenues" on the accompanying balance sheets for both 2001 and 2000. The 7000 West Joint Venture has distributed approximately \$0.6 million to the partners, of which Stratus has recorded its \$0.3 million portion as a reduction of its investment in 7000 West.

Funds for the construction of the first building at 7000 West were provided by a \$6.6 million project loan that Stratus negotiated in April 1999. During the first quarter of 2000, as manager of the 7000 West project, Stratus obtained an additional \$7.7 million of availability under the 7000 West development facility to provide the funding necessary to construct Phase II. The variable rate, nonrecourse loan is secured by the approximate 11 acres of real estate and the two completed office buildings at 7000 West and was scheduled to mature in August 24, 2001; however, Stratus negotiated an extension of the term loan to August 24, 2002 with an option to extend the maturity to August 24, 2003, subject to certain conditions. Stratus currently meets these conditions and will exercise its option to extend the maturity of the debt until at least August 2003. Borrowings outstanding on the 7000 West development loan totaled \$12.9 million at December 31, 2001 and \$12.0 million at December 31, 2000. In February 2002, Stratus purchased Olympus' interest in the 7000 West Joint Venture and will consolidate this debt on its balance sheet prospectively (Note 11).

The summarized unaudited financial information of Stratus' unconsolidated affiliates as of December 31, 2001 and 2000, and for each of the three years in the period ending December 31, 2001 follows (in thousands):

	Barton Creek Joint Venture	Walden Partnership	7000 West	Total
	-----	-----	-----	-----
	(Unaudited)			
Earnings data (year ended December 31, 2001):				
Revenues	\$ 973	\$ 2,472	\$ 3,275	\$ 6,720
Operating loss	(252)	(751)	(152)	(1,155)
Net loss	(244)	(595)	(75)	(914)
Stratus' equity in net loss	(121)	(254)a	(37)	(412)
Earnings data (year ended December 31, 2000):				
Revenues	17,454	2,396	1,357	21,207
Operating income (loss)	4,461	(1,074)	(909)	2,478
Net income (loss)	4,580	(1,007)	(909)	2,664
Stratus' equity in net income (loss)	2,286	(460)a	(454)	1,372
Earnings data (year ended December 31, 1999):				
Revenues	4,787	2,993	21	7,801
Operating income (loss)	1,039	(510)	(83)	446
Net income (loss)	1,039	(485)	(74)	480
Stratus' equity in net income (loss)	518	(174)a	(37)	307
Balance sheet data (at December 31, 2001):				
Current assets	363	313	1,960	4,608
Other long-term receivables	1,972	-	-	-
Real estate and facilities, net	4,957	6,166	14,783	25,906
Total assets	7,292	6,479	16,743	30,514
Current liabilities	5	2,984	856	3,845
Total liabilities	5	7,347 b	13,794	21,146
Net assets (liabilities)	7,287	(868)	2,949	9,368
Stratus' equity in net assets (liabilities)	3,643	(433)	1,471	4,681
Balance sheet data (at December 31, 2000):				
Current assets	1,243	501	1,490	5,218
Other long-term receivables	1,984	-	-	-
Real estate and facilities, net	5,181	7,350	14,696	27,227
Total assets	8,408	7,851	16,186	32,445
Current liabilities	177	1,946	12,635	14,758
Total liabilities	177	8,124 b	12,635	20,936
Net assets (liabilities)	8,231	(273)	3,551	11,509
Stratus' equity in net assets (liabilities)	4,107	(136)	1,772	5,743

a. Includes recognition of deferred income of \$43,000 in 2001, \$42,000 in 2000 and \$67,000 in 1999, representing the difference in Stratus' investment in the Walden Partnership and its underlying equity at the date of acquisition. Stratus will recognize the remaining difference as the related real estate is sold. At December 31, 2001, Stratus had \$185,000 of remaining unrecognized Walden Partnership deferred income.

b. Includes a \$2.1 million note payable to Stratus.

**Lakeway Project**

Since mid-1998, Stratus has provided development, management, operating and marketing services for the Lakeway development near Austin, Texas, which is owned by Commercial Lakeway Limited Partnership, an affiliate of Credit Suisse First Boston, for a fixed monthly fee. In January 2001, Stratus entered into an expanded development management agreement with Commercial Lakeway Limited Partnership covering a 552-acre portion of the Lakeway development known as Schramm Ranch, and

Stratus contributed \$2.0 million as an investment in this project (Lakeway Project). Under the agreement, Stratus will receive enhanced management and development fees and sales commissions, as well as a net profits interest in the Lakeway project. Lakeway Project distributions are made to Stratus as sales installments close. Stratus is currently receiving a 28 percent share in any Lakeway Project distributions and that rate will continue until it receives proceeds totaling the initial investment in the project (\$2.0 million) plus a stated annual rate of return, at which time, the share of the Lakeway Project distributions will increase to 40 percent.

During the second quarter of 2001, Stratus negotiated an agreement to sell the entire Schramm Ranch property to a single purchaser for approximately \$11.0 million, conditioned on obtaining certain entitlements. As manager of the project, Stratus obtained subdivision, annexation, zoning and other entitlements for the first phase of the Schramm Ranch property. Obtaining these entitlements allowed for the closing of the sale for the first phase of the Schramm Ranch property for \$1.5 million. The proceeds from this initial closing were used to obtain the entitlements necessary for the purchaser to develop the remaining 500-plus acres of the property. In the fourth quarter of 2001, Stratus secured all the remaining necessary entitlements for the Schramm Ranch property and the purchaser closed and funded \$3.5 million, representing the second of four sale installments. In connection with this second sale installment, the Lakeway Project distributed approximately \$1.2 million to Stratus. Stratus recorded approximately \$0.6 million of the proceeds as a partial return of its original investment in the project and \$0.6 million as its equity earnings in the project's income for the year, which was reflected in "Equity in unconsolidated affiliates' income" in the accompanying statements of income. The remaining two Schramm Ranch property sales installments (totaling \$6.0 million) are scheduled to occur in March 2002 and June 2002. At December 31, 2001, Stratus had \$0.6 million in accounts receivable related to expenditures made on behalf of the Lakeway Project that are to be reimbursed by the Commercial Lakeway Limited Partnership.

## 5. Long-Term Debt

	December 31,	
	2001	2000
	(In Thousands)	
Comerica facility, average rate 6.1% in 2001 and 9.5% in 2000	\$ 12,080	\$ 397
Unsecured term loans, average rate 9.25% in 2001 and 2000	10,000	5,000
Construction loan facility, average rate 4.6% in 2001	13,496	-
Convertible debt facility with Olympus, average rate 12.0% in 2001 and 2000 (Note 2)	-	3,043
	\$ 25,576	\$ 8,440

In December 1999, Stratus negotiated a facility agreement with Comerica Bank-Texas (Comerica). The facility provided for a \$20 million term loan and a \$10 million revolving line of credit. Stratus borrowed \$20 million under the term loan portion of the facility and used the proceeds to repay all outstanding borrowings under a previous credit facility. In December 2000, Stratus repaid all remaining borrowings outstanding under the existing Comerica facility and negotiated an expanded \$30 million facility arrangement, with a December 16, 2002 maturity. Under terms of the amended agreement, Stratus' availability totaled \$20 million under a revolving line of credit with a \$10 million term loan commitment specifically designated for potential future redemption obligations related to Stratus' mandatorily redeemable preferred stock held by Olympus (Note 3). In December 2001, Stratus established a new credit facility with Comerica. Under terms of the new facility, Stratus has established an expanded \$25 million revolving line of credit available for general corporate purposes and an additional \$5 million loan specifically designed to provide the funds for certain development costs. This facility will mature in April 2004. At December 31, 2001, Stratus had borrowed \$12.1 million under its existing revolving credit facility. See Note 11 for discussion of transactions that required Stratus to borrow additional amounts under its revolving credit facility.

Interest on the Comerica facility is variable and accrues at either the lender's prime rate plus 1 percent or LIBOR plus 250 basis points at Stratus' option. The term loan and revolving line of credit contain certain customary restrictions and are secured by a lien on all of Stratus' real property assets, its interests in unconsolidated affiliates and the future receipt of municipal utility district reimbursements and other infrastructure receivables. The credit facility also contains covenants which prohibit the payment of dividends and impose certain other restrictions. As of December 31, 2001, Stratus was in compliance with such covenants. Stratus also is required to deposit funds into an interest reserve account with the bank. The

amount in this account must be sufficient to carry the potential debt service for both the term loan and the revolving line of credit for the ensuing twelve-month period, adjusted quarterly. The amount of the interest reserve totaled approximately \$1.6 million at December 31, 2001. The amount can be funded directly by Stratus or by reducing Stratus' availability under the revolving line of credit. At December 31, 2001, Stratus had no amounts deposited in the interest reserve account, which reduced its availability under its revolving credit facility to \$23.4 million, of which Stratus had borrowed \$12.1 million at December 31, 2001 (see above). The full amount of the facility can be re-established if Stratus makes future deposits into the interest reserve account. Stratus is able to withdraw any of the proceeds it deposits into the interest reserve account at its discretion.

Stratus has also entered into two separate five-year \$5.0 million unsecured term loans with First American Asset Management. Interest accrues on the loans at an annual rate of 9.25 percent and is payable monthly. One loan will mature in December 2005, the other \$5.0 million term loan will mature in July 2006. The proceeds from these term loans have been used to fund Stratus' ongoing operations and for its general corporate purposes.

In the second quarter of 2001, Stratus secured an \$18.4 million project loan with Comerica for the construction of two office buildings at the 7500 Rialto Drive project located within the Lantana project in Austin, Texas. This variable-rate project loan facility, secured by the land and buildings in the project, matures in June 2003, with an option to extend its maturity by one year. Currently, Stratus' availability under the project loan is \$9.2 million and is intended for the construction of the first 75,000-square-foot building and related parking garage. At December 31, 2001, Stratus had borrowed \$3.5 million under this project loan facility.

As a result of the transactions with Olympus in February 2002, Stratus assumed \$12.9 million of previously unconsolidated debt associated with the construction of the 140,000-square-foot office complex at 7000 West (see Notes 4 and 11).

#### 6. Real Estate and Facilities, net

	December 31,	
	2001	2000
	(In Thousands)	
Land held for development or sale:		
Austin, Texas area	\$ 100,735	\$ 87,781
Other areas of Texas	1,590	4,875
	-----	-----
Total land	102,325	92,656
Office building (7500 Rialto)	7,380	-
Furniture, fixtures and equipment, net of accumulated depreciation of \$322 in 2001 and \$189 in 2000	337	349
	-----	-----
	\$ 110,042	\$ 93,005
	=====	=====

At December 2001, Stratus' investment in real estate includes approximately 3,800 acres of land located in Austin, Houston and San Antonio, Texas. The principal holdings of Stratus are located in the Austin area and consist of 2,039 acres of undeveloped residential, multi-family and commercial property and 34 developed real estate lots within the Barton Creek community. Stratus' remaining Austin properties include 436 acres of undeveloped residential, multi-family and commercial property in an area known as the Lantana tract, south of and adjacent to the Barton Creek community and the approximate 1,300 acres of undeveloped commercial and multi-family property within the Circle C Ranch development. During 2001, Stratus commenced and substantially completed the 75,000-square-foot office building at 7500 Rialto Drive within Lantana. The office building costs reflected in the table above include both the construction and land costs associated with 7500 Rialto.

Stratus also owns 13 acres of undeveloped commercial property in Houston, Texas, and 21 acres of undeveloped multi-family residential property located in San Antonio, Texas. The San Antonio property is being managed and actively marketed by an unaffiliated professional real estate developer. Under the terms of the related development agreements the operating expenses and development costs, net of revenues, are funded by Stratus. The developer is entitled to a management fee and a 25 percent interest in the net profits, after Stratus recovers its investment and a stated rate of return, resulting from the sale of the managed properties. As of December 31, 2001, no amounts have been paid in connection with this net profit arrangement.

Various regulatory matters and litigation involving Stratus' development of its Austin-area properties were resolved during 2000 (Note 9).

7. Income Taxes Income taxes are recorded pursuant to SFAS 109 "Accounting for Income Taxes." No benefit has been recognized for any period presented with respect to Stratus' net deferred assets, as a full valuation allowance has been provided because of Stratus' operating history. Therefore, the final determination of the gross deferred tax asset amounts had no impact to Stratus' financial statements. The components of deferred taxes follow:

	December 31,	
	2001	2000
	(In Thousands)	
Deferred tax assets:		
Net operating losses (expire 2001-2018)	\$ 11,599	\$ 12,167
Real estate and facilities, net	9,360	10,518
Alternative minimum tax credits and depletion allowance (no expiration)	805	496
Other future deduction carryforwards (expire 2001-2003)	67	52
Valuation allowance	(21,831)	(23,233)
	-----	-----
	\$ -	\$ -
	=====	=====

Income taxes charged to income follow:

	Years Ended December 31,		
	2001	2000	1999
	(In Thousands)		
Current income tax provision			
Federal	\$ -	\$ (351)	\$ (60)
State	-	(45)	(70)
	-----	-----	-----
		(396)	(130)
	-----	-----	-----
Income tax provision	\$ -	\$ (396)	\$ (130)
	=====	=====	=====

Reconciliations of the differences between the income tax provision computed at the federal statutory tax rate and the income tax provision recorded follow:

	Years Ended December 31,					
	2001		2000		1999	
	Amount	Percent	Amount	Percent	Amount	Percent
	(Dollars In Thousands)					
Income tax provision computed at the federal statutory income tax rate	\$(1,379)	(35)%	\$(5,116)	(35)%	\$(1,050)	(35)%
(Increase) decrease						

attributable to:						
Change in valuation allowance	1,402	35	3,742	26	1,212	40
State taxes and other	(23)	-	978	6	(292)	(9)
	-----	-----	-----	----	-----	----
Income tax provision	\$ -	-	% \$ (396)	(3)%	\$ (130)	(4)%
	=====	=====	=====	====	=====	=====

8. Stock Options and Equity Transactions Stock Options. Stratus' Stock Option Plan, 1998 Stock Option Plan and Stock Option Plan for Non-Employee Directors (the Plans) provide for the issuance of stock options, adjusted for the effects of the effective reverse stock split transactions (see below), representing 975,000 shares of common stock and stock appreciation rights at no less than market value at time of grant. Generally, stock options are exercisable in 25 percent annual increments beginning one year from the date of grant and expire 10 years after the date of grant. At December 31, 2001, 174,950 options were available for new grants under the Plans. The 50,000 remaining stock appreciation rights were exercised during 2001. A summary of stock options outstanding follows:

	2001		2000		1999	
	Number of Options	Average Option Price	Number of Options	Average Option Price	Number of Options	Average Option Price
Beginning of year	836,625	\$ 7.70	631,938	\$ 7.00	533,813	\$ 6.84
Granted	7,500	9.87	236,875	9.08	98,125	7.84
Exercised	(56,250)	10.12	(30,000)	3.52	-	-
Expired/forfeited	(325)	12.38	(2,188)	9.00	-	-
End of year	787,550	8.01	836,625	7.70	631,938	7.00

Summary information of fixed stock options outstanding at December 31, 2001 follows:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Of Options	Weighted Average Remaining Life	Weighted Average Option Price	Number of Options	Weighted Average Option Price
\$3.00 to \$3.63	135,000	3.9 years	\$ 3.12	135,000	\$ 3.12
\$5.25 to \$7.81	254,063	6.2 years	7.08	208,129	6.93
\$8.06 to \$9.87	256,875	8.5 years	9.09	67,972	9.07
\$12.38	141,612	6.1 years	12.38	106,375	12.38
	787,550			517,476	

Stratus has adopted the disclosure-only provisions of SFAS No. 123, "Accounting for Stock Based Compensation," and continues to apply Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations in accounting for its stock-based compensation plans. Accordingly, Stratus has recognized no compensation costs associated with its stock option grants. If Stratus had determined compensation costs for its stock option grants based on the fair value of the awards at their grant dates, its net income would have decreased by \$909,000 (\$0.11 per share) in 2001, \$828,000 (\$0.10 per share) in 2000 and \$752,000 (\$0.09 per share) in 1999. For the pro forma computations, the fair values of the option grants were estimated on the dates of grant using the Black-Scholes option pricing model. These values totaled \$7.02 in 2001, \$6.55 in 2000 and \$5.50 in 1999. The weighted average assumptions used include a risk-free interest rate of 5.4 percent in 2001, 6.0 percent in 2000 and 5.4 percent in 1999, expected lives of 10 years and expected volatility of 55 percent in 2001, 55 percent in 2000 and 54 percent in 1999. These pro forma effects are not necessarily representative of future years. No other discounts or restrictions related to vesting or the likelihood of vesting of fixed stock options were applied.

**Share Purchase Program.** In February 2001, Stratus' Board of Directors authorized an open market stock purchase program for up to 0.7 million stock-split adjusted shares of Stratus' common stock (see below). The purchases may occur over time depending on many factors, including the market price of Stratus stock; Stratus' operating results, cash flow and financial position; and general economic and market conditions. No purchases have been made under this program through February 4, 2002.

**Stock Split Transactions.** On May 10, 2001, the shareholders of Stratus approved an amendment to Stratus' certificate of incorporation to permit a reverse 1-for-50 common stock split followed immediately by a forward 25-for-1 common stock split. This transaction resulted in Stratus' shareholders owning fewer than 50 shares of common stock having their shares converted into less than one share in the reverse 1-for-50 split, for which they received cash payments equal to the fair value of those fractional interests. Stratus shareholders owning more than 50 shares of Stratus' common stock had their number of shares of common stock reduced by one-half immediately after this transaction.

Shareholders owning an odd number of shares were entitled to a cash payment equal to the fair value of the resulting fractional share. The fair value of the fractional shares was calculated by valuing each outstanding share of Stratus common stock held at the close of business on the effective date, May 25, 2001, at the average daily closing price per share of Stratus' common stock for the ten trading days immediately preceding the effective date. Stratus funded \$0.5 million into a restricted cash account to purchase approximately 42,000 post-stock split shares of its common stock. As of December 31, 2001, fractional shares

representing approximately

21,000 shares of Stratus' common stock had been purchased for \$0.25 million. The funding for the remaining 21,000 purchased shares is shown as \$0.2 million of restricted cash on the accompanying December 31, 2001 balance sheet. The number of shares outstanding of Stratus' mandatorily redeemable preferred stock (see Note 3) is not affected by this transaction; however, the conversion price in effect immediately prior to the transaction was approximately doubled to reflect the effects of these transactions.

9. Commitments and Contingencies. Construction Contracts. Stratus has commitments under non-cancelable open contracts totaling \$4.8 million at December 31, 2001.

Environmental. Stratus has made, and will continue to make, expenditures at its operations for protection of the environment. Increasing emphasis on environmental matters can be expected to result in additional costs, which will be charged against Stratus' operations in future periods. Present and future environmental laws and regulations applicable to Stratus' operations may require substantial capital expenditures that could adversely affect the development of its real estate interests or may affect its operations in other ways that cannot be accurately predicted at this time.

Stratus previously accrued liabilities totaling \$5.1 million in the connection with operation of certain oil and gas properties that were sold during 1993. During 2000 management completed a review of these amounts and determined that current conditions warranted reversal of \$2.1 million of these accruals. Accordingly, other income of \$2.1 million is reflected in the Statement of Income for the year ending December 31, 2000. The remaining liability represents Stratus' indemnification of the purchaser for any future abandonment costs in excess of net revenues received by the purchaser in connection with the sale of one oil and gas property in 1993. Stratus accrued \$3.0 million relating to this liability at the time of the purchase, which is included in "Other liabilities" in the accompanying balance sheets. Stratus periodically assesses the reasonableness of amounts recorded for this liability through the use of information provided by the operator of the property, including its net production revenues. The carrying value of this liability may be adjusted in future periods, as additional information becomes available.

Litigation. Annexation/Circle C MUD Reimbursement Suit. On December 19, 1997, the City of Austin (the City) annexed all land formerly lying within the Circle C project. Stratus' property located within Circle C's municipal utility districts (MUDs) and annexed by the City is subject to the City's zoning and development regulations. Additionally, the City is required to assume all MUD debt and reimburse Stratus for a significant portion of the costs incurred for water, wastewater and drainage infrastructure. Because the City failed to pay these costs upon annexation, as required by statute, Stratus sued the City.

In late October 1999, Circle C Land Corp., a wholly owned subsidiary of Stratus, and the City reached an agreement regarding a portion of Circle C's claims against the City. As a result of this agreement, Stratus received approximately \$10.3 million, including \$1.0 million in interest, of partial settlement claims through December 31, 1999 and received an additional \$0.2 million payment in January 2000.

In March 2000, the City settled its disputes with certain third party real estate developers and landowners at the Circle C community. Under terms of this settlement, the lawsuits contesting the City's December 1997 annexation of all land within the four Circle C MUDs and the dissolution of the four MUDs were dismissed with prejudice. As a result, a refund contingency included in the City's partial settlement of Stratus' reimbursement claim was eliminated. Stratus recorded a gain of approximately \$7.4 million in the first quarter of 2000, representing that portion of the reimbursement infrastructure expenditures in excess of Stratus' remaining basis in these assets and related interest income. The remaining \$3.1 million of the proceeds reduced Stratus' investment in Circle C.

In December 2000, Stratus received \$6.9 million, including \$0.6 million of interest, from the City as full and final settlement of Stratus' Circle C MUD reimbursement claim. Stratus recorded a gain of \$6.9 million during the fourth quarter associated with its receipt of these proceeds.

Other. Stratus and the City were involved in various lawsuits from January 1998 through June 2000, regarding the constitutionality of certain legislation authorizing the creation of water quality protection zones (WQPZs). The enabling legislation provided that a duly formed WQPZ would be responsible for establishing and monitoring the water quality standards for the development within zones. The City argued that the enabling legislation authorizing the formation of the WQPZs was unconstitutional, while Stratus and other developers argued the WQPZ legislation was constitutional. In June 2000, the Texas

Supreme Court ruled the

Texas WQPZ legislation was unconstitutional. This decision primarily affects Stratus' properties within the southern portion of its Barton Creek project. Significant portions of Stratus' properties contain grandfathered entitlements providing an exemption from certain current development regulations. Stratus has initiated development plans for these areas that will meet the grandfathered ordinance requirements or current ordinances, as applicable.

#### 10. Quarterly Financial Information (Unaudited)

	Revenues	Operating Income (Loss)	Net Income (Loss)	Net Income (Loss) per Share	
				Basic	Diluted
(In Thousands, Except Per Share Amounts)					
2001					
1st Quarter	\$ 1,426	\$ (140)	\$ 20	\$ -	\$ -
2nd Quarter	8,214	1,278	1,090	0.15	0.13
3rd Quarter	4,458	2,946	3,056	0.43	0.37
4th Quarter	731	(1,290)	(226)	(0.03)	(0.03)
	-----	-----	-----	-----	-----
	\$ 14,829	\$ 2,794	\$ 3,940	0.55	0.48
	=====	=====	=====		
2000					
1st Quarter	\$ 2,113	\$ (745)	\$ 7,278 a	\$ 1.02	\$ 0.88
2nd Quarter	2,942	(2)	575	0.08	0.07
3rd Quarter	2,019	(918)	164	0.02	0.02
4th Quarter	3,025	(1,984)	6,205 b	0.86	0.76
	-----	-----	-----	-----	-----
	\$ 10,099	\$ (3,649)	\$ 14,222	1.99	1.74
	=====	=====	=====		

a. Includes \$7.4 million gain recognition associated with the partial settlement of the Circle C MUD reimbursement claim (Note 9).

b. Includes \$6.9 million gain associated with the full and final settlement of the Circle C MUD reimbursement claim (Note 9).

11. Subsequent Event Since 1998, Stratus, through its subsidiaries, has been involved in three joint ventures with Olympus (see Note 4). Each joint venture was governed by a partnership agreement containing similar provisions, including a "buy/sell option" which could be exercised by either Stratus or Olympus.

In November 2001, Olympus triggered the buy/sell option by offering to either sell its approximate 50 percent equity interests in each of the three joint ventures or otherwise purchase Stratus' approximate 50 percent equity interests in the three joint ventures. In December 2001, Stratus notified Olympus that it intended to purchase Olympus' interests. Subsequently, Stratus and Olympus initiated discussions to conclude their ongoing business relationship.

On February 12, 2002, Stratus and Olympus agreed to conclude their business relationship, which occurred on February 27, 2002 in the following transactions:

\* Stratus redeemed its \$10.0 million of mandatorily redeemable preferred stock held by Olympus for \$7.6 million. Stratus will record the \$2.4 million discount as additional paid in capital.

\* Stratus sold its 49.9 percent ownership interest in the Walden Partnership to Olympus for \$3.1 million.

\* Stratus acquired Olympus' 50.01 percent ownership interest in the Barton Creek Joint Venture for \$2.4 million. At the time of its acquisition, the Barton Creek Joint Venture's cash totaled \$0.3 million and the joint venture is scheduled to receive a \$1.0 million MUD reimbursement in June 2002.

\* Stratus acquired Olympus' 50.1 percent ownership interest in the 7000 West Joint Venture for \$1.5 million. Stratus received \$0.7 million of cash from 7000 West upon its acquisition and also assumed 7000 West's \$12.9 million of previously unconsolidated debt.

The net cash cost of the transactions for Stratus totaled approximately \$7.4 million, after considering the approximate \$1.0 million in cash it received from its acquisition of the Barton Creek and 7000 West Joint Ventures. Stratus completed these transactions using funds available to it under its \$25 million revolving credit facility (see Note 5).

In connection with the completion of these transactions, Stratus also announced the resignation of Mr. Robert L. Adair III from its Board of Directors. Mr. Adair was appointed to the Board in 1998 in connection with the original Olympus agreement that provided for representation on Stratus' Board (Note 2).

The following unaudited pro forma consolidated balance sheet at December 31, 2001 and income statement for the year ending December 31, 2001 show the effect of the Olympus transactions as if the event had occurred on January 1, 2001 (in thousands).

	Stratus Historical	Acquired Joint Ventures	Unadjusted Combined Balance Sheet	Pro Forma Adjustments	Pro Forma Balance Sheet
<b>Assets</b>					
Cash and cash equivalents	\$ 3,705	\$ 1,108	\$ 4,813	\$ (1,000) <sup>a</sup>	\$ 3,813
Accounts receivable	740	307	1,047	-	1,047
Prepaid expenses	73	6	79	-	79
<b>Total current assets</b>	<b>4,518</b>	<b>1,421</b>	<b>5,939</b>	<b>(1,000)</b>	<b>4,939</b>
Real estate and facilities, net	110,042	19,741	129,783	(3,201) <sup>b</sup>	126,582
Investments in and advances to unconsolidated affiliates	8,005	-	8,005	(6,575) <sup>c</sup>	1,430
Long-term receivable	4,083	-	4,083	-	4,083
Other assets	2,830	2,969	5,799	(1,321) <sup>d</sup>	4,478
<b>Total assets</b>	<b>\$ 129,478</b>	<b>\$ 24,131</b>	<b>\$ 153,609</b>	<b>\$ (12,097)</b>	<b>\$ 141,512</b>
<b>Liabilities and Stockholders' Equity</b>					
Accounts payable and and accrued liabilities	\$ 2,482	\$ 614	\$ 3,096	\$ -	\$ 3,096
Accrued interest, property taxes and other	1,895	232	2,127	-	2,127
<b>Total current liabilities</b>	<b>4,377</b>	<b>846</b>	<b>5,223</b>	<b>-</b>	<b>5,223</b>
Long-term debt	25,576	12,930	38,506	7,400 <sup>e</sup>	45,906
Other liabilities	4,866	-	4,866	(1,864) <sup>f</sup>	3,002
Mandatorily redeemable preferred stock	10,000	-	10,000	(10,000) <sup>g</sup>	-
<b>Total stockholders' equity</b>	<b>84,659</b>	<b>10,355</b>	<b>95,014</b>	<b>(7,633)<sup>h</sup></b>	<b>87,381</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 129,478</b>	<b>\$ 24,131</b>	<b>\$ 153,609</b>	<b>\$ (12,097)</b>	<b>\$ 141,512</b>

a. Cash paid in transactions using cash received from joint ventures acquired and borrowings.

b. Basis reduction of properties acquired in acquisitions and elimination of deferred costs.

c. Elimination of investments in and advances to unconsolidated affiliates.

d. Elimination of long-term interest receivable from the Walden Partnership.

e. Net borrowings to fund transactions excluding the cash received from joint ventures acquired (see above).

f. Elimination of the remaining deferred gains associated with the Barton Creek Joint Venture (\$1.1 million) and 7000 West (\$0.8 million).

g. Redemption of Stratus' mandatorily redeemable preferred stock.

h. Elimination of the partnership equity of joint ventures acquired offset in part by recording the \$2.4 million discount associated with the redemption of the mandatorily redeemable preferred stock and the approximate \$0.3 million gain from the sale of the Walden partnership.

	Stratus Historical	Acquired Joint Ventures	Unadjusted Combined Income Statement	Pro Forma Adjustments	Pro Forma Income Statement
Revenues	\$ 14,829	\$ 4,249	\$ 19,078	\$ (549) a	\$ 18,529
Costs and expenses:					
Cost of sales	9,110	2,911	12,021	(329) b	11,692
General and administrative expenses	2,925	705	3,630	-	3,630
Total cost and expenses	12,035	3,616	15,651	(329)	15,322
Operating income (loss)	2,794	633	3,427	(220)	3,207
Interest expense, net	(456)	(1,057)	(1,513)	-	(1,513)
Interest income	1,157	2	1,159	(532) c	627
Equity in unconsolidated affiliates' income	207	-	207	254 d	461
Other income, net	238	82	320	-	320
Income before income taxes affiliates	3,940	(340)	3,600	(498)	3,102
Income tax provision	-	-	-	-	-
Net income (loss)	\$ 3,940	\$ (340)	\$ 3,600	\$ (498)	\$ 3,102

a. Elimination of recognition of previously deferred revenues and sales commissions and management fee income received from the joint ventures.

b. Elimination of previously deferred cost of sales and sales commission and management fee expense at the joint venture level.

c. Elimination of accrued interest income associated with Walden Partnership note.

d. Elimination of the Walden Partnership loss in 2001.

#### **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES**

Not applicable.

### **PART III**

#### **ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

The information set forth under the caption "Information About Nominees and Directors" of the Proxy Statement submitted to the stockholders of the registrant in connection with its 2002 annual meeting to be held on May 16, 2002, is incorporated herein by reference.

#### **ITEM 11. EXECUTIVE COMPENSATION**

The information set forth under the captions "Director Compensation" and "Executive Officer Compensation" of the Proxy Statement submitted to the stockholders of the registrant in connection with its 2002 annual meeting to be held on May 16, 2002, is incorporated herein by reference.

#### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The information set forth under the captions "Common Stock Ownership of Certain Beneficial Owners" and "Common Stock Ownership of Directors and Executive Officer" of the Proxy Statement submitted to the stockholders of the registrant in connection with its 2002 annual meeting to be held on May 16, 2002, is incorporated herein by reference.

#### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

The information set forth under the caption "Certain Transactions" of the Proxy Statement submitted to the stockholders of the registrant in connection with its 2002 annual meeting to be held on May 16, 2002, is incorporated herein by reference.

## Part IV

### ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K

- (a)(1) Financial Statements. Reference is made to the Financial Statements beginning on page 15 hereof.
- (a)(2) Financial Statement Schedules. Reference is made to the Index to Financial Statements appearing on page F-1 hereof.
- (a)(3) Exhibits. Reference is made to the Exhibit Index beginning on page E-1 hereof.
- (b) Reports on Form 8-K. During the last quarter covered by this report and for the 2002 period ending March 21, 2002, the registrant filed two Current Reports on Form 8-K dated December 20, 2001 and March 1, 2002 reporting events under Item 5.



**STRATUS PROPERTIES INC.**  
**EXHIBIT INDEX**

Exhibit  
Number

- 3.1 Amended and Restated Certificate of Incorporation of Stratus. Incorporated by reference to Exhibit 3.1 to Stratus' 1998 Form 10-K.
- 3.2 Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Stratus.
- 3.3 By-laws of Stratus, as amended as of February 11, 1999.  
Incorporated by Reference to Exhibit 3.2 to Stratus' 1998 Form 10-K.
- 4.1 Stratus' Certificate of Designations of Series A Participating Cumulative Preferred Stock. Incorporated by reference to Exhibit 4.1 to Stratus' 1992 Form 10-K.
- 4.2 Rights Agreement dated as of May 28, 1992 between Stratus and Mellon Securities Trust Company, as Rights Agent. Incorporated by reference to Exhibit 4.2 to Stratus' 1992 Form 10-K.
- 4.3 Amendment No. 1 to Rights Agreement dated as of April 21, 1997 between Stratus and the Rights Agent. Incorporated by reference to Exhibit 4 to Stratus' Current Report on Form 8-K dated April 21, 1997.
- 4.4 The loan agreement by and between Comerica Bank-Texas and Stratus Properties Inc., Stratus Properties Operating Co., L.P., Circle C Land Corp. and Austin 290 Properties Inc. dated December 21, 1999. Incorporated by reference to Exhibit 4.4 to Stratus 1999 Form 10-K.
- 4.5 Certificate of Designations of the Series B Participating Preferred Stock of Stratus Properties Inc. Incorporated by reference to Exhibit 4.1 to Stratus' Current Report on Form 8-K dated June 3, 1998.
- 4.6 Investor Rights Agreement, dated as of May 22, 1998, by and between Stratus Properties Inc. and Oly/Stratus Equities, L.P. Incorporated by reference to Exhibit 4.2 to Stratus' Current Report on Form 8-K dated June 3, 1998.
- 10.1 Joint Venture Agreement between Freeport-McMoRan Resource Partners, Limited Partnership and the Partnership, dated June 11, 1992. Incorporated by reference to Exhibit 10.3 to Stratus' 1992 Form 10-K.
- 10.2 Development and Management Agreement dated and effective as of June 1, 1991 by and between Longhorn Development Company and Precept Properties, Inc. (the "Precept Properties Agreement"). Incorporated by reference to Exhibit 10.8 to Stratus' 1992 Form 10-K.
- 10.3 Assignment dated June 11, 1992 of the Precept Properties Agreement by and among FTX (successor by merger to FMI Credit Corporation, as successor by merger to Longhorn Development Company), the Partnership and Precept Properties, Inc. Incorporated by reference to Exhibit 10.9 to Stratus' 1992 Form 10-K.
- 10.4 Master Agreement, dated as of May 22, 1998, by and among Oly Fund II GP Investments, L.P., Oly Lender Stratus, L.P., Oly/Stratus Equities, L.P., Stratus Properties Inc. and Stratus Ventures I Borrower L.L.C. Incorporated by reference to Exhibit 99.1 to Stratus' Current Report on Form 8-K dated June 3, 1998.
- 10.5 Securities Purchase Agreement, dated as of May 22, 1998, by and between Oly/Stratus Equities, L.P. and Stratus Properties Inc. Incorporated by reference to Exhibit 99.2 to Stratus' Current Report on Form 8-K dated June 3, 1998.
- 10.6 Oly Stratus Barton Creek I Amended and Restated Joint Venture Agreement between Oly ABC West I, L.P. and Stratus ABC West I, L.P. dated December 28, 1999. Incorporated by reference to Exhibit 10.7 to the Stratus 1999 Form 10-K.

**STRATUS PROPERTIES INC.**  
**EXHIBIT INDEX**

Exhibit

Number

10.7 Amendment No. 1 to the Oly Stratus ABC West I Joint Venture Agreement dated November 9, 1998. Incorporated by reference to Exhibit 10.11 to the Stratus 1998 Third Quarter 10-Q.

10.8 Management Agreement between Oly Stratus ABC West I Joint Venture and Stratus Management L.L.C. dated September 30, 1998. Incorporated by reference to Exhibit 10.12 to the Stratus 1998 Third Quarter 10-Q.

10.9 General Partnership Agreement dated April 8, 1998 by and between Oly/Houston Walden, L.P. and Oly/FM Walden, L.P. Incorporated by reference to Exhibit 10.14 to the Stratus 1998 Third Quarter 10-Q.

10.10 Amendment No. 1 to the General Partnership Agreement dated September 30, 1998 by and among Oly/Houston Walden, L.P., Oly/FM Walden, L.P. and Stratus Ventures I Walden, L.P. Incorporated by reference to Exhibit 10.15 to the Stratus 1998 Third Quarter 10-Q.

10.11 Management Agreement dated April 9, 1998 by and between Oly/FM Walden, L.P. and Stratus Management, L.L.C. Incorporated by reference to Exhibit 10.18 to the Stratus 1998 Third Quarter 10-Q.

10.12 Amended and Restated Joint Venture Agreement dated August 16, 1999 by and between Oly Lantana, L.P., and Stratus 7000 West, Ltd. Incorporated by reference to Exhibit 10.18 to the Quarterly Report on Form 10-Q of Stratus for the Quarter ended September 30, 1999.

10.13 Construction Loan Agreement dated February 24, 2000 by and between Stratus 7000 West Joint Venture and Comerica Bank- Texas.

10.14 Modification Agreement dated August 16, 1999, by and between Comerica Bank-Texas, as Lender, Stratus 7000 West Joint Venture, as borrower and Stratus Properties Inc., as Guarantor.

10.15 Guaranty Agreement dated December 31, 1999 by and between Stratus Properties Inc. and Comerica Bank-Texas. Incorporated by reference to Stratus' Quarterly Report on Form 10-Q for the Quarter ended March 31, 2000.

10.16 Second Amendment to Construction Loan Agreement dated December 31, 1999 by and between Stratus 7000 West Joint Venture, as borrower, Stratus Properties Operating Co., L.P. and Stratus Properties Inc., as Guarantors, and Comerica Bank-Texas.

10.17 Construction Loan Agreement dated April 9, 1999 by and between Stratus 7000 West Joint Venture and Comerica Bank-Texas.

10.18 Guaranty Agreement dated February 24, 2000 by and between Stratus Properties Inc. and Comerica Bank-Texas. Incorporated by reference to Stratus' Quarterly Report on Form 10-Q for the Quarter ended March 31, 2000.

10.19 Second Modification Agreement dated February 24, 2000 by and between Comerica Bank-Texas, as Lender, and Stratus 7000 West Joint Venture, as borrower, and Stratus Properties Inc., as Guarantor.

10.20 Third Modification Agreement dated August 23, 2001 by and between Comerica Bank-Texas, as Lender, Stratus 7000 West Joint Venture, as Borrower and Stratus Properties Inc., as Guarantor.

10.21 Development Management Agreement by and between Commercial Lakeway Limited Partnership, as owner, and Stratus Properties Inc., as development manager, dated January 26, 2001. Incorporated by reference to Exhibit 10.18 to the Stratus 2001 First Quarter 10-Q.

10.22 Amended Loan Agreement dated December 27, 2000 by and between Stratus Properties Inc. and Comerica-Bank Texas. Incorporated by reference to Exhibit 10.19 to the Stratus 2000 Form 10-K.

**STRATUS PROPERTIES INC.**  
**EXHIBIT INDEX**

Exhibit  
Number

10.23 Second Amendment to Loan Agreement dated December 18, 2001 by and among Stratus Properties Inc., Stratus Properties Operating Co., L.P., Circle C Land Corp. and Austin 290 Properties Inc. collectively as borrower and Comerica Bank-Texas, as Lender.

10.24 Loan Agreement dated December 28, 2000 by and between Stratus Properties Inc. and Holliday Fenoliglio Fowler, L.P., subsequently assigned to an affiliate of First American Asset Management. Incorporated by reference to Exhibit 10.20 to the Stratus 2000 Form 10-K.

10.25 Loan Agreement dated June 14, 2001, by and between Stratus Properties Inc. and Holliday Feroliglio Fowler, L.P., subsequently assigned to an affiliate of First American Asset Management.

10.26 Stratus' Performance Incentive Awards Program, as amended effective February 11, 1999. Incorporated by reference to Exhibit 10.18 to Stratus' 1998 Form 10-K.

10.27 Stratus Stock Option Plan, as amended. Incorporated by reference to Exhibit 10.9 to Stratus' 1997 Form 10-K.

10.28 Stratus 1996 Stock Option Plan for Non-Employee Directors, as amended. Incorporated by reference to Exhibit 10.10 to Stratus' 1997 Form 10-K.

10.29 Stratus Properties Inc. 1998 Stock Option Plan as amended

effective February 11, 1999. Incorporated by reference to Exhibit 10.21 to Stratus' 1998 Form 10-K.

21.1 List of subsidiaries.

23.1 Consent of Arthur Andersen LLP.

23.2 Letter from Arthur Andersen LLP concerning audit quality controls.

24.1 Certified resolution of the Board of Directors of Stratus authorizing this report to be signed on behalf of any officer or director pursuant to a Power of Attorney.

24.2 Powers of attorney pursuant to which a report haws been signed on behalf of certain officers and directors of Stratus.

**STRATUS PROPERTIES INC.**  
**INDEX TO FINANCIAL STATEMENTS**

The financial statements in the schedule listed below should be read in conjunction with the financial statements of Stratus contained elsewhere in this Annual Report on Form 10-K.

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Report of Independent Public Accountants	F-1
Schedule III-Real Estate and Accumulated Depreciation	F-2

Schedules other than the one listed above have been omitted since they are either not required, not applicable or the required information is included in the financial statements or notes thereto.

**REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS**

**TO THE STOCKHOLDERS AND BOARD OF DIRECTORS  
OF STRATUS PROPERTIES INC.:**

We have audited, in accordance with auditing standards generally accepted in the United States, the financial statements included in this Form 10-K, and have issued our report thereon dated February 4, 2002 (except with respect to Note 11, as to which the date is February 27, 2002). Our audits were made for the purpose of forming an opinion on those financial statements taken as a whole. The accompanying schedule is the responsibility of the Company's management and is presented for the purpose of complying with the Securities and Exchange Commission's rules and is not part of the basic financial statements. This schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

**Arthur Andersen LLP**

Austin, Texas  
February 4, 2002 (except with respect to Note 11, as to which the date is  
February 27, 2002)

Stratus Properties Inc.  
REAL ESTATE AND ACCUMULATED DEPRECIATION  
December 31, 2001  
(In Thousands)

SCHEDULE III

	Initial Cost		Cost Capitalized Subsequent to Acquisitions		Gross Amounts at December 31, 2001	
	Land	Building and Improvements	Land	Building and Improvements	Land	Building and Improvements
Developed Lots a						
Barton Creek, Austin, TX	\$ 3,160	\$ -	\$ 4,754	\$ 7,914	\$ -	
Undeveloped Acreage b						
Camino Real, San Antonio, TX	310	-	60	370	-	
Copper Lakes, Houston, TX	591	-	630	1,221	-	
Barton Creek, Austin, TX	6,372	-	989	7,361	-	
Lantana, Austin, TX	1,261	-	11,832c	5,713	7,380	
Longhorn Properties, Austin, TX	10,329	-	324	10,653	-	
Developed Acreage e						
Barton Creek, Austin, TX	18,047	-	36,981	55,028	-	
Longhorn Properties, Austin, TX	5,299	-	4,336	9,635	-	
Lantana, Austin, TX	3,067	-	1,363	4,430	-	
Operating Properties						
Corporate offices, Austin, TX	-	659	-	-	659	
	\$ 48,436	\$ 659	\$ 61,269	\$ 102,325	\$ 8,039	

(continued from above)

Stratus Properties Inc.  
REAL ESTATE AND ACCUMULATED DEPRECIATION (Continued)  
December 31, 2001

	Total	Number of Lot and Acres		Accumulated Depreciation	Year Acquired
		Lots	Acres		
Developed Acreage a					
Barton Creek, Austin, TX	\$ 7,914	34		\$ -	-
Undeveloped Acreage b					
Camino Real, San Antonio, TX	370	-	21	-	1990
Copper Lakes, Houston, TX	1,221	-	13	-	1991
Barton Creek, Austin, TX	7,361	-	416	-	1988
Lantana, Austin, TX	13,093	-	148	-	1994
Longhorn Properties, Austin, TX d	10,653	-	740	-	1992
Developed Acreage e					
Barton Creek, Austin, TX	55,028	-	1,623	-	1988
Longhorn Properties, Austin, TX d	9,635	-	537	-	1992

Lantana, Austin, TX	4,430	-	288	-	1994
Operating Properties					
Corporate Offices, Austin, TX	659	-	-	322	-
	-----	-----	-----	-----	
	\$ 110,364	34	3,786	\$ 322	
	=====	=====	=====	=====	

- a. Includes 34 developed lots in Mirador subdivision in the Barton Creek community.
- b. Undeveloped real estate that can be sold "as is" or will be developed in the future as additional permitting is obtained.
- c. Includes the costs associated with the construction of the 75,000-square-foot office building located at 7500 Rialto Drive. Initial land costs associated with the building total \$208,000.
- d. Includes the Circle C community real estate.
- e. Real estate that is currently being developed, has been developed, or has received the necessary permits to be developed.

Notes to Schedule III  
(In Thousands)

## (1) Reconciliation of Real Estate Properties:

The changes in real estate assets for the years ended December 31, 2001 and 2000 are as follows:

	2001	2000
	-----	-----
	(In Thousands)	
Balance, beginning of year	\$ 93,194	\$ 91,873
Acquisitions	121	82
Improvements and other	22,977	2,608
Cost of real estate sold	(5,928)	(1,369)
	-----	-----
Balance, end of year	\$ 110,364	\$ 93,194
	=====	=====

The aggregate net book value for federal income tax purposes as of December 31, 2001 was \$133,618,000.

## (2) Reconciliation of Accumulated Depreciation:

The changes in accumulated depreciation for the years ended December 31, 2001 and 2000 are as follows:

	2001	2000
	-----	-----
	(In Thousands)	
Balance, beginning of year	\$ 189	\$ 209
Retirement of assets	-	(149)
Depreciation expense	133	129
	-----	-----
Balance, end of year	\$ 322	\$ 189
	=====	=====

Depreciation of buildings and improvements reflected in the statements of operations is calculated over estimated lives of 30 years.

(3) Concurrent with certain year-end 1994 debt negotiations, the Partnership analyzed the carrying amount of its real estate assets, using generally accepted accounting principles, and recorded a \$115 million pre-tax, non-cash write-down. The actual amounts that will be realized depend on future market conditions and may be more or less than the amounts recorded in the Partnership's financial statements.

**Exhibit 3.2**

**CERTIFICATE OF AMENDMENT**  
to the  
**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**  
of  
**STRATUS PROPERTIES INC.**

Stratus Properties Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

FIRST: The Corporation's Board of Directors, at a meeting of the Board on February 7, 2001, duly adopted the following resolutions:

RESOLVED, That Article FOURTH of the Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FOURTH: (a) The total number of shares of capital stock which the Corporation shall have authority to issue is 200,000,000 shares, of which 50,000,000 shares shall be Preferred Stock with a par value of \$.01 per share and 150,000,000 shares shall be Common Stock with a par value of \$.01 per share.

(b) The Preferred Stock may be issued from time to time in one or more series, each of such series to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors. If so provided in such resolution or resolutions and as and to the extent permitted by law, the shares of any series of the Preferred stock may be made subject to redemption, or convertible into or exchangeable for shares of any other class or series, by the Corporation at its option or at the option of the holders or upon the happening of a specified event.

Subject to such special voting rights as holders of any shares of the Preferred Stock may be entitled to exercise, each holder of Common Stock of the Corporation shall be entitled to one vote for each share of such Common Stock standing in the name of such holder on the books of the Corporation.

(c) No holder of shares of any class shall be entitled, as such, as matter of right, to subscribe for or purchase any part of any new or additional issue of stock of any class or series whatsoever, or of securities convertible into, or accompanied by rights to subscribe to, stock of any class or series whatsoever, whether now or hereafter authorized, or whether issued for cash or otherwise.

(d) At 5:00 p.m. (Eastern Time) on the effective date of the amendment amending and restating this Article FOURTH (the "Effective Date"), each share of Common Stock held of record as of 5:00 p.m. (Eastern Time) on the Effective Date or held in the Corporation's treasury as of such time shall be automatically reclassified and converted, without further action on the part of the holder thereof, into one-fiftieth (1/50) of one share of Common Stock (the "Reverse Stock Split"). No fractional share of Common Stock shall be issued to any Fractional Holder (as defined below) as a result of the Reverse Stock Split. From and after 5:00 p.m. (Eastern Time) on the Effective Date, each Fractional Holder shall have no further interest as a stockholder in respect of any fractional share resulting from the Reverse Stock Split and, in lieu of receiving such fractional share, shall be entitled to receive, upon surrender of the certificate or certificates representing such fractional share, the cash value of such fractional share based on the average daily closing price per share of the Common Stock on Nasdaq for the 10 trading days immediately preceding the Effective Date, without interest; provided, however, that if no shares of Common Stock have been traded on any such trading day, the closing price per share of the Common Stock for such trading day shall be the average of the highest bid and lowest asked prices for the Common Stock for such trading day as reported by Nasdaq. As used herein, the term "Fractional Holder" shall mean a holder of record of fewer than 50 shares of Common Stock as of 5:00 p.m. (Eastern Time) on the Effective Date who would be entitled to less than one whole share of Common Stock in respect of such shares as a result of the Reverse Stock Split.

At 5:01 p.m. (Eastern Time) on the Effective Date, each share of Common Stock, and any fraction thereof (excluding any interest in the Corporation held by a Fractional Holder converted into cash) held by a holder of record of one or more shares of Common Stock as of 5:01 p.m. (Eastern Time) on the Effective Date, or held in the Corporation's treasury as of such time, shall be automatically reclassified and converted, without further action on the part of the holder thereof, into shares of Common Stock on the basis of 25 shares of Common Stock for each share of Common Stock then held (the "Forward Stock Split"). Each stockholder who holds an odd number of shares of Common Stock in

a record account immediately prior to the Effective Date, in lieu of the fractional share in the account resulting from the Forward Stock Split, shall be entitled to receive, upon surrender of the certificate or certificates representing such fractional share, the cash value of such fractional share based on the average daily closing price per share of the Common Stock on Nasdaq for the 10 trading days immediately preceding the Effective Date, without interest; provided, however, that if no shares of Common Stock have been traded on any such trading day, the closing price per share of the Common Stock for such trading day shall be the average of the highest bid and lowest asked prices for the Common Stock for such trading day as reported by Nasdaq.

SECOND: The Corporation's Board of Directors declared the foregoing amendment to be advisable and directed that the proposed amendment be submitted to a vote of the Corporation's stockholders at the 2001

**Annual Meeting of Stockholders of the Corporation.**

THIRD: At the Annual Meeting of Stockholders on May 10, 2001, the Corporation's stockholders duly approved the foregoing amendment and such amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being the Chairman of the Board, President and Chief Executive Officer of the Corporation, for the purpose of amending the Corporation's Amended and Restated Certificate of Incorporation, does hereby make this Certificate of Amendment, hereby declaring and certifying that this is the act and deed of the Corporation and the facts herein stated are true, and accordingly the undersigned has hereunto set his hand as of this 25th day of May, 2001.

**STRATUS PROPERTIES INC.**

*By: /s/ William H. Armstrong III*

-----  
*William H. Armstrong III  
Chairman of the Board,  
President and  
Chief Executive Officer*

**CORPORATE SEAL**

*Attest: /s/ Douglas N. Currault II*

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*Douglas N. Currault II  
Assistant Secretary*



**CONSTRUCTION LOAN AGREEMENT**

This CONSTRUCTION LOAN AGREEMENT ("Agreement") is made and entered into as of the 9th day of April, 1999, by and between STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture ("Borrower"), whose address is 98 San Jacinto Boulevard, Suite 220, Austin, Texas 78701, and COMERICA BANK-TEXAS, a state banking association ("Lender"), whose address is 1601 Elm Street, 2nd Floor, Dallas, Texas 75201, Attn: Real Estate Department.

**ARTICLE I**

**DEFINITION OF TERMS**

I.1 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

**Advance:** A disbursement by Lender, whether by journal entry, deposit to Borrower's account, check to third party or otherwise of any of the proceeds of the Loan, any insurance proceeds or Borrower's Deposit.

**Affidavit of Commencement:** As defined in Section 5.13 hereof.

**Affidavit of Completion:** As defined in Section 5.14 hereof.

**Agreement:** This Loan Agreement, as the same may from time to time be amended or supplemented.

**Allocations:** The line items set forth in the Budget for which Advances of Loan proceeds will be made.

**Assignment:** The Assignment of Accounts Receivable assigning to Lender the proceeds due Borrower from the City of Austin pursuant to the Agreement Regarding the Construction of Improvements to the City of Austin's Water System in the Lantana Area (the "Austin Water Agreement").

**Borrower's Deposit:** Such cash amounts as Lender may deem necessary for Borrower to deposit with it in accordance with the provisions of Section 3.4 of this Agreement.

**Budget:** The budget which is set forth on Exhibit B attached hereto and incorporated herein by reference.

**Commencement Date:** February 11, 1999.

**Commitment Fee:** The sum of \$33,000.00 to be paid by Borrower to Lender pursuant to the applicable provisions of this Agreement.

**Completion Date:** November 30, 1999, for completion of the shell portion of the office building.

**Construction Contract:** Collectively, all contracts and agreements entered into between Borrower and Contractor pertaining to the development, construction and completion of the Phase I Improvements.

**Contractor:** Zapalac/Reed Construction Company, L.C., together with any other person or entity with whom Borrower contracts for the development, construction and completion of the Phase I Improvements or any portion thereof.

**Deed of Trust:** The Amended and Restated Deed of Trust of even date herewith pursuant to which Borrower mortgages the Land to secure the Loan.

**Design Professional:** Susman Tisdale Gayle, together with any other person or entity with whom Borrower contracts for the providing of planning, design, architectural, engineering or other similar services relating to the Phase I Improvements, if any.

**Design Services Contract:** Collectively, all contracts and agreements entered into between Borrower and each Design Professional pertaining to the design, development and construction of the Phase I Improvements, if any.

**Disposition:** Any sale, lease (except as expressly permitted pursuant to the Loan Documents), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part, directly or indirectly, of the beneficial ownership interest in Borrower (if Borrower is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity); provided, however, a sale of the publicly traded stock of Stratus Properties, Inc. shall not constitute a Disposition under the terms of this Agreement.

**Draw Request:** a request by Borrower to Lender for an Advance in such form and containing such information as Lender may require.

**Environmental Law:** Any federal, state, or local law, statute, ordinance, or regulation, whether now existing or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. & 9601 et seq. ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. & 6901, et seq. ("RCRA"), the Clean Water Act, 33 U.S.C. & 1251 et seq. ("CWA"), the Clean Air Act, 42 U.S.C. & 7401 et seq. ("CAA"), the Federal Water Pollution Control Act, 33 U.S.C. & 1251 et seq. and any corresponding state laws or ordinances, the Texas Water Code & 26.001 et seq. ("TWC"), the Texas Solid Waste Disposal Act, Texas Health & Safety Code & 361.001 et seq. ("THSC"), and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

**Event of Default:** Any happening or occurrence described in Section 7.1 of this Agreement.

**Financing Statement:** The financing statement or financing statements (on Standard Form UCC-1 or otherwise) executed and delivered by Borrower in connection with the Loan Documents.

**Governmental Authority:** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

**Governmental Requirements:** All statutes, laws, ordinances, rules, regulations, orders, writs, injunctions or decrees of any Governmental Authority applicable to Borrower, Guarantor or the Mortgaged Property.

**Guarantor:** STRATUS PROPERTIES, INC., a Delaware corporation.

**Guaranty:** That or those instruments of guaranty now or hereafter in effect from Guarantor to Lender guaranteeing the repayment of all or any part of the Loan, the satisfaction of, or continued compliance with, the covenants contained in the Loan Documents, or both.

**Hazardous Substance:** Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within the definition of "regulated substance" pursuant to Section 26.342(9) of TWC; (iv) any substance included within the definition of "hazardous substance" pursuant to Section 361.003(13) of THSC; (v) asbestos; (vi) polychlorinated biphenyls; (vii) petroleum products; (viii) underground storage tanks, whether empty, filled or partially filled with any substance; (ix) any radioactive materials, urea formaldehyde foam insulation, radon; and (x) any other chemical, material or substance the exposure to which is prohibited, limited or regulated by any governmental authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

**Indebtedness:** As defined in Section 9.8 hereof.

**Initial Advance:** The Advance to be made at the time Borrower satisfies the conditions set forth in Sections 3.1 and 3.2 of this Agreement.

**Inspecting Person:** Chris Rehkemper of AECC will from time to time inspect the Phase I Improvements and the development of Phase II Improvements for the benefit of Lender.

**Land:** The real property or interest therein described in Exhibit A attached hereto and incorporated herein by this reference upon which the Phase I and Phase II Improvements are to be constructed.

**Loan:** The loan evidenced by the Note and governed by this Agreement.

**Loan Amount: SIX MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,600,000.00).**

**Loan Documents:** The Note, the Deed of Trust, this Agreement, the Security Agreement, the Financing Statement, the Guaranty, the Assignment, and any and all other documents now or hereafter executed by the Borrower, Guarantor, or any other person or party in connection with the Loan, the indebtedness evidenced by the Note, or the covenants contained in this Agreement.

**Material Adverse Effect:** Any material and adverse effect on (i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of the Borrower, taken as a whole, (ii) the value of the Mortgaged Property, (iii) the ability of Borrower or any Guarantor (or if the Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or such Guarantor) to pay and perform the Indebtedness or any other Obligations, or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

**Mortgaged Property:** Collectively, the Land, the Phase I and Phase II Improvements, and all other collateral covered by the Loan Documents.

**Note:** The promissory note dated as of even date herewith in the principal sum of the Loan Amount (together with all renewals and extensions thereof) executed and delivered by Borrower payable to the order of Lender, evidencing the Loan.

**Obligations:** Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor, or any other person or party to the Loan Documents to Lender, the trustee of the Deed of Trust, or others as set forth in the Loan Documents, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

**Phase I Improvements:** That certain 66,606 square foot office building, together with all amenities, to be constructed on the Mortgaged Property, all as more particularly described in the Plans and Specifications.

**Phase II Improvements:** The improvements to be constructed by Borrower from Borrower's funds for the Phase II portion of the Mortgaged Property.

**Plans and Specifications:** The plans and specifications for the development and construction of the Mortgaged Property, prepared by Borrower or the Design Professional and approved by Lender as required herein, by all applicable Governmental Authorities, by any party to a purchase or construction contract with a right of approval, all amendments and modifications thereof approved in writing by the same, and all other design, engineering or architectural work, test reports, surveys, shop drawings, and related items.

**Security Agreement:** The Security Agreement shall mean all security agreements, whether contained in the Deed of Trust, a separate security agreement or otherwise creating a security interest in all personal property and fixtures of Borrower (including replacements, substitutions and after-acquired property) now or hereafter located in or upon the Land or the Phase I and Phase II Improvements, or used or intended to be used in the operation thereof, to secure the Loan.

**Subordinate Mortgage:** Any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Mortgaged Property executed and delivered by Borrower, the lien of which is subordinate and inferior to the lien of the Deed of Trust.

**Special Account:** An account established by Borrower with Lender (in which Borrower shall at all times maintain a minimum balance of \$1,000.00) into which all Advances made directly to Borrower will be deposited.

**Tenant Leases:** All written leases or rental agreements by which Borrower, as landlord, grants to a tenant a leasehold interest in a portion of the leasable space within the Mortgaged Property.

**Title Insurance:** One or more title insurance commitments, binders or policies, as Lender may require, issued by the Title Company, on a coinsurance or reinsurance basis (with direct access endorsement or rights) if and as required by Lender, in the maximum amount of the Loan insuring or committing to insure that the Deed of Trust constitutes a valid lien covering the Land and the Phase I and Phase II Improvements, subject only to those exceptions which Lender may approve.

**Title Company:** The Title Company (and its issuing agent, if applicable) issuing the Title Insurance, which shall be acceptable to Lender in its sole and absolute discretion.

## **ARTICLE II**

### **THE LOAN**

**II.1 Agreement to Lend.** Lender hereby agrees to lend up to but not in excess of the Loan Amount to Borrower, and Borrower hereby agrees to borrow such sum from Lender, all upon and subject to the terms and provisions of this Agreement, such sum to be evidenced by the Note. No principal amount repaid by Borrower may be reborrowed by Borrower. Borrower's liability for repayment of the interest on account of the Loan shall be limited to and calculated with respect to Loan proceeds actually disbursed to Borrower pursuant to the terms of this Agreement and the Note and only from the date or dates of such disbursements. After notice to Borrower, Lender may, in Lender's sole discretion, disburse Loan proceeds by journal entry to pay interest and financing costs and, following an uncured Event of Default, disburse Loan proceeds directly to third parties to pay costs or expenses required to be paid by Borrower pursuant to this Agreement. Loan proceeds disbursed by Lender by journal entry to pay interest or financing costs, and Loan proceeds disbursed directly by Lender to pay costs or expenses required to be paid by Borrower pursuant to this Agreement, shall constitute Advances to Borrower. Borrower hereby acknowledges and agrees that no Advances shall be used by Borrower to pay for any development or construction costs for the Phase II Improvements.

**II.2 Advances.** The purposes for which Loan proceeds are allocated and the respective amounts of such Allocations are set forth in the Budget, which Advances shall be limited to the value of the work in place as determined by the Inspecting Person.

II.3 Allocations. The Allocations shall be disbursed only for the purposes set forth in the Budget. Lender shall not be obligated to make an Advance for an Allocation set forth in the Budget to the extent that the amount of the Advance for such Allocation would, when added to all prior Advances for such Allocation, exceed the total of such Allocation as set forth in the Budget.

II.4 Limitation on Advances. To the extent that Loan proceeds disbursed by Lender pursuant to the Allocations are insufficient to pay all costs required for the acquisition, development, construction and completion of the Mortgaged Property, Borrower shall pay such excess costs with funds derived from sources other than the Loan. Under no circumstances shall Lender be required to disburse any proceeds of the Loan in excess of the Loan Amount.

II.5 Reallocations. Lender reserves the right, at its option, to disburse Loan proceeds allocated to any of the Allocations for such other purposes or in such different proportions as Lender may, in its sole discretion, deem necessary or advisable. Borrower shall not be entitled to require that Lender reallocate funds among the Allocations.

II.6 Contingency Allocations. Any amount allocated in the Budget for "contingencies" or other non-specific purposes may, in the Lender's discretion, be disbursed by Lender to pay future contingent costs and expenses of maintaining, leasing and promoting the Mortgaged Property and such other costs or expenses as Lender shall approve. Under no circumstances shall the Borrower have the right to require Lender to disburse any amounts so allocated and Lender may impose such requirements and conditions as it deems prudent and necessary should it elect to disburse all or any portion of the amounts so allocated.

II.7 Withholding. Lender may withhold from an Advance or, on account of subsequently discovered evidence, withhold from a later Advance under this Agreement or require Borrower to repay to Lender the whole or any part of any earlier Advance to such extent as may be necessary to protect the Lender from loss on account of (i) defective work not remedied or requirements of this Agreement not performed, (ii) liens filed or reasonable evidence indicating probable filing of liens which are not bonded, (iii) failure of Borrower to make payments to the Contractor for material or labor, except as is permitted by the Construction Contract, or (iv) a reasonable doubt that the construction of the Phase I Improvements can be completed for the balance of the Loan Amount then undisbursed. When all such grounds are removed, payment shall be made of any amount so withheld because of them.

II.8 Loan Limitation. It is expressly agreed and understood that, in accordance with the Budget, to the extent an Advance is for construction costs of the Phase I Improvements, such Advance, except for the final payment under the Loan, shall not exceed ninety percent (90%) of the actual construction costs to which such Advance relates; and

### **ARTICLE III**

#### **ADVANCES**

III.1 Conditions to Initial Advance. The obligation of Lender to make the Initial Advance hereunder is subject to the prior or simultaneous occurrence of each of the following conditions:

- (a) Lender shall have received from Borrower all of the Loan Documents duly executed by Borrower and, if applicable, by Guarantor.
- (b) Lender shall have received certified copies of resolutions of Borrower, if Borrower is a corporation, or a certified copy of a consent of partners, if Borrower is a partnership, authorizing execution, delivery and performance of all of the Loan Documents and authorizing the borrowing hereunder, along with such certificates of existence, certificates of good standing and other certificates or documents as Lender may reasonably require to evidence Borrower's authority.
- (c) Lender shall have received true copies of all organization documents of Borrower, including all amendments or supplements thereto, if Borrower is a legal entity other than a corporation, along with such certificates or other documents as Lender may reasonably require to evidence Borrower's authority.
- (d) Lender shall have received evidence that the Mortgaged Property is not located within any designated flood plain or special flood hazard area; or evidence that Borrower has applied for and received flood insurance covering the Mortgaged Property in the amount of the Loan or the maximum coverage available to Lender.
- (e) Lender shall have received evidence of compliance with all Governmental Requirements.
- (f) Lender shall have received a full-size, single sheet copy of all recorded subdivision or plat maps of the Land approved (to the extent required by Governmental Requirements) by all Governmental Authorities, if applicable, and legible copies of all instruments representing exceptions to the state of title to the Mortgaged Property.
- (g) Lender shall have received policies of all-risk builder's risk insurance (non-reporting form) during the construction of the Phase I Improvements and all-risk insurance after construction of the Phase I Improvements, owner's and contractor's liability insurance, workers' compensation insurance, and such other insurance as Lender may reasonably require, with standard endorsements attached naming Lender as the insured mortgagee or additional insured, whichever is applicable, such policies to be in form and content and issued by companies reasonably satisfactory to Lender, with copies, or certificates thereof, being delivered to Lender.

- (h) Lender shall have received the Title Insurance, at the sole expense of Borrower.
- (i) Lender shall have received from Borrower such other instruments, evidence and certificates as Lender may reasonably require, including the items indicated below:
- (1) Evidence that all the streets furnishing access to the Mortgaged Property have been dedicated to public use and installed and accepted by applicable Governmental Authorities.
  - (2) A current survey of the Land prepared by a registered surveyor or engineer and certified to Lender, Borrower and the Title Company, in form and substance reasonably acceptable to Lender, showing all easements, building or setback lines, rights-of-way and dedications affecting said land and showing no state of facts objectionable to Lender.
  - (3) Evidence reasonably satisfactory to Lender showing the availability of all necessary utilities at the boundary lines of the Land, including sanitary and storm sewer facilities, potable water, telephone, electricity, gas, and municipal services.
  - (4) Evidence that the current and proposed use of the Mortgaged Property and the construction of the Phase I Improvements complies with all Governmental Requirements.
  - (5) An opinion of counsel for Borrower, which counsel shall be satisfactory to Lender, to the effect that (i) Borrower possesses full power and authority to own the Mortgaged Property, to construct the Phase I Improvements and to perform Borrower's obligations hereunder; (ii) the Loan Documents have been duly authorized, executed and delivered by Borrower and, where required, by Guarantor, and constitute the valid and binding obligations of Borrower and Guarantor, not subject to any defense based upon usury, capacity of Borrower or otherwise; (iii) the Loan Documents are enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency and other laws affecting creditors' rights generally, and except that certain remedial provisions thereof may be limited by the laws of the State of Texas; (iv) to the knowledge of such counsel, there are no actions, suits or proceedings pending or threatened against or affecting Borrower, Guarantor or the Mortgaged Property, or involving the priority, validity or enforceability of the liens or security interests arising out of the Loan Documents, at law or in equity, or before or by any Governmental Authority, except actions, suits or proceedings fully covered by insurance or which, if adversely determined, would not substantially impair the ability of Borrower or Guarantor to pay when due any amounts which may become payable in respect to the Loan as represented by the Note; (v) to the knowledge of such counsel, neither Borrower nor Guarantor is in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority of which such counsel has knowledge; (vi) to the knowledge of such counsel, the consummation of the transactions hereby contemplated and the performance of this Agreement and the execution and delivery of the Guaranty will not violate or contravene any provision of any instrument creating or governing the business operations of Borrower or Guarantor and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement or other instrument to which Borrower or any Guarantor is a party or by which Borrower, Guarantor or the Mortgaged Property may be bound or affected; and (vii) such other matters as Lender may reasonably request.
  - (6) A cost breakdown satisfactory to Lender showing the total costs, including, but not limited to, such related nonconstruction items as interest during construction, commitment, legal, design professional and real estate agents' fees, plus the amount of the Land cost and direct construction costs required to be paid to satisfactorily complete the Phase I Improvements, free and clear of liens or claims for liens for material supplied and for labor services performed.
  - (7) Original or a copy of each proposed Construction Contract.
  - (8) Original or a copy of each fully executed Design Services Contract.
  - (9) Waiver of lien or lien subordination agreement(s) for the prior month's draw request executed by Contractor and by each contractor, laborer and suppliers furnishing labor or materials to the Mortgaged Property, in a form acceptable to Lender, together with Borrower's affidavit to Lender that all changes and expenses incurred to date for either the Phase I Improvements or the Phase II Improvements have been paid in full.
  - (10) A copy of the Plans and Specifications for the Phase I Improvements.
  - (11) Building permit(s), grading permit(s) and all other permits required with respect to the construction of the Phase I or Phase II Improvements.
  - (12) Evidence that all applicable zoning ordinances and restrictive covenants affecting the Land permit the use for which the Phase I and Phase II Improvements are intended and have been or will be complied with.
  - (13) Evidence of payment of required sums for insurance, taxes, expenses, charges and fees customarily required or recommended by Lender or any Governmental Authority, corporation, or person guaranteeing, insuring or purchasing, committing to guaranty, insure, purchase or refinance the Loan or any portion thereof.
  - (14) A current financial statement of Borrower certified by a duly authorized representative of Borrower.

- (15) A current financial statement of Guarantor certified by said Guarantor.
- (16) A Guaranty executed by the Guarantor.
- (17) A schedule of construction progress for the Phase I Improvements with the anticipated commencement and completion dates of each phase of construction and the anticipated date and amounts of each Advance for the same.
- (18) Copies of all agreements entered into by Borrower or its operating partner pertaining to the development, construction and completion of the Phase I Improvements or pertaining to materials to be used in connection therewith, together with a schedule of anticipated dates and amounts of each Advance for the same.
- (19) Environmental site assessment report with respect to the Mortgaged Property prepared by a firm of engineers approved by Lender, which report shall be satisfactory in form and substance to Lender, certifying that there is no evidence that any Hazardous Substance have been generated, treated, stored or disposed of on any of the Mortgaged Property and none exists on, under or at the Mortgaged Property.
- (20) A soils and geological report covering the Land issued by a laboratory approved by Lender, which report shall be satisfactory in form and substance to Lender, and shall include a summary of soils test borings.
- (21) Such other instruments, evidence or certificates as Lender may reasonably request.
- (j) Lender shall have ordered and received, at Borrower's expense, an appraisal of the Mortgaged Property, prepared by an appraiser acceptable to Lender and presented and based upon such standards as may be required by Lender.
- (k) Lender shall have received payment of the Commitment Fee.

III.2 Conditions to Advances. The obligation of Lender to make each Advance hereunder, including the Initial Advance, shall be subject to the prior or simultaneous occurrence or satisfaction of each of the following conditions:

- (a) The Loan Documents shall be and remain outstanding and enforceable in all material respects in accordance with their terms, all as required hereunder.
- (b) Lender shall have received a title report dated within two (2) days of the requested Advance from the Title Company showing no state of facts objectionable to Lender, including, but not limited to, a showing that title to the Land is vested in Borrower and that no claim for mechanics' or materialmen's liens has been filed against the Mortgaged Property.
- (c) A monthly construction status report for the Phase I Improvements shall be prepared and submitted by Borrower to Lender on or before the tenth (10th) day of each month, commencing on or before May 10, 1999 and continuing for each month thereafter.
- (d) The representations and warranties made by Borrower, as contained in this Agreement and in all other Loan Documents shall be true and correct as of the date of each Advance; and if requested by Lender, Borrower shall give to Lender a certificate to that effect.
- (e) The covenants made by Borrower to Lender, as contained in this Agreement and in all other Loan Documents shall have been fully complied with, except to the extent such compliance may be limited by the passage of time or the completion of construction of the Phase I and Phase II Improvements.
- (f) Lender shall have received (i) a fully executed copy of each Construction Contract or copy thereof (to be dated after the date of recordation of the Deed of Trust);
- (ii) a report of any changes, replacements, substitutions, additions or other modification in the list of contractors, subcontractors and materialmen involved or expected to be involved in the construction of the Phase I Improvements;
- (iii) appropriate payment and performance bonds (with dual obligee rider to the performance bond, in favor of Lender) covering any such contractors, subcontractors and materialmen and their work, and (iv) evidence that the recording requirements of Texas Property Code &&53.201-53.211 have been satisfied.
- (g) Except in connection with the Initial Advance, Lender shall have received from Borrower a Draw Request for such Advance, completed, executed and sworn to by Borrower and Contractor, with the Inspecting Person's approval noted thereon, stating that the requested amount does not exceed ninety percent (90%) of the then unpaid cost of construction of the Phase I Improvements since the last certificate furnished hereunder; that said construction was performed in accordance with the Plans and Specifications in all material respects; and that, in the opinion of Borrower, Contractor and the Design Professional, construction of the Phase I Improvements can be completed on or before the Completion Date for an additional cost not in excess of the amount then available under the Loan. To the extent approved by Lender and included in the Budget, such expenses will be paid from the proceeds of the Loan.
- (h) Except in connection with the Initial Advance, Borrower shall have furnished to Lender, from each contractor, subcontractor and

materialman, including Contractor, an invoice, lien waiver and such other instruments and documents as Lender may from time to time specify, in form and content, and containing such certifications, approvals and other data and information, as Lender may reasonably require. The invoice, lien waiver and other documents shall cover and be based upon work actually completed or materials actually furnished and paid under a prior application for payment. The lien waiver for the prior month's draws of each contractor, subcontractor and materialman shall, if required by Lender, be received by Lender simultaneously with the making of any Advance hereunder for the benefit of such contractor, subcontractor or materialman.

(i) There shall exist no default or breach by any obligated party (other than Lender) under the Loan Documents.

(j) The Phase I Improvements shall not have been materially injured, damaged or destroyed by fire or other casualty, nor shall any part of the Mortgaged Property be subject to condemnation proceedings or negotiations for sale in lieu thereof.

(k) All work typically done at the stage of construction when the Advance is requested shall have been done, and all materials, supplies, chattels and fixtures typically furnished or installed at such stage of construction shall have been furnished or installed.

(l) All personal property not yet incorporated into the Phase I Improvements but which is to be paid for out of such Advance, must then be located upon the Land, secured in a method acceptable to Lender, and Lender shall have received evidence thereof, or if stored off-site, must be stored in a secured area and must be available for inspection by the Inspecting Person.

(m) Borrower shall have complied with all reasonable requirements of the Inspecting Person to insure compliance with the Plans and Specifications and all requirements of the Governmental Authorities.

(n) Except in connection with the Initial Advance, if the Phase I Improvements are being built for any party under a purchase or construction contract, then Lender at its election may require the approval of such purchaser before making any additional Advance.

(o) Borrower shall have fully completed (to the extent applicable), signed, notarized and delivered to Lender the Draw Request Form.

(p) If any portion of the Phase I Improvements are being built for a specific lessee, the approval by such lessee of the construction thereof with respect to the applicable portion of the Phase I Improvements subject to such lease shall be obtained and furnished to Lender, upon request therefor by Lender.

(q) Borrower shall have funded all Borrower equity requirements indicated on the Budget.

(r) Borrower shall have taken all action necessary to ensure that the monies due Stratus Properties Operating Co., an entity owned by Stratus Properties, Inc., under the Austin Water Agreement for Facilities 1, 2 and 3 (as defined therein) are paid, and shall not have failed to take any required action to ensure said payments under the Austin Water Agreement.

III.3 Advance Not A Waiver. No Advance of the proceeds of the Loan shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances, nor, in the event Borrower is unable to satisfy any such condition, shall any such Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default.

III.4 Borrower's Deposit. If at any time Lender shall in its sole discretion deem that the undisbursed proceeds of the Loan are insufficient to meet the costs of completing construction of the Phase I Improvements, plus the costs of insurance, ad valorem taxes and other normal costs of the Phase I Improvements, Lender may refuse to make any additional Advances to Borrower hereunder until Borrower shall have deposited with Lender sufficient additional funds ("Borrower's Deposit") to cover the deficiency which Lender deems to exist. Such Borrower's Deposit will be disbursed by Lender to Borrower pursuant to the terms and conditions hereof as if they constituted a portion of the Loan being made hereunder. Borrower agrees upon fifteen (15) days written demand by Lender to deposit with Lender such Borrower's Deposit. Lender agrees that the Borrower's Deposit shall be placed in an interest-bearing account.

III.5 Advance Not An Approval. The making of any Advance or part thereof shall not be deemed an approval or acceptance by Lender of the work theretofore done. Lender shall have no obligation to make any Advance or part thereof after the happening of any Event of Default, but shall have the right and option so to do; provided that if Lender elects to make any such Advance, no such Advance shall be deemed to be either a waiver of the right to demand payment of the Loan, or any part thereof, or an obligation to make any other Advance.

III.6 Time and Place of Advances. All Advances are to be made at the office of Lender, or at such other place as Lender may designate; and Lender shall require five (5) days prior notice in writing before the making of any such Advance. Lender shall not be obligated to undertake any Advance hereunder more than once in any 30-day period. Except as set forth in this Agreement, all Advances are to be made by direct deposit into the Special Account. In the event Borrower shall part with or be in any manner whatever deprived of Borrower's interests in the Land, Lender may, at Lender's option but without any obligation to do so, continue to make Advances under this Agreement, and subject to all its terms and conditions, to such person or persons as may succeed to Borrower's title and interest and all sums so disbursed shall be deemed Advances under this Agreement and secured by the Deed of Trust and all other liens or security interests securing the Loan.

III.7 Retainage. An amount equal to ten percent (10%) of the cost of construction of the Phase I Improvements shall be retained by Lender and

shall be paid over by Lender to Borrower, provided that no lien claims are then filed against the Mortgaged Property, when all of the following have occurred to the satisfaction of Lender:

(a) Lender has received a completion certificate prepared by the Inspecting Person and executed by Borrower and the Design Professional stating that the Phase I Improvements have been completed in accordance with the Plans and Specifications, together with such other evidence that no mechanics or materialmen's liens or other encumbrances have been filed and remain in effect against the Mortgaged Property which have not been bonded to Lender's satisfaction and that all offsite utilities and streets, if any, have been completed to the satisfaction of Lender and any applicable Governmental Authority;

(b) each applicable Governmental Authority shall have duly inspected and approved the Phase I Improvements and issued the appropriate permit, license or certificate to evidence such approval;

(c) thirty (30) days shall have elapsed from the later of (i) the date of completion of the Phase I Improvements, as specified in Texas Property Code &53.106, if the Affidavit of Completion provided for in this Agreement is filed within ten (10) days after such date of completion, or (ii) the date of filing of such Affidavit of Completion if such Affidavit of Completion is filed ten (10) days or more after the date of the completion of the Phase I Improvements as specified in Texas Property Code &53.106; and

(d) receipt by Lender of evidence satisfactory to Lender that payment in full has been made for all obligations incurred in connection with the construction and completion of all off-site utilities and improvements (if any) as required by Lender or any Governmental Authority.

III.8 No Third Party Beneficiaries. The benefits of this Agreement shall not inure to any third party, nor shall this Agreement be construed to make or render Lender liable to any materialmen, subcontractors, contractors, laborers or others for goods and materials supplied or work and labor furnished in connection with the construction of either the Phase I or Phase II Improvements or for debts or claims accruing to any such persons or entities against Borrower. Lender shall not be liable for the manner in which any Advances under this Agreement may be applied by Borrower, Contractor and any of Borrower's other contractors or subcontractors. Notwithstanding anything contained in the Loan Documents, or any conduct or course of conduct by the parties hereto, before or after signing the Loan Documents, this Agreement shall not be construed as creating any rights, claims or causes of action against Lender, or any of its officers, directors, agents or employees, in favor of any contractor, subcontractor, supplier of labor or materials, or any of their respective creditors, or any other person or entity other than Borrower. Without limiting the generality of the foregoing, Advances made to any contractor, subcontractor or supplier of labor or materials, pursuant to any requests for Advances, whether or not such request is required to be approved by Borrower, shall not be deemed a recognition by Lender of a third-party beneficiary status of any such person or entity.

## ARTICLE IV

### WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents to Lender, as of the date hereof and at all times during the term of the Agreement, as follows:

IV.1 Plans and Specifications. The Plans and Specifications for the Phase I Improvements are satisfactory to Borrower, are in compliance with all Governmental Requirements and, to the extent required by Governmental Requirements or any effective restrictive covenant, have been approved by each Governmental Authority and/or by the beneficiaries of any such restrictive covenant affecting the Mortgaged Property.

IV.2 Governmental Requirements. No violation of any Governmental Requirements exists or will exist with respect to the Mortgaged Property and neither the Borrower nor the Guarantor is, nor will either be, in default with respect to any Governmental Requirements.

IV.3 Utility Services. All utility services of sufficient size and capacity necessary for the construction of both the Phase I and Phase II Improvements and the use thereof for their intended purposes are available at the property line(s) of the Land for connection to the Phase I or Phase II Improvements, including potable water, storm and sanitary sewer, gas, electric and telephone facilities.

IV.4 Access. All roads necessary for the full utilization of the Phase I and Phase II Improvements for their intended purposes have been completed and have been dedicated to the public use and accepted by the appropriate Governmental Authority.

IV.5 Financial Statements. Each financial statement of Borrower and Guarantor delivered heretofore, concurrently herewith or hereafter to Lender was and will be prepared in conformity with general accepted accounting principles, or other good accounting principles approved by Lender in writing, applied on a basis consistent with that of previous statements and completely and accurately disclose the financial condition of Borrower and Guarantor (including all contingent liabilities) as of the date thereof and for the period covered thereby, and there has been no material adverse change in either Borrower's or Guarantor's financial condition subsequent to the date of the most recent financial statement of Borrower and Guarantor delivered to Lender.

IV.6 Statements. No certificate, statement, report or other information delivered heretofore, concurrently herewith or hereafter by Borrower or Guarantor to Lender in connection herewith, or in connection with any transaction contemplated hereby, contains or will contain any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading, and

same were true, complete and accurate as of the date hereof.

IV.7 Disclaimer of Permanent Financing. Borrower acknowledges and agrees that Lender has not made any commitments, either express or implied, to extend the term of the Loan past its stated maturity date or to provide Borrower with any permanent financing.

## ARTICLE V

### COVENANTS OF BORROWER

Borrower hereby unconditionally covenants and agrees with Lender, until the Loan shall have been paid in full and the lien of the Deed of Trust shall have been released, as follows:

V.1 Commencement and Completion. Borrower will cause the construction of the Phase I Improvements to commence by the Commencement Date and to be prosecuted with diligence and continuity and will complete the same in all material respects in accordance with the Plans and Specifications for the Phase I Improvements on or before the Completion Date, free and clear of liens or claims for liens for material supplied and for labor services performed in connection with the construction of the Phase I Improvements.

V.2 No Changes. Borrower will not amend, alter or change (pursuant to change order, amendment or otherwise) the Plans and Specifications for the Phase I Improvements unless the same shall have been approved in advance in writing by Lender, by all applicable Governmental Authorities, and by each surety under payment or performance bonds covering the Construction Contract or any other contract for construction of all or a portion of the Phase I Improvements; provided, however, Borrower shall have the right to approve change orders without Lender's consent which do not individually exceed \$25,000.00, or in the aggregate exceed \$100,000.00.

V.3 Advances. Borrower will receive the Advances and will hold same as a trust fund for the purpose of paying the cost of construction of the Phase I Improvements and related nonconstruction costs related to the Mortgaged Property as provided for herein. Borrower will apply the same promptly to the payment of the costs and expenses for which each Advance is made and will not use any part thereof for any other purpose.

V.4 Lender's Expenses. Borrower will reimburse Lender for all out-of-pocket expenses of Lender, including reasonable attorneys' fees, incurred in connection with the preparation, execution, delivery, administration and performance of the Loan Documents.

V.5 Surveys. Borrower will furnish Lender at Borrower's expense (i) a foundation survey and (ii) an as-built survey, each prepared by a registered engineer or surveyor acceptable to Lender, showing that the locations of the Phase I and Phase II Improvements, and certifying that same are entirely within the property lines of Land, do not encroach upon any easement, setback or building line or restrictions, are placed in accordance with the Plans and Specifications, all Governmental Requirements and all restrictive covenants affecting the Land and/or Phase I and Phase II Improvements, and showing no state of facts objectionable to Lender. All surveys shall be in form and substance and from a registered public surveyor acceptable to Lender.

V.6 Defects and Variances. Borrower will, upon demand of Lender and at Borrower's sole expense, correct any structural defect in the Phase I Improvements or any variance from the Plans and Specifications for the Phase I Improvements which is not approved in writing by Lender.

V.7 Estoppel Certificates. Borrower will deliver to Lender, promptly after request therefor, estoppel certificates or written statements, duly acknowledged, stating the amount that has then been advanced to Borrower under this Agreement, the amount due on the Note, and whether any known offsets or defenses exist against the Note or any of the other Loan Documents.

V.8 Inspecting Person. Borrower will pay the fees and expenses of, and cooperate, with the Inspecting Person and will cause the Design Professional, the Contractor, each contractor and subcontractor and the employees of each of them to cooperate with the Inspecting Person and, upon request, will furnish the Inspecting Person whatever the Inspecting Person may consider necessary or useful in connection with the performance of the Inspecting Person's duties. Without limiting the generality of the foregoing, Borrower shall furnish or cause to be furnished such items as working details, Plans and Specifications and details thereof, samples of materials, licenses, permits, certificates of public authorities, zoning ordinances, building codes and copies of the contracts between such person and Borrower (if applicable). Borrower will permit Lender, the Inspecting Person and their representative to enter the Mortgaged Property for the purposes of inspecting same and Borrower specifically agrees that the Inspecting Person's inspection rights shall cover both the Phase I and Phase II Improvements. Borrower acknowledges that the duties of the Inspecting Person run solely to Lender and that the Inspecting Person shall have no obligations or responsibilities whatsoever to Borrower, Contractor, the Design Professional, or to any of Borrower's or Contractor's agents, employees, contractors or subcontractors.

V.9 BROKERS. BORROWER WILL INDEMNIFY LENDER FROM CLAIMS OF BROKERS ARISING BY REASON OF THE EXECUTION HEREOF OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY TO THE EXTENT SUCH BROKER WAS CONTACTED OR HIRED BY BORROWER OR EITHER OF ITS JOINT VENTURERS.

V.10 Personalty and Fixtures. Borrower will deliver to Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Phase I Improvements or subject to the

lien of the Deed of Trust or to the security interest of the Security Agreement.

V.11 Compliance with Governmental Requirements. Borrower will comply promptly with all Governmental Requirements.

V.12 Compliance with Restrictive Covenants. Borrower will comply with all restrictive covenants, if any, affecting the Mortgaged Property. Construction of the Phase I and Phase II Improvements will be performed in a good and workmanlike manner, within the perimeter boundaries of the Land and within all applicable building and setback lines in accordance with all Governmental Requirements and the Plans and Specifications. There are, and will be, no structural defects in the Phase I or Phase II Improvements.

V.13 Affidavit of Commencement. Borrower has filed in the appropriate records of the county in which the Land is situated, an Affidavit of Commencement ("Affidavit of Commencement"), substantially in the form of Exhibit C attached hereto and incorporated herein by this reference, duly executed by Borrower and Contractor. The date of commencement of work set forth in such Affidavit of Commencement shall not be the date of or prior to the date on which the Deed of Trust was recorded.

V.14 Affidavit of Completion. Borrower, within ten (10) days after construction of the Phase I Improvements has been completed, shall file in the appropriate records in the county in which the Land is situated an Affidavit of Completion ("Affidavit of Completion") in the form of Exhibit D attached hereto and incorporated herein by this reference.

V.15 Payment of Expenses. Borrower shall pay or reimburse to Lender all out-of-pocket costs and expenses relating to the Mortgaged Property and for which an Advance is made, including (without limitation), title insurance and examination charges, survey costs, insurance premiums, filing and recording fees, and other expenses payable to third parties incurred by Lender in connection with the consummation of the transactions contemplated by this Agreement.

V.16 Notices Received. Borrower will promptly deliver to Lender a true and correct copy of all notices received by Borrower from any person or entity with respect to Borrower, Guarantor, the Mortgaged Property, or any or all of them, which in any way relates to or affects the Loan or the Mortgaged Property.

V.17 Advertising by Lender. Borrower agrees that during the term of the Loan, Borrower shall erect and thereafter shall maintain on the Mortgaged Property one or more advertising signs furnished by Lender indicating that the financing for the Mortgaged Property has been furnished by Lender.

V.18 Leases. Borrower will deliver to Lender, upon request of Lender, executed counterparts of all leases and rental agreements affecting the Mortgaged Property; and all said leases will, if requested by Lender, contain a written provision acceptable to Lender whereby all rights of the tenant in the lease and the Mortgaged Property are subordinated to the liens and security interests granted in the Loan Documents. Furthermore, if requested by Lender, Borrower shall cause to be executed and delivered to Lender a Non-Disturbance, Attornment and Subordination Agreement, in form and substance acceptable to Lender, relating to each such lease and fully executed by Lender, Borrower and such lessee.

V.19 Approval to Lease Required. Borrower will obtain the prior written consent of Lender as to any tenant lease ("Lease") proposed to be entered into by Borrower for space in the Phase I Improvements and will not thereafter materially modify any Lease as to the rental rate, term or any credit enhancement issue without Lender's prior consent. Lender agrees that it will respond to any request for review of a Lease, or change thereto, within ten (10) days of receipt of a written request from Borrower. Borrower agrees to submit to each tenant in connection with a proposed lease the Lender's required form of Subordination, Non-Disturbance and Attornment Agreement (the "SNDA"), substantially in the form attached hereto as Exhibit E.

V.20 Statements and Reports. Borrower agrees to deliver to Lender, during the term of the Loan and until the Loan has been fully paid and satisfied, the following statements and reports:

(a) Annual, audited financial statements of Borrower, each general partner of Borrower and Guarantor within ninety-five (95) days after the end of each calendar year, prepared and certified to by Guarantor and, in the case of Borrower, the chief financial officer of the general partner of Borrower;

(b) Monthly marketing reports with detailed information as to leasing activities shall be provided Lender on or before the fifteenth (15th) day of the following month;

(c) Copies of all state and federal tax returns prepared with respect to Borrower, each Guarantor and the general partner of Borrower within ten (10) days of such returns being filed with the Internal Revenue Service or applicable state authority;

(d) Copies of extension requests or similar documents with respect to federal or state income tax filings for Borrower, each Guarantor and the general partner of Borrower within ten (10) days of such documents being filed with the Internal Revenue Service or applicable state authority;

(e) Annual operating statements with respect to the Mortgaged Property within ninety-five (95) days after the end of each calendar year, prepared in such form and detail as Lender may require and certified to by the chief financial officer of the general partner of Borrower;

(f) Monthly operating statements and a rent roll with respect to the Phase I Improvements, within thirty (30) days after the end of each calendar month, commencing upon lease-up of said property, prepared in such form and detail as Lender may reasonably require and in accordance with generally accepted accounting principles and certified to by the chief financial officer of the general partner of Borrower; and

(g) Such other reports and statements as Lender may reasonably require from time to time.

## ARTICLE VI

### ASSIGNMENTS

VI.1 Assignment of Construction Contract. As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Construction Contract upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each Construction Contract the Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Construction Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Construction Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**

(c) Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Construction Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH ACTION.**

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Construction Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e) Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Construction Contract, provided that Borrower shall not cancel or amend any Construction Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

VI.2 Assignment of Plans and Specifications. As additional security for the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's right, title and interest in and to the Plans and Specifications and hereby represents and warrants to and agrees with Lender as follows:

(a) Each schedule of the Plans and Specifications for the Phase I Improvements delivered or to be delivered to Lender is and shall be a complete and accurate description of such Plans and Specifications.

(b) The Plans and Specifications for the Phase I Improvements are and shall be complete and adequate for the construction of the Phase I Improvements and there have been no modifications thereof except as described in such schedule. The Plans and Specifications shall not be modified without the prior consent of Lender.

(c) Lender may use the Plans and Specifications for the Phase I Improvements for any purpose relating to the Phase I Improvements, including but not limited to inspections of construction and the completion of the Phase I Improvements.

(d) Lender's acceptance of this assignment shall not constitute approval of the Plans and Specifications by Lender. Lender has no liability or obligation in connection with the Plans and Specifications and no responsibility for the adequacy thereof or for the construction of the Phase I Improvements contemplated by the Plans and Specifications for the Phase I Improvements. Lender has no duty to inspect either the Phase I or Phase II Improvements, and if Lender should inspect the Phase I or Phase II Improvements, Lender shall have no liability or obligation to Borrower or any other party arising out of such inspection. No such inspection nor any failure by Lender to make objections after any such

inspection shall constitute a representation by Lender that the Phase I Improvements are in accordance with the Plans and Specifications or any other requirement or constitute a waiver of Lender's right thereafter to insist that the Phase I Improvements be constructed in accordance with the Plans and Specifications or any other requirement.

(e) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

VI.3 Assignment of Design Services Contract. As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Design Services Contract upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each Design Services Contract the Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Design Services Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Design Services Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**

(c) Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Design Services Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH ACTION.**

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Design Services Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e) Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Design Services Contract, provided that Borrower shall not cancel or amend any Design Services Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

VI.4 Assignment of Proceeds. Borrower hereby further collaterally transfers and assigns to Lender and acknowledges that Lender shall be entitled to receive (i) any and all sums which may be awarded and become payable to Borrower for condemnation of all or any portion of the Mortgaged Property, or

(ii) the proceeds of any and all insurance upon the Mortgaged Property (other than the proceeds of general public liability insurance).

(a) Borrower shall, upon request of Lender, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Lender to collect and receipt for any of such insurance or condemnation proceeds.

(b) Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums.

(c) Any sums so received by Lender pursuant to this Section 6.4 may, in Lender's sole discretion, be provided back to Borrower for restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements in documents as Lender may require, or shall be applied to the liquidation of the Indebtedness in accordance with the provisions of Section 7.4 of the Deed of Trust; provided, however, if Lender determines that the Mortgaged Property can be restored prior to the maturity date of the Note, and no Event of Default exists, then Lender will apply the proceeds to the restoration of the Mortgaged Property.

VI.5 Assignment of Accounts Receivable. Pursuant to the terms of the Austin Water Agreement dated October 2, 1995, between the City of Austin and FM Properties Operating Company, now known as Stratus Properties Operating Co. ("Operating Co."), an entity owned 99.9% by Guarantor, Operating Co. constructed Facilities 1, 2 and 3 of that certain Water Project, as more fully described in the Austin Water Agreement

and, upon completion and final acceptance of Facilities 1, 2 and 3 of the Water Project became entitled to three (3) annual payments of \$990,648.46 each from the City of Austin. Operating Co. has received the first of said three (3) installment payments and is entitled to receive a \$990,648.46 payment on or before December 31, 1999 and a \$990,648.46 payment on or before December 31, 2000. As additional security for the repayment of the Loan, Operating Co. hereby transfers and assigns to Lender all of the accounts receivable under the Austin Water Agreement, said assignment to be upon the terms and conditions set forth in the Assignment of Accounts Receivable entered into by Operating Co. of even date herewith. In connection with the execution and delivery of said Assignment, Operating Co. agrees to obtain from the City of Austin a consent acknowledging the assignment and directing that the two (2) payments of \$990,648.46 each are due and payable to Operating Co. on the dates set forth above, that there are no contingencies or rights of offset thereto, and further that the City of Austin consents to the assignment of said payments to Lender as security for the Loan. Borrower specifically acknowledges and agrees, and has directed Operating Co., that said proceeds upon receipt by Operating Co. shall be deposited into an account with Lender to be applied against the indebtedness evidenced by the Note upon maturity, or at Borrower's option, shall be applied upon receipt as a principal pay down under the Loan, and that neither Borrower nor Operating Co. shall have no right to withdraw said proceeds.

## ARTICLE VII

### EVENTS OF DEFAULT

VII.1 Events of Default. Each of the following shall constitute an "Event of Default" hereunder:

- (a) If Borrower shall fail, refuse, or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise and such default shall continue for a period of ten (10) calendar days beyond any due date.
- (b) If Borrower shall fail, refuse or neglect, or cause others to fail, refuse, or neglect to comply with, perform and discharge fully and timely any of the Obligations as and when called for, and such failure shall continue for a period of ten (10) days after receipt of written notice from Lender; provided, however, Borrower shall have the right to attempt to cure said default for up to an additional thirty (30) days if Borrower is diligently prosecuting a cure of said default.
- (c) If any representation, warranty, or statement made by Borrower, Guarantor, or others in, under, or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Indebtedness is determined by Lender to be false or misleading in any material respect as of the date hereof or thereof or shall become so at any time prior to the repayment in full of the Indebtedness.
- (d) If Borrower shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property which is not cured within any notice or grace period.
- (e) If Borrower (i) shall execute an assignment for the benefit of creditors or an admission in writing by Borrower of Borrower's inability to pay, or Borrower's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Borrower or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty (60) days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks of the benefit or benefits of any Debtor Relief Law (as defined in the Deed of Trust), or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Lender or the trustee under the Deed of Trust granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Borrower as a debtor under any Debtor Relief Law or seeks appointment of a receiver, trustee, custodian or liquidator of Borrower or of the Mortgaged Property, or any part thereof, or of any significant portion of Borrower's other property and (a) Borrower admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Borrower, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of filing.
- (f) If Borrower, any Constituent Party (as defined in the Deed of Trust), or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or become permanently disabled.
- (g) If Borrower creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions.
- (h) If Borrower makes a Disposition, without the prior written consent of Lender.
- (i) If any condemnation proceeding is instituted or threatened which would, in Lender's sole judgment, materially impair the use and enjoyment of the Mortgaged Property for its intended purposes.

- (j) If the Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Lender's judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.
- (k) If Lender reasonably determines that any event shall have occurred that could be expected to have a Material Adverse Effect.
- (l) If Borrower abandons all or any portion of the Mortgaged Property.
- (m) The occurrence of any event referred to in Sections 7.1(e) and (f) hereof with respect to any Guarantor, Constituent Party or other person or entity obligated in any manner to pay or perform the Indebtedness or Obligations, respectively, or any part thereof (as if such Guarantor, Constituent Party or other person or entity were the "Borrower" in such Sections).
- (n) An Event of Default as defined in any of the Loan Documents.
- (o) If the construction of the Phase I Improvements are, at any time, (i) discontinued due to acts or matters within Borrower's control for a period of ten (10) or more consecutive days, (ii) not carried on with reasonable dispatch, or (iii) not completed by the Completion Date; subject, however, to Force Majeure (hereinafter defined). "Force Majeure" shall be deemed to mean that Borrower is delayed or hindered in or prevented from the performance of any act required hereunder, not the failure of Borrower, by reason of (i) inability to procure materials or reasonable substitutes thereof, (ii) failure of power, (iii) civil commotion, riots, insurrection or war, (iv) unavoidable fire or other casualty, or acts of God (v) strikes, lockouts or other labor disputes (not by Borrower's employees), (vi) restrictive governmental law or regulation, (vii) delay by Lender of any act required of it hereunder, or (viii) any other causes of a like nature to the above listed (i) through (vii). Financial inability on the part of Borrower shall not be construed a Force Majeure hereunder. Borrower agrees to use its best efforts to resume the construction of the Phase I Improvements as soon as practicable after the cause of such delay has been removed or cancelled.
- (p) If Borrower is unable to satisfy any condition of Borrower's right to receive Advances hereunder for a period in excess of thirty (30) days after Lender's refusal to make any further Advances.
- (q) If Borrower executes any conditional bill of sale, chattel mortgage or other security instrument covering any materials, fixtures or articles intended to be incorporated in the Phase I or Phase II Improvements or the appurtenances thereto, or covering articles of personal property placed in the Phase I or Phase II Improvements, or files a financing statement publishing notice of such security instrument, or if any of such materials, fixtures or articles are not purchased in such a manner that the ownership thereof vests unconditionally in Borrower, free from encumbrances, on delivery at the Phase I and Phase II Improvements, or if Borrower does not produce to Lender upon reasonable demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which Borrower claims title to such materials, fixtures and articles.
- (r) If any levy, attachment or garnishment is issued, or if any lien for the performance of work or the supply of materials is filed, against any part of the Mortgaged Property and remains unsatisfied or unbonded following the earlier of (i) fifteen (15) days after the date of filing thereof or (ii) the requesting by Borrower of an Advance.

VII.2 Remedies. Lender shall have the right, upon the happening of an Event of Default, in addition to any rights or remedies available to it under all other Loan Documents, to enter into possession of the Mortgaged Property and perform any and all work and labor necessary to complete the Phase I Improvements in accordance with the Plans and Specifications. All amounts so expended by Lender shall be deemed to have been disbursed to Borrower as Loan proceeds and secured by the Deed of Trust. For this purpose, Borrower hereby constitutes and appoints (which appointment is coupled with an interest and is therefore irrevocable) Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution to complete the Phase I Improvements in the name of Borrower, and hereby empowers Lender, acting as Borrower's attorney-in-fact, as follows: to use any funds of Borrower, including any balance which may be held in escrow, any Borrower's Deposit and any funds which may remain unadvanced hereunder, for the purpose of completing the Phase I Improvements in the manner called for by the Plans and Specifications; to make such additions and changes and corrections in the Plans and Specifications which shall be necessary or desirable to complete the Phase I Improvements in the manner contemplated by the Plans and Specifications; to continue all or any existing construction contracts or subcontracts; to employ such contractors, subcontractors, agents, design professionals and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property, or may be necessary or desirable for the completion of the work or the clearing of title; to execute all the applications and certificates in the name of Borrower which may be required by any construction contract; and to do any and every act with respect to the construction of the Phase I Improvements which Borrower could do in Borrower's own behalf. Lender, acting as Borrower's attorney-in-fact, shall also have power to prosecute and defend all actions or proceedings in connection with the Mortgaged Property and to take such action and require such performance as is deemed necessary.

## ARTICLE VIII

### LENDER'S DISCLAIMERS - BORROWER'S INDEMNITIES

VIII.1 No Obligation by Lender to Construct. Lender has no liability or obligation whatsoever or howsoever in connection with the Mortgaged

Property or the development, construction or completion thereof or work performed thereon, and has no obligation except to disburse the Loan proceeds as herein agreed, Lender is not obligated to inspect the Phase I or Phase II Improvements nor is Lender liable, and under no circumstances whatsoever shall Lender be or become liable, for the performance or default of any contractor or subcontractor, or for any failure to construct, complete, protect or insure the Mortgaged Property, or any part thereof, or for the payment of any cost or expense incurred in connection therewith, or for the performance or nonperformance of any obligation of Borrower or Guarantor to Lender nor to any other person, firm or entity without limitation. Nothing, including without limitation, any disbursement of Loan proceeds or the Borrower's Deposit nor acceptance of any document or instrument, shall be construed as such a representation or warranty, express or implied, on Lender's part.

VIII.2 No Obligation by Lender to Operate. Any term or condition of any of the Loan Documents to the contrary notwithstanding, Lender shall not have, and by its execution and acceptance of this Agreement hereby expressly disclaims, any obligation or responsibility for the management, conduct or operation of the business and affairs of Borrower or Guarantor. Any term or condition of the Loan Documents which permits Lender to disburse funds, whether from the proceeds of the Loan, the Borrower's Deposit or otherwise, or to take or refrain from taking any action with respect to Borrower, Guarantor, the Mortgaged Property or any other collateral for repayment of the Loan, shall be deemed to be solely to permit Lender to audit and review the management, operation and conduct of the business and affairs of Borrower and Guarantor, and to maintain and preserve the security given by Borrower to Lender for the Loan, and may not be relied upon by any other person. Further, Lender shall not have, has not assumed and by its execution and acceptance of this Agreement hereby expressly disclaims any liability or responsibility for the payment or performance of any indebtedness or obligation of Borrower or Guarantor and no term or condition of the Loan Documents, shall be construed otherwise. Borrower hereby expressly acknowledges that no term or condition of the Loan Documents shall be construed so as to deem the relationship between Borrower, Guarantor and Lender to be other than that of borrower, guarantor and lender, and Borrower shall at all times represent that the relationship between Borrower, Guarantor and Lender is solely that of borrower, guarantor and lender.

BORROWER HEREBY INDEMNIFIES AND AGREES TO HOLD LENDER HARMLESS FROM AND AGAINST ANY COST, EXPENSE OR LIABILITY INCURRED OR SUFFERED BY LENDER AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY OBLIGATION OR RESPONSIBILITY OF LENDER FOR THE MANAGEMENT, OPERATION AND CONDUCT OF THE BUSINESS AND AFFAIRS OF BORROWER OR GUARANTOR, OR AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY LIABILITY OR RESPONSIBILITY OF LENDER FOR THE PAYMENT OR PERFORMANCE OF ANY INDEBTEDNESS OR OBLIGATION OF BORROWER OR GUARANTOR.

VIII.3 INDEMNITY BY BORROWER. BORROWER HEREBY INDEMNIFIES LENDER AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM, AND HOLDS EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES TO WHICH ANY OF THEM MAY BECOME SUBJECT, INSOFAR AS SUCH LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES ARISE FROM OR RELATE TO ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY OR FROM ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING RELATING TO ANY OF THE FOREGOING. Without intending to limit the remedies available to Lender with respect to the enforcement of its indemnification rights as stated herein or as stated in any Loan Document, in the event any claim or demand is made or any other fact comes to the attention of Lender in connection with, relating or pertaining to, or arising out of the transactions contemplated by this Agreement, which Lender reasonably believes might involve or lead to some liability of Lender, Borrower shall, immediately upon receipt of written notification of any such claim or demand, assume in full the personal responsibility for and the defense of any such claim or demand and pay in connection therewith any loss, damage, deficiency, liability or obligation, including, without limitation, legal fees and court costs incurred in connection therewith. In the event of court action in connection with any such claim or demand, Borrower shall assume in full the responsibility for the defense of any such action and shall immediately satisfy and discharge any final decree or judgment rendered therein. Lender may, in its sole discretion, make any payments sustained or incurred by reason of any of the foregoing; and Borrower shall immediately repay to Lender, in cash and not with proceeds of the Loan, the amount of such payment, with interest thereon at the Default Rate (as defined in the Note) from the date of such payment. Lender shall have the right to join Borrower as a party defendant in any legal action brought against Lender, and Borrower hereby consents to the entry of an order making Borrower a party defendant to any such action.

VIII.4 No Agency. Nothing herein shall be construed as making or constituting Lender as the agent of Borrower in making payments pursuant to any construction contracts or subcontracts entered into by Borrower for construction of the Phase I Improvements or otherwise. The purpose of all requirements of Lender hereunder is solely to allow Lender to check and require documentation (including, but not limited to, lien waivers) sufficient to protect Lender and the Loan contemplated hereby. Borrower shall have no right to rely on any procedures required by Lender, Borrower hereby acknowledging that Borrower has sole responsibility for constructing the Phase I or Phase II Improvements and paying for work done in accordance therewith and that Borrower has solely, on Borrower's own behalf, selected or approved each contractor, each subcontractor and each materialman, Lender having no responsibility for any such persons or entities or for the quality of their materials or workmanship.

## ARTICLE IX

### MISCELLANEOUS

IX.1 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Borrower and Lender, and their respective heirs, legal representatives, successors and assigns; provided, however, that Borrower may not assign any rights or obligations under

this Agreement without the prior written consent of Lender.

IX.2 Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define or be used in construing the text of such Articles, Sections or Subsections.

IX.3 Survival. The provisions hereof shall survive the execution of all instruments herein mentioned, shall continue in full force and effect until the Loan has been paid in full and shall not be affected by any investigation made by any party.

IX.4 APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. COURTS WITHIN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN BORROWER AND LENDER, WHETHER IN LAW OR EQUITY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT; AND VENUE IN ANY SUCH DISPUTE WHETHER IN FEDERAL OR STATE COURT SHALL BE LAID IN DALLAS COUNTY, TEXAS.

IX.5 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth on page 1 of this Agreement; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth herein.

IX.6 Reliance by Lender. Lender is relying and is entitled to rely upon each and all of the provisions of this Agreement; and accordingly, if any provision or provisions of this Agreement should be held to be invalid or ineffective, then all other provisions hereof shall continue in full force and effect notwithstanding.

IX.7 Participations. Lender shall have the right at any time and from time to time to grant participations in the Loan and Loan Documents. Each participant shall be entitled to receive all information received by Lender regarding the creditworthiness of Borrower, any of its principals and the Guarantor, including (without limitation) information required to be disclosed to a participant pursuant to Banking Circular 181 (Rev., August 2, 1984), issued by the Comptroller of the Currency (whether the participant is subject to the circular or not).

IX.8 Controlling Agreement. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable Texas law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law) and that this section shall control every other covenant and agreement in this Agreement. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness ("Indebtedness") evidenced or secured by the Loan Documents, or if Lender's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Note and all other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate (as defined in the Note) from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the loan evidenced and/or secured by the Loan Documents. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

IX.9 Controlling Document. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any other Loan Document, the terms and conditions of this Agreement shall control.

IX.10 Construction of Agreement. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term, whether such is singular or plural in nature, as the context may suggest or require.

IX.11 Counterpart Execution. To facilitate execution, this Agreement may be executed in one or more counterparts as may be convenient or required, with all such counterparts collectively constituting a single instrument.

IX.12 NOTICE OF INDEMNIFICATION. BORROWER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS PURSUANT TO SECTIONS 5.9, 6.1, 6.3, 8.2 AND 8.3 HEREOF.

IX.13 ENTIRE AGREEMENT. THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES HERETO.

IX.14 Year 2000 Covenant. Borrower shall perform all acts reasonably necessary to ensure that (i) Borrower and any business in which Borrower holds a substantial interest, and (ii) all customers, suppliers and vendors that are material to Borrower's business, become Year 2000 Compliant in a timely manner. Such acts shall include, without limitation, performing a comprehensive review and assessment of all of Borrower's systems and adopting a detailed plan, with itemized budget, for the remediation, monitoring and testing of such systems. As used in this paragraph, "Year 2000 Compliant" shall mean, in regard to any entity, that all software, hardware, firmware, equipment, fixtures, goods or systems utilized by or material to the business operations or financial condition of such entity, will properly perform date sensitive functions before, during and after the year 2000. Borrower shall, immediately upon request, provide to Lender such certifications or other evidence of Borrower's compliance with the terms of this paragraph as Lender may from time to time require.

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

**LENDER:**

**COMERICA BANK-TEXAS,**  
a state banking association

By:  
Name:  
Title:

**BORROWER:**

**STRATUS 7000 WEST JOINT VENTURE,**  
a Texas joint venture

By: Stratus 7000 West, Ltd.,  
a Texas limited partnership,  
Its Operating Partner

By: STRS L.L.C.,  
a Delaware limited liability  
company,  
Its General Partner

By: Stratus Properties, Inc.,  
a Delaware corporation,  
Its Sole Member

By: /s/ William H. Armstrong, III  
-----

Name: William H. Armstrong, III  
Title: President and  
Chief Executive Officer

## Exhibit 10.14

When recorded, return to:

Lynda Zimmerman, Esq.  
Winstead Sechrest & Minick  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 752701

### MODIFICATION AGREEMENT

This MODIFICATION AGREEMENT ("Agreement") is made as of the 16th day of August, 1999, by and between COMERICA BANK-TEXAS, a state banking association ("Lender"), STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture ("Borrower"), and STRATUS PROPERTIES, INC., a Delaware corporation (the "Guarantor").

#### WITNESSETH:

WHEREAS, Lender made a loan ("Loan") to Borrower on April 9, 1999, in the maximum principal amount of SIX MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,600,000.00); and

WHEREAS, Lender and Borrower executed that certain Construction Loan Agreement ("Loan Agreement") dated April 9, 1999, pertaining to the Loan; and

WHEREAS, the Borrower executed and delivered to Lender that certain Promissory Note (the "Note") dated April 9, 1999, payable to the order of Lender in the amount of and evidencing the Loan; and

WHEREAS, the Borrower executed and delivered that certain Amended and Restated Deed of Trust (the "Deed of Trust") dated of even date with the Note to Gary W. Orr, as trustee ("Trustee"), for the benefit of the Lender, recorded under Document No. 1999009453 of the Official Records of Travis County, Texas, covering the real property described in Exhibit A attached hereto and incorporated herein for all purposes, together with all improvements, appurtenances, other properties (whether real or personal), rights and interests described in and encumbered by the Deed of Trust ("Property"), to secure the payment of the Note and performance by Borrower of the other obligations set forth in the Security Documents (as herein defined); and

WHEREAS, the Borrower executed and delivered to Lender that certain Assignment of Rents and Leases (the "Assignment") dated of even date with the Note, assigning to Lender all rents, leases, income, revenues, issues and profits which may arise from the operation or ownership of the Property, to secure the payment of the Note and performance by Borrower of the other obligations set forth in the Security Documents; and

WHEREAS, the Borrower caused to be issued by Chicago Title Insurance Company ("Title Company") that certain Mortgagee Policy of Title Insurance ("Policy") No.44-0394-101-339, dated April 16, 1999, in the amount of the Note, insuring the dignity and priority of the lien created and evidenced by the Deed of Trust and the Assignment; and

WHEREAS, the Borrower caused Stratus Properties, Inc., the Guarantor to execute and deliver to Lender that certain Guaranty ("Guaranty") dated of even date with the Note guaranteeing certain payment obligations under the Note and certain other monetary obligations contained in the Security Documents and performance by Borrower of certain other obligations as set forth in the Security Documents subject to and on the terms and conditions set forth in the Guaranty; and

WHEREAS, the Lender, Borrower and Guarantor now propose to modify certain of the terms and provisions of the Loan Agreement, the Assignment, the Note, the Deed of Trust and the other related documents executed by Borrower or third parties pertaining to, evidencing or securing the Loan (collectively, the "Security Documents").

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Borrower and Guarantor hereby agree as follows:

1. Disposition. Borrower and Lender hereby agree that the definition of "Disposition" as contained in the Loan Agreement and as contained in the Deed of Trust shall be amended and modified by adding to said definition the following underlined additional language to be inserted in the Loan Agreement and the Deed of Trust:

"Disposition: Any sale, lease (except as permitted under this Deed of Trust), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest in Grantor (if Grantor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business

association or legal entity); provided, however, a sale of the publicly traded stock of Stratus Properties, Inc. shall not constitute a Disposition under the terms of this Deed of Trust; and, further provided, notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, Oly Lantana, L.P., a joint venturer of Grantor ("Oly Lantana") may, after written notice to but without the requirement of Beneficiary's consent, transfer all or any portion of its joint venture interest in Grantor or all or any portion of its interest in any constituent entity of Oly Lantana to any entity or individual that is now or is in the future an affiliate or partner in Hicks Muse Tate and Furst, Inc., Olympus Real Estate Corporation or Olympus Real Estate Fund II, LP; PROVIDED, HOWEVER, in no event shall Stratus 7000 West, Ltd., the other joint venturer of Grantor, and the entities which comprise Stratus 7000 West, Ltd. (collectively, "Stratus")

(i) be entitled to transfer any interest in Stratus 7000 West, Ltd. or in any Stratus constituent entity without the prior written consent of Beneficiary and FURTHER PROVIDED that (ii) Stratus shall be obligated to, at all times during the term of this Loan, remain in charge of the day-to-day management of the Grantor; EXCEPT, HOWEVER, Oly Lantana shall be entitled to exercise its right to remove Stratus as Operating Partner of Grantor in accordance with

Section 4.1 of the Amended and Restated Joint Venture Agreement between Oly Lantana and Stratus 7000 West, Ltd. dated August \_\_, 1999, PROVIDED: (i) Oly Lantana has first given written notice to Lender at least five

(5) business days in advance of such removal and the reason for said proposed removal, together with Oly Lantana's proposed additional collateral, cash deposit or guaranty of the Loan (the "Proposed Collateral"), which Proposed Collateral must be satisfactory to Lender in its sole discretion; and thereafter either

(ii) within ten (10) business days of receipt of Lender's approval of said Proposed Collateral, has furnished to Lender such Proposed Collateral; or

(iii) within ten (10) business days of receipt of Lender's disapproval of the Proposed Collateral has paid off the Loan in full."

2. Limitation of Liability. The Note shall be amended and modified by adding the following additional paragraph to the Note:

"5.8 Limitation of Liability of Oly Lower Tier Borrower Partners. Maker and Payee agree that (x) all of the following entities are fully liable for the indebtedness evidenced by this Note (the "Indebtedness"), all sums to accrue or to become payable thereon, all amounts covenanted to be paid under the Loan Documents and all covenants and agreements under the Loan Documents: (i) Maker and its two (2) joint venturers, Stratus 7000 West, Ltd. and Oly Lantana, L.P. (the "Joint Venturers"), (ii) the General Partners of the Joint Venturers, and (iii) to the extent any lower tier entities of Stratus 7000 West, Ltd. otherwise have personal liability under the terms of this Note, said lower tier entities of Stratus 7000 West, Ltd.; (y) Stratus Properties, Inc. (the "Guarantor") is liable for the Guaranteed Obligations (as defined in the Guaranty) to the extent set forth in the Guaranty of even date herewith executed by Guarantor in favor of Payee; and (z) Stratus Properties Operating Co., an entity owned 99.9% by Guarantor, the Assignor under that certain Assignment of Accounts Receivable executed of even date herewith given by Assignor as additional collateral for the Indebtedness, has absolutely assigned the accounts receivable described therein to Payee and said Assignment is not modified by the terms of this Paragraph 5.9. However, any liability of any lower tier entity which has an ownership interest in Oly Lantana, L.P., one of the Joint Venturers, (the "Oly Lower Tier Borrower Parties") under this Note, or any other Loan Documents shall be enforced only against the collateral now or hereafter given to secure the Indebtedness and not against any other assets, properties or funds of any Oly Lower Tier Borrower Parties; EXCEPT, HOWEVER, to the extent that the Indebtedness, together with all sums due and owing to Payee under the Loan Documents, is not fully satisfied in the manner required by the Loan Documents, following an uncured Event of Default, the Oly Lower Tier Borrower Parties shall be personally liable for all amounts of money paid, loaned or distributed to the Oly Lower Tier Borrowing Parties or affiliates thereof, unless such amounts of money were paid, loaned or distributed with the express written consent of Payee.

Nothing herein shall be deemed to be a waiver of any right which Payee may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to Payee under the Loan Documents or to require that all collateral shall continue to secure the amounts due under the Loan Documents.

It is specifically acknowledged and agreed that nothing contained in this Section 5.8 shall be deemed to modify or limit the liability of Oly Lantana, L.P., or of Stratus 7000 West, Ltd. or of the General Partner of either of them or, to the extent any lower tier entity of Stratus 7000 West, Ltd. has personal liability under the terms of this Note, of each lower tier entity of Stratus 7000 West, Ltd."

2. Title Insurance. Contemporaneously with the execution and delivery hereof, the Borrower shall cause the Title Company to issue with respect to the Policy, the standard Texas Form T-38 Endorsement pursuant to Rule P-9b(3) of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas ("Title Manual").

3. Acknowledgment by Borrower. Except as otherwise specified herein, the terms and provisions hereof shall in no manner impair, limit, restrict or otherwise affect the obligations of Borrower or any third party to Lender, as evidenced by the Security Documents. Borrower hereby acknowledges, agrees and represents that (i) Borrower is indebted to Lender pursuant to the terms of the Note as modified hereby;

(ii) the liens, security interests and assignments created and evidenced by the Security Documents are, respectively, valid and subsisting liens, security interests and assignments of the respective dignity and priority recited in the Security Documents; (iii) there are no claims or offsets against, or defenses or counterclaims to, the terms or provisions of the Security Documents, and the other obligations created or evidenced by the Security Documents; (iv) Borrower has no claims, offsets, defenses or counterclaims arising from any of Lender's acts or omissions with respect to the Property, the Security Documents or Lender's performance under the Security Documents or with respect to the Property; (v) the representations and warranties contained in the Security Documents are true and correct representations and warranties of Borrower and third parties, as of the date hereof; and (vi) Lender is not in default and no event has occurred which, with the passage of time, giving of notice, or

both, would constitute a default by Lender of Lender's obligations under the terms and provisions of the Security Documents. To the extent Borrower now has, or in the future possesses, any claims, offsets, defenses or counterclaims against Lender or the repayment of all or a portion of the Loan, whether known or unknown, fixed or contingent, same are hereby forever irrevocably waived and released in their entirety.

4. No Waiver of Remedies. Except as may be expressly set forth herein, nothing contained in this Agreement shall prejudice, act as, or be deemed to be a waiver of any right or remedy available to Lender by reason of the occurrence or existence of any fact, circumstance or event constituting a default under the Note or the other Security Documents.

5. Joinder of Guarantor. By its execution hereof, Guarantor hereby (i) acknowledges and consents to the terms and provisions hereof; (ii) specifically acknowledges that the Limitation of Liability of Oly Lower Tier Borrower Partners shall in no manner limit or modify the Guaranteed Obligations of Guarantor under the Guaranty or the obligations of Stratus 7000 West, Ltd. or of any lower tier entity which has an ownership interest in Stratus 7000 West, Ltd. (iii) ratifies and confirms the Guaranty, including all interest and costs of collection, to or for the benefit of Lender; (iv) agrees that the Guaranty is and shall remain in full force and effect and that the terms and provisions of the Guaranty cover and pertain to the Loan, Note, Deed of Trust and other Security Documents as modified hereby; (v) acknowledges that there are no claims or offsets against, or defenses or counterclaims to, the terms and provisions of the Guaranty or the other obligations created and evidenced by the Guaranty; (vi) certifies that the representations and warranties contained in the Guaranty remain true and correct representations and warranties of Guarantor as of the date hereof; and (vii) acknowledges that Lender has satisfied and performed its covenants and obligations under the Guaranty and the other Security Documents, and that no action or failure to act by or on behalf of, Lender has or will give rise to any cause of action or other claim against Lender for breach of the Guaranty or other Security Documents or otherwise.

6. Costs and Expenses. Contemporaneously with the execution and delivery hereof, Borrower shall pay, or cause to be paid, all costs and expenses incident to the preparation, execution and recordation hereof and the consummation of the transaction contemplated hereby, including, but not limited to, recording fees, title insurance policy or endorsement premiums or other charges of the Title Company, and reasonable fees and expenses of legal counsel to Lender.

7. Additional Documentation. From time to time, Borrower shall execute or procure and deliver to Lender such other and further documents and instruments evidencing, securing or pertaining to the Loan or the Security Documents as shall be reasonably requested by Lender so as to evidence or effect the terms and provisions hereof. Upon Lender's request, Borrower shall cause to be delivered to Lender an opinion of counsel, satisfactory to Lender as to form, substance and rendering attorney, opining to (i) the validity and enforceability of this Agreement and the terms and provisions hereof, and any other agreement executed in connection with the transaction contemplated hereby; (ii) the authority of Borrower, and any constituents of Borrower, to execute, deliver and perform its or their respective obligations under the Security Documents, as hereby modified; and (iii) such other matters as reasonably requested by Lender.

8. Effectiveness of the Security Documents. Except as expressly modified by the terms and provisions hereof, each of the terms and provisions of the Security Documents are hereby ratified and shall remain in full force and effect; provided, however, that any reference in any of the Security Documents to the Loan, the amount constituting the Loan, any defined terms, or to any of the other Security Documents shall be deemed, from and after the date hereof, to refer to the Loan, the amount constituting the Loan, defined terms and to such other Security Documents, as modified hereby.

9. Governing Law. THE TERMS AND PROVISIONS HEREOF SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.

10. Time. Time is of the essence in the performance of the covenants contained herein and in the Security Documents.

11. Binding Agreement. This Agreement shall be binding upon the successors and assigns of the parties hereto; provided, however, the foregoing shall not be deemed or construed to (i) permit, sanction, authorize or condone the assignment of all or any part of the Property or any of Borrower's rights, titles or interests in and to the Property or any rights, titles or interests in and to Borrower, except as expressly authorized in the Security Documents or by the terms of this Agreement, or (ii) confer any right, title, benefit, cause of action or remedy upon any person or entity not a party hereto, which such party would not or did not otherwise possess.

12. Headings. The section headings hereof are inserted for convenience of reference only and shall in no way alter, amend, define or be used in the construction or interpretation of the text of such section.

13. Construction. Whenever the context hereof so requires, reference to the singular shall include the plural and likewise, the plural shall include the singular; words denoting gender shall be construed to mean the masculine, feminine or neuter, as appropriate; and specific enumeration shall not exclude the general, but shall be construed as cumulative of the general recitation.

14. Severability. If any clause or provision of this Agreement is or should ever be held to be illegal, invalid or unenforceable under any present or future law applicable to the terms hereof, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid or unenforceable, such

clause or provision shall be judicially construed and interpreted to be as similar in substance and content to such illegal, invalid or unenforceable clause or provision, as the context thereof would reasonably suggest, so as to thereafter be legal, valid and enforceable.

15. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

16. Final Agreement. THIS MODIFICATION AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO OR THERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO OR THERETO. THE PROVISIONS OF THIS MODIFICATION AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE RESPECTIVE PARTIES TO SUCH DOCUMENTS.

17. Notices. All notices or other communications required or permitted to be given pursuant hereto shall be in writing and shall be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. Either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth herein. For purposes of such notices, the addresses of the parties shall be as follows:

Payee: Comerica Bank-Texas  
1601 Elm Street, 2nd Floor  
Dallas, Texas 75201  
Attn: National Real Estate Services

Maker: Stratus 7000 West Joint Venture  
98 San Jacinto Boulevard  
Suite 220  
Austin, Texas 78701  
Attn: William H. Armstrong, III

and to: Oly Lantana, L.P.  
200 Crescent Court  
Suite 1650  
Dallas, Texas 75201  
Attn: Legal Department

Guarantor: Stratus Properties, Inc.  
98 San Jacinto Boulevard  
Suite 220  
Austin, Texas 78701  
Attn: William H. Armstrong, III

With a copy to: Armbrust Brown & Davis, L.L.P.  
100 Congress Avenue  
Suite 1300  
Austin, Texas 78701  
Attention: Kenneth Jones, Esq.

and to: Locke Liddell & Sapp LLP  
700 Lavaca  
Suite 800  
Austin, Texas 78701

EXECUTED as of the date first above written.

**LENDER:**

**COMERICA BANK-TEXAS,**  
a state banking association

By:  
Name:  
Title:

**BORROWER:**

**STRATUS 7000 WEST JOINT VENTURE,**  
a Texas joint venture

By:Stratus 7000 West, Ltd.,  
a Texas limited partnership,  
Its Operating Partner

By:STRS L.L.C.,  
a Delaware limited liability company, Its General Partner

By:Stratus Properties, Inc.,  
a Delaware corporation,  
Its Sole Member

By: /s/ William H. Armstrong, III  
-----

Name: William H. Armstrong, III  
Title: President and Chief Executive Officer

By:Oly Lantana, L.P.,  
a Texas limited partnership,  
Its Financial Partner

By:Oly Lantana GP, L.L.C.,  
a Texas limited liability company, Its Sole General Partner

By:  
Name:  
Title:

**GUARANTOR:**

**STRATUS PROPERTIES, INC.,**  
a Delaware corporation

By:  
Name:  
Title:

**STATE OF TEXAS &**

&

COUNTY OF \_\_\_\_\_ &

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_ day of \_\_\_\_\_, 1999, by \_\_\_\_\_, the \_\_\_\_\_ of COMERICA BANK-TEXAS, a state banking association, on behalf of said banking association.

[ S E A L ]

Notary Public, State of Texas My Commission Expires:

\_\_\_\_\_ Printed Name of Notary Public

**STATE OF TEXAS &**

&

COUNTY OF \_\_\_\_\_ &

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_ day of \_\_\_\_\_, 1999, by \_\_\_\_\_, the \_\_\_\_\_ of STRATUS PROPERTIES, INC., a Delaware corporation and the Sole Member of STRS L.L.C., a Delaware limited liability company and the General Partner of STRATUS 7000 WEST, LTD., a Texas limited partnership and Operating Partner of STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture, on behalf of each of said entities.

[ S E A L ]

Notary Public, State of Texas My Commission Expires:

\_\_\_\_\_ Printed Name of Notary Public

**STATE OF TEXAS &**

&

COUNTY OF \_\_\_\_\_ &

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_ day of \_\_\_\_\_, 1999, by \_\_\_\_\_, the \_\_\_\_\_ of OLY LANTANA GP, L.L.C., a Texas limited liability company and the Sole General Partner of OLY LANTANA, L.P., a Texas limited partnership, on behalf of each of said entities.

[ S E A L ]

Notary Public, State of Texas My Commission Expires:

\_\_\_\_\_ Printed Name of Notary Public

**STATE OF TEXAS &**

&

COUNTY OF \_\_\_\_\_ &

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_ day of \_\_\_\_\_, 1999, by \_\_\_\_\_, the \_\_\_\_\_ of STRATUS PROPERTIES, INC., a Delaware corporation, on behalf of said corporation.

[ S E A L ]

Notary Public, State of Texas My Commission Expires:

\_\_\_\_\_ Printed Name of Notary Public

## Exhibit 10.15

### CONSTRUCTION LOAN AGREEMENT

This CONSTRUCTION LOAN AGREEMENT ("Agreement") is made and entered into as of the 24th day of February, 2000, by and between STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture ("Borrower"), whose address is 98 San Jacinto Boulevard, Suite 220, Austin, Texas 78701, and COMERICA BANK-TEXAS, a state banking association ("Lender"), whose address is 1601 Elm Street, 2nd Floor, Dallas, Texas 75201, Attn: National Real Estate Services.

#### ARTICLE I

##### DEFINITION OF TERMS

I.1 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

**Advance:** A disbursement by Lender, whether by journal entry, deposit to Borrower's account, check to third party or otherwise of any of the proceeds of the Loan, any insurance proceeds or Borrower's Deposit.

**Affidavit of Commencement:** As defined in Section 5.13 hereof.

**Affidavit of Completion:** As defined in Section 5.14 hereof.

**Agreement:** This Loan Agreement, as the same may from time to time be amended or supplemented.

**Allocations:** The line items set forth in the Budget for which Advances of Loan proceeds will be made.

**Borrower's Deposit:** Such cash amounts as Lender may deem necessary for Borrower to deposit with it in accordance with the provisions of Section 3.4 of this Agreement.

**Budget:** The budget which is set forth on Exhibit B attached hereto and incorporated herein by reference.

**Commitment Fee:** The sum of \$38,500.00 to be paid by Borrower to Lender pursuant to the applicable provisions of this Agreement.

**Completion Date:** September 30, 2000, for completion of the shell portion of the office building.

**Construction Contract:** Collectively, all contracts and agreements entered into between Borrower and Contractor pertaining to the development, construction and completion of the Phase II Improvements, which Construction Contract shall provide a guaranteed maximum cost for construction of the Phase II Improvements.

**Contractor:** Zapalac/Reed Construction Company, L.C., together with any other person or entity with whom Borrower contracts for the development, construction and completion of the Phase II Improvements or any portion thereof.

**Deed of Trust:** The Amended and Restated Deed of Trust dated April 9, 1999, and recorded under Document No. 1999009453 of the Official Records of Travis County, as modified by the Modification Agreement dated August 16, 1999, recorded under Document No. 1999093007 of the Official Records of Travis County, Texas, and as further amended by the Second Amended and Restated Deed of Trust dated of even date herewith, pursuant to which Borrower has mortgaged the Land to secure both the Phase I Note and this Note.

**Design Professional:** Susman Tisdale Gayle, together with any other person or entity with whom Borrower contracts for the providing of planning, design, architectural, engineering or other similar services relating to the Phase II Improvements, if any.

**Design Services Contract:** Collectively, all contracts and agreements entered into between Borrower and each Design Professional pertaining to the design, development and construction of the Phase II Improvements, if any.

**Disposition:** Any sale, lease (except as expressly permitted pursuant to the Loan Documents), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part, directly or indirectly, of the beneficial ownership interest in Borrower (if Borrower is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity); provided, however, a sale of the publicly traded stock of Stratus Properties Inc. shall not constitute a Disposition under the terms of this Agreement; and, further provided, notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, Oly Lantana, L.P., a joint venturer of Borrower ("Oly Lantana") may, after written notice to but without the requirement of Lender's consent, transfer all or any portion of its joint venture interest in Borrower or all or any portion of its interest in any constituent entity of Oly Lantana to any entity or individual that is now or is in the future an affiliate or partner in Hicks Muse Tate and Furst, Inc., Olympus Real Estate Corporation or Olympus Real Estate Fund II, LP; PROVIDED, HOWEVER, in no event shall Stratus 7000 West, Ltd., the other joint venturer of Borrower, and the entities which comprise Stratus 7000 West, Ltd. (collectively, "Stratus")

(i) be entitled to transfer any interest in Stratus 7000 West, Ltd. or in any Stratus constituent entity without the prior written consent of Lender and FURTHER PROVIDED that (ii) Stratus shall be obligated to, at all times during the term of this Loan, remain in charge of the day-to-day management of the Borrower; EXCEPT, HOWEVER, Oly Lantana shall be entitled to exercise its right to remove Stratus as Operating Partner of Borrower in accordance with Section 4.1 of the Amended and Restated Joint Venture Agreement between Oly Lantana and Stratus 7000 West, Ltd. dated August 16, 1999, PROVIDED: (i) Oly Lantana has first given written notice to Lender at least five (5) business days in advance of such removal and the reason for said proposed removal, together with Oly Lantana's proposed additional collateral, cash deposit or guaranty of the Loan (the "Proposed Collateral"), which Proposed Collateral must be satisfactory to Lender in its sole discretion; and thereafter either (ii) within ten (10) business days of receipt of Lender's approval of said Proposed Collateral, has furnished to Lender such Proposed Collateral; or (iii) within ten (10) business days of receipt of Lender's disapproval of the Proposed Collateral has paid off the Loan in full.

**Draw Request:** a request by Borrower to Lender for an Advance in such form and containing such information as Lender may require.

**Environmental Law:** Any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. & 9601 et seq.; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C. & 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. & 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. & 1101 et seq.; Clean Water Act ("CWA"), 33 U.S.C. & 1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C. & 7401 et seq.; Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. & 1251 et seq.; and any corresponding state laws or ordinances including but not limited to the Texas Water Code ("TWC") & 26.001 et seq; Texas Health & Safety Code ("THSC") & 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

**Event of Default:** Any happening or occurrence described in Section 7.1 of this Agreement.

**Financing Statement:** The financing statement or financing statements (on Standard Form UCC-1 or otherwise) executed and delivered by Borrower in connection with the Loan Documents.

**Governmental Authority:** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

**Governmental Requirements:** All statutes, laws, ordinances, rules, regulations, orders, writs, injunctions or decrees of any Governmental Authority applicable to Borrower, Guarantor or the Mortgaged Property.

**Guarantor:** STRATUS PROPERTIES INC., a Delaware corporation.

**Guaranty:** That or those instruments of guaranty now or hereafter in effect from Guarantor to Lender guaranteeing the repayment of all or any part of the Loan, the satisfaction of, or continued compliance with, the covenants contained in the Loan Documents, or both.

**Hazardous Substance:** Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(11) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(11) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

**Indebtedness:** As defined in Section 9.8 hereof.

**Initial Advance:** The Advance to be made at the time Borrower satisfies the conditions set forth in Sections 3.1 and 3.2 of this Agreement.

**Inspecting Person:** Chris Rehkemper of AECC will from time to time inspect the Phase II Improvements and the development of Phase II Improvements for the benefit of Lender.

Land: The real property or interest therein described in Exhibit A attached hereto and incorporated herein by this reference upon which the Phase I and Phase II Improvements are to be constructed.

Loan: The loan evidenced by the Note and governed by this Agreement.

**Loan Amount: SEVEN MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,700,000.00).**

Loan Documents: The Note, the Deed of Trust, this Agreement, the Security Agreement, the Financing Statement, the Guaranty, and any and all other documents now or hereafter executed by the Borrower, Guarantor, or any other person or party in connection with the Loan, the indebtedness evidenced by the Note, or the covenants contained in this Agreement.

Material Adverse Effect: Any material and adverse effect on

(i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of the Borrower, taken as a whole, (ii) the value of the Mortgaged Property, (iii) the ability of Borrower or any Guarantor (or if the Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or such Guarantor) to pay and perform the Indebtedness or any other Obligations, or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Mortgaged Property: Collectively, the Land, the Phase I and Phase II Improvements, and all other collateral covered by the Loan Documents.

Note: The promissory note dated as of even date herewith in the principal sum of the Loan Amount (together with all renewals and extensions thereof) executed and delivered by Borrower payable to the order of Lender, evidencing the Loan.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor, or any other person or party to the Loan Documents to Lender, the trustee of the Deed of Trust, or others as set forth in the Loan Documents, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Phase I Improvements: That certain 66,606 square foot office building, together with all amenities, currently under construction on the Mortgaged Property, the funds for the said Phase I Improvements having been advanced to Borrower by Lender under a prior construction loan agreement dated April 9, 1999 between Lender and Borrower as modified by that certain Second Amendment to Construction Loan Agreement dated December 31, 1999 (the "Prior Agreement").

Phase I Loan Documents: The Phase I Note, the Deed of Trust, the Prior Agreement, the security agreement of even date with the Phase I Note entered into by and between Borrower and Lender, the financing statements executed by Borrower, as debtor, dated as of the date of the Phase I Note, that certain guaranty executed as of December 31, 1999, and delivered by Guarantor, any and all other documents previously executed or hereafter executed by the Borrower, Guarantor or any other person or party in connection with the Phase I Note or the covenants contained in the Prior Agreement.

Phase I Note: That certain \$6,600,000 Promissory Note dated April 9, 1999, executed by Borrower and payable to Lender, and secured by the Mortgaged Property.

Phase II Improvements: That certain 66,475 square foot office building, together with all amenities, to be constructed on the Mortgaged Property, all as more particularly described in the Plans and Specifications.

Plans and Specifications: The plans and specifications for the development and construction of the Mortgaged Property, prepared by Borrower or the Design Professional and approved by Lender as required herein, by all applicable Governmental Authorities, by any party to a purchase or construction contract with a right of approval, all amendments and modifications thereof approved in writing by the same, and all other design, engineering or architectural work, test reports, surveys, shop drawings, and related items.

Security Agreement: The Security Agreement shall mean all security agreements, whether contained in the Deed of Trust, a separate security agreement or otherwise creating a security interest in all personal property and fixtures of Borrower (including replacements, substitutions and after-acquired property) now or hereafter located in or upon the Land or the Phase I and Phase II Improvements, or used or intended to be used in the operation thereof, to secure the Loan.

Subordinate Mortgage: Any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Mortgaged Property executed and delivered by Borrower, the lien of which is subordinate and inferior to the lien of the Deed of Trust.

Special Account: An account established by Borrower with Lender (in which Borrower shall at all times maintain a minimum balance of \$1,000.00) into which all Advances made directly to Borrower will be deposited.

**Tenant Leases:** All written leases or rental agreements by which Borrower, as landlord, grants to a tenant a leasehold interest in a portion of the leasable space within the Mortgaged Property.

**Title Insurance:** One or more title insurance commitments, binders or policies, as Lender may require, issued by the Title Company, on a coinsurance or reinsurance basis (with direct access endorsement or rights) if and as required by Lender, in the maximum amount of the Loan insuring or committing to insure that the Deed of Trust constitutes a valid lien covering the Land and the Phase I and Phase II Improvements, subject only to those exceptions which Lender may approve.

**Title Company:** The Title Company (and its issuing agent, if applicable) issuing the Title Insurance, which shall be acceptable to Lender in its sole and absolute discretion.

## **ARTICLE II**

### **THE LOAN**

**II.1 Agreement to Lend.** Lender hereby agrees to lend up to but not in excess of the Loan Amount to Borrower, and Borrower hereby agrees to borrow such sum from Lender, all upon and subject to the terms and provisions of this Agreement, such sum to be evidenced by the Note. No principal amount repaid by Borrower may be reborrowed by Borrower. Borrower's liability for repayment of the interest on account of the Loan shall be limited to and calculated with respect to Loan proceeds actually disbursed to Borrower pursuant to the terms of this Agreement and the Note and only from the date or dates of such disbursements. After notice to Borrower, Lender may, in Lender's sole discretion, disburse Loan proceeds by journal entry to pay interest and financing costs and, following an uncured Event of Default, disburse Loan proceeds directly to third parties to pay costs or expenses required to be paid by Borrower pursuant to this Agreement. Loan proceeds disbursed by Lender by journal entry to pay interest or financing costs, and Loan proceeds disbursed directly by Lender to pay costs or expenses required to be paid by Borrower pursuant to this Agreement, shall constitute Advances to Borrower.

**II.2 Prior Loan.** As reflected by the Phase I Loan Documents, Lender and Borrower previously entered into the Prior Agreement for construction of improvements on the Phase I portion of the Land, such construction having been commenced on or about February 11, 1999, for the construction of a two-story office building similar in scope and design to the Phase II Improvements. Advances have been made to Borrower by Lender under the terms of the Prior Agreement, and construction is ongoing under said Prior Agreement. Borrower and Lender hereby agree that the Deed of Trust previously recorded in connection with the Phase I Note and Prior Agreement more fully described above shall be further modified to reflect that the lien of the deed of trust shall also secure the indebtedness evidenced by the Note entered into of even date herewith and the obligations of this Construction Loan Agreement, all of which was contemplated as of the original date of the Deed of Trust. Further, Borrower hereby acknowledges and agrees that no Advances shall be used by Borrower under this Loan to pay for any development or construction costs for the Phase I Improvements.

**II.3 Advances.** The purposes for which Loan proceeds are allocated and the respective amounts of such Allocations are set forth in the Budget, which Advances shall be limited to the value of the work in place as determined by the Inspecting Person.

**II.4 Allocations.** The Allocations shall be disbursed only for the purposes set forth in the Budget. Lender shall not be obligated to make an Advance for an Allocation set forth in the Budget to the extent that the amount of the Advance for such Allocation would, when added to all prior Advances for such Allocation, exceed the total of such Allocation as set forth in the Budget.

**II.5 Limitation on Advances.** To the extent that Loan proceeds disbursed by Lender pursuant to the Allocations are insufficient to pay all costs required for the acquisition, development, construction and completion of the Mortgaged Property, Borrower shall pay such excess costs with funds derived from sources other than the Loan. Under no circumstances shall Lender be required to disburse any proceeds of the Loan in excess of the Loan Amount.

**II.6 Reallocations.** Lender reserves the right, at its option, to disburse Loan proceeds allocated to any of the Allocations for such other purposes or in such different proportions as Lender may, in its sole discretion, deem necessary or advisable. Borrower shall not be entitled to require that Lender reallocate funds among the Allocations.

**II.7 Contingency Allocations.** Any amount allocated in the Budget for "contingencies" or other non-specific purposes may, in the Lender's discretion, be disbursed by Lender to pay future contingent costs and expenses of maintaining, leasing and promoting the Mortgaged Property and such other costs or expenses as Lender shall approve. Under no circumstances shall the Borrower have the right to require Lender to disburse any amounts so allocated and Lender may impose such requirements and conditions as it deems prudent and necessary should it elect to disburse all or any portion of the amounts so allocated.

**II.8 Withholding.** Lender may withhold from an Advance or, on account of subsequently discovered evidence, withhold from a later Advance under this Agreement or require Borrower to repay to Lender the whole or any part of any earlier Advance to such extent as may be necessary to protect the Lender from loss on account of (i) defective work not remedied or requirements of this Agreement not performed, (ii) liens filed or reasonable evidence indicating probable filing of liens which are not bonded, (iii) failure of Borrower to make payments to the Contractor for material or labor, except as is permitted by the Construction Contract, or (iv) a reasonable doubt that the construction of the Phase I Improvements can be completed for the balance of the Loan Amount then undisbursed. When all such grounds are removed, payment shall be

made of any amount so withheld because of them.

II.9 Loan Limitation. It is expressly agreed and understood that, in accordance with the Budget, to the extent an Advance is for construction costs of the Phase I Improvements, such Advance, except for the final payment under the Loan, shall not exceed ninety percent (90%) of the actual construction costs to which such Advance relates.

### ARTICLE III

#### ADVANCES

III.1 Conditions to Initial Advance. The obligation of Lender to make the Initial Advance hereunder is subject to the prior or simultaneous occurrence of each of the following conditions:

- (a) Lender shall have received from Borrower all of the Loan Documents duly executed by Borrower and, if applicable, by Guarantor.
- (b) Lender shall have received certified copies of resolutions of Borrower, if Borrower is a corporation, or a certified copy of a consent of partners, if Borrower is a partnership, authorizing execution, delivery and performance of all of the Loan Documents and authorizing the borrowing hereunder, along with such certificates of existence, certificates of good standing and other certificates or documents as Lender may reasonably require to evidence Borrower's authority.
- (c) Lender shall have received true copies of all organization documents of Borrower, including all amendments or supplements thereto, if Borrower is a legal entity other than a corporation, along with such certificates or other documents as Lender may reasonably require to evidence Borrower's authority.
- (d) Lender shall have received evidence that the Mortgaged Property is not located within any designated flood plain or special flood hazard area; or evidence that Borrower has applied for and received flood insurance covering the Mortgaged Property in the amount of the Loan or the maximum coverage available to Lender.
- (e) Lender shall have received evidence of compliance with all Governmental Requirements.
- (f) Lender shall have received a full-size, single sheet copy of all recorded subdivision or plat maps of the Land approved (to the extent required by Governmental Requirements) by all Governmental Authorities, if applicable, and legible copies of all instruments representing exceptions to the state of title to the Mortgaged Property.
- (g) Lender shall have received policies of all-risk builder's risk insurance (non-reporting form) during the construction of the Phase II Improvements and all-risk insurance after construction of the Phase II Improvements, owner's and contractor's liability insurance, workers' compensation insurance, and such other insurance as Lender may reasonably require, with standard endorsements attached naming Lender as the insured mortgagee or additional insured, whichever is applicable, such policies to be in form and content and issued by companies reasonably satisfactory to Lender, with copies, or certificates thereof, being delivered to Lender.
- (h) Lender shall have received the Title Insurance, at the sole expense of Borrower.
- (i) Lender shall have received from Borrower such other instruments, evidence and certificates as Lender may reasonably require, including the items indicated below:
  - (1) Evidence that all the streets furnishing access to the Mortgaged Property have been dedicated to public use and installed and accepted by applicable Governmental Authorities.
  - (2) A current survey of the Land prepared by a registered surveyor or engineer and certified to Lender, Borrower and the Title Company, in form and substance reasonably acceptable to Lender, showing all easements, building or setback lines, rights-of-way and dedications affecting said land and showing no state of facts objectionable to Lender.
  - (3) Evidence reasonably satisfactory to Lender showing the availability of all necessary utilities at the boundary lines of the Land, including sanitary and storm sewer facilities, potable water, telephone, electricity, gas, and municipal services.
  - (4) Evidence that the current and proposed use of the Mortgaged Property and the construction of the Phase II Improvements complies with all Governmental Requirements.
  - (5) An opinion of counsel for Borrower, which counsel shall be satisfactory to Lender, to the effect that (i) Borrower possesses full power and authority to own the Mortgaged Property, to construct the Phase II Improvements and to perform Borrower's obligations hereunder; (ii) the Loan Documents have been duly authorized, executed and delivered by Borrower and, where required, by Guarantor, and constitute the valid and binding obligations of Borrower and Guarantor, not subject to any defense based upon usury, capacity of Borrower or otherwise; (iii) the Loan Documents are enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency and other laws

affecting creditors' rights generally, and except that certain remedial provisions thereof may be limited by the laws of the State of Texas; (iv) to the knowledge of such counsel, there are no actions, suits or proceedings pending or threatened against or affecting Borrower, Guarantor or the Mortgaged Property, or involving the priority, validity or enforceability of the liens or security interests arising out of the Loan Documents, at law or in equity, or before or by any Governmental Authority, except actions, suits or proceedings fully covered by insurance or which, if adversely determined, would not substantially impair the ability of Borrower or Guarantor to pay when due any amounts which may become payable in respect to the Loan as represented by the Note; (v) to the knowledge of such counsel, neither Borrower nor Guarantor is in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority of which such counsel has knowledge; (vi) to the knowledge of such counsel, the consummation of the transactions hereby contemplated and the performance of this Agreement and the execution and delivery of the Guaranty will not violate or contravene any provision of any instrument creating or governing the business operations of Borrower or Guarantor and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement or other instrument to which Borrower or any Guarantor is a party or by which Borrower, Guarantor or the Mortgaged Property may be bound or affected; and (vii) such other matters as Lender may reasonably request.

(6) A cost breakdown satisfactory to Lender showing the total costs, including, but not limited to, such related nonconstruction items as interest during construction, commitment, legal, design professional and real estate agents' fees, plus the amount of the Land cost and direct construction costs required to be paid to satisfactorily complete the Phase II Improvements, free and clear of liens or claims for liens for material supplied and for labor services performed.

(7) Original or a copy of each proposed Construction Contract.

(8) Original or a copy of each fully executed Design Services Contract.

(9) Waiver of lien or lien subordination agreement(s) for the prior month's draw request executed by Contractor and by each contractor, laborer and suppliers furnishing labor or materials to the Mortgaged Property, in a form acceptable to Lender, together with Borrower's affidavit to Lender that all changes and expenses incurred to date for either the Phase I Improvements or the Phase II Improvements have been paid in full.

(10) A copy of the Plans and Specifications for the Phase II Improvements.

(11) Building permit(s), grading permit(s) and all other permits required with respect to the construction of the Phase I or Phase II Improvements.

(12) Evidence that all applicable zoning ordinances and restrictive covenants affecting the Land permit the use for which the Phase I and Phase II Improvements are intended and have been or will be complied with.

(13) Evidence of payment of required sums for insurance, taxes, expenses, charges and fees customarily required or recommended by Lender or any Governmental Authority, corporation, or person guaranteeing, insuring or purchasing, committing to guaranty, insure, purchase or refinance the Loan or any portion thereof.

(14) A current financial statement of Borrower certified by a duly authorized representative of Borrower.

(15) A current financial statement of Guarantor certified by said Guarantor.

(16) A Guaranty executed by the Guarantor.

(17) A schedule of construction progress for the Phase II Improvements with the anticipated commencement and completion dates of each phase of construction and the anticipated date and amounts of each Advance for the same.

(18) Copies of all agreements entered into by Borrower or its operating partner pertaining to the development, construction and completion of the Phase II Improvements or pertaining to materials to be used in connection therewith, together with a schedule of anticipated dates and amounts of each Advance for the same.

(19) Environmental site assessment report with respect to the Mortgaged Property prepared by a firm of engineers approved by Lender, which report shall be satisfactory in form and substance to Lender, certifying that there is no evidence that any Hazardous Substance have been generated, treated, stored or disposed of on any of the Mortgaged Property and none exists on, under or at the Mortgaged Property.

(20) A soils and geological report covering the Land issued by a laboratory approved by Lender, which report shall be satisfactory in form and substance to Lender, and shall include a summary of soils test borings.

(21) Such other instruments, evidence or certificates as Lender may reasonably request.

(j) Lender shall have ordered and received, at Borrower's expense, an appraisal of the Mortgaged Property, prepared by an appraiser acceptable to Lender and presented and based upon such standards as may be required by Lender.

(k) Lender shall have received payment of the Commitment Fee.

III.2 Conditions to Advances. The obligation of Lender to make each Advance hereunder, including the Initial Advance, shall be subject to the prior or simultaneous occurrence or satisfaction of each of the following conditions:

(a) The Loan Documents shall be and remain outstanding and enforceable in all material respects in accordance with their terms, all as required hereunder.

(b) Lender shall have received a title report dated within two (2) days of the requested Advance from the Title Company showing no state of facts objectionable to Lender, including, but not limited to, a showing that title to the Land is vested in Borrower and that no claim for mechanics' or materialmen's liens has been filed against the Mortgaged Property.

(c) A monthly construction status report for the Phase II Improvements shall be prepared and submitted by Borrower to Lender on or before the tenth (10th) day of each month, commencing on or before March 10, 2000 and continuing for each month thereafter.

(d) The representations and warranties made by Borrower, as contained in this Agreement and in all other Loan Documents shall be true and correct as of the date of each Advance; and if requested by Lender, Borrower shall give to Lender a certificate to that effect.

(e) The covenants made by Borrower to Lender, as contained in this Agreement and in all other Loan Documents shall have been fully complied with, except to the extent such compliance may be limited by the passage of time or the completion of construction of the Phase I and Phase II Improvements.

(f) Lender shall have received (i) a fully executed copy of each Construction Contract or copy thereof (to be dated after the date of recordation of the Deed of Trust); and (ii) a report of any changes, replacements, substitutions, additions or other modification in the list of contractors, subcontractors and materialmen involved or expected to be involved in the construction of the Phase II Improvements.

(g) Except in connection with the Initial Advance, Lender shall have received from Borrower a Draw Request for such Advance, completed, executed and sworn to by Borrower and Contractor, with the Inspecting Person's approval noted thereon, stating that the requested amount does not exceed ninety percent (90%) of the then unpaid cost of construction of the Phase II Improvements since the last certificate furnished hereunder; that said construction was performed in accordance with the Plans and Specifications in all material respects; and that, in the opinion of Borrower, Contractor and the Design Professional, construction of the Phase II Improvements can be completed on or before the Completion Date for an additional cost not in excess of the amount then available under the Loan. To the extent approved by Lender and included in the Budget, such expenses will be paid from the proceeds of the Loan.

(h) Except in connection with the Initial Advance, Borrower shall have furnished to Lender, from each contractor, subcontractor and materialman, including Contractor, an invoice, lien waiver and such other instruments and documents as Lender may from time to time specify, in form and content, and containing such certifications, approvals and other data and information, as Lender may reasonably require. The invoice, lien waiver and other documents shall cover and be based upon work actually completed or materials actually furnished and paid under a prior application for payment. The lien waiver for the prior month's draws of each contractor, subcontractor and materialman shall, if required by Lender, be received by Lender simultaneously with the making of any Advance hereunder for the benefit of such contractor, subcontractor or materialman.

(i) There shall exist no default or breach by any obligated party (other than Lender) under the Loan Documents.

(j) The Phase II Improvements shall not have been materially injured, damaged or destroyed by fire or other casualty, nor shall any part of the Mortgaged Property be subject to condemnation proceedings or negotiations for sale in lieu thereof.

(k) All work typically done at the stage of construction when the Advance is requested shall have been done, and all materials, supplies, chattels and fixtures typically furnished or installed at such stage of construction shall have been furnished or installed.

(l) All personal property not yet incorporated into the Phase II Improvements but which is to be paid for out of such Advance, must then be located upon the Land, secured in a method acceptable to Lender, and Lender shall have received evidence thereof, or if stored off-site, must be stored in a secured area and must be available for inspection by the Inspecting Person.

(m) Borrower shall have complied with all reasonable requirements of the Inspecting Person to insure compliance with the Plans and Specifications and all requirements of the Governmental Authorities.

(n) Except in connection with the Initial Advance, if the Phase II Improvements are being built for any party under a purchase or construction contract, then Lender at its election may require the approval of such purchaser before making any additional Advance.

(o) Borrower shall have fully completed (to the extent applicable), signed, notarized and delivered to Lender the Draw Request Form.

(p) If any portion of the Phase II Improvements are being built for a specific lessee, the approval by such lessee of the construction thereof with

respect to the applicable portion of the Phase II Improvements subject to such lease shall be obtained and furnished to Lender, upon request therefor by Lender.

(q) Borrower shall have funded all Borrower equity requirements indicated on the Budget.

III.3 Advance Not A Waiver. No Advance of the proceeds of the Loan shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances, nor, in the event Borrower is unable to satisfy any such condition, shall any such Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default.

III.4 Borrower's Deposit. If at any time Lender shall in its sole discretion deem that the undisbursed proceeds of the Loan are insufficient to meet the costs of completing construction of the Phase II Improvements, plus the costs of insurance, ad valorem taxes and other normal costs of the Phase II Improvements, Lender may refuse to make any additional Advances to Borrower hereunder until Borrower shall have deposited with Lender sufficient additional funds ("Borrower's Deposit") to cover the deficiency which Lender deems to exist. Such Borrower's Deposit will be disbursed by Lender to Borrower pursuant to the terms and conditions hereof as if they constituted a portion of the Loan being made hereunder. Borrower agrees upon fifteen (15) days written demand by Lender to deposit with Lender such Borrower's Deposit. Lender agrees that the Borrower's Deposit shall be placed in an interest-bearing account.

III.5 Advance Not An Approval. The making of any Advance or part thereof shall not be deemed an approval or acceptance by Lender of the work theretofore done. Lender shall have no obligation to make any Advance or part thereof after the happening of any Event of Default, but shall have the right and option so to do; provided that if Lender elects to make any such Advance, no such Advance shall be deemed to be either a waiver of the right to demand payment of the Loan, or any part thereof, or an obligation to make any other Advance.

III.6 Time and Place of Advances. All Advances are to be made at the office of Lender, or at such other place as Lender may designate; and Lender shall require five (5) days prior notice in writing before the making of any such Advance. Lender shall not be obligated to undertake any Advance hereunder more than once in any 30-day period. Except as set forth in this Agreement, all Advances are to be made by direct deposit into the Special Account. In the event Borrower shall part with or be in any manner whatever deprived of Borrower's interests in the Land, Lender may, at Lender's option but without any obligation to do so, continue to make Advances under this Agreement, and subject to all its terms and conditions, to such person or persons as may succeed to Borrower's title and interest and all sums so disbursed shall be deemed Advances under this Agreement and secured by the Deed of Trust and all other liens or security interests securing the Loan.

III.7 Retainage. An amount equal to ten percent (10%) of the cost of construction of the Phase II Improvements shall be retained by Lender and shall be paid over by Lender to Borrower, provided that no lien claims are then filed against the Mortgaged Property, when all of the following have occurred to the satisfaction of Lender:

(a) Lender has received a completion certificate prepared by the Inspecting Person and executed by Borrower and the Design Professional stating that the Phase II Improvements have been completed in accordance with the Plans and Specifications, together with such other evidence that no mechanics or materialmen's liens or other encumbrances have been filed and remain in effect against the Mortgaged Property which have not been bonded to Lender's satisfaction and that all offsite utilities and streets, if any, have been completed to the satisfaction of Lender and any applicable Governmental Authority;

(b) each applicable Governmental Authority shall have duly inspected and approved the Phase II Improvements and issued the appropriate permit, license or certificate to evidence such approval;

(c) thirty (30) days shall have elapsed from the later of (i) the date of completion of the Phase II Improvements, as specified in Texas Property Code &53.106, if the Affidavit of Completion provided for in this Agreement is filed within ten (10) days after such date of completion, or (ii) the date of filing of such Affidavit of Completion if such Affidavit of Completion is filed ten (10) days or more after the date of the completion of the Phase II Improvements as specified in Texas Property Code &53.106; and

(d) receipt by Lender of evidence satisfactory to Lender that payment in full has been made for all obligations incurred in connection with the construction and completion of all off-site utilities and improvements (if any) as required by Lender or any Governmental Authority.

III.8 No Third Party Beneficiaries. The benefits of this Agreement shall not inure to any third party, nor shall this Agreement be construed to make or render Lender liable to any materialmen, subcontractors, contractors, laborers or others for goods and materials supplied or work and labor furnished in connection with the construction of either the Phase I or Phase II Improvements or for debts or claims accruing to any such persons or entities against Borrower. Lender shall not be liable for the manner in which any Advances under this Agreement may be applied by Borrower, Contractor and any of Borrower's other contractors or subcontractors. Notwithstanding anything contained in the Loan Documents, or any conduct or course of conduct by the parties hereto, before or after signing the Loan Documents, this Agreement shall not be construed as creating any rights, claims or causes of action against Lender, or any of its officers, directors, agents or employees, in favor of any contractor, subcontractor, supplier of labor or materials, or any of their respective creditors, or any other person or entity other than Borrower. Without limiting the generality of the foregoing, Advances made to any contractor, subcontractor or supplier of labor or materials, pursuant to any requests for Advances, whether or not such request is required to be approved by Borrower, shall not be deemed a recognition by Lender of a third-party beneficiary status of any such person or entity.

## ARTICLE IV

### WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents to Lender, as of the date hereof and at all times during the term of the Agreement, as follows:

IV.1 Plans and Specifications. The Plans and Specifications for the Phase II Improvements are satisfactory to Borrower, are in compliance with all Governmental Requirements and, to the extent required by Governmental Requirements or any effective restrictive covenant, have been approved by each Governmental Authority and/or by the beneficiaries of any such restrictive covenant affecting the Mortgaged Property.

IV.2 Governmental Requirements. No violation of any Governmental Requirements exists or will exist with respect to the Mortgaged Property and neither the Borrower nor the Guarantor is, nor will either be, in default with respect to any Governmental Requirements.

IV.3 Utility Services. All utility services of sufficient size and capacity necessary for the construction of both the Phase I and Phase II Improvements and the use thereof for their intended purposes are available at the property line(s) of the Land for connection to the Phase I or Phase II Improvements, including potable water, storm and sanitary sewer, gas, electric and telephone facilities.

IV.4 Access. All roads necessary for the full utilization of the Phase I and Phase II Improvements for their intended purposes have been completed and have been dedicated to the public use and accepted by the appropriate Governmental Authority.

IV.5 Financial Statements. Each financial statement of Borrower and Guarantor delivered heretofore, concurrently herewith or hereafter to Lender was and will be prepared in conformity with generally accepted accounting principles, or other good accounting principles approved by Lender in writing, applied on a basis consistent with that of previous statements and completely and accurately disclose the financial condition of Borrower and Guarantor (including all contingent liabilities) as of the date thereof and for the period covered thereby, and there has been no material adverse change in either Borrower's or Guarantor's financial condition subsequent to the date of the most recent financial statement of Borrower and Guarantor delivered to Lender.

IV.6 Statements. No certificate, statement, report or other information delivered heretofore, concurrently herewith or hereafter by Borrower or Guarantor to Lender in connection herewith, or in connection with any transaction contemplated hereby, contains or will contain any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading, and same were true, complete and accurate as of the date hereof.

IV.7 Disclaimer of Permanent Financing. Borrower acknowledges and agrees that Lender has not made any commitments, either express or implied, to extend the term of the Loan past its stated maturity date or to provide Borrower with any permanent financing.

## ARTICLE V

### COVENANTS OF BORROWER

Borrower hereby unconditionally covenants and agrees with Lender, until the Loan shall have been paid in full and the lien of the Deed of Trust shall have been released, as follows:

V.1 Commencement and Completion. Borrower will cause the construction of the Phase II Improvements to be prosecuted with diligence and continuity and will complete the same in all material respects in accordance with the Plans and Specifications for the Phase II Improvements on or before the Completion Date, free and clear of liens or claims for liens for material supplied and for labor services performed in connection with the construction of the Phase II Improvements.

V.2 No Changes. Borrower will not amend, alter or change (pursuant to change order, amendment or otherwise) the Plans and Specifications for the Phase II Improvements unless the same shall have been approved in advance in writing by Lender, by all applicable Governmental Authorities, and by each surety under payment or performance bonds covering the Construction Contract, if any, or any other contract for construction of all or a portion of the Phase II Improvements; provided, however, Borrower shall have the right to approve change orders without Lender's consent which do not individually exceed \$25,000.00, or in the aggregate exceed \$100,000.00.

V.3 Advances. Borrower will receive the Advances and will hold same as a trust fund for the purpose of paying the cost of construction of the Phase II Improvements and related nonconstruction costs related to the Mortgaged Property as provided for herein. Borrower will apply the same promptly to the payment of the costs and expenses for which each Advance is made and will not use any part thereof for any other purpose.

V.4 Lender's Expenses. Borrower will reimburse Lender for all out-of-pocket expenses of Lender, including reasonable attorneys' fees, incurred in connection with the preparation, execution, delivery, administration and performance of the Loan Documents.

V.5 Surveys. Borrower will furnish Lender at Borrower's expense (i) a foundation survey and (ii) an as-built survey, each prepared by a

registered engineer or surveyor acceptable to Lender, showing that the locations of the Phase I and Phase II Improvements, and certifying that same are entirely within the property lines of Land, do not encroach upon any easement, setback or building line or restrictions, are placed in accordance with the Plans and Specifications, all Governmental Requirements and all restrictive covenants affecting the Land and/or Phase I and Phase II Improvements, and showing no state of facts objectionable to Lender. All surveys shall be in form and substance and from a registered public surveyor acceptable to Lender.

V.6 Defects and Variances. Borrower will, upon demand of Lender and at Borrower's sole expense, correct any structural defect in the Phase II Improvements or any variance from the Plans and Specifications for the Phase II Improvements which is not approved in writing by Lender.

V.7 Estoppel Certificates. Borrower will deliver to Lender, promptly after request therefor, estoppel certificates or written statements, duly acknowledged, stating the amount that has then been advanced to Borrower under this Agreement, the amount due on the Note, and whether any known offsets or defenses exist against the Note or any of the other Loan Documents.

V.8 Inspecting Person. Borrower will pay the fees and expenses of, and cooperate, with the Inspecting Person and will cause the Design Professional, the Contractor, each contractor and subcontractor and the employees of each of them to cooperate with the Inspecting Person and, upon request, will furnish the Inspecting Person whatever the Inspecting Person may consider necessary or useful in connection with the performance of the Inspecting Person's duties. Without limiting the generality of the foregoing, Borrower shall furnish or cause to be furnished such items as working details, Plans and Specifications and details thereof, samples of materials, licenses, permits, certificates of public authorities, zoning ordinances, building codes and copies of the contracts between such person and Borrower (if applicable). Borrower will permit Lender, the Inspecting Person and their representative to enter the Mortgaged Property for the purposes of inspecting same and Borrower specifically agrees that the Inspecting Person's inspection rights shall cover both the Phase I and Phase II Improvements. Borrower acknowledges that the duties of the Inspecting Person run solely to Lender and that the Inspecting Person shall have no obligations or responsibilities whatsoever to Borrower, Contractor, the Design Professional, or to any of Borrower's or Contractor's agents, employees, contractors or subcontractors.

V.9 BROKERS. BORROWER WILL INDEMNIFY LENDER FROM CLAIMS OF BROKERS ARISING BY REASON OF THE EXECUTION HEREOF OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY TO THE EXTENT SUCH BROKER WAS CONTACTED OR HIRED BY BORROWER OR EITHER OF ITS JOINT VENTURERS.

V.10 Personalty and Fixtures. Borrower will deliver to Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Phase II Improvements or subject to the lien of the Deed of Trust or to the security interest of the Security Agreement.

V.11 Compliance with Governmental Requirements. Borrower will comply promptly with all Governmental Requirements.

V.12 Compliance with Restrictive Covenants. Borrower will comply with all restrictive covenants, if any, affecting the Mortgaged Property. Construction of the Phase I and Phase II Improvements will be performed in a good and workmanlike manner, within the perimeter boundaries of the Land and within all applicable building and setback lines in accordance with all Governmental Requirements and the Plans and Specifications. There are, and will be, no structural defects in the Phase I or Phase II Improvements.

V.13 Affidavit of Commencement. In connection with the Phase I Improvements, Borrower filed in the appropriate records of the county in which the Land is situated, an Affidavit of Commencement ("Affidavit of Commencement"), duly executed by Borrower and Contractor. The date of commencement of work set forth in such Affidavit of Commencement was subsequent to the date the original Deed of Trust was originally recorded. Borrower represents to Lender that said Affidavit of Commencement encompassed all work contemplated for both the Phase I and Phase II Improvements.

V.14 Affidavit of Completion. Borrower, within ten (10) days after construction of the Phase II Improvements has been completed, shall file in the appropriate records in the county in which the Land is situated an Affidavit of Completion ("Affidavit of Completion") in the form of Exhibit C attached hereto and incorporated herein by this reference.

V.15 Payment of Expenses. Borrower shall pay or reimburse to Lender all out-of-pocket costs and expenses relating to the Mortgaged Property and for which an Advance is made, including (without limitation), title insurance and examination charges, survey costs, insurance premiums, filing and recording fees, and other expenses payable to third parties incurred by Lender in connection with the consummation of the transactions contemplated by this Agreement.

V.16 Notices Received. Borrower will promptly deliver to Lender a true and correct copy of all notices received by Borrower from any person or entity with respect to Borrower, Guarantor, the Mortgaged Property, or any or all of them, which in any way relates to or affects the Loan or the Mortgaged Property.

V.17 Advertising by Lender. Borrower agrees that during the term of the Loan, Borrower shall erect and thereafter shall maintain on the Mortgaged Property one or more advertising signs furnished by Lender indicating that the financing for the Mortgaged Property has been furnished by Lender.

V.18 Leases. Borrower will deliver to Lender, upon request of Lender, executed counterparts of all leases and rental agreements affecting the Mortgaged Property; and all said leases will, if requested by Lender, contain a written provision acceptable to Lender whereby all rights of the tenant in the lease and the Mortgaged Property are subordinated to the liens and security interests granted in the Loan Documents. Furthermore, if requested by Lender, Borrower shall cause to be executed and delivered to Lender a Non-Disturbance, Attornment and Subordination Agreement, in form and substance acceptable to Lender, relating to each such lease and fully executed by Lender, Borrower and such lessee.

V.19 Approval to Lease Required. Borrower will obtain the prior written consent of Lender as to any tenant lease ("Lease") proposed to be entered into by Borrower for space in the Phase II Improvements and will not thereafter materially modify any Lease as to the rental rate, term or any credit enhancement issue without Lender's prior consent. Lender agrees that it will respond to any request for review of a Lease, or change thereto, within ten (10) days of receipt of a written request from Borrower. Borrower agrees to submit to each tenant in connection with a proposed lease the Lender's required form of Subordination, Non-Disturbance and Attornment Agreement (the "SNDA"), substantially in the form attached hereto as Exhibit D.

V.20 Statements and Reports. Borrower agrees to deliver to Lender, during the term of the Loan and until the Loan has been fully paid and satisfied, the following statements and reports:

- (a) Annual, audited financial statements of Borrower, each general partner of Borrower and Guarantor within ninety-five (95) days after the end of each calendar year, prepared and certified to by Guarantor and, in the case of Borrower, the chief financial officer of the general partner of Borrower and further, in the case of Guarantor, cashflow and contingent liability information shall also be provided Lender;
- (b) Monthly marketing reports with detailed information as to leasing activities shall be provided Lender on or before the fifteenth (15th) day of the following month and monthly construction status reports as to the progress of construction of the Phase II Improvements shall be provided Lender on or before the fifteenth (15th) day of the following month;
- (c) Copies of all state and federal tax returns prepared with respect to Borrower, each Guarantor and the general partner of Borrower within ten (10) days of such returns being filed with the Internal Revenue Service or applicable state authority;
- (d) Copies of extension requests or similar documents with respect to federal or state income tax filings for Borrower, each Guarantor and the general partner of Borrower within ten (10) days of such documents being filed with the Internal Revenue Service or applicable state authority;
- (e) Annual operating statements with respect to the Mortgaged Property within ninety-five (95) days after the end of each calendar year, prepared in such form and detail as Lender may require and certified to by the chief financial officer of the general partner of Borrower;
- (f) Monthly operating statements and a rent roll with respect to the Phase II Improvements, within thirty (30) days after the end of each calendar month, commencing upon lease-up of said property, prepared in such form and detail as Lender may reasonably require and in accordance with generally accepted accounting principles and certified to by the chief financial officer of the general partner of Borrower; and
- (g) Such other reports and statements as Lender may reasonably require from time to time.

## ARTICLE VI

### ASSIGNMENTS

VI.1 Assignment of Construction Contract. As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Construction Contract upon the following terms and conditions:

- (a) Borrower represents and warrants that the copy of each Construction Contract the Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.
- (b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Construction Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Construction Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**
- (c) Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Construction Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH**

ACTION.

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Construction Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e) Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Construction Contract, provided that Borrower shall not cancel or amend any Construction Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

VI.2 Assignment of Plans and Specifications. As additional security for the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's right, title and interest in and to the Plans and Specifications and hereby represents and warrants to and agrees with Lender as follows:

(a) Each schedule of the Plans and Specifications for the Phase II Improvements delivered or to be delivered to Lender is and shall be a complete and accurate description of such Plans and Specifications.

(b) The Plans and Specifications for the Phase II Improvements are and shall be complete and adequate for the construction of the Phase II Improvements and there have been no modifications thereof except as described in such schedule. The Plans and Specifications shall not be modified without the prior consent of Lender.

(c) Lender may use the Plans and Specifications for the Phase II Improvements for any purpose relating to the Phase II Improvements, including but not limited to inspections of construction and the completion of the Phase II Improvements.

(d) Lender's acceptance of this assignment shall not constitute approval of the Plans and Specifications by Lender. Lender has no liability or obligation in connection with the Plans and Specifications and no responsibility for the adequacy thereof or for the construction of the Phase II Improvements contemplated by the Plans and Specifications for the Phase II Improvements. Lender has no duty to inspect either the Phase I or Phase II Improvements, and if Lender should inspect the Phase I or Phase II Improvements, Lender shall have no liability or obligation to Borrower or any other party arising out of such inspection. No such inspection nor any failure by Lender to make objections after any such inspection shall constitute a representation by Lender that the Phase II Improvements are in accordance with the Plans and Specifications or any other requirement or constitute a waiver of Lender's right thereafter to insist that the Phase II Improvements be constructed in accordance with the Plans and Specifications or any other requirement.

(e) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

VI.3 Assignment of Design Services Contract. As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Design Services Contract upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each Design Services Contract the Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Design Services Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Design Services Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**

(c) Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Design Services Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH ACTION.**

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Design Services Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e) Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Design Services Contract, provided that Borrower shall not cancel or amend any Design Services Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

VI.4 Assignment of Proceeds. Borrower hereby further collaterally transfers and assigns to Lender and acknowledges that Lender shall be entitled to receive (i) any and all sums which may be awarded and become payable to Borrower for condemnation of all or any portion of the Mortgaged Property, or

(ii) the proceeds of any and all insurance upon the Mortgaged Property (other than the proceeds of general public liability insurance).

(a) Borrower shall, upon request of Lender, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Lender to collect and receipt for any of such insurance or condemnation proceeds.

(b) Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums.

(c) Any sums so received by Lender pursuant to this

Section 6.4 may, in Lender's sole discretion, be provided back to Borrower for restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements in documents as Lender may require, or shall be applied to the liquidation of the Indebtedness in accordance with the provisions of Section 7.4 of the Deed of Trust; provided, however, if Lender determines that the Mortgaged Property can be restored prior to the maturity date of the Note, and no Event of Default exists, then Lender will apply the proceeds to the restoration of the Mortgaged Property.

## ARTICLE VII

### EVENTS OF DEFAULT

VII.1 Events of Default. Each of the following shall constitute an "Event of Default" hereunder:

(a) If Borrower shall fail, refuse, or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise and such default shall continue for a period of ten (10) calendar days beyond any due date.

(b) If there is an "Event of Default", as defined in the Phase I Note or in any of the Phase I Loan Documents, which is not cured within any applicable grace or cure periods.

(c) If Borrower shall fail, refuse or neglect, or cause others to fail, refuse, or neglect to comply with, perform and discharge fully and timely any of the Obligations as and when called for, and such failure shall continue for a period of ten (10) days after receipt of written notice from Lender; provided, however, Borrower shall have the right to attempt to cure said default for up to an additional thirty (30) days if Borrower is diligently prosecuting a cure of said default.

(d) If any representation, warranty, or statement made by Borrower, Guarantor, or others in, under, or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Indebtedness is determined by Lender to be false or misleading in any material respect as of the date hereof or thereof or shall become so at any time prior to the repayment in full of the Indebtedness.

(e) If Borrower shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property which is not cured within any notice or grace period.

(f) If Borrower (i) shall execute an assignment for the benefit of creditors or an admission in writing by Borrower of Borrower's inability to pay, or Borrower's failure to pay, debts generally as the debts become due; or

(ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Borrower or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty (60) days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks of the benefit or benefits of any Debtor Relief Law (as defined in the Deed of Trust), or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Lender or the trustee

- under the Deed of Trust granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Borrower as a debtor under any Debtor Relief Law or seeks appointment of a receiver, trustee, custodian or liquidator of Borrower or of the Mortgaged Property, or any part thereof, or of any significant portion of Borrower's other property and
- (a) Borrower admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Borrower, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of filing.
- (g) If Borrower, any Constituent Party (as defined in the Deed of Trust), or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or become permanently disabled.
- (h) If Borrower creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions.
- (i) If Borrower makes a Disposition, without the prior written consent of Lender.
- (j) If any condemnation proceeding is instituted or threatened which would, in Lender's sole judgment, materially impair the use and enjoyment of the Mortgaged Property for its intended purposes.
- (k) If the Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Lender's judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.
- (l) If Lender reasonably determines that any event shall have occurred that could be expected to have a Material Adverse Effect.
- (m) If Borrower abandons all or any portion of the Mortgaged Property.
- (n) The occurrence of any event referred to in Sections 7.1(f) and (g) hereof with respect to any Guarantor, Constituent Party or other person or entity obligated in any manner to pay or perform the Indebtedness or Obligations, respectively, or any part thereof (as if such Guarantor, Constituent Party or other person or entity were the "Borrower" in such Sections).
- (o) An Event of Default as defined in any of the Loan Documents.
- (p) If the construction of the Phase II Improvements are, at any time, (i) discontinued due to acts or matters within Borrower's control for a period of ten (10) or more consecutive days, (ii) not carried on with reasonable dispatch, or (iii) not completed by the Completion Date; subject, however, to Force Majeure (hereinafter defined). "Force Majeure" shall be deemed to mean that Borrower is delayed or hindered in or prevented from the performance of any act required hereunder, not the failure of Borrower, by reason of (i) inability to procure materials or reasonable substitutes thereof, (ii) failure of power, (iii) civil commotion, riots, insurrection or war, (iv) unavoidable fire or other casualty, or acts of God (v) strikes, lockouts or other labor disputes (not by Borrower's employees), (vi) restrictive governmental law or regulation, (vii) delay by Lender of any act required of it hereunder, or (viii) any other causes of a like nature to the above listed (i) through (vii). Financial inability on the part of Borrower shall not be construed a Force Majeure hereunder. Borrower agrees to use its best efforts to resume the construction of the Phase II Improvements as soon as practicable after the cause of such delay has been removed or canceled.
- (q) If Borrower is unable to satisfy any condition of Borrower's right to receive Advances hereunder for a period in excess of thirty (30) days after Lender's refusal to make any further Advances.
- (r) If Borrower executes any conditional bill of sale, chattel mortgage or other security instrument covering any materials, fixtures or articles intended to be incorporated in the Phase I or Phase II Improvements or the appurtenances thereto, or covering articles of personal property placed in the Phase I or Phase II Improvements, or files a financing statement publishing notice of such security instrument, or if any of such materials, fixtures or articles are not purchased in such a manner that the ownership thereof vests unconditionally in Borrower, free from encumbrances, on delivery at the Phase I and Phase II Improvements, or if Borrower does not produce to Lender upon reasonable demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which Borrower claims title to such materials, fixtures and articles.
- (s) If any levy, attachment or garnishment is issued, or if any lien for the performance of work or the supply of materials is filed, against any part of the Mortgaged Property and remains unsatisfied or unbonded following the earlier of (i) fifteen (15) days after the date of filing thereof or (ii) the requesting by Borrower of an Advance.

VII.2 Remedies. Lender shall have the right, upon the happening of an Event of Default, in addition to any rights or remedies available to it under all other Loan Documents, to enter into possession of the Mortgaged Property and perform any and all work and labor necessary to complete the Phase II Improvements in accordance with the Plans and Specifications. All amounts so expended by Lender shall be deemed to have been disbursed to Borrower as Loan proceeds and secured by the Deed of Trust. For this purpose, Borrower hereby constitutes and

appoints (which appointment is coupled with an interest and is therefore irrevocable) Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution to complete the Phase II Improvements in the name of Borrower, and hereby empowers Lender, acting as Borrower's attorney-in-fact, as follows: to use any funds of Borrower, including any balance which may be held in escrow, any Borrower's Deposit and any funds which may remain unadvanced hereunder, for the purpose of completing the Phase II Improvements in the manner called for by the Plans and Specifications; to make such additions and changes and corrections in the Plans and Specifications which shall be necessary or desirable to complete the Phase II Improvements in the manner contemplated by the Plans and Specifications; to continue all or any existing construction contracts or subcontracts; to employ such contractors, subcontractors, agents, design professionals and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property, or may be necessary or desirable for the completion of the work or the clearing of title; to execute all the applications and certificates in the name of Borrower which may be required by any construction contract; and to do any and every act with respect to the construction of the Phase II Improvements which Borrower could do in Borrower's own behalf. Lender, acting as Borrower's attorney-in-fact, shall also have power to prosecute and defend all actions or proceedings in connection with the Mortgaged Property and to take such action and require such performance as is deemed necessary.

## ARTICLE VIII

### LENDER'S DISCLAIMERS - BORROWER'S INDEMNITIES

VIII.1 No Obligation by Lender to Construct. Lender has no liability or obligation whatsoever or howsoever in connection with the Mortgaged Property or the development, construction or completion thereof or work performed thereon, and has no obligation except to disburse the Loan proceeds as herein agreed, Lender is not obligated to inspect the Phase I or Phase II Improvements nor is Lender liable, and under no circumstances whatsoever shall Lender be or become liable, for the performance or default of any contractor or subcontractor, or for any failure to construct, complete, protect or insure the Mortgaged Property, or any part thereof, or for the payment of any cost or expense incurred in connection therewith, or for the performance or nonperformance of any obligation of Borrower or Guarantor to Lender nor to any other person, firm or entity without limitation. Nothing, including without limitation, any disbursement of Loan proceeds or the Borrower's Deposit nor acceptance of any document or instrument, shall be construed as such a representation or warranty, express or implied, on Lender's part.

VIII.2 No Obligation by Lender to Operate. Any term or condition of any of the Loan Documents to the contrary notwithstanding, Lender shall not have, and by its execution and acceptance of this Agreement hereby expressly disclaims, any obligation or responsibility for the management, conduct or operation of the business and affairs of Borrower or Guarantor. Any term or condition of the Loan Documents which permits Lender to disburse funds, whether from the proceeds of the Loan, the Borrower's Deposit or otherwise, or to take or refrain from taking any action with respect to Borrower, Guarantor, the Mortgaged Property or any other collateral for repayment of the Loan, shall be deemed to be solely to permit Lender to audit and review the management, operation and conduct of the business and affairs of Borrower and Guarantor, and to maintain and preserve the security given by Borrower to Lender for the Loan, and may not be relied upon by any other person. Further, Lender shall not have, has not assumed and by its execution and acceptance of this Agreement hereby expressly disclaims any liability or responsibility for the payment or performance of any indebtedness or obligation of Borrower or Guarantor and no term or condition of the Loan Documents, shall be construed otherwise. Borrower hereby expressly acknowledges that no term or condition of the Loan Documents shall be construed so as to deem the relationship between Borrower, Guarantor and Lender to be other than that of borrower, guarantor and lender, and Borrower shall at all times represent that the relationship between Borrower, Guarantor and Lender is solely that of borrower, guarantor and lender.

BORROWER HEREBY INDEMNIFIES AND AGREES TO HOLD LENDER HARMLESS FROM AND AGAINST ANY COST, EXPENSE OR LIABILITY INCURRED OR SUFFERED BY LENDER AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY OBLIGATION OR RESPONSIBILITY OF LENDER FOR THE MANAGEMENT, OPERATION AND CONDUCT OF THE BUSINESS AND AFFAIRS OF BORROWER OR GUARANTOR, OR AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY LIABILITY OR RESPONSIBILITY OF LENDER FOR THE PAYMENT OR PERFORMANCE OF ANY INDEBTEDNESS OR OBLIGATION OF BORROWER OR GUARANTOR.

VIII.3 INDEMNITY BY BORROWER. BORROWER HEREBY INDEMNIFIES LENDER AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM, AND HOLDS EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES TO WHICH ANY OF THEM MAY BECOME SUBJECT, INsofar AS SUCH LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES ARISE FROM OR RELATE TO ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY OR FROM ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING RELATING TO ANY OF THE FOREGOING. Without intending to limit the remedies available to Lender with respect to the enforcement of its indemnification rights as stated herein or as stated in any Loan Document, in the event any claim or demand is made or any other fact comes to the attention of Lender in connection with, relating or pertaining to, or arising out of the transactions contemplated by this Agreement, which Lender reasonably believes might involve or lead to some liability of Lender, Borrower shall, immediately upon receipt of written notification of any such claim or demand, assume in full the personal responsibility for and the defense of any such claim or demand and pay in connection therewith any loss, damage, deficiency, liability or obligation, including, without limitation, legal fees and court costs incurred in connection therewith. In the event of court action in connection with any such claim or demand, Borrower shall assume in full the responsibility for the defense of any such action and shall immediately satisfy and discharge any final decree or judgment rendered therein. Lender may, in its sole discretion, make any payments sustained or incurred by reason of any of the foregoing; and Borrower shall immediately repay to Lender, in cash and not with proceeds of the

Loan, the amount of such payment, with interest thereon at the Default Rate (as defined in the Note) from the date of such payment. Lender shall have the right to join Borrower as a party defendant in any legal action brought against Lender, and Borrower hereby consents to the entry of an order making Borrower a party defendant to any such action.

VIII.4 No Agency. Nothing herein shall be construed as making or constituting Lender as the agent of Borrower in making payments pursuant to any construction contracts or subcontracts entered into by Borrower for construction of the Phase II Improvements or otherwise. The purpose of all requirements of Lender hereunder is solely to allow Lender to check and require documentation (including, but not limited to, lien waivers) sufficient to protect Lender and the Loan contemplated hereby. Borrower shall have no right to rely on any procedures required by Lender, Borrower hereby acknowledging that Borrower has sole responsibility for constructing the Phase I or Phase II Improvements and paying for work done in accordance therewith and that Borrower has solely, on Borrower's own behalf, selected or approved each contractor, each subcontractor and each materialman, Lender having no responsibility for any such persons or entities or for the quality of their materials or workmanship.

## ARTICLE IX

### MISCELLANEOUS

IX.1 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Borrower and Lender, and their respective heirs, legal representatives, successors and assigns; provided, however, that Borrower may not assign any rights or obligations under this Agreement without the prior written consent of Lender.

IX.2 Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define or be used in construing the text of such Articles, Sections or Subsections.

IX.3 Survival. The provisions hereof shall survive the execution of all instruments herein mentioned, shall continue in full force and effect until the Loan has been paid in full and shall not be affected by any investigation made by any party.

IX.4 APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. COURTS WITHIN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN BORROWER AND LENDER, WHETHER IN LAW OR EQUITY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT; AND VENUE IN ANY SUCH DISPUTE WHETHER IN FEDERAL OR STATE COURT SHALL BE LAID IN DALLAS COUNTY, TEXAS.

IX.5 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth on page 1 of this Agreement; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth herein.

IX.6 Reliance by Lender. Lender is relying and is entitled to rely upon each and all of the provisions of this Agreement; and accordingly, if any provision or provisions of this Agreement should be held to be invalid or ineffective, then all other provisions hereof shall continue in full force and effect notwithstanding.

IX.7 Participations. Lender shall have the right at any time and from time to time to grant participations in the Loan and Loan Documents. Each participant shall be entitled to receive all information received by Lender regarding the creditworthiness of Borrower, any of its principals and the Guarantor, including (without limitation) information required to be disclosed to a participant pursuant to Banking Circular 181 (Rev., August 2, 1984), issued by the Comptroller of the Currency (whether the participant is subject to the circular or not).

IX.8 Controlling Agreement. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable Texas law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law) and that this section shall control every other covenant and agreement in this Agreement. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness ("Indebtedness") evidenced or secured by the Loan Documents, or if Lender's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Note and all other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other

Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate (as defined in the Note) from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the loan evidenced and/or secured by the Loan Documents. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

**IX.9 Controlling Document.** In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any other Loan Document, the terms and conditions of this Agreement shall control.

**IX.10 Construction of Agreement.** All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term, whether such is singular or plural in nature, as the context may suggest or require.

**IX.11 Counterpart Execution.** To facilitate execution, this Agreement may be executed in one or more counterparts as may be convenient or required, with all such counterparts collectively constituting a single instrument.

**IX.12 NOTICE OF INDEMNIFICATION. BORROWER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS PURSUANT TO SECTIONS 5.9, 6.1, 6.3, 8.2 AND 8.3 HEREOF.**

**IX.13 ENTIRE AGREEMENT. THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES HERETO.**

**IX.14 Year 2000 Covenant.** Borrower shall perform all acts reasonably necessary to ensure that (i) Borrower and any business in which Borrower holds a substantial interest, and (ii) all customers, suppliers and vendors that are material to Borrower's business, become Year 2000 Compliant in a timely manner. Such acts shall include, without limitation, performing a comprehensive review and assessment of all of Borrower's systems and adopting a detailed plan, with itemized budget, for the remediation, monitoring and testing of such systems. As used in this paragraph, "Year 2000 Compliant" shall mean, in regard to any entity, that all software, hardware, firmware, equipment, fixtures, goods or systems utilized by or material to the business operations or financial condition of such entity, will properly perform date sensitive functions before, during and after the year 2000. Borrower shall, immediately upon request, provide to Lender such certifications or other evidence of Borrower's compliance with the terms of this paragraph as Lender may from time to time require.

[The remainder of this page is intentionally left blank.]

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

**LENDER:**

**COMERICA BANK-TEXAS,**  
a state banking association

By:  
Name:  
Title:

**BORROWER:**

**STRATUS 7000 WEST JOINT VENTURE,**  
a Texas joint venture

By: Stratus 7000 West, Ltd.,  
a Texas limited partnership,  
Its Operating Partner

By: STRS L.L.C.,  
a Delaware limited liability  
company,  
Its General Partner

By: Stratus Properties Inc.,  
a Delaware corporation,  
Its Sole Member

By: /s/ William H. Armstrong, III  
-----

Name: William H. Armstrong, III  
Title: Chairman of the Board, President  
and Chief Executive Officer

By: Oly Lantana, L.P., a Texas limited partnership, Its Financial Partner

By: Oly Lantana GP, L.L.C., a Texas limited liability company, Its Sole General Partner

By:

Name:

Title:

**SECOND AMENDMENT TO CONSTRUCTION LOAN AGREEMENT**

THIS SECOND AMENDMENT TO CONSTRUCTION LOAN AGREEMENT ("Amendment") is executed effective as of, although not necessarily on, the 31st day of December, 1999, by STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture ("Borrower"), whose address is 98 San Jacinto Boulevard, Suite 220, Austin, Texas 78791, STRATUS PROPERTIES OPERATING CO., L.P., a Delaware limited partnership (formerly Stratus Properties Operating Co., a Delaware general partnership), STRATUS PROPERTIES, INC., a Delaware corporation ("Guarantor"), and COMERICA BANK - TEXAS, a state banking association ("Lender"), as follows:

**WITNESSETH:**

WHEREAS, as of the 9th day of April, 1999, Borrower and COMERICA BANK-TEXAS, a state banking association ("Lender"), whose address is 1601 Elm Street, 2nd Floor, Dallas, Texas 75201, Attn: National Real Estate Services, entered into that certain Construction Loan Agreement (the "Agreement"), which Agreement set forth the terms and conditions of a construction loan from Lender to Borrower in the amount of SIX MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,600,000.00) ("Loan") for the construction of an office building to be constructed in the City of Austin, County of Travis, Texas, upon the land more fully described in Exhibit A attached hereto; and

WHEREAS, among other things, as security for the Loan, Stratus Properties Operating Co., L.P. ("Operating Company") executed and delivered to Lender that certain Assignment of Accounts Receivable ("Assignment") dated of even date with the Agreement which assigned to Lender the Proceeds (herein so called) due to Operating Company from the City of Austin pursuant to the Agreement Regarding the Construction of Improvements to the City of Austin's Water System in the Lantana Area ("Austin Water Agreement"), all as more fully described in the Agreement and in the Assignment; and

WHEREAS, Guarantor executed and delivered that certain limited guaranty ("Guaranty") to Lender in connection with the Loan, all as more fully set forth in the Guaranty from Guarantor dated of even date with the Agreement; and

WHEREAS, Borrower, Lender and Guarantor entered into that certain Modification Agreement as of the 16th day of August, 1999 (the "Modification Agreement"); and

WHEREAS, Borrower and Guarantor have now requested that the Proceeds to be paid under the Austin Water Agreement be released from the terms and conditions of the Loan, and the Proceeds due under the Austin Water Agreement be reassigned to Lender in connection with a Related Loan (herein so called) from Lender in the original principal amounts of TWENTY MILLION AND NO/100 DOLLARS (\$20,000,000.00) and TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) dated December 16, 1999, wherein STRATUS PROPERTIES INC., a Delaware corporation, STRATUS PROPERTIES OPERATING CO., L.P., a Delaware limited partnership, CIRCLE C LAND CORP., a Texas corporation, and AUSTIN 290 PROPERTIES, INC., a Texas corporation, as co-borrower, pledged multiple real properties and other assets of the co-borrowers to Lender; and

WHEREAS, Guarantor, in consideration for Lender releasing the Proceeds under the Assignment, has agreed to execute and deliver to Lender, in substitution and replacement of the limited Guaranty previously delivered at the time of entering into the Agreement, an unconditional and unlimited guaranty;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Borrower and Lender do hereby amend the Agreement as follows:

1. Release of Proceeds. In consideration for the unconditional and unlimited guaranty executed and delivered simultaneously herewith by STRATUS PROPERTIES INC., Lender hereby terminates the Assignment dated as of the 9th day of April, 1999, from Operating Company and releases its lien on the Proceeds as to this Loan. The parties hereto agree and acknowledge that two (2) installments, each in the amount of NINE HUNDRED NINETY THOUSAND SIX HUNDRED FORTY-EIGHT DOLLARS AND 46/100 DOLLARS (\$990,648.46), are due from the City of Austin under the Austin Water Agreement, the first installment being due and payable as of the date hereof and the remaining installment in a like sum shall be due and payable on or before December 31, 2000, together with any and all additional revenue, income, proceeds, profits and other types of deposits or benefits paid or payable by the City of Austin under the Austin Water Agreement. Operating Company agrees and acknowledges that it shall simultaneously herewith execute an assignment of accounts receivable acceptable to Lender whereby all of its rights and remedies under the Austin Water Agreement shall be re-assigned to Lender under the Related Loan, and that the two (2) installments due under the Austin Water Agreement shall be applied upon receipt by Lender to the Related Loan.
2. Substitution of Guaranty. Simultaneously herewith Guarantor shall execute and deliver its guaranty in form and content acceptable to Lender whereby Guarantor unconditionally guarantees the payment and performance of the Loan, and the limited Guaranty now held by Lender shall be returned to Guarantor.
3. Full Force and Effect. Except as otherwise modified herein or under the terms of the Modification Agreement, the Agreement shall remain in

full force and effect.

4. Definitions. All terms not otherwise defined herein shall have those definitions as contained in the Agreement. EXECUTED as of, although not necessarily on, the day and year first above written.

**COMERICA BANK-TEXAS,**  
a state banking association

By:  
Name:  
Title:

**STRATUS 7000 WEST JOINT VENTURE,**  
a Texas joint venture

By:Stratus 7000 West, Ltd.,  
a Texas limited partnership,  
Its Operating Partner

By:STRS L.L.C.,  
a Delaware limited liability  
company,  
Its General Partner

By:Stratus Properties Inc.,  
a Delaware corporation,  
Its Sole Member

*By: /s/ William H. Armstrong, III*

-----  
*Name: William H. Armstrong, III*  
*Title: Chairman of the Board,*  
*President and Chief*  
*Executive Officer*

By:Oly Lantana, L.P., a Texas limited partnership, Its Financial Partner

By:Oly Lantana GP, L.L.C., a Texas limited liability company,  
Its Sole General Partner

By:  
Name:  
Title:

**STRATUS PROPERTIES OPERATING CO., L.P.,**  
a Delaware limited partnership

By:STRS L.L.C.,  
a Delaware limited liability company, General Partner

By:Stratus Properties Inc.,  
a Delaware corporation,  
Sole Member

*By: /s/ William H. Armstrong, III*

-----  
Name: William H. Armstrong, III  
Title: Chairman of the Board, President  
and Chief Executive Officer

**STRATUS PROPERTIES INC.,**  
a Delaware corporation,

By: /s/ William H. Armstrong, III  
-----

Name: William H. Armstrong, III  
Title: Chairman of the Board, President  
and Chief Executive Officer

STATE OF TEXAS &  
&  
COUNTY OF \_\_\_\_\_ &

The foregoing instrument was ACKNOWLEDGED before me this \_\_\_\_\_ day of February, 2000, by \_\_\_\_\_, the \_\_\_\_\_ of COMERICA BANK-TEXAS, a state banking association, on behalf of said association.

[S E A L]  
Notary Public - State of Texas  
My Commission Expires:

\_\_\_\_\_ Printed Name of Notary Public

STATE OF TEXAS &  
&  
COUNTY OF \_\_\_\_\_ &

The foregoing instrument was ACKNOWLEDGED before me this \_\_\_\_\_ day of February, 2000, by William H. Armstrong, III, Chairman of the Board, President and Chief Executive Officer of STRATUS PROPERTIES INC., a Delaware corporation and the Sole Member of STRS L.L.C., a Delaware limited liability company and the General Partner of STRATUS 7000 WEST, LTD., a Texas limited partnership and the Operating Partner of STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture, on behalf of said joint venture.

[S E A L]  
Notary Public - State of Texas My Commission Expires:

\_\_\_\_\_ Printed Name of Notary Public

STATE OF TEXAS &  
&  
COUNTY OF \_\_\_\_\_ &



Exhibit 10.17 When recorded, return to:

Lynda Zimmerman, Esq.  
Winstead Sechrest & Minick  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270

## SECOND MODIFICATION AGREEMENT

This SECOND MODIFICATION AGREEMENT ("Agreement") is made to be effective as of the 24th day of February, 2000, by and between COMERICA BANK-TEXAS, a state banking association ("Lender"), STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture ("Borrower"), and STRATUS PROPERTIES, INC., a Delaware corporation (the "Guarantor").

### WITNESSETH:

WHEREAS, Lender made a loan ("Loan") to Borrower on April 9, 1999, in the maximum principal amount of SIX MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,600,000.00); and

WHEREAS, Lender and Borrower executed that certain Construction Loan Agreement ("Loan Agreement") dated April 9, 1999, pertaining to the Loan; and

WHEREAS, the Borrower executed and delivered to Lender that certain Promissory Note (the "\$6,600,000.00 Note") dated April 9, 1999, payable to the order of Lender in the amount of and evidencing the Loan; and

WHEREAS, the Borrower executed and delivered that certain Amended and Restated Deed of Trust dated of even date with the \$6,600,000.00 Note to Gary W. Orr, as trustee ("Trustee"), for the benefit of the Lender, recorded under Document No. 1999009453 of the Official Records of Travis County, Texas, covering the real property described in Exhibit A attached hereto and incorporated herein for all purposes, together with all improvements, appurtenances, other properties (whether real or personal), rights and interests described in and encumbered by the Deed of Trust ("Property"), to secure the payment of the \$6,600,000.00 Note and performance by Borrower of the other obligations set forth in the Security Documents (as herein defined); and

WHEREAS, the Borrower executed and delivered to Lender that certain Assignment of Rents and Leases (the "Assignment") dated of even date with the \$6,600,000.00 Note, assigning to Lender all rents, leases, income, revenues, issues and profits which may arise from the operation or ownership of the Property, to secure the payment of the \$6,600,000.00 Note and performance by Borrower of the other obligations set forth in the Security Documents; and

WHEREAS, the Borrower caused to be issued by Chicago Title Insurance Company ("Title Company") that certain Mortgagee Policy of Title Insurance ("Policy") No.44-0394-101-339, dated April 16, 1999, in the amount of the \$6,600,000.00 Note, insuring the dignity and priority of the lien created and evidenced by the Amended and Restated Deed of Trust and the Assignment; and

WHEREAS, as of December 31, 1999, the Borrower caused Stratus Properties Inc., the Guarantor to execute and deliver to Lender that certain Guaranty ("Guaranty") guaranteeing the payment obligations under the \$6,600,000.00 Note and other monetary obligations contained in the Security Documents and performance by Borrower of the other obligations as set forth in the Security Documents subject to and on the terms and conditions set forth in the Guaranty, which Guaranty was in substitution of that prior guaranty executed and delivered as of April 9, 1999; and

WHEREAS, the Borrower, Lender and Guarantor entered into that certain Modification Agreement dated as of the 16th day of August, 1999, which Modification Agreement was recorded under Document No. 1999093007 of the Official Records of Travis County, Texas, and thereafter entered into that certain Second Amendment to Construction Loan Agreement executed effective as of the 31st day of December, 1999; and

WHEREAS, Borrower thereafter executed for the benefit of Lender that certain Second Amended and Restated Deed of Trust (the "Deed of Trust") dated of even date herewith, wherein Lender and Borrower, among other things, agreed that the Property would also secure that certain Phase II construction loan in addition to the Phase I loan covered by the above-referenced Loan Agreement; and

WHEREAS, the Lender, Borrower and Guarantor now propose to modify certain of the terms and provisions of the Loan Agreement, as previously amended, the Assignment, the \$6,600,000.00 Note, the Deed of Trust, the Guaranty and the other related documents executed by Borrower or third parties pertaining to, evidencing or securing the Loan (collectively, the "Security Documents").

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Borrower and Guarantor hereby agree as follows:

1. Increase of Indebtedness. The definition of "Indebtedness" (the "Further Indebtedness Provision") of the Amended and Restated Deed of Trust contemplates that other debts or obligations of Borrower to Lender, whensoever or howsoever incurred and of whatever nature, would be secured by the Deed of Trust. In accordance with the terms of the Second Amended and Restated Deed of Trust of even date herewith, Borrower and Lender hereby agree that the Property which secures the existing Loan shall also secure the additional indebtedness in the amount of SEVEN MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,700,000.00) as evidenced by that certain Promissory Note (the "\$7,700,000.00 Note") executed by Borrower as maker for the benefit of Lender as payee of even date herewith. Borrower hereby promises to pay to the order of Lender the principal sum of the \$7,700,000.00 Note and the \$6,600,000.00 Note (sometimes hereinafter referred to collectively as the "Note"), or so much thereof as may be advanced, less any repayments of the principal thereof heretofore made, together with interest thereon at the rate, on the dates, and in the manner specified therein.

2. Current \$6,600,000.00 Note Balance. Prior to the execution hereof, the aggregate amount advanced by Lender under the \$6,600,000.00 Note was FOUR MILLION SIX HUNDRED FORTY-ONE THOUSAND AND NO/100 DOLLARS (\$4,641,000.00). There are committed funds remaining in the amount of ONE MILLION NINE HUNDRED FIFTY-NINE THOUSAND AND NO/100 DOLLARS (\$1,959,000.00) to be disbursed in accordance with the Security Documents.

3. Extension of Maturity. The maturity date of the \$6,600,000.00 Note is hereby extended until August 24, 2001, when the unpaid principal balance of the \$6,600,000.00 Note, together with all accrued but unpaid interest thereon, shall be due and payable, which maturity date coincides with the maturity date for the \$7,700,000.00 Note of even date herewith. In each instance in the \$6,600,000.00 Note or in the Security Documents where there is a reference to the maturity date, said maturity date shall mean August 24, 2001 in lieu of the maturity date as shown. The Borrower hereby renews, but does not extinguish, the \$6,600,000.00 Note and the liens, security interests and assignments created and evidenced by the Deed of Trust and other Security Documents, and in this regard all of the Security Documents are hereby renewed and modified by extending the maturity date thereof as set forth above. Borrower covenants to observe, comply with and perform each of the terms and provisions of the Security Documents, as modified hereby.

4. Modification of Payment Terms in the \$6,600,000.00 Note. The payment schedule set forth in Section 3.1 of the \$6,600,000.00 Note shall be deleted in its entirety, and the following new payment schedule shall be inserted in lieu thereof:

"3.1 Payment Schedule. This Note shall be due and payable as follows:

(a) Commencing on May 5, 1999, and continuing thereafter on the fifth (5th) day of each successive month until the Maturity Date, Maker shall pay Payee all then accrued but unpaid interest hereon.

(b) Commencing on September 5, 2000, and continuing on the fifth (5th) day of each month thereafter until the Maturity Date, a Monthly Principal Payment (hereinafter defined), together with all then accrued but unpaid interest hereon, shall be due and payable; and

(c) The outstanding principal balance hereof and any and all accrued but unpaid interest thereon shall be due and payable in full on the Maturity Date or upon earlier maturity hereof, whether by acceleration or otherwise.

For purposes hereof, "Monthly Principal Payment" shall mean that amount equal to 1.19% of the then outstanding principal balance as of September 1, 2000 owed under this Note divided by twelve (12) months. Payee shall furnish said amount, which is based upon a twenty-five (25) year, mortgage equivalent amortization schedule, to Maker in writing, which fixed amount shall thereafter constitute the Monthly Principal Payment."

5. Events of Default. Borrower hereby agrees that the Loan Agreement, as previously amended, and the other Security Documents shall be amended whereby the following "Event of Default" shall be included as an additional Event of Default in said documents:

"An Event of Default as defined under the \$7,700,000.00 Note dated February 24, 2000 executed by Borrower as maker to Lender as payee or under any of the loan documents which secure the \$7,700,000.00 Note shall be deemed to constitute an Event of Default under the \$6,600,000.00 Note and the Security Documents which secure the \$6,600,000.00 Note."

6. Title Insurance. Contemporaneously with the execution and delivery hereof, the Borrower shall cause the Title Company to issue to Lender a standard Texas form Mortgagee Policy of Title Insurance in the amount of the indebtedness for the \$6,600,000.00 Note and the \$7,700,000.00 Note, insuring the dignity and priority of the lien of the Deed of Trust and Assignment, as previously modified and as further modified by the terms and provisions hereof, and subject only to (i) the exceptions and encumbrances specified in Schedule B of the Policy, (ii) such other exceptions as may have been approved in writing by Lender at the time of execution hereof, and (iii) taxes on the Property for the current and subsequent years, but not yet due and payable.

7. Acknowledgment by Borrower. Except as otherwise specified herein, the terms and provisions hereof shall in no manner impair, limit, restrict or otherwise affect the obligations of Borrower or any third party to Lender, as evidenced by the Security Documents. Borrower hereby acknowledges, agrees and represents that (i) Borrower is indebted to Lender pursuant to the terms of the \$6,600,000.00 Note, as modified hereby and of the \$7,700,000.00 Note; (ii) the liens, security interests and assignments created and evidenced by the Security Documents are, respectively, valid and subsisting liens, security interests and assignments of the respective dignity and priority recited in the Security Documents; (iii) there are no claims or offsets against, or defenses or counterclaims to, the terms or provisions of the Security Documents, and

the other obligations created or evidenced by the Security Documents;

(iv) Borrower has no claims, offsets, defenses or counterclaims arising from any of Lender's acts or omissions with respect to the Property, the Security Documents or Lender's performance under the Security Documents or with respect to the Property;

(v) the representations and warranties contained in the Security Documents are true and correct representations and warranties in all material respects of Borrower and to the knowledge of Borrower, of any third parties, as of the date hereof; and

(vi) Lender is not in default and no event has occurred which, with the passage of time, giving of notice, or both, would constitute a default by Lender of Lender's obligations under the terms and provisions of the Security Documents. To the extent Borrower now has any claims, offsets, defenses or counterclaims against Lender or the repayment of all or a portion of the Loan, whether known or unknown, fixed or contingent, same are hereby forever irrevocably waived and released in their entirety.

8. No Waiver of Remedies. Except as may be expressly set forth herein, nothing contained in this Agreement shall prejudice, act as, or be deemed to be a waiver of any right or remedy available to Lender by reason of the occurrence or existence of any fact, circumstance or event constituting a default under the Note or the other Security Documents.

9. Joinder of Guarantor. By its execution hereof, Guarantor hereby (i) acknowledges and consents to the terms and provisions hereof; (ii) ratifies and confirms the Guaranty, including all interest and costs of collection, to or for the benefit of Lender; (iii) agrees that the Guaranty is and shall remain in full force and effect and that the terms and provisions of the Guaranty cover and pertain to the Loan, Note, Deed of Trust and other Security Documents as modified hereby;

(iv) acknowledges that there are no claims or offsets against, or defenses or counterclaims to, the terms and provisions of the Guaranty or the other obligations created and evidenced by the Guaranty; (v) certifies that the representations and warranties contained in the Guaranty remain true and correct representations and warranties of Guarantor as of the date hereof; and

(vi) acknowledges that Lender has satisfied and performed its covenants and obligations under the Guaranty and the other Security Documents, and that no action or failure to act by or on behalf of, Lender has or will give rise to any cause of action or other claim against Lender for breach of the Guaranty or other Security Documents or otherwise.

10. Costs and Expenses. Contemporaneously with the execution and delivery hereof, Borrower shall pay, or cause to be paid, all costs and expenses incident to the preparation, execution and recordation hereof and the consummation of the transaction contemplated hereby, including, but not limited to, recording fees, title insurance policy or endorsement premiums or other charges of the Title Company, and reasonable fees and expenses of legal counsel to Lender.

11. Additional Documentation. From time to time, Borrower shall execute or procure and deliver to Lender such other and further documents and instruments evidencing, securing or pertaining to the Loan or the Security Documents as shall be reasonably requested by Lender so as to evidence or effect the terms and provisions hereof. Upon Lender's request, Borrower shall cause to be delivered to Lender an opinion of counsel, satisfactory to Lender as to form, substance and rendering attorney, opining to (i) the validity and enforceability of this Agreement and the terms and provisions hereof, and any other agreement executed in connection with the transaction contemplated hereby; (ii) the authority of Borrower, and any constituents of Borrower, to execute, deliver and perform its or their respective obligations under the Security Documents, as hereby modified; and (iii) such other matters as reasonably requested by Lender.

12. Effectiveness of the Security Documents. Except as expressly modified by the terms and provisions hereof, each of the terms and provisions of the Security Documents are hereby ratified and shall remain in full force and effect; provided, however, that any reference in any of the Security Documents to the Loan, the amount constituting the Loan, any defined terms, or to any of the other Security Documents shall be deemed, from and after the date hereof, to refer to the Loan, the amount constituting the Loan, defined terms and to such other Security Documents, as modified hereby.

13. Governing Law. THE TERMS AND PROVISIONS HEREOF SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.

14. Time. Time is of the essence in the performance of the covenants contained herein and in the Security Documents.

15. Binding Agreement. This Agreement shall be binding upon the successors and assigns of the parties hereto; provided, however, the foregoing shall not be deemed or construed to

(i) permit, sanction, authorize or condone the assignment of all or any part of the Property or any of Borrower's rights, titles or interests in and to the Property or any rights, titles or interests in and to Borrower, except as expressly authorized in the Security Documents, or (ii) confer any right, title, benefit, cause of action or remedy upon any person or entity not a party hereto, which such party would not or did not otherwise possess.

16. Headings. The section headings hereof are inserted for convenience of reference only and shall in no way alter, amend, define or be used in the construction or interpretation of the text of such section.

17. Construction. Whenever the context hereof so requires, reference to the singular shall include the plural and likewise, the plural shall include the singular; words denoting gender shall be construed to mean the masculine, feminine or neuter, as appropriate; and specific enumeration shall not exclude the general, but shall be construed as cumulative of the general recitation.

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

19. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

20. THIS MODIFICATION AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO OR THERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO OR THERETO. THE PROVISIONS OF THIS MODIFICATION AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE RESPECTIVE PARTIES TO SUCH DOCUMENTS.

**LENDER:**

**COMERICA BANK-TEXAS,**  
a state banking association

By:  
Name:  
Title:

**BORROWER:**

**STRATUS 7000 WEST JOINT VENTURE,**  
a Texas joint venture

By: Stratus 7000 West, Ltd.,  
a Texas limited partnership,  
Its Operating Partner

By: STRS L.L.C.,  
a Delaware limited liability company, Its General Partner

By: Stratus Properties Inc.,  
a Delaware corporation,  
Its Sole Member

By: /s/ William H. Armstrong, III

-----  
Name: William H. Armstrong, III  
Title: Chairman of the Board,  
President and Chief  
Executive Officer

By: Oly Lantana, L.P.,  
a Texas limited partnership,

Its Financial Partner

By: Oly Lantana GP, L.L.C.,  
a Texas limited liability company, Its Sole General Partner

By:  
Name:  
Title:

**GUARANTOR:**

**STRATUS PROPERTIES INC.,**  
a Delaware corporation

By: /s/ William H. Armstrong, III  
-----  
Name: William H. Armstrong, III  
Title: Chairman of the Board, President  
and Chief Executive Officer

**STATE OF TEXAS**

&

COUNTY OF \_\_\_\_\_ &

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_ day of March, 2000, by \_\_\_\_\_, the  
\_\_\_\_\_ of COMERICA BANK-TEXAS, a state banking association, on behalf of said banking association.

[ S E A L ]

Notary Public, State of Texas

My Commission Expires:

Printed Name of Notary Public

THE STATE OF TEXAS &  
&  
COUNTY OF \_\_\_\_\_ &

This instrument was acknowledged before me on day of , 2000, by William H. Armstrong, III, Chairman of the Board, President and Chief Executive Officer of STRATUS PROPERTIES INC., a Delaware corporation, the Sole Member of STRS L.L.C., a Delaware limited liability company, the General Partner of STRATUS 7000 WEST, LTD., a Texas limited partnership, the Operating Partner of STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture, on behalf of each said entity.

[SEAL]

Notary Public, State of Texas My Commission Expires:

**Printed Name of Notary Public:**

**STATE OF TEXAS &**

&

COUNTY OF \_\_\_\_\_ &

This instrument was acknowledged before me on day of , 2000, by \_\_\_\_\_, the \_\_\_\_\_ of OLY LANTANA GP, L.L.C., a Texas limited liability company, the Sole General Partner of OLY LANTANA, L.P., a Texas limited partnership, the Financial Partner of STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture, on behalf of each said entity.

[ S E A L ]

Notary Public, State of Texas My Commission Expires:

\_\_\_\_\_ Printed Name of Notary Public

**STATE OF TEXAS &**

&

COUNTY OF \_\_\_\_\_ &

This instrument was acknowledged before me on day of , 2000, by William H. Armstrong, III, Chairman of the Board, President and Chief Executive Officer of STRATUS PROPERTIES INC., a Delaware corporation, on behalf of said corporation.

[ S E A L ]

Notary Public, State of Texas My Commission Expires:

\_\_\_\_\_ Printed Name of Notary Public

**Exhibit 10.18**

When recorded, return to:

Lynda Zimmerman, Esq.  
Winstead Sechrest & Minick  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270

**THIRD MODIFICATION AGREEMENT**

This THIRD MODIFICATION AGREEMENT ("Agreement") is made to be effective as of the 23rd day of August, 2001, by and between COMERICA BANK-TEXAS, a state banking association ("Lender"), STRATUS 7000 WEST JOINT VENTURE, a Texas joint venture ("Borrower"), and STRATUS PROPERTIES, INC., a Delaware corporation (the "Guarantor").

**WITNESSETH:**

WHEREAS, Lender, Borrower and Guarantor, to the extent set forth below, have executed the following documents:

Construction Loan Agreement dated April 9, 1999, executed by Borrower and Lender (as amended prior to the date hereof, the "Phase I Agreement").

Promissory Note (as amended prior to the date hereof, the "6.6 Note") dated April 9, 1999, executed by Borrower, payable to the order of Lender, in the original stated sum of \$6,600,000.00.

Guaranty dated as of December 31, 1999, executed by Guarantor with respect to the 6.6 Note (as amended prior to the date hereof, the "6.6 Guaranty")

Construction Loan Agreement dated February 24, 2000, executed by Borrower and Lender (as amended prior the date hereof, the "Phase II Agreement").

Promissory Note (as amended prior to the date hereof, the "7.7 Note") dated February 24, 2000, executed by Borrower, payable to the order of Lender, in the original stated sum of \$7,700,000.00

Guaranty dated as of February 24, 2000, executed by Guarantor with respect to the 7.7 Note (as amended prior to the date hereof, the "7.7 Guaranty")

Second Amended and Restated Deed of Trust (the "Deed of Trust") dated as of February 24, 2000, executed by Borrower to Gary W. Orr, Trustee, for the benefit of Lender, recorded under Document No. 2000048399 of the Official Public Records of Travis County, Texas, covering the real property described in Exhibit A attached hereto and incorporated herein for all purposes, together with all improvements, appurtenances, other properties (whether real or personal), rights and interests described in and encumbered by the Deed of Trust (collectively, the "Property").

Assignment of Rents and Leases (the "Assignment") dated as of April 9, 1999, executed by Borrower for the benefit of Lender, recorded under Document No. 1999009454 of the Official Public Records of Travis County, Texas, and Assignment of Rents and Leases dated as of February 24, 2000, executed by Borrower for the benefit of Lender, recorded under Document No. 2000048400 of the Official Public Records of Travis County, Texas (collectively, the "Assignments").

Modification Agreement dated as of August 16, 1999, executed by Borrower, Lender and Guarantor, recorded under Document No. 1999093007 of the Official Public Records of Travis County, Texas.

Second Modification Agreement dated as of February 24, 2000, executed by Borrower, Lender and Guarantor, recorded under Document No. 2000048402 of the Official Public Records of Travis County, Texas.

Terms used with initial capitalized letters and not specifically defined in this Agreement shall have the meanings ascribed to them in the Phase I Agreement or the Phase II Agreement, as the context requires. All of the foregoing and all other documents executed by Borrower or Guarantor to and for the benefit of Lender in connection with any of the foregoing are collectively referred to herein as the "Loan Documents").

WHEREAS, the Borrower caused to be issued by Chicago Title Insurance Company ("Title Company") that certain Mortgagee Policy of Title Insurance ("Policy") No.44-0394-101-563, dated March 31, 2000, in the amount of \$14,300,000.00, insuring the dignity and priority of the liens created and evidenced by the Deed of Trust.

WHEREAS, the Lender, Borrower and Guarantor now propose to renew and extend the 6.6 Note and the 7.7 Note and make certain other modifications thereto.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Borrower and Guarantor hereby agree as follows:

1. **Payment of Extension Fees.** Contemporaneously with the execution and delivery of this Agreement, Borrower shall remit to Lender cash funds in the amounts of (i) SIXTEEN THOUSAND TWO HUNDRED SEVENTY-TWO AND NO/100 DOLLARS (\$16,272.00), representing the extension fee for the renewal and extension of the 6.6 Note, and (ii) SIXTEEN THOUSAND TWO HUNDRED THIRTY-ONE AND NO/100 DOLLARS (\$16,231.00), representing the extension fee for the renewal and extension of the 7.7 Note

2. **Current Balances.** As of August 1, 2001, the aggregate amount of unpaid principal outstanding under the 6.6 Note was SIX MILLION FIVE HUNDRED EIGHT THOUSAND SIX HUNDRED FIFTY-SEVEN AND 03/100 DOLLARS (\$6,508,657.03). As of August 1, 2001, the aggregate amount of unpaid principal outstanding under the 7.7 Note was SIX MILLION FOUR HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED EIGHT AND 98/100 DOLLARS (\$6,492,408.98).

3. **Extension of Maturity Dates.** The maturity date of both the 6.6 Note and 7.7 Note are hereby extended until August 24, 2002, when the entire unpaid principal balance of each of the 6.6 Note and 7.7 Note, together with all accrued but unpaid interest thereon, shall be due and payable (the "Maturity Date"), unless the Maturity Date is accelerated pursuant to Lender's right to do so under the Loan Documents. In each instance in the 6.6 Note, the 7.7 Note or in the Loan Documents where there is a reference to the Maturity Date, said Maturity Date shall mean August 24, 2002 in lieu of any other Maturity Date as shown. The Borrower hereby renews, but does not extinguish, the 6.6 Note, the 7.7 Note and the liens, security interests and assignments created and evidenced by the Deed of Trust and other Loan Documents, and in this regard all of the Loan Documents are hereby renewed and modified by extending the Maturity Date thereof as set forth above. Borrower covenants to observe, comply with and perform each of the terms and provisions of the Loan Documents, as modified hereby.

4. **Modification of Payment Terms in the 6.6 Note.** The payment schedule set forth in Section 3.1 of the 6.6 Note shall be deleted in its entirety, and the following new payment schedule shall be inserted in lieu thereof:

"3.1 Payment Schedule. This Note shall be due and payable as follows:

(a) Commencing on September 5, 2001, and continuing thereafter on the fifth (5th) day of each successive month until the Maturity Date, Maker shall pay Payee all then accrued but unpaid interest hereon.

(b) Commencing on September 5, 2001, and continuing on the fifth (5th) day of each successive month thereafter until the Maturity Date, Maker shall pay Payee an installment of principal in the amount of Eight Thousand One Hundred Twenty-Three and 20/100 Dollars (\$8,123.00); and

(c) The entire remaining outstanding principal balance hereof and any and all accrued but unpaid interest thereon shall be due and payable in full on the Maturity Date or upon earlier maturity hereof, whether by acceleration or otherwise."

5. **Modification of Payment Terms in the 7.7 Note.** The payment schedule set forth in Section 3.1 of the 7.7 Note shall be deleted in its entirety, and the following new payment schedule shall be inserted in lieu thereof:

"3.1 Payment Schedule. This Note shall be due and payable as follows:

(a) Commencing on September 5, 2001, and continuing thereafter on the fifth (5th) day of each successive month until the Maturity Date, Maker shall pay Payee all then accrued but unpaid interest hereon.

(b) Commencing on September 5, 2001, and continuing on the fifth (5th) day of each successive month thereafter until the Maturity Date, Maker shall pay Payee an installment of principal in the amount of Seven Thousand Six Hundred Forty-Nine Dollars (\$7,649.00); and

(c) The entire remaining outstanding principal balance hereof and any and all accrued but unpaid interest thereon shall be due and payable in full on the Maturity Date or upon earlier maturity hereof, whether by acceleration or otherwise."

6. **Debt Coverage Requirement.** Each of the Phase I Agreement and the Phase II Agreement are hereby modified and amended by inserting therein the following new Section 5.21.

"5.21 Debt Coverage Requirement.

"(a) In the event the Debt Coverage Ratio for any applicable Calendar Period should be less than 1.20 to 1.0, and unless Borrower otherwise elects to pledge Additional Collateral as provided in subsection (b) below then, within fifteen (15) days after written notice from Lender to Borrower, Borrower shall prepay a portion of the Loan (the "Curative Amount") such that a minimum Debt Coverage Ratio of 1.20 to 1.0 or

more is created based on (1) annualized Net Operating Income for the immediately preceding Calendar Period and (2) a hypothetical Debt Service Requirement for the then current Calendar Period which would result from a reamortization of such reduced balance of the Loan sufficient to fully amortize such Loan on a level-payment basis in 25 years from the first day of such current Calendar Period based on the Amortization Rate (as defined below). Irrespective of any hypothetical Debt Service Requirement utilized to calculate the Curative Amount, the actual amount of the required payments shall continue to be as provided in the Note. Failure of Borrower to timely fund any required Curative Amount shall be deemed an "Event of Default" pursuant to this Agreement in addition to any other "Events of Default" specified herein.

"(b) As an alternative to payment of the Curative Amount, Borrower shall be entitled, in the event the Debt Coverage Ratio for any Calendar Period should be determined to be less than 1.20 to 1.0, to pledge additional collateral to secure the Loan. The collateral to be so pledged to Lender must be in the form of cash, certificates of deposit, letters of credit, stocks, bonds or other highly liquid investments acceptable in all respects to Lender in its sole and absolute discretion (for purposes of this Agreement, the term "Additional Collateral" shall mean and refer to such additional collateral as shall be approved by Lender and pledged pursuant to this subsection (b). The amount or value of the Additional Collateral required to be pledged shall be a function of the liquidation value of such collateral, as determined by Lender in its reasonable discretion, and shall be such amount (i.e., the liquidation value) as would, if subtracted from the total amount of indebtedness evidenced and represented by the Note at such time, result in a Debt Coverage Ratio (calculated as provided above) equal to 1.20 to 1.0. In connection with such pledge of Additional Collateral, and not later than fifteen (15) days after written notice from Lender to Borrower of Borrower's obligation to either pay the Curative Amount or to pledge the Additional Collateral, and provided that Borrower has not instead paid the Curative Amount required at that time pursuant to subsection (a) above, Borrower shall execute and deliver to Lender all pledge and security agreements, financing statements and other instruments, certificates and agreements as Lender shall require, and shall deliver to Lender the Additional Collateral or such instruments, certificates, acknowledgments, stock powers, authorizations, powers of attorney, consents and any and all other documentation, as executed by all appropriate parties as may be necessary to effectuate the collateral pledge and assignment of such collateral to Lender, as Lender and its counsel shall deem necessary or appropriate. If, after the Borrower's provision of Additional Collateral, the Debt Coverage Ratio should improve so as to be 1.20 to 1.0 or more for any Calendar Period (without taking into account the Additional Collateral), then Borrower shall be entitled to a release of the Additional Collateral. Borrower shall thereafter be required to either pay to Lender the Curative Amount or repledge Additional Collateral to the extent the required Debt Coverage Ratio should fail to be met during any subsequent Calendar Period and shall likewise be entitled to a re-release of any such subsequently pledged Additional Collateral consistent with the immediately preceding sentence.

"(c) The Debt Coverage Ratio calculation shall be undertaken for the applicable Calendar Period. Borrower shall provide written evidence and documents to Lender indicating the calculations and backup information for the Debt Coverage Ratio for each applicable Calendar Period. Lender shall be entitled to request and require such backup documentation, including financial information, as may be required by Lender in order to satisfy itself as to the correct calculation of the Debt Coverage Ratio for any Calendar Period

"(d) As used in this Agreement, the following terms have the following meanings:

(1) Calendar Period: The three (3) calendar month period (or portion thereof for the first period) ending on each March 31, June 30, September 30 and December 31.

(2) Debt Coverage Ratio: Net Operating Income for a Calendar Period divided by Debt Service Requirements for the same Calendar Period.

(3) Debt Service Requirements: The greater of (A) any and all principal or interest payments scheduled with respect to the Loan to the extent such are to be due and owing during such Calendar Period (and irrespective of whether or not such payments were timely made) or (B) all principal and interest payments which would be owing during such Calendar Period based upon a hypothetical level-payment, mortgage loan-type amortization schedule of 25 years calculated using the Loan Amount, and an interest rate on the Loan Amount during the Calendar Period equal to the greater of (i) the then actual Applicable Base Rate (as defined in the Note), or (ii) eight percent (8%), or (iii) the sum of (x) the yield of the United States Treasury obligations which shall have the closest maturity date (month and year) to the date that is ten (10) years from the date of such calculation plus (y) two percent (2.0%) (the greater of clauses (i), (ii) or (iii) immediately preceding being sometimes referred to herein as the "Amortization Rate").

(4) Gross Income: For each applicable Calendar Period actual rentals, revenues and other cash forms of consideration, received by, or paid to or for the account of or for the benefit of, Borrower resulting from or attributable to the operation, leasing and occupancy of the Mortgaged Property, determined on a cash basis (except as specified herein), including the following: (i) rents by any lessees or tenants of the Mortgaged Property; (ii) rents and receipts received by or for the benefit of Borrower with respect to the full or partial reimbursement of Operating Expenses from any lessee or tenant of the Mortgaged Property; (iii) proceeds received by or for the benefit of Borrower in connection with any rental loss or business interruption insurance with respect to the Mortgaged Property; (iv) any other fees or rents collected by, for or on behalf of Borrower with respect to the leasing and operation of the Mortgaged Property;

(v) any refunds of deposits for obtaining, using or maintaining utility services for all or any portion of the Mortgaged Property; (vi) interest, if any, earned by Borrower on security and other type deposits of and advance rentals paid by, any lessees or tenants of the Mortgaged Property; and (vii) the amount of any security and other type deposits and advance rentals relating to the Mortgaged Property which have been forfeited. Notwithstanding anything included within this definition of Gross Income, there shall be excluded from Gross Income the following: (i) any security or other deposits of lessees and tenants, unless and until the same actually are either applied to actual rentals owed or other charges or

fees or forfeited; (ii) the proceeds of any financing or refinancing with respect to all or any part of the Mortgaged Property; (iii) the proceeds of any sale or other capital transaction (excluding leases for occupancy purposes only) of all or any portion of the Mortgaged Property; (iv) any insurance or condemnation proceeds paid with respect to the Mortgaged Property, except for rental loss or business interruption insurance; and (v) any insurance and condemnation proceeds applied in reduction of the principal of the Note in accordance with the terms of the Deed of Trust or the other Loan Documents; provided, however, nothing set forth herein shall in any manner imply Lender's consent to a sale, refinancing or other capital transaction.

(5) Net Operating Income: For each applicable Calendar Period, Gross Income less Operating Expenses, determined on a cash basis of accounting except as otherwise provided in this Agreement.

(6) Operating Expenses: For the applicable Calendar Period, those amounts actually incurred and paid with respect to the ownership, operation, management, leasing and occupancy of the Mortgaged Property, determined on a cash basis, except as otherwise specified herein, including any and all of the following (but without duplication of any item):

(i) ad valorem taxes calculated on an accrual basis (and not on the cash basis) of accounting for the Calendar Period; such accrual accounting for ad valorem taxes shall be based upon taxes actually assessed for the current calendar year, or if such assessment for the current calendar year has not been made, then until such assessment has been made (and with any retroactive adjustments for prior calendar months as may ultimately be needed when the actual assessments has been made) ad valorem taxes for the Calendar Period shall be estimated based on the last such assessment for the Mortgaged Property; (ii) foreign, U.S., state and local sales, use or other taxes, except for taxes measured by net income; (iii) special assessments or similar charges against the Mortgaged Property; (iv) costs of utilities, air conditioning and heating for the Mortgaged Property to the extent not directly paid by lessees or tenants; (v) maintenance and repair costs for the Mortgaged Property; (vi) management fees;

(vii) all salaries, wages and other benefits to "on-site" employees of the Borrower or Borrower's property manager (excluding all salaries, wages and other benefits of officers and supervisory personnel, and other general overhead expenses of Borrower and Borrower's property manager) employed in connection with the leasing, maintenance and management of the Mortgaged Property; (viii) insurance premiums calculated on an accrual basis (and not on the cash basis) of accounting for the Calendar Period; such accrual accounting for insurance premiums shall be based upon the insurance premiums for the Mortgaged Property which was last billed to the Borrower, adjusted to an annualized premium if necessary;

(ix) costs, including leasing commissions, advertising and promotion costs, to obtain new leases or to extend or renew existing leases, and the costs of work performed and materials provided to ready tenant space in the Mortgaged Property for new or renewal occupancy under leases;

(x) outside accounting and audit fees and costs and administrative expenses in connection with the direct operation and management of the Mortgaged Property; and (xi) any payments, and any related interest thereon, to lessees or tenants of the Mortgaged Property with respect to security deposits or other deposits required to be paid to tenants but only to the extent any such security deposits and related interest thereon have been previously included in Gross Income. Notwithstanding anything to the contrary as being included in the definition of Operating Expenses, there shall be excluded from Operating Expenses the following: (i) depreciation and any other non-cash deduction allowed to Borrower for income tax purposes; and (ii) any and all principal, interest or other costs paid under or with respect to the Note or Loan. Notwithstanding any of the foregoing, in all events Operating Expenses shall not be less than \$9.15 per square foot of the Improvements."

7. Extension Options. If, but only if, all of the following conditions precedent shall have been first satisfied, then Borrower shall be entitled, for one time only, to extend the Maturity Date of the 6.6 Note, or the 7.7 Note, or both, as the case may be, by an additional twelve (12) months, to August 24, 2003. The conditions precedent to extension of the either or both of the 6.6 Note and 7.7 Note for such additional twelve (12) month period are as follows:

(a) Borrower shall notify Lender in writing on or before July 15, 2003, of Borrower's election to exercise its rights under this Section 7 and specify the note or notes to which such election applies.

(b) Borrower shall pay to Lender in cash an extension fee equal to twenty-five one-hundredths percent (0.25%) of the outstanding principal balance, as of August 23, 2002, of the 6.6 Note, the 7.7 Note, or both, as the case may be.

(c) Lender shall have received tenant estoppel certificates dated not earlier than July 15, 2002, from all tenants under the Leases in effect at that time, which certificates shall reasonably be satisfactory to Lender in form and substance.

(d) No Default or Event of Default shall exist on any of the Loan Documents.

(e) No event, claim, liability or circumstance shall exist which, in Lender's determination, could be expected to have or have had a Material Adverse Effect.

(f) Borrower and Guarantor shall execute and deliver to Lender such modification, renewal and extension agreements and other instruments as Lender may reasonably request to evidence the extension of the Maturity Date.

(g) Lender is in receipt of written evidence satisfactory to Lender indicating that the Debt Coverage Ratio is being satisfied.

(h) Lender is in receipt of written evidence reasonably satisfactory to Lender that the outstanding principal amount of the 6.6 Note, the 7.7 Note, or both, as the case may be, is not more than seventy percent (70%) of the fair market value of the Property that will continue to secure

the 6.6 Note, the 7.7 Note, or both, as the case may be, as established in the appraisals received and accepted by Lender as of the date of this Agreement, such evidence to include new appraisals of the Property obtained at Borrower's sole expense if Lender requires the same.

8. Title Insurance. Contemporaneously with the execution and delivery hereof, the Borrower shall cause the Title Company to issue such endorsements to the Title Policy as Lender may reasonably require.

9. Acknowledgment by Borrower. Except as otherwise specified herein, the terms and provisions hereof shall in no manner impair, limit, restrict or otherwise affect the obligations of Borrower or any third party to Lender, as evidenced by the Loan Documents. Borrower hereby acknowledges, agrees and represents that (i) Borrower is indebted to Lender pursuant to the terms of the 6.6 Note and the 7.7 Note, as modified hereby; (ii) the liens, security interests and assignments created and evidenced by the Loan Documents are, respectively, valid and subsisting liens, security interests and assignments of the respective dignity and priority recited in the Loan Documents; (iii) there are no claims or offsets against, or defenses or counterclaims to, the terms or provisions of the Loan Documents, and the other obligations created or evidenced by the Loan Documents; (iv) Borrower has no claims, offsets, defenses or counterclaims arising from any of Lender's acts or omissions with respect to the Property, the Loan Documents or Lender's performance under the Loan Documents or with respect to the Property; (v) the representations and warranties contained in the Loan Documents are true and correct representations and warranties in all material respects of Borrower and to the knowledge of Borrower, of any third parties, as of the date hereof; and (vi) Lender is not in default and no event has occurred which, with the passage of time, giving of notice, or both, would constitute a default by Lender of Lender's obligations under the terms and provisions of the Loan Documents. To the extent Borrower now has any claims, offsets, defenses or counterclaims against Lender or the repayment of all or a portion of the Loan, whether known or unknown, fixed or contingent, same are hereby forever irrevocably waived and released in their entirety.

10. No Waiver of Remedies. Except as may be expressly set forth herein, nothing contained in this Agreement shall prejudice, act as, or be deemed to be a waiver of any right or remedy available to Lender by reason of the occurrence or existence of any fact, circumstance or event constituting a default under the Note or the other Loan Documents.

11. Joinder of Guarantor. By its execution hereof, Guarantor hereby (i) acknowledges and consents to the terms and provisions hereof; (ii) ratifies and confirms each of the 6.6 Guaranty and the 7.7 Guaranty, including all interest and costs of collection, to or for the benefit of Lender; (iii) agrees that each of the 6.6 Guaranty and the 7.7 Guaranty is and shall remain in full force and effect and that the terms and provisions of each of the 6.6 Guaranty and the 7.7 Guaranty cover and pertain to the Loan Documents as modified hereby; (iv) acknowledges that there are no claims or offsets against, or defenses or counterclaims to, the terms and provisions of either of the 6.6 Guaranty or the 7.7 Guaranty or the other obligations created and evidenced by each of the 6.6 Guaranty and the 7.7 Guaranty; (v) certifies that the representations and warranties contained in each of the 6.6 Guaranty and the 7.7 Guaranty remain true and correct representations and warranties of Guarantor as of the date hereof; and (vi) acknowledges that Lender has satisfied and performed its covenants and obligations under each of the 6.6 Guaranty and the 7.7 Guaranty and the other Loan Documents, and that no action or failure to act by or on behalf of, Lender has or will give rise to any cause of action or other claim against Lender for breach of either of the 6.6 Guaranty or the 7.7 Guaranty or other Loan Documents or otherwise.

12. Costs and Expenses. Contemporaneously with the execution and delivery hereof, Borrower shall pay, or cause to be paid, all costs and expenses incident to the preparation, execution and recordation hereof and the consummation of the transaction contemplated hereby, including, but not limited to, recording fees, title insurance policy or endorsement premiums or other charges of the Title Company, and reasonable fees and expenses of legal counsel to Lender.

13. Additional Documentation. From time to time, Borrower shall execute or procure and deliver to Lender such other and further documents and instruments evidencing, securing or pertaining to the Loan or the Loan Documents as shall be reasonably requested by Lender so as to evidence or effect the terms and provisions hereof. Upon Lender's request, Borrower shall cause to be delivered to Lender an opinion of counsel, satisfactory to Lender as to form, substance and rendering attorney, opining to (i) the validity and enforceability of this Agreement and the terms and provisions hereof, and any other agreement executed in connection with the transaction contemplated hereby; (ii) the authority of Borrower, and any constituents of Borrower, to execute, deliver and perform its or their respective obligations under the Loan Documents, as hereby modified; and (iii) such other matters as reasonably requested by Lender.

14. Effectiveness of the Loan Documents. Except as expressly modified by the terms and provisions hereof, each of the terms and provisions of the Loan Documents are hereby ratified and shall remain in full force and effect; provided, however, that any reference in any of the Loan Documents to the Loan, the amount constituting the Loan, any defined terms, or to any of the other Loan Documents shall be deemed, from and after the date hereof, to refer to the Loan, the amount constituting the Loan, defined terms and to such other Loan Documents, as modified hereby.

15. Governing Law. THE TERMS AND PROVISIONS HEREOF SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.

16. Time. Time is of the essence in the performance of the covenants contained herein and in the Loan Documents.

17. Binding Agreement. This Agreement shall be binding upon the successors and assigns of the parties hereto; provided, however, the foregoing shall not be deemed or construed to

(i) permit, sanction, authorize or condone the assignment of all or any part of the Property or any of Borrower's rights, titles or interests in and to the Property or any rights, titles or interests in and to Borrower, except as expressly authorized in the Loan Documents, or (ii) confer any right, title, benefit, cause of action or remedy upon any person or entity not a party hereto, which such party would not or did not otherwise possess.

18. Headings. The section headings hereof are inserted for convenience of reference only and shall in no way alter, amend, define or be used in the construction or interpretation of the text of such section.

19. Construction. Whenever the context hereof so requires, reference to the singular shall include the plural and likewise, the plural shall include the singular; words denoting gender shall be construed to mean the masculine, feminine or neuter, as appropriate; and specific enumeration shall not exclude the general, but shall be construed as cumulative of the general recitation.

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

21. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

22. THIS MODIFICATION AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO OR THERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO OR THERETO. THE PROVISIONS OF THIS MODIFICATION AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE RESPECTIVE PARTIES TO SUCH DOCUMENTS.

**LENDER:**

**COMERICA BANK-TEXAS,**  
a state banking association

By:

Name:

Title:

**BORROWER:**

**STRATUS 7000 WEST JOINT VENTURE,**  
a Texas joint venture

By: Stratus 7000 West, Ltd.,  
a Texas limited partnership,  
Its Operating Partner

By: STRS L.L.C.,  
a Delaware limited liability  
company,  
Its General Partner

By: Stratus Properties Inc.,  
a Delaware corporation,  
Its Sole Member

By: /s/ William H. Armstrong, III

-----  
Name: William H. Armstrong, III  
Title: Chairman of the Board,  
President and Chief  
Executive Officer

By: Oly Lantana, L.P., a Texas limited partnership, Its Financial Partner

By: Oly Lantana GP, L.L.C., a Texas limited liability company, Its Sole General Partner

By:  
Name:  
Title:

**GUARANTOR:**

**STRATUS PROPERTIES INC.,**  
a Delaware corporation

By: /s/ William H. Armstrong, III

-----  
Name: William H. Armstrong, III  
Title: Chairman of the Board,  
President and Chief  
Executive Officer

**STATE OF TEXAS &**

**COUNTY OF DALLAS &**

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_ day of September, 2001, by \_\_\_\_\_, a Senior Vice President of COMERICA BANK-TEXAS, a state banking association, on behalf of said banking association.

[ S E A L ]  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_

Printed Name of Notary Public

THE STATE OF TEXAS &  
&

**COUNTY OF TRAVIS &**

This instrument was acknowledged before me on day of September, 2001, by William H. Armstrong, III, Chairman of the Board, President and Chief Executive Officer of STRATUS PROPERTIES INC., a Delaware corporation, the Sole Member of STRS L.L.C., a Delaware limited



SECOND AMENDMENT TO LOAN AGREEMENT

This SECOND AMENDMENT TO LOAN AGREEMENT (this "Amendment") is made and entered into to be effective as of December 18, 2001 (the "Amendment Date"), by and among STRATUS PROPERTIES INC., a Delaware corporation ("Stratus"), STRATUS PROPERTIES OPERATING CO., L.P., a Delaware limited partnership, CIRCLE C LAND CORP., a Texas corporation, and AUSTIN 290 PROPERTIES, INC., a Texas corporation (herein individually and collectively referred to as the "Borrower"), and COMERICA BANK-TEXAS, a state banking association (herein referred to as the "Bank").

WITNESSETH:

WHEREAS, Borrower, as Maker, executed that certain Promissory Note dated December 16, 1999, in the original principal amount of \$20,000,000 U.S., in favor of and payable to the order of Bank, as Payee, which Promissory Note has been amended (including, without limitation, a reduction in the stated principal amount of such Promissory Note to \$5,000,000.00 U.S. and the addition of a limited revolving feature) pursuant to an Amendment to Promissory Note dated as of December 27, 2000 (the "First Amendment") and a Second Amendment to Promissory Note (the "Second Amendment") of even date herewith executed by Borrower and Bank (together, as amended, the "\$5,000,000.00 Note"), which \$5,000,000.00 Note evidences a loan (hereafter referred to as the "\$5,000,000.00 Loan") made by Bank to Borrower in connection with and pursuant to that certain Loan Agreement dated December 16, 1999, executed by and among Borrower and Bank, as amended by the Amendment to Loan Agreement dated December 27, 2000, and as further amended by this Second Amendment to Loan Agreement (the "Loan Agreement"); and

WHEREAS, Borrower, as Maker, executed that certain Revolving Credit Note dated December 16, 1999, in the original principal amount of \$10,000,000.00 U.S., in favor of and payable to the order of Bank, as Payee, which Revolving Credit Note has been amended (including, without limitation, an increase as of the date hereof in the stated principal amount of such Revolving Credit Note to \$25,000,000.00 U.S.) pursuant to that certain Amendment to Revolving Credit Note dated as of December 27, 2000, and the Second Amendment to the Revolving Credit Note of even date herewith executed by Borrower and Bank (together, as amended, the "Revolving Credit Note"), which Revolving Credit Note evidences a loan (the "Revolving Credit Loan") made by Bank to Borrower in connection with and pursuant to the Loan Agreement (the Revolving Credit Note and the \$5,000,000.00 Note, each as amended, are hereinafter collectively referred to as the "Notes", and the Revolving Credit Loan and the \$5,000,000.00 Loan are hereinafter collectively referred to as the "Loans"); and

WHEREAS, the current unpaid principal balance of the \$5,000,000.00 Note as of the date hereof is approximately \$5,000.00 (the "Current Outstanding Principal Balance of the \$5,000,000.00 Note"); and

WHEREAS, the current unpaid principal balance of the Revolving Credit Note as of the date hereof is approximately \$\_\_\_\_\_; and

**WHEREAS, the \$5,000,000.00 Note and the Revolving Credit**

**Note are cross-defaulted and cross-collateralized, and are**

secured by, among other things and without limitation, the deeds of trust, assignments and other items referenced in Section 5.1 of each of the Notes, and further described in the Loan Agreement, as said deeds of trust have been amended pursuant to that prior Modification Agreement dated as of December 27, 2000, and further modified by the Second Modification Agreement of even date herewith executed by Borrower and Bank (collectively, as amended, the "Lien Instruments" or the "Security Instruments"); and

WHEREAS, Borrower hereby acknowledges that (i) Borrower is obligated to Bank under the Notes, the Loan Agreement, the Lien Instruments and the other Loan Documents (as such term is defined in the Loan Agreement), (ii) Borrower has no defense, offset or counterclaim with respect to the sums owed to Bank under the Notes, the Loan Agreement, the Lien Instruments and the other Loan Documents, or with respect to any covenant in the Notes, the Loan Agreement, this Amendment, the Lien Instruments or any of the other Loan Documents, and (iii) Bank, as of the date hereof, has fully performed all obligations to Borrower which Bank may have had or has on and as of the date hereof; and

WHEREAS, Borrower and Bank desire to enter into this Amendment in order to modify and amend certain of the terms and provisions of the Loan Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Bank hereby agree as follows:

1. Recitals. The recitals set forth above are true, accurate and correct, and are incorporated herein by this reference.
2. Capitalized Terms. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement, as previously modified.
3. Modification of Loan Agreement. Borrower and Bank hereby agree to modify the Loan Agreement as follows:
  - 3.1 Modification of Defined Terms. The following defined terms, as set forth in Addendum 1 of the Loan Agreement, as such terms are used in the Loan Agreement, are hereby amended as follows:

(a) "Agreement": The term "Agreement" is hereby revised to include this Amendment.

(b) "Deeds of Trust": The term "Deeds of Trust" is hereby revised to include the Second Modification Agreement of even date with this Amendment, executed by Borrower and Bank, whereby the Deeds of Trust were amended as provided therein. The Deeds of Trust, as amended, shall continue in full force and effect to secure repayment of the Notes and the obligations of Borrower under the Loan Agreement and this Amendment and the other Loan Documents, as modified.

(c) "Loan Documents": The term "Loan Documents" is hereby revised to include the Loan Agreement (as modified by the first and second Amendments), the Notes (as modified by the first and second Amendments to Promissory Note and by the first and second Amendments to Revolving Credit Note, as described in the recitals to this Amendment), the Deeds of Trust (as modified by the first and second Modification Agreements described in subparagraph (b) above), and all other documents, instruments or agreements included within the definition of "Loan Documents" as set forth in the Loan Agreement, as such documents may have been or may hereafter be amended from time to time.

(d) "Loans": The definition of the term "Loans" is hereby amended and replaced to read as follows:

"Loans' shall mean, collectively, the Revolving Credit Loan and the \$5,000,000.00 Loan, and "Loan" shall mean any of them."

(e) "Maximum Loan Amount": The definition of the term "Maximum Loan Amount" is hereby amended and replaced to read as follows:

"Maximum Loan Amount' shall hereafter be defined as: (a) as to the Revolving Credit Note, the lesser of: (i) thirty-five percent (35%) of the fair market value of the Primary Collateral as indicated by (1) newly prepared and updated Primary Collateral Appraisals acceptable to Bank effective as of the date prepared and delivered to Bank (or updates of the values presented in the Primary Collateral Appraisals previously delivered to and accepted by Bank) or (2) recertifications of the accuracy and values presented in the Primary Collateral Appraisals delivered to and accepted by Bank on or about the date hereof; (b) as to the \$5,000,000.00 Note, such maximum amount as Bank elects to advance in its sole and absolute discretion; but in no event shall the total aggregate outstanding balances under the Notes exceed \$30,000,000.00."

(f) "Notes": The definition of the term "Notes" is hereby amended and replaced to read as follows:

"Notes' shall mean, collectively, whether one or more, the Revolving Credit Note and the \$5,000,000.00 Note, and "Note" shall mean any of them, executed and delivered by Borrower payable to the order of Bank, evidencing the Loans, as the same may be renewed, extended, modified, increased or restated from time to time."

3.2 Substitution of Defined Terms. The following defined terms, as set forth in Addendum 1 of the Loan Agreement, as such terms are used in the Loan Agreement (as modified hereby), are hereby amended, substituted and replaced as follows:

(a) "Maximum Legal Rate" The term "Maximum Legal Rate" is hereby changed to the term "Maximum Lawful Rate" and the definition of such term is hereby deleted and replaced to read as follows:

"Maximum Lawful Rate' shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Bank in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that it permits Bank to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges (defined as all fees, charges and/or any other things of value, if any, contracted for, charged, received, taken or reserved by Bank in connection with the transactions relating to the Notes and the other Loan Documents, which are treated as interest under applicable law) made in connection with the transaction evidenced by the Notes and the other Loan Documents. To the extent that Bank is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Indebtedness, Bank will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303. To the extent United States federal law permits Bank to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Bank will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law, Bank may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law."

(b) "Person' or 'person' shall mean any individual, corporation, partnership, joint venture, limited liability company, association, trust, unincorporated association, joint stock company, government, municipality, political subdivision or agency, or other entity."

(c) "Revolving Credit Loan Maturity Date' shall mean April 16, 2004, or such earlier date on which the entire unpaid principal amount of the Revolving Credit Loan becomes due and payable whether by the lapse of time, acceleration or otherwise; provided, however, if any such date is not a Business Day, then the Revolving Credit Loan Maturity Date shall be the next succeeding Business Day."

(d) "Revolving Credit Loan Maximum Amount' shall mean Twenty- Five Million Dollars (\$25,000,000.00)."

(e) "Revolving Credit Note' shall mean the Revolving Credit Note dated December 16, 1999, made by Borrower payable to the order of the Bank, as amended by that certain Amendment to Revolving Credit Note dated December 27, 2000, and as further amended by the Second

Amendment to Revolving Credit Note of even date herewith by and between Borrower and Bank, as the same may be renewed, extended, modified, increased or restated from time to time."

(f) The term "Revolving Specific Advance Loan" is hereby deleted and replaced to read "\$5,000,000.00 Loan" throughout the Loan Agreement (as modified hereby), any reference to "Specific Advance" throughout the Loan Agreement is hereby deleted in its entirety, and the definition of "Revolving Specific Advance Loan" is hereby deleted and replaced with the following "\$5,000,000.00

Loan" definition:

''\$5,000,000.00 Loan' shall mean the Loan made, or to be made, by Bank to or for the credit of Borrower in multiple Advances, including the initial advance which Borrower

and Bank acknowledge has already been advanced by Bank to Borrower, of which approximately \$5,000.00 currently remains outstanding as of the date hereof (the "Current Outstanding Principal Balance of the \$5,000,000.00 Loan"), which Advances together shall not exceed at any one time the \$5,000,000.00 Loan Maximum Amount, pursuant to this Agreement, the \$5,000,000.00 Note, and the Loan Terms, Conditions and Procedures Addendum."

(g) The term "Revolving Specific Advance Loan Maturity Date" is hereby deleted and replaced to read "\$5,000,000.00 Loan Maturity Date" throughout the Loan Agreement (as modified hereby), and the definition of "Revolving Specific Advance Loan Maturity Date" is hereby substituted and replaced with the following "\$5,000,000.00 Loan Maturity Date" definition:

''\$5,000,000.00 Loan Maturity Date' shall mean April 16, 2004, or such earlier date on which the entire unpaid principal amount of the \$5,000,000.00 Loan becomes due and payable whether by the lapse of time, acceleration or otherwise; provided, however, if any such date is not a Business Day, then the \$5,000,000.00 Loan Maturity Date shall be the next succeeding Business Day."

(h) The term "Revolving Specific Advance Note" is hereby deleted and replaced to read "\$5,000,000.00 Note" throughout the Loan Agreement (as modified hereby), and the definition of "Revolving Specific Advance Note" is hereby deleted and replaced with the following "\$5,000,000.00 Note" definition:

''\$5,000,000.00 Note' shall mean that certain Promissory Note dated December 16, 1999, made by Borrower payable to the order of the Bank, as amended by that certain Amendment to Promissory Note dated December 27, 2000, by and between Borrower and Bank, and as further amended by the Second Amendment to Promissory Note dated as of the date hereof, as the same may be renewed, extended, modified, increased or restated from time to time."

3.3 Modification of Capital Structure. As permitted under the terms of the Amendment to Loan Agreement, Borrower shall have the continuing right to (i) repurchase up to \$10,000,000 of the outstanding common stock of Stratus, and (ii) redeem up to \$10,000,000 of the mandatorily redeemable Series B Preferred Stock of Stratus initially issued to Oly/Stratus Equities, L.P. by the issuance of common stock; provided, however, that all other terms, conditions and restrictions set forth in the Loan Agreement (including, without limitation, all other terms, conditions and restrictions set forth in Sections 5.1, 5.7 and 5.8 of the Loan Agreement) shall remain in full force and effect, except to the extent modified by this Amendment.

3.4 Reaffirmation of Negative Covenants. Borrower hereby acknowledges and agrees that the Negative Covenants set forth in Section 5 of the original Loan Agreement are in full force and effect, are reaffirmed hereby and are set forth below for ease of reference.

## **"SECTION 5. NEGATIVE COVENANTS**

Each Borrower covenants and agrees that, so long as Bank is committed to make any Advance under this Agreement and until all instruments and agreements evidencing any Loan which is payable on demand or which conditions Advances upon the Bank's discretion are fully discharged and terminated and, thereafter, so long as any Indebtedness remains outstanding, it will not, and it will not allow any Loan Party within its control to, without the prior written consent of the Bank:

5.1 Capital Structure, Business Objects or Purpose. Purchase, acquire or redeem any of its equity ownership interests, or enter into any reorganization or recapitalization or reclassify its equity ownership interests, or make any material change in its capital structure or general business objects or purpose.

5.2 Mergers or Dispositions. Change its name, enter into any merger or consolidation, whether or not the surviving entity thereunder, or sell, lease, transfer, relocate or dispose of all, substantially all, or any material part of its assets (whether in a single transaction or in a series of transactions), except as expressly permitted under this Agreement or the other Loan Documents.

5.3 Guaranties. Guarantee, endorse, or otherwise become secondarily liable for or upon the obligations or Debt of others (whether directly or

indirectly), except:

- (a) guaranties in favor of and satisfactory to Bank; and
- (b) endorsements for deposit or collection in the ordinary course of business.

5.4 Debt. Become or remain obligated for any Debt, except:

- (a) Indebtedness and other Debt from time to time outstanding and owing to Bank;
- (b) unsecured trade, utility or non- extraordinary accounts payable arising in the ordinary course of business and other unsecured Debt of Borrowers or the Loan Parties on a Consolidated basis at any one time not to exceed \$500,000.00;
- (c) contingent liabilities of Borrowers on a consolidated basis at any one time not to exceed \$20,000,000.00;
- (d) Debt of a Related Party but only to the extent of the lesser of seventy-five percent (75%) of the appraised value of the real estate project owned by such Related Party or eighty percent (80%) of the total costs associated with the real estate project owned by such Related Party;
- (e) Debt subordinated to the prior payment in full of the Indebtedness upon terms and conditions approved in writing by Bank;
- (f) Debt outstanding as of the date hereof that is shown on the Financial Statements previously delivered to Bank; and
- (g) Debt of Loan Party to any other Loan Party.

5.5 Encumbrances. Create, incur, assume or suffer to exist any Lien upon, or create, suffer or permit to exist any Lien upon any of its property or assets, whether now owned or hereafter acquired, except for Permitted Encumbrances.

5.6 Acquisitions. Except as expressly permitted under this Agreement, purchase or otherwise acquire or become obligated for the purchase of all or substantially all of the assets or business interests of any Person or any shares of stock or other ownership interests of any Person or in any other manner effectuate or attempt to effectuate an expansion of present business by acquisition.

5.7 Dividends. Declare or pay dividends on, or make any other distribution (whether by reduction of capital or otherwise) in respect of any shares of its capital stock or other ownership interests, including but not limited to dividends payable by Stratus or any dividends payable solely in stock except (a) dividends payable by a Subsidiary of a Borrower to a Borrower or by the Subsidiary of another Loan Party to such other Loan Party; or (b) the redemption, repurchase or acquisition of any shares of its capital stock payable upon an employee's termination pursuant to its employee stock option, repurchase, or similar plan; provided, however, that after giving effect to such redemption, repurchase or acquisition, such Borrower or such other Loan Party, as applicable, shall be in full compliance with the terms of this Agreement.

5.8 Investments. Except as otherwise permitted in Section 2.17 of Addendum 2, make or allow to remain outstanding any investment (whether such investment shall be of the character of investment in shares of stock, evidences of indebtedness or other securities or otherwise) in, or any loans, advances or extensions of credit to, any Person, other than:

- (a) Each Borrower's current ownership in its respective Subsidiaries and Related Parties; and
- (b) any investment in direct obligations of the United States of America or any agency thereof, or in certificates of deposit issued by Bank, maintained consistent with a Borrower's or such Subsidiary's business practices prior to the date hereof; provided, that no such investment shall mature more than ninety (90) days after the date when made or the issuance thereof.

5.9 Transactions with Affiliates. Enter into any transaction with any of their stockholders, officers, employees, partners or any of their Affiliates or Related Parties, except subject to the terms hereof, transactions in the ordinary course of business and on terms not less favorable than would be usual and customary in similar transactions between Persons dealing at arm's length, or transfer any assets to any Related Party which is not a Borrower hereunder without Bank's prior consent.

5.10 Defaults on Other Obligations. Fail to perform, observe or comply duly with any covenant, agreement or other obligation to be performed, observed or complied with by any Loan Party, subject to any grace or cure periods provided therein, which failure could have a Material Adverse Effect.

5.11 Prepayment of Debt. Prepay (or take any actions which impose an obligation to prepay), except, subject to the terms hereof or thereof, Indebtedness.

5.12 Pension Plans. Except in compliance with this Agreement, enter into, maintain, or make contribution to, directly or indirectly, any Pension Plan that is subject to ERISA.

5.13 Subordinate Indebtedness. Subordinate any indebtedness due to it from any Person to indebtedness of other creditors of such Person.

5.14 No Further Negative Pledges. Other than the Holiday Loan (as more fully described below), enter into or become subject to any agreement (other than this Agreement or the Loan Documents) (a) prohibiting the guaranteeing by any Loan Party of any obligations, (b) prohibiting the creation or assumption of any Lien upon the properties or assets of any Loan Party, whether now owned or hereafter acquired or (c) requiring an obligation to become secured (or further secured) if another obligation is secured or further secured.

5.15 No License Restrictions. Permit any restriction in any license or other agreement that restricts any Borrower or any other Loan Party from granting a Lien to Bank upon any of any Borrower's or such other Loan Party's rights under such license or agreement.

5.16 Olympus Agreements. Terminate or agree to any material modification or amendment to any of the Olympus Agreements without Bank's prior consent."

3.5 Modification and Restatement of Addendum 2 - Loan Terms, Conditions and Procedures Addendum. Addendum 2 set forth in the Loan Agreement shall be deleted in its entirety, as previously modified by the Amendment to Loan Agreement, and the following Addendum 2 shall be inserted in lieu thereof:

## "ADDENDUM 2

### LOAN TERMS, CONDITIONS AND PROCEDURES ADDENDUM

#### SECTION 1. THE LOAN

1.1 Agreements to Lend. Bank hereby agrees to lend to Borrower up to but not in excess of (i) with respect to the Revolving Credit Loan, the Revolving Credit Loan Maximum Amount, (ii) with respect to the \$5,000,000.00 Loan, the \$5,000,000.00 Loan Maximum Amount, and Borrower hereby agrees to borrow such sums from Bank, all upon and subject to the terms and provisions of this Agreement, such sums to be evidenced by, respectively, the Revolving Credit Note and the \$5,000,000.00 Note. Subject to the terms and provisions of this Agreement, the Notes, and the other Loan Documents, principal repaid on (i) the Revolving Credit Loan, and (ii) the \$5,000,000.00 Loan may be reborrowed by Borrower. Borrower's liability for repayment of the interest on account of the Loans shall be limited to and calculated with respect to Loans proceeds actually disbursed to Borrower pursuant to the terms of this Agreement and the Notes and only from the date or dates of such disbursements. Bank may, in Bank's discretion, disburse Loans proceeds by journal entry to pay interest and financing costs and disburse Loan proceeds directly to third parties to pay costs or expenses required to be paid by Borrower pursuant to this Agreement. Loan proceeds disbursed by Bank by journal entry to pay interest or financing costs, and Loan proceeds disbursed directly by Bank to pay costs or expenses required to be paid by Borrower pursuant to this Agreement, shall constitute Advances to Borrower. As more fully set forth in Section 4.21 of the original Loan Agreement, an Interest Reserve Escrow Account has been established. As of the date hereof, the balance in said account is \$5,132.00. \$1,619,868.00 shall be held back from funds available under the Revolving Credit Note for a total Interest Reserve Amount of \$1,625,000.00; provided, however, that the amount held back from funds available under the Revolving Credit Note will adjust if there is a change in the balance of the Interest Reserve Escrow Account in order to meet the total Interest Reserve Amount.

#### 1.2 Advances.

(a) Any Advance requested by Borrower under the \$5,000,000.00 Loan shall be subject to Borrower's satisfaction of the terms and conditions set forth in this Addendum 2 and in particular shall comply with the use of proceeds restrictions set forth in Section 2.4 below, all of which are deemed to apply to any and all Advances under the \$5,000,000.00 Loan unless otherwise agreed to by Bank. Bank may approve or disapprove any request for all or any portion of any Advance under the \$5,000,000.00 Loan in its SOLE AND ABSOLUTE DISCRETION. Bank shall have the right to impose such terms and conditions as it elects upon either the Advance under the \$5,000,000.00 Loan or the proposed collateral securing same.

(b) The proceeds of the Revolving Credit Loan shall be disbursed to Borrower in one or more Advances provided all applicable conditions to Advances set forth in this Agreement have been satisfied, including, if applicable, Section 2.17 (Additional Land Acquisitions) set forth below.

1.3 Limitation on Advances. Under no circumstances shall Bank be required to disburse any proceeds of the Revolving Credit Note that would cause the outstanding balance thereof at any one time to exceed the Revolving Credit Loan Maximum Amount nor shall Bank be required to disburse any proceeds of the \$5,000,000.00 Loan that would cause the outstanding balance thereof at any one time to exceed the \$5,000,000.00 Loan Maximum Amount or disburse any proceeds of either of the Loans that would cause the aggregate outstanding balance of the Loans at any one time to exceed \$30,000,000.00.

1.4 Regulatory Restrictions. Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, in no event shall Bank be required to disburse, nor shall Borrower be entitled to demand that Bank disburse, all or any portion of any of the Loans if the amounts of the Loans would, in Bank's sole and absolute discretion, cause Bank to exceed the lending limit to a single borrower under any applicable state or federal law, regulation or ruling. If Bank determines, in its sole and absolute discretion, at any time (including after any portion or all of the Loans have been disbursed) that the transactions evidenced by this Agreement and the other Loan Documents violates such lending limit restriction, then Bank shall have the right to immediately declare the Notes to be due and payable and shall thereafter have no further

obligations to disburse any further proceeds of the Loans. In such event, Borrower shall be required to immediately pay all outstanding Indebtedness under the Loans and shall have no further rights and privileges under this Agreement and the other Loan Documents.

1.5 Repayment of and Interest on Loans. The Indebtedness from time to time outstanding under and evidenced by the Notes shall bear interest at the respective rates per annum set forth in the Notes until the occurrence of an Event of Default and thereafter at the Default Rate and shall otherwise be repaid in accordance with the terms of the respective Notes. All unpaid principal, accrued and unpaid interest and other amounts owing under the Revolving Credit Note and the \$5,000,000.00 Note shall be due and payable on the Revolving Credit Loan Maturity Date and the \$5,000,000.00 Loan Maturity Date, respectively.

## SECTION 2. ADVANCES, PAYMENTS, RECOVERIES AND COLLECTIONS

2.1 Advance Procedure. Except as hereinafter provided, Borrower may request an Advance by submitting to Bank a Request for Advance by an authorized representative of Borrower, subject to the following:

(a) each such Request for Advance shall include, without limitation, the proposed amount of such Advance and the proposed Disbursement Date, which date must be a Business Day;

(b) a Request for Advance, once communicated to Bank, shall not be revocable by Borrower;

(c) each Request for Advance, once communicated to Bank, shall constitute a representation, warranty and certification by Borrower as of the date thereof that:

(i) both before and after the making of such Advance, all of the Loan Documents are and shall be valid, binding and enforceable against each Loan Party, as applicable;

(ii) all terms and conditions precedent to the making of such Advance have been satisfied, and shall remain satisfied through the date of such Advance;

(iii) the making of such Advance will not cause (A) the aggregate principal amount of all Advances on the \$5,000,000.00 Note to exceed the original principal amount of the \$5,000,000.00 Note, (B) the aggregate principal amount outstanding on the Revolving Credit Note to exceed the Revolving Credit Loan Maximum Amount or (C) the aggregate principal amount outstanding on both the \$5,000,000.00 Note and Revolving Credit Note to exceed \$30,000,000.00;

(iv) no Default or Event of Default shall have occurred or be in existence, and none will exist or arise upon the making of such Advance;

(v) the representations and warranties contained in this Agreement, and the other Loan Documents are true and correct in all material respects and shall be true and correct in all material respects as of the making of such Advance; and

(vi) the Advance will not violate the terms or conditions of any contract, indenture, agreement or other borrowing of any Loan Party.

Bank may elect (but without any obligation to do so) to make an Advance upon the telephonic or facsimile request of Borrower, provided that Borrower have first executed and delivered to Bank a Telephone Notice Authorization. If any such Advance based upon a telephonic or facsimile request is made by Borrower, Bank may require Borrower to confirm said telephonic or facsimile request in writing by delivering to Bank, on or before 11:00 a.m. (Dallas, Texas time) on the next Business Day following the Disbursement Date of such Advance, a duly executed written Request for Advance, and all other provisions of this Section 2.1 shall be applicable with respect to such Advance. In addition, Borrower may authorize the Bank to automatically make Advances pursuant to such other written agreements as may be entered into by Bank and Borrower. Except as set forth in this Agreement, all Advances are to be made by direct deposit into the Special Account.

2.2 Voluntary Prepayment. Borrower may prepay all or part of the outstanding balance under the \$5,000,000.00 Note and/or the Revolving Credit Note (subject to the provisions of Section 3.6(g) of the Revolving Credit Note regarding a prepayment prior to the expiration of the applicable LIBOR Interest Period) at any time, without premium or penalty or prejudice to the right of Borrower to reborrow sums of the Loans under the terms of this Agreement, subject to the terms and conditions of the Loan Documents.

2.3 Revolving Credit Loan Maximum Amount and \$5,000,000.00 Loan Maximum Amount and Reduction of Indebtedness. Notwithstanding anything contained in this Agreement to the contrary, the aggregate principal amount of the Revolving Credit Loan at any time outstanding shall not exceed the Revolving Credit Loan Maximum Amount, and the aggregate principal amount of the \$5,000,000.00 Loan outstanding at any time shall not exceed the \$5,000,000.00 Loan Maximum Amount. If said limitation is exceeded at anytime, Borrower shall immediately, without demand by Bank, pay to Bank an amount not less than such excess, or, if Bank, in its sole discretion, shall so agree, Borrower shall provide Bank cash collateral in an amount not less than such excess, and Borrower hereby pledges and grants to Bank a security interest in such cash collateral so provided to Bank.

2.4 Use of Proceeds of Loans. The use of proceeds advanced under the \$5,000,000.00 Loan shall be subject to Bank's sole and absolute discretion as set forth above in Section 1.2. The proceeds of the Revolving Credit Loan shall be used to fund equity contributions for

development ventures of Borrower, for pre-development costs, such as earnest money deposits, and property improvements in connection with the Land and other working capital needs of Borrower, including corporate and project general, administrative and operating costs, pursuit costs, entitlement costs, taxes, business endeavors associated with the development of commercial and residential real properties.

2.5 Non-Application of Chapter 346 of Texas Finance Code. The provisions of Chapter 346 of the Texas Finance Code are specifically declared by the parties not to be applicable to any of the Loan Documents or the transactions contemplated thereby.

2.6 Place of Advances. All Advances are to be made at the office of Bank, or at such other place as Bank may designate.

2.7 Bank's Books and Records. The amount and date of each Advance hereunder, the amount from time to time outstanding under the Notes, the interest rate in respect of the Loans, and the amount and date of any repayment hereunder or under the Notes, shall be noted on Bank's books and records, which shall be conclusive evidence thereof, absent manifest error; provided, however, any failure by Bank to make any such notation, or any error in any such notation, shall not relieve Borrower of its obligations to pay to Bank all amounts owing to Bank under or pursuant to the Loan Documents, in each case, when due in accordance with the terms hereof or thereof.

2.8 Payments on Non-Business Day. In the event that any payment of any principal, interest, fees or any other amounts payable by Borrower under or pursuant to any Loan Document shall become due on any day which is not a Business Day, such due date shall be extended to the next succeeding Business Day, and, to the extent applicable, interest shall continue to accrue and be payable at the interest rate set forth in the applicable Note for and during any such extension.

2.9 Payment Procedures. Unless otherwise expressly provided in a Loan Document, all sums payable by Borrower to Bank under or pursuant to any Loan Document, whether principal, interest, or otherwise, shall be paid, when due, directly to Bank at the office of Bank identified on the signature page of this Agreement, or at such other office of Bank as Bank may designate in writing to Borrower from time to time, in immediately available United States funds, and without setoff, deduction or counterclaim. Bank may, in its discretion, charge any and all deposit or other accounts (including, without limitation, any account evidenced by a certificate of deposit or time deposit) of any Borrower maintained with Bank for all or any part of any Indebtedness which is not paid when due and payable; provided, however, that such authorization shall not affect any Borrower's obligations to pay all Indebtedness, when due, whether or not any such account balances maintained by such Borrower with Bank are insufficient to pay any amounts then due.

2.10 Maximum Interest Rate. It is expressly stipulated and agreed to be the intent of Borrower and Bank at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (or applicable United States federal law to the extent that it permits Bank to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Bank related to any of the Indebtedness,

(ii) contracted for, charged or received by reason of Bank's exercise of the option to accelerate the maturity of the Note and/or any other portion of the Indebtedness, or (iii) Borrower will have paid or Bank will have received by reason of any voluntary prepayment by Borrower of the Note and/or any of the other Indebtedness, then it is Borrower's and Bank's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Bank shall be credited on the principal balance of the Note and/or any of the other Indebtedness evidenced by the Loan Documents (or, if the Note and all other Indebtedness evidenced by the Loan Documents have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Borrower and Bank agree that Bank shall, with reasonable promptness after Bank discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against any other Indebtedness then owing by Borrower to Bank. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Bank, Borrower will provide written notice to Bank, advising Bank in reasonable detail of the nature and amount of the violation, and Bank shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or other Indebtedness then owing by Borrower to Bank. All sums contracted for, charged or received by Bank for the use, forbearance or detention of any of the Indebtedness, including any portion of the debt evidenced by the Note shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or other Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or other Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Note and/or the other Indebtedness for so long as any Indebtedness is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note and/or any of the other Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Bank to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

2.11 Receipt of Payments by Bank. Any payment by Borrower of any of the Indebtedness made by mail will be deemed tendered and received by Bank only upon actual receipt thereof by Bank at the address designated for such payment, whether or not Bank has authorized payment by mail or in any other manner, and such payment shall not be deemed to have been made in a timely manner unless actually received by Bank on

or before the date due for such payment, time being of the essence. Borrower expressly assumes all risks of loss or liability resulting from non-delivery or delay of delivery of any item of payment transmitted by mail or in any other manner. Acceptance by Bank of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and any failure to pay the entire amount then due shall constitute and continue to be an Event of Default hereunder. Bank shall be entitled to exercise any and all rights and remedies conferred upon and otherwise available to Bank under any Loan Document upon the occurrence and during the continuance of any such Event of Default. Borrower further agrees that after the occurrence and during the continuance of any Default Bank shall have the continuing exclusive right to apply and to reapply any and all payments received by Bank at any time or times, whether as voluntary payments, proceeds from any Mortgaged Property, offsets, or otherwise, against the Indebtedness evidenced by the Loan Documents in such order and in such manner as Bank may, in its sole discretion, deem advisable, notwithstanding any entry by Bank upon any of its books and records. Borrower hereby expressly agrees that, to the extent that Bank receives any payment or benefit of or otherwise upon any of the Indebtedness, and such payment or benefit, or any part thereof, is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, receiver, or any other Person under any bankruptcy act, state or federal law, common law, equitable cause or otherwise, then to the extent of such payment or benefit, the Indebtedness, or part thereof, intended to be satisfied shall be revived and continued in full force and effect as if such payment or benefit had not been made or received by Bank, and, further, any such repayment by Bank shall be added to and be deemed to be additional Indebtedness.

2.12 Security. Payment and performance of the Indebtedness evidenced by the Loan Documents shall be secured by Liens on the assets, other collateral and properties of Borrower as Bank may require from time to time.

2.13 Conditions Precedent to the Loans and Initial Advance. The obligation of the Bank to make each Advance under either Loan shall be subject to the satisfaction of all of conditions precedent set forth in this Section. In the event that any condition precedent is not so satisfied but Bank elects to make an Advance on either Loan notwithstanding the same, such election shall not constitute a waiver of such condition and the condition shall be satisfied prior to any subsequent Advance.

(a) All of the Loan Documents shall be in full force and effect and binding and enforceable obligations of Borrower and, to the extent that it is a party thereto or otherwise bound thereby, of each other Person who may be a party thereto or bound thereby.

(b) All actions, proceedings, instruments and documents required to carry out the borrowings and transactions contemplated by this Agreement or any other Loan Document or incidental thereto, and all other related legal matters, shall have been satisfactory to and approved by legal counsel for Bank, and said counsel shall have been furnished with such certified copies of actions and proceedings and such other instruments and documents as they shall have requested.

(c) Each Borrower shall have performed and complied with all agreements and conditions contained in the Loan Documents applicable to it and which are then in effect.

(d) Borrower shall have delivered, or caused to have been delivered, to Bank or done or caused to have been done, to Bank's satisfaction each and every of the following items:

(1) This Agreement (together with all addenda, schedules, exhibits, certificates, opinions, financial statements and other documents to be delivered pursuant hereto) and any and all amendments thereto, the Notes, the Deeds of Trust and all other Loan Documents and Lien Instruments and any and all amendments thereto duly executed, acknowledged (if required) and delivered by Borrower and any Person who is a party thereto.

(2) (i) Copies of resolutions of the board of directors, partners or members or managers, as applicable, of each Loan Party evidencing approval of the modification of the borrowing arrangement hereunder and the transactions contemplated by the modified Loan Documents, and authorizing the execution, delivery and performance by each Loan Party of each modified Loan Document to which it is a party or by which it is otherwise bound, which resolutions shall have been certified by a duly authorized officer, partner or other representative, as applicable, of each Loan Party as of the date of this Agreement and as of the date of any amendments as being complete, accurate and in full force and effect; (ii) incumbency certifications of a duly authorized officer, partner or other representative, as applicable, of each Loan Party, in each case, identifying those individuals who are authorized to execute the modified Loan Documents and any amendments thereto for and on behalf of such Person(s), respectively, and to otherwise act for and on behalf of such Person(s); (iii) certified copies of each of such Person(s)' articles of incorporation and bylaws, partnership agreement, certificate of limited partnership, articles of organization, regulations or operating agreement, as applicable, and all amendments thereto; and (iv) certificates of existence, good standing and authority to do business, as applicable, certified substantially contemporaneously with the date of this Agreement, from the state or other jurisdiction of each of such Person(s)' organization and from every other state or jurisdiction in which such Person is required, under applicable law, to be qualified to do business.

(3) Proof that appropriate security agreements, financing statements, mortgages, deeds of trust, collateral and such additional documents or certificates as may be required by Bank and/or contemplated under the terms of any and every modified Loan Document, and such other documents or agreements of security and appropriate assurances of validity, perfection and priority of Lien as Bank may request shall have been executed and delivered by the appropriate Persons and recorded or filed in such jurisdictions and such other steps shall have been taken as necessary to perfect, subject only to Permitted Encumbrances, the Liens granted thereby.

(4) An opinion of Borrower's legal counsel, dated as of the date hereof, as to enforceability and authority issues and covering such other matters as are required by Bank and which are otherwise reasonably satisfactory in form and substance to Bank.

(5) Evidence of insurance coverage as required by this Agreement and the Deeds of Trust.

(6) The Title Company's commitment to issue such endorsements as may be required by Bank in connection with all modifications to the Deeds of Trust.

(7) Updated Primary Collateral Appraisals.

(8) Current Financial Statements of Borrower.

(e) Bank shall have received payment of the modification and extension fee set forth below.

(f) Bank shall have received such other instruments, documents and evidence (not inconsistent with the terms hereof) as Bank may reasonably request in connection with the modification of the Loans hereunder, and all such instruments, documents and evidence shall be satisfactory in form and substance to Bank.

2.14 Conditions to Subsequent Advances. Bank has no obligation to make any subsequent Advance under the \$5,000,000.00 Loan unless it elects in its sole and absolute discretion to do so. In addition, Bank has no obligation to make any subsequent advance on the Revolving Credit Loan unless the following conditions precedent are satisfied on or before the Disbursement Date for such Advance:

(a) At Bank's request, Borrower shall furnish to Bank an endorsement to the Title Policies (or if an endorsement is not available, a letter from the Title Company) showing "nothing further" of record affecting the Primary Collateral from the date of recording of the Deeds of Trust, except such matters as Bank specifically approves.

(b) All Loan Documents shall be in full force and effect and binding and enforceable obligations of each Loan Party.

(c) Each of the representations and warranties of each Loan Party under any Loan Document shall be true and correct in all material respects.

(d) No Default or Event of Default shall have occurred and be continuing; there shall exist no Material Adverse Effect; and no provision of law, any order of any Governmental Authority, or any regulation, rule or interpretation thereof, shall have had any material adverse effect on the validity or enforceability of any Loan Document.

(e) Upon making any Advance on the Revolving Credit Loan then requested, the amount outstanding on the Revolving Credit Loan shall not exceed the Revolving Credit Loan Amount.

(f) Upon making any Advance on the \$5,000,000.00 Loan then requested, the amount outstanding on the \$5,000,000.00 Loan shall not exceed the \$5,000,000.00 Maximum Loan Amount.

2.15 Advance Not A Waiver. No Advance of the proceeds of either of the Loans shall constitute a waiver of any of the conditions of Bank's obligation to make further Advances, nor, in the event Borrower is unable to satisfy any such condition, shall any such Advance have the effect of precluding Bank from thereafter declaring such inability to be an Event of Default.

2.16 Advance Not An Approval. Bank shall have no obligation to make any Advance or part thereof during the existence of any Default or Event of Default, but shall have the right and option so to do; provided that if Bank elects to make any such Advance, no such Advance shall be deemed to be either a waiver of the right to demand payment of the Loans, or any part thereof, or an obligation to make any other Advance.

2.17 Additional Land Acquisitions. Subject to the satisfaction of all conditions precedent to Advances on the Revolving Credit Loan, Bank hereby agrees to make one or more Advances on the Revolving Credit Loan, which Advances shall reduce the amount available to Borrower under the Revolving Credit Loan, in an amount not to exceed, without prior Bank approval, (i) \$3,000,000.00 at any one time, or (ii) \$10,000,000.00 in the aggregate, for the purpose of the acquisition of fee title to real property, provided that Borrower (i) provides Bank with information about such real property as Bank may reasonably request, (ii) executes and delivers to Bank a separate note for each acquisition and a deed of trust, substantially in the form of the Deeds of Trust, granting to Bank a deed of trust first lien on such real property, which note and the real property covered by the deed of trust will be cross- defaulted and cross-collateralized with the Notes and the Primary Collateral and Other Collateral (iii) causes the Title Company to provide Bank with a Title Policy insuring such deed of trust as a first lien on such real property and containing only such exceptions to title acceptable to Bank, and in an amount and otherwise on terms and conditions satisfactory

to Bank, and (iv) executes and delivers to Bank its proposed disposition plan of such real property which must be reasonably satisfactory to Bank. Any and all real estate assets acquired in whole or part with Advances made under this Section are sometimes referred to as 'Section 2.17 Assets.' Notwithstanding anything in this Agreement to the contrary, such Section 2.17 Assets shall, for purposes of this Agreement, be deemed to be included as 'Other Collateral'; provided, however, that such Section 2.17 Assets may be designated as part of the 'Primary Collateral' by obtaining an appraisal, an environmental audit and other documents that may be required by Bank to classify such Section 2.17 Assets as 'Primary Collateral.' Advances under the Revolving Credit Loan for other than the acquisitions of Section 2.17 Assets are not subject to the terms and provisions of this Section 2.17.

**2.18 Mandatory Prepayments.** Borrower shall immediately pay to Bank for application to the Revolving Credit Loan in accordance with the terms of this Agreement and in accordance with the Release Provisions set forth in Addendum 3, unless otherwise agreed by Bank in writing, the following sums: (i) one-hundred percent (100%) of the net proceeds received by or on behalf of any Borrower from the sale of all or any portion of the Mortgaged Property or upon the taking of all or any portion of the Mortgaged Property by condemnation; provided that, if such sale is to a Related Party, the mandatory prepayment shall be in an amount equal to the greater of fifty percent (50%) of the gross sales price or fifty percent (50%) of the corresponding Partial Release Price, as more fully set forth in Addendum 3, of such portion of the Mortgaged Property, (ii) one-hundred percent (100%) of the net proceeds of MUD Reimbursables, (iii) one-hundred percent (100%) of the net proceeds received upon the sale of any Section 2.17 Asset, (iv) and one-hundred percent (100%) of the distributions received by any Borrower from any Partnership or any Future Partnership upon the sale by such Related Party of any real property interest ("Partnership Distributions").

**2.19 Application of Payments.** So long as no Event of Default exists, all payments received from Borrower (including, without limitation, the application of net proceeds received from MUD Reimbursables, the application of net proceeds from the sale of Section 2.17 Assets, the application of net proceeds from the sale of Primary Collateral or Other Collateral or Partnership Distributions, the application of net proceeds from the conveyance of Primary Collateral or Other Collateral to a Related Party, and release price proceeds from any other source) shall be applied as follows:

- (a) First, such proceeds shall be applied to pay interest current on the Revolving Credit Note and to withhold an amount necessary to pay interest current at month end (and to establish or replenish the Interest Reserve Escrow Account);
- (b) Second, such proceeds shall be applied to pay any other sums (other than principal) then due and payable under the Revolving Credit Loan;
- (c) Third, such proceeds shall be applied to pay the outstanding principal balance then due under the Revolving Credit Note; and
- (d) Fourth, any remaining proceeds after application as above set forth shall be distributed to Borrower at its discretion.

All payments received from Borrower on the \$5,000,000.00 Note will be applied thereto in accordance with the terms and provisions of the \$5,000,000.00 Note.

**3.6 Modification and Restatement of Addendum 3 - Release Provisions.** Addendum 3 attached to the Loan Agreement is hereby deleted in its entirety, and the following Addendum 3 is inserted in lieu thereof:

### **"ADDENDUM 3**

#### **RELEASE PROVISIONS**

(Terms used with initial capital letters in this Addendum 3 that are not specifically defined in this Agreement shall have the meanings ascribed to them in the Deeds of Trust.)

The Partial Release Price for Primary Collateral shall be as follows: The payment to Bank of a Partial Release Price equal to one hundred percent (100%) of the Net Proceeds (i.e., all proceeds less only reasonable closing costs, surveying costs, title insurance premiums, attorneys' fees and a broker's commission not to exceed six percent (6.0%) with aggregate deductions not to exceed eight percent (8%) of the sales price), which Net Proceeds shall in no event be less than eighty-five percent (85%) of the appraised value (using year one undiscounted unit prices)

(hereinafter referred to as "Appraised Value") of the Primary Collateral being released. See Addendum 3-1(a)-(c) attached hereto for the schedule of Appraised Value, which Addendum 3-1(a)-

(c) shall replace and supersede the prior Addendum 3-1(a)-(c) attached to the Loan Agreement dated December 16, 1999.

The Partial Release Price for Other Collateral shall be as follows: The payment to Bank of a Partial Release Price equal to one hundred percent (100%) of the Net Proceeds (i.e., all proceeds less only reasonable closing costs, surveying costs, title insurance premiums, attorneys' fees and a broker's commission not to exceed six percent (6%) with aggregate deductions not to exceed eight percent (8%) of the sales price), which Net Proceeds shall in no event be less than eighty-five percent (85%) of the assigned value (hereinafter referred to as "Assigned Value")

established by Bank and Borrower for each of the Lots [or Tracts] of Other Collateral (the "Minimum Release Prices"). See Addendum 3-2 attached hereto for the schedule of Assigned Value, which Addendum 3-2 shall replace and supersede the prior Addendum 3-2 attached to the

The foregoing notwithstanding, the Partial Release Price for Primary Collateral or Other Collateral for sale to a Related Party shall be as follows:

The payment of a Partial Release Price equal to one hundred percent (100%) of all cash proceeds received by Borrower, which cash proceeds shall in no event be less than the greater of (i) fifty percent (50%) of the Appraised Value for Primary Collateral or fifty percent (50%) of the Assigned Value for Other Collateral, as applicable, of the Primary Collateral or Other Collateral being released; or (ii) fifty percent (50%) of the gross sales price paid by the Related Party. The gross sales price (i.e., cash proceeds and all other considerations) for the sale to the Related Party will not be less than eighty-five percent (85%) of the applicable Appraised Value or Assigned Value.

The foregoing notwithstanding, no release price will be required for the release of either Primary Collateral or Other Collateral from the lien of the Deeds of Trust in the event such Primary Collateral or Other Collateral is the subject of additional project financing by Bank pursuant to a separate loan between any Loan Party and Bank, and only so long as (i) in connection with such loan, Bank has a first priority lien and security interest in such Primary Collateral or Other Collateral securing repayment of such loan,

(ii) such Loan Party owns 100% of the Primary Collateral or Other Collateral which is the subject of such separate loan, and any and all equity in the project is funded solely by Borrower without any third-parties having any ownership or equity interest therein, (iii) such loan is cross-defaulted and cross-collateralized with the Loans to the extent required by Bank; and (iv) any ownership interest of Borrower in a Related Party into which Primary Collateral or Other Collateral has been transferred will be assigned to Bank as security for the Indebtedness, and Borrower agrees to execute and deliver to Bank an assignment of partnership interest in such form and content as Bank may require. If the Land sought to be released as provided above is Primary Collateral, then such Primary Collateral shall be removed from the borrowing base (i.e., such Primary Collateral shall be removed from the loan-to-value calculations for purposes of determining the Maximum Loan Amount allowed hereunder). Except as modified hereby, all of the release provisions (including, without limitation, the provisions requiring payment of a release price) as set forth in the Loan Agreement will continue to apply with respect to any release of Primary Collateral or Other Collateral.

Notwithstanding anything contained herein to the contrary, the location and configuration of the lot or lots, or tract or tracts, requested to be released

(herein called "Lot" or "Lots" or "Tract" or "Tracts")

shall be reasonably satisfactory to Bank and no Partial Release shall result in any remaining Lot [or Tract] being without access to a public street. Any and all Partial Releases shall be in accordance with the following procedures:

(a) Borrower's request for a Partial Release shall be given to Bank and accompanied by (i) the legal description of the Lot or Lots [or Tract] to be released, together with a draft closing statement prepared for the proposed sale; (ii) information necessary to process the request for Partial Release, including whether the property to be released is Primary Collateral or Other Collateral and whether it is being sold to a Related Party; (iii) any appraisal reconciliation of value information as may be required by Bank, together with a reimbursement of the cost of same, which cost shall not exceed \$750.00; and (iv) the name and address of the title company, if any, to whose attention the Partial Release Instrument (as hereinafter defined) should be directed, numbers that should be referenced (order number, loan number, etc.) and the date when such Partial Release is to be made. Borrower shall also specify the name and address of the prospective purchaser and the intended use of the Lot [or Tract] to be released and shall supply such other documents and information concerning such Partial Release as Bank may reasonably request.

(b) Within five (5) days after receipt of such request, and in accordance with and pursuant to the terms and conditions of this Addendum 3 and the other applicable provisions of this Agreement, Bank shall execute an instrument effecting such Partial Release ("Partial Release Instrument") and deliver same to the title company so specified; provided that all costs and expenses of Bank associated with such Partial Release (including, but not limited to, reasonable legal fees) shall be paid by Borrower. Borrower shall also obtain all title insurance endorsements reasonably required by Bank in connection with such Partial Release.

(c) The execution and delivery of such Partial Release Instrument shall not affect any of Borrower's obligations under the Loan Documents, except that the payment of the Partial Release Price must be actually received by Bank. Regardless of the time such Partial Release is executed, delivered and recorded, the payment made by Borrower to Bank in respect to such Partial Release shall be credited against the Indebtedness in accordance with the terms of this Agreement only upon receipt by Bank of the Partial Release Price. The Partial Release Instrument shall be delivered, in escrow, by Bank to the title company so designated, to be held, released, delivered and recorded in accordance with Bank's escrow instructions, which shall require payment, in cash, of the Partial Release Price to Bank prior to delivery and recordation of the Partial Release Instrument.

3.7 Letters of Credit. On Borrower's behalf, Bank has issued two (2) letters of credit in the aggregate amount of \$2,587,576.00 and has correspondingly reduced the amount available under the Revolving Credit Note by such amount. Borrower's obligations under the issued letters of credit and any subsequent letters of credit (collectively, the "Letters of Credit") are as follows:

A. Conditions to Letters of Credit. Subject to the terms and conditions set forth below, Borrower may, prior to the maturity date of the Revolving Credit Note, request Bank to issue one or more Letters of Credit under and as part of the Revolving Credit Loan, provided that the following conditions are satisfied:

(1) such Letter of Credit and any amounts to be disbursed or advanced under such Letter of Credit shall be used only for the same purposes as allowed for Advances under the Revolving Credit Loan, as set forth in Section 2.4 of Addendum 2 of the Loan Agreement;

- (2) after taking into account any such Letter of Credit, the sum of (i) the then existing LC Obligations (as defined below), plus (ii) the then outstanding principal balance of the Revolving Credit Loan, does not (and shall at no time) exceed the Revolving Credit Loan Maximum Amount. Accordingly, the amount of all LC Obligations, if any, shall be applied against the amount of Advances available to Borrower under the Revolving Credit Loan;
- (3) the expiration date of such Letter of Credit is not more than six (6) months after the maturity date of the Revolving Credit Note;
- (4) such Letter of Credit shall be classified as a "Standby" Letter of Credit in accordance with applicable laws and regulations applicable to Bank and in accordance with the Bank's customary practices at such times for reporting to regulatory authorities;
- (5) the issuance of such Letter of Credit will be in compliance with all applicable governmental restrictions, policies, and guidelines and will not subject Bank to any cost which is not reimbursable by Borrower under the Loan Documents;
- (6) the form and terms of such Letter of Credit must be acceptable to Bank in its sole discretion;
- (7) all other conditions in this Amendment to the issuance of such Letter of Credit shall have been satisfied;
- (8) immediately before and after the issuance of such Letter of Credit, no Event of Default shall have occurred and be continuing, and no event shall have occurred which, with the passage of time or notice, could constitute an Event of Default; and
- (9) the representations and warranties of Borrower contained in the Loan Agreement (as modified hereby) and the other Loan Documents shall be true and correct on and as of the date of issuance of such Letter of Credit.

Bank will honor any such request by Borrower for the issuance of a Letter of Credit if the foregoing conditions

(1) through (9) (collectively, the "LC Conditions") have been met as of the date of issuance of such Letter of Credit. Bank may choose to honor any such request for any other Letter of Credit but has no obligation to do so and may refuse to issue any other requested Letter of Credit for any reason which Bank in its sole discretion deems relevant.

For purposes hereof, (i) the term "LC Obligations" means, at the time in question, the sum of all Matured LC Obligations plus the maximum amounts which Bank might then or thereafter be called upon to advance under all Letters of Credit then outstanding, and (ii) the term "Matured LC Obligations" means all amounts paid by Bank on drafts or demands for payment drawn or made under as purported to be under any Letter of Credit, and all other amounts due and owing to Bank under any application by Borrower for any Letter of Credit to be issued by Bank (a "LC Application"), to the extent the same have not been repaid to Bank (with the proceeds of an Advance or otherwise).

**B. Requesting Letters of Credit.** Borrower must make written application for any Letter of Credit at least five (5) business days before the date on which Borrower desires for Bank to issue such Letter of Credit. By making any such written application, Borrower shall be deemed to have represented and warranted that the LC Conditions will be met as of the date of issuance of such Letter of Credit. Two (2) business days after the LC Conditions have been met (or if Bank otherwise desires to issue such Letter of Credit), Bank will issue such Letter of Credit at Bank's office in Dallas, Texas. If any provisions of any LC Application conflict with any provisions of this Amendment, the provisions of this Amendment shall govern and control.

#### **C. Reimbursement and Participations.**

(1) **Reimbursement by Borrower.** Each Matured LC Obligation shall constitute an Advance under the Revolving Credit Loan. To the extent the same has not been repaid to Bank (with the proceeds of an Advance under the Revolving Credit Loan or otherwise), Borrower promises to pay to Bank, or to Bank's order, on demand,

(i) the full amount of each Matured LC Obligation, whether such obligation accrues before or after the maturity date of the Revolving Credit Note, together with (ii) interest thereon at a rate per annum equal to the Applicable Rate for the Base Rate Balance (as such terms are defined in the Revolving Credit Note) until repaid in full; provided that after the maturity date of the Revolving Credit Note or following a default or an Event of Default under the Loan Agreement or the other Loan Documents, such interest shall accrue at the Default Rate (as such term is defined in the Revolving Credit Note).

(2) **Letter of Credit Advances.** If the beneficiary of any Letter of Credit makes a draft or other demand for payment thereunder, then Borrower may, during the interval between the making thereof and the honoring thereof by Bank, request Bank to make an Advance under the Revolving Credit Loan to Borrower in the amount of such draft or demand, which Advance shall be made concurrently with Bank's payment of such draft or demand and shall be immediately used by Bank to repay the amount of the resulting Matured LC Obligation. Such a request by Borrower shall be made in compliance with all of the provisions hereof.

**D. Letter of Credit Fees.** In consideration of Bank's issuance of any Letter of Credit, Borrower agrees to pay to Bank a letter of credit issuance fee at a rate equal to two percent (2.0%) per annum. Each such fee will be calculated based on the term and face amount of such Letter of Credit and the above applicable rate and will be payable upon issuance. In no event shall the issuance fee be less than \$500.00 for any Letter of Credit.

#### E. No Duty to Inquire.

(1) Drafts and Demands. Bank is authorized and instructed to accept and pay drafts and demands for payment under any Letter of Credit without requiring, and without responsibility for, any determination as to the existence of any event giving rise to said draft, either at the time of acceptance of payment or thereafter. Bank is under no duty to determine the proper identity of anyone presenting such a draft or making such a demand (whether by tested telex or otherwise) as the officer, representative or agent of any beneficiary under any Letter of Credit, and payment by Bank to any such beneficiary when requested by any such purported officer, representative or agent is hereby authorized and approved. Borrower agrees to hold Bank harmless and indemnified against any liability or claim in connection with or arising out of the subject matter of this section, WHICH INDEMNITY SHALL APPLY WHETHER OR NOT ANY SUCH LIABILITY OR CLAIM IS IN ANY WAY OR TO ANY EXTENT OWED, IN WHOLE OR IN PART, UNDER ANY CLAIM OR THEORY OF STRICT LIABILITY, OR ARE CAUSED, IN WHOLE OR IN PART, BY ANY NEGLIGENT ACT OR OMISSION OF ANY KIND BY BANK, provided only that Bank shall not be entitled to indemnification for that portion, if any, of any liability or claim which is proximately caused by its own individual gross negligence or willful misconduct, as determined in a final judgment.

(2) Extension of Letter of Credit Maturity. If the maturity of any Letter of Credit is extended by its terms or by Law or governmental action, if any extension of the maturity or time for presentation of drafts or any other modification of the terms of any Letter of Credit is made at the request of Borrower, or if the amount of any Letter of Credit is increased at the request of Borrower, this Amendment shall be binding upon Borrower with respect to such Letter of Credit as so extended, increased or otherwise modified, with respect to drafts and property covered thereby, and with respect to any action taken by Bank, or Bank's correspondents in accordance with such extension, increase or other modification.

(3) Transferees of Letters of Credit. If any Letter of Credit provides that it is transferable, Bank shall have no duty to determine the proper identity of anyone appearing as transferee of such Letter of Credit, nor shall Bank be charged with responsibility of any nature or character for the validity or correctness of any transfer or successive transfers, and payment by Bank to any purported transferee or transferees as determined by Bank is hereby authorized and approved, and Borrower further agrees to hold Bank harmless and indemnified against any liability or claim in connection with or arising out of the foregoing, WHICH INDEMNITY SHALL APPLY WHETHER OR NOT ANY SUCH LIABILITY OR CLAIM IS IN ANY WAY OR TO ANY EXTENT OWED, IN WHOLE OR IN PART, UNDER ANY CLAIM OR THEORY OF STRICT LIABILITY, OR ARE CAUSED, IN WHOLE OR IN PART, BY ANY NEGLIGENT ACT OR OMISSION OF ANY KIND BY BANK, provided only that Bank shall not be entitled to indemnification for that portion, if any, of any liability or claim which is proximately caused by its own individual gross negligence or willful misconduct, as determined in a final judgment. F. LC Collateral.

(1) Acceleration of LC Obligations. On the maturity date of the Revolving Credit Note, or if the Loans or either of them becomes immediately due and payable pursuant to the Loan Documents, then, unless Bank otherwise specifically elects to the contrary, all LC Obligations shall become immediately due and payable without regard to whether or not actual drawings or payments on the Letters of Credit have occurred, and Borrower shall be obligated to pay to Bank immediately an amount equal to the aggregate LC Obligations which are then outstanding. All amounts so paid shall first be applied to Matured LC Obligations and the remainder will be held by Bank as security for the remaining LC Obligations (all such amounts held as security for LC Obligations being herein collectively called "LC Collateral") until such LC Obligations become Matured LC Obligations, at which time such LC Collateral shall be applied to such Matured LC Obligations.

(2) Investment of LC Collateral. Pending application thereof, all LC Collateral shall be invested by Bank in such investments as Bank may elect. All interest on such investments shall be reinvested or applied to Matured LC Obligations. When all indebtedness evidenced by the Notes and all LC Obligations have been satisfied in full, all Letters of Credit have expired or been terminated, and all of Borrower's reimbursement obligations in connection therewith have been satisfied in full, Bank shall release any remaining LC Collateral. Borrower hereby assigns and grants to Bank a continuing security interest in all LC Collateral, all investments purchased with such LC Collateral, and all proceeds thereof to secure its Matured LC Obligations and its obligations under this Amendment, the Loan Agreement, the Notes and the other Loan Documents. Borrower further agrees that Bank shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State of Texas with respect to such security interest and that an Event of Default under the Loan Agreement (as modified hereby) shall constitute a default for purposes of such security interest.

(3) Payment of LC Collateral. When Borrower is required to provide LC Collateral for any reason and fails to do so on the day when required, Bank may without notice to Borrower provide such LC Collateral (whether by transfers from other accounts maintained with Bank or otherwise) using any available funds of Borrower.

#### 4. Payment of Fees.

(a) At such time as Borrower requests an Advance under the \$5,000,000.00 Note, Borrower shall remit to Bank cash funds equal to 0.5% of the amount of the Advance requested and shall pay a 0.5% fee in connection with each Advance thereafter funded under the \$5,000,000.00 Note, which sum shall be in payment of and further consideration for the funding of each such Advance.

(b) Contemporaneously with the execution and delivery of this Amendment, Borrower shall remit to Bank (i) cash funds in the amount of \$68,750.00, which sum shall be in payment of and as additional consideration for the modification of the Revolving Credit Loan, and for the extension of the maturity date of the Revolving Credit Loan as set forth herein.

(c) Bank's obligation to make any further Advances under the Revolving Credit Note are and shall be subject to and further conditioned upon

payment of the foregoing fees.

5. **Holliday Loan.** In connection with the Amendment to Loan Agreement entered into December 27, 2000, Bank consented to an unsecured loan from Holliday Fenoglio Fowler, L.P., a Texas limited partnership ("Holliday") to Stratus Properties, Inc. ("Stratus") in a principal amount not to exceed \$10,000,000.00 (the "Holliday Loan") upon certain terms and conditions. Borrower hereby represents and warrants that the following terms, covenants and restrictions have been satisfied and complied with at all times to date and shall continue to be satisfied and complied with throughout the term of the Holliday Loan until the Loans have been repaid in full and all other obligations of Borrower under the Loan Documents have been fully satisfied: (i) neither the stated principal amount of the Holliday Loan, nor the outstanding principal balance of the Holliday Loan, shall at any time exceed \$10,000,000; (ii) the proceeds of the Holliday Loan shall be used only for general corporate purposes of Stratus, including the use of such proceeds for the purpose of repurchasing the common stock of Stratus; (iii) the Holliday Loan is not and shall at no time be secured by any of the real property or other collateral securing the Loans or otherwise be secured by any Liens in contravention of any terms or provisions in the Loan Agreement (including, without limitation, Section 5.5 thereof), as modified hereby, or any of the other Loan Documents;

(iv) Bank's rights to receive, use and apply any and all proceeds and other amounts as set forth in Sections 2.18 and 2.19 of Addendum 2 and elsewhere in the Loan Agreement (as modified hereby) shall continue in full force and effect and shall not be affected in any manner by the Holliday Loan, and Holliday (and any subsequent holder of the Holliday Loan) shall have no rights to the receipt of any such proceeds, and Borrower shall not utilize any of such proceeds for repayment of or application to any of the indebtedness evidenced by the Holliday Loan; (v) without the prior written approval of Bank, no proceeds of the Loans shall be used by Borrower to repay any principal or other amounts then outstanding under the Holliday Loan, except that proceeds of the Revolving Credit Loan may be used by Borrower for the repayment of ordinary interest then due and payable under the Holliday Loan so long as no Event of Default exists and is continuing under the Loan Agreement (as modified hereby) or the other Loan Documents; (vi) without Bank's written consent, Stratus and Borrower shall not prepay any principal portion of the indebtedness under the Holliday Loan during the first eighteen (18) months of the term of the Holliday Loan; and (vii) the promissory note, loan agreement and other loan documents (if any) executed in connection with the Holliday Loan shall be on terms consistent with the foregoing and otherwise on terms reasonably acceptable to Bank, and shall not, without Bank's written consent, be amended or modified in any manner that (a) conflicts with any of the foregoing terms, covenants and restrictions, (b) increases the principal amount of the Holliday Loan to more than \$10,000,000.00, or (c) would cause a default or an event of default under the Loan Agreement (as modified hereby) or any of the other Loan Documents. Bank previously consented to Holliday assigning its interest in the Holliday Loan to American Select Portfolio Inc., a Minnesota corporation, on the condition that the foregoing terms are complied with. Borrower shall promptly provide Bank with a copy of any notice of default received by Stratus or Borrower from Holliday (or the then holder of the Holliday Loan) or delivered by Stratus or Borrower to Holliday (or the then holder of the Holliday Loan), in connection with the Holliday Loan. Any failure of Borrower or the Holliday Loan to comply with any of the foregoing conditions, covenants and restrictions set forth in items (i) through (vii) above shall be an Event of Default under the Loan Agreement (as modified hereby) and the other Loan Documents. Any default or event of default under the Holliday Loan which continues beyond any applicable grace or cure period thereunder shall also constitute an Event of Default under the Loan Agreement (as amended hereby) and the other Loan Documents.

6. **Title Insurance.** Contemporaneously with the execution and delivery hereof, the Borrower shall cause the Title Company to issue with respect to the mortgagee title policy previously issued to Bank in connection with the Loans (the "Title Policy"), the standard Texas Form T-38 Endorsement pursuant to Rule P-9B(3) of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (the "Title Manual"), and the Standard Texas Form T-33 Endorsement pursuant to Rule P-9B(6) of the Title Manual, all acceptable to Bank, confirming that the Title Policy has not been reduced or terminated by virtue of the terms and provisions of this Amendment and the other Loan Modification Documents (as defined below).

7. **Acknowledgment by Borrower.** Except as otherwise specified herein, the terms and provisions hereof shall in no manner impair, limit, restrict or otherwise affect the obligations of Borrower or any third party to Bank, as evidenced by the Loan Documents. Borrower hereby acknowledges, agrees and represents that (i) Borrower is indebted to Bank pursuant to the terms of the Notes as modified; (ii) the liens, security interests and assignments created and evidenced by the Security Instruments are, respectively, valid and subsisting liens, security interests and assignments of the respective dignity and priority recited in the Security Instruments; (iii) there are no claims or offsets against, or defenses or counterclaims to, the terms or provisions of the Security Instruments or the other Loan Documents, and the other obligations created or evidenced by the Security Instruments or the other Loan Documents; (iv) Borrower has no claims, offsets, defenses or counterclaims arising from any of Bank's acts or omissions with respect to the Mortgaged Property, the Security Instruments or the other Loan Documents or Bank's performance under the Security Instruments or the other Loan Documents or with respect to the Mortgaged Property; (v) the representations and warranties of Borrower contained in the Loan Agreement, the Security Instruments and the other Loan Documents are and remain true and correct as of the date hereof; and (vi) Bank is not in default and no event has occurred which, with the passage of time, giving of notice, or both, would constitute a default by Bank of Bank's obligations under the terms and provisions of the Loan Documents.

8. **No Waiver of Remedies.** Except as may be expressly set forth herein, nothing contained in this Amendment shall prejudice, act as, or be deemed to be a waiver of any right or remedy available to Bank by reason of the occurrence or existence of any fact, circumstance or event constituting a default under the Notes or the other Loan Documents.

9. **Effectiveness of the Security Instruments.** Except as expressly modified by the terms and provisions of this Second Amendment to Loan Agreement and by the prior Amendment to Loan Agreement, the Amendment to Promissory Note, and the Second Amendment to Promissory Note referenced above, and the Amendment to Revolving Credit Note and the Second Amendment to Revolving Credit Note referenced above, and the Modification Agreement and the Second Modification Agreement referenced above (collectively, the "Loan Modification

Documents"), each of the terms and provisions of the Loan Agreement, the Notes, the Security Instruments and the other Loan Documents are hereby ratified and shall remain in full force and effect; provided, however, that any reference in any of the Security Instruments to the Loans, the amounts constituting the Loans, any defined terms, or to any of the other Security Instruments shall be deemed, from and after the date hereof, to refer to the Loans, the amounts constituting the Loans, defined terms and to the Notes, the Loan Agreement, the Lien Instruments and such other Loan Documents, as modified by the Loan Modification Documents.

10. Costs and Expenses. Contemporaneously with the execution and delivery hereof, Borrower shall pay, or cause to be paid, all costs and expenses incident to the preparation, execution and recordation of the Loan Modification Documents and the consummation of the transaction contemplated hereby, including, but not limited to, recording fees, title insurance policy or endorsement premiums or other charges of the Title Company, and reasonable fees and expenses of legal counsel to Bank.

11. Additional Documentation. From time to time, Borrower shall execute or procure and deliver to Bank such other and further documents and instruments evidencing, securing or pertaining to the Loans or the Loan Documents as shall be reasonably requested by Bank so as to evidence or effect the terms and provisions hereof. Upon Bank's request, Borrower shall cause to be delivered to Bank an opinion of counsel, satisfactory to Bank as to form, substance and rendering attorney, opining to (i) the validity and enforceability of this Amendment and the other Loan Modification Documents and the terms and provisions hereof and thereof, and any other agreement executed in connection with the transaction contemplated hereby; (ii) the authority of Borrower, and any constituents of Borrower, to execute, deliver and perform its or their respective obligations under the Loan Documents, as modified by the Loan Modification Documents; and (iii) such other matters as reasonably requested by Bank.

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

13. Borrower's Reaffirmation. Borrower hereby reaffirms all of its obligations under the Notes (as amended), the Loan Agreement (as amended hereby), the Lien Instruments (as amended) and the other Loan Documents, and acknowledges that it has no claims, offsets or defenses with respect to the payment of sums due under the Notes (as amended), the Loan Agreement (as amended hereby), the Lien Instruments (as amended) or the other Loan Documents.

14. Continuing Effect; Ratification. Except as expressly amended and modified by this Amendment, the Loan Agreement shall remain unchanged and in full force and effect. The Loan Agreement, as modified by this Amendment, and all documents, assignments, transfers, liens and security rights pertaining to it, are hereby ratified, reaffirmed and confirmed in all respects as valid, subsisting and continuing in full force and effect. The Loan Agreement and this Amendment shall together comprise the Loan Agreement with respect to the Loans.

15. No Waiver. The execution and delivery of this Amendment shall in no way be deemed to be a waiver by Bank of any default or potential default by Borrower under the Loan Agreement or the other Loan Documents or of any rights, powers or remedies of Bank under the Loan Agreement or the other Loan Documents, and shall in no way limit, impair or prejudice Bank from exercising any past, present or future right, power or remedy available to it under the Loan Agreement and the other Loan Documents.

16. No Novation. It is the intent of the parties that this Amendment shall not constitute a novation and shall in no way limit, diminish, impair or adversely affect the lien priority of the Lien Instruments. All of the liens and security interests securing the Loans, including, without limitation, the liens and security interests created by the Lien Instruments, are hereby ratified, reinstated, renewed, confirmed and extended to secure the Loans and the Notes as modified.

17. Binding Effect. This Amendment shall be binding upon and shall inure to the benefit of Borrower and Bank, and their respective successors and assigns.

18. Governing Law. This Amendment shall be construed in accordance with and governed by the laws of the State of Texas.

19. Counterpart Execution. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

20. Notice of Final Agreement. This Amendment is the entire agreement between the parties with respect to modifications of documents provided for herein and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. THE NOTES, THE LOAN AGREEMENT, THIS AMENDMENT, THE LIEN INSTRUMENTS AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN PARTIES.**

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, Borrower and Bank have executed this Amendment to be effective as of the Amendment Date.

**BORROWER:**

**STRATUS PROPERTIES INC.,**  
a Delaware corporation

By: */s/ William H. Armstrong, III*  
-----  
Name: *William H. Armstrong, III*  
Title: *Chairman of the Board, President*  
*and Chief Executive Officer*

**STRATUS PROPERTIES OPERATING CO.,**  
L.P.,  
a Delaware limited partnership

By: STRS L.L.C.,  
a Delaware limited liability company,  
General Partner

By: Stratus Properties Inc.,  
a Delaware corporation,  
Sole Member

By: */s/ William H. Armstrong, III*  
-----  
Name: *William H. Armstrong, III*  
Title: *Chairman of the Board,*  
*President*  
*and Chief Executive Officer*

**CIRCLE C LAND CORP.,**  
a Texas corporation

By: */s/ William H. Armstrong, III*  
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Name: *William H. Armstrong, III*  
Title: *President*

**AUSTIN 290 PROPERTIES, INC.,**  
a Texas corporation

By: /s/William H. Armstrong, III

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Name: William H. Armstrong, III  
Title: President

**BANK:**

**COMERICA BANK-TEXAS,**  
a state banking association

By:  
Name:  
Title:

**CONSTRUCTION LOAN AGREEMENT**

This CONSTRUCTION LOAN AGREEMENT ("Agreement") is made and entered into as of the 11th day of June, 2001, by and between 7500 RIALTO BOULEVARD, L.P., a Texas limited partnership ("Borrower"), whose address is 98 San Jacinto Boulevard, Suite 220, Austin, Texas 78701, and COMERICA BANK-TEXAS, a state banking association ("Lender"), whose address is 1601 Elm Street, 2nd Floor, Dallas, Texas 75201, Attn: National Real Estate Services.

**ARTICLE I**

**DEFINITION OF TERMS**

I.1 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

**Advance:** A disbursement by Lender, whether by journal entry, deposit to Borrower's account, check to third party or otherwise of any of the proceeds of the Loan, any insurance proceeds or Borrower's Deposit.

**Affidavit of Commencement:** As defined in Section 5.13 hereof.

**Affidavit of Completion:** As defined in Section 5.14 hereof.

**Agreement:** This Loan Agreement, as the same may from time to time be amended or supplemented.

**Allocations:** The line items set forth in the Budget for which Advances of Loan proceeds will be made.

**Assignment of Leases:** The Assignment of Leases and Rents assigning to Lender Borrower's interest in all leases entered into for the Mortgaged Property and all rents and other rights and benefits to which Borrower is entitled under the terms of such leases.

**Borrower's Deposit:** Such cash amounts as Lender may deem necessary for Borrower to deposit with it in accordance with the provisions of Section 3.4 of this Agreement.

**Budget:** The budget which is set forth on Exhibit B attached hereto and incorporated herein by reference.

**Commencement Date:** March 29, 2001.

**Commitment Fee:** The sum of \$45,875.00 to be paid by Borrower to Lender in connection with funding for the Phase I Improvements, and if the Phase II Conditions are satisfied as evidenced by the execution of a modification agreement between Lender and Borrower, an additional commitment fee of \$45,875.00 shall be due from Borrower to Lender.

**Completion Date:** January 15, 2002, for completion of the shell portion of the Phase I Improvements.

**Construction Contract:** Collectively, all contracts and agreements entered into between Borrower and Contractor pertaining to the development, construction and completion of the Phase I Improvements.

**Contractor:** Zapalac/Reed Construction Company, L.C., together with any other person or entity with whom Borrower contracts for the development, construction and completion of the Phase I Improvements or any portion thereof.

**Cross-Default Agreement:** The Cross-Default and Cross-Collateralization Agreement of even date herewith executed by and among Lender, Borrower and Guarantor, and other parties whereby the Mortgaged Property and the collateral of Guarantor as more fully described therein which secures that certain \$30,000,000.00 loan from Lender to Guarantor as evidenced by a \$20,000,000.00 Promissory Note and a \$10,000,000.00 Revolving Credit Note, respectively, each dated December 16, 1999, and thereafter modified by Modification Agreement dated December 27, 2000, by and between Lender, Guarantor, Stratus Properties Operating Co., L.P., Circle C Land Corp., and Austin 290 Properties, Inc., are cross-collateralized and the \$30,000,000.00 loan and this loan are cross-defaulted.

**Deed of Trust:** The Amended and Restated Deed of Trust of even date herewith pursuant to which Borrower mortgages the Land to secure the Loan.

**Design Professional:** Susman Tisdale Gayle, together with any other person or entity with whom Borrower contracts for the providing of planning, design, architectural, engineering or other similar services relating to the Phase I Improvements, if any.

**Design Services Contract:** Collectively, all contracts and agreements entered into between Borrower and each Design Professional pertaining to the design, development and construction of the Phase I Improvements, if any.

**Disposition:** Any sale, lease (except as expressly permitted pursuant to the Loan Documents), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part, directly or indirectly, of the beneficial ownership interest in Borrower (if Borrower is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity); provided, however, a sale of the publicly traded stock of Stratus Properties, Inc. shall not constitute a Disposition under the terms of this Agreement.

**Draw Request:** a request by Borrower to Lender for an Advance in such form and containing such information as Lender may reasonably require.

**Environmental Law:** Any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or Improvements, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. & 9601 et seq.; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C. & 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. & 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. & 1101 et seq.; Clean Water Act ("CWA"), 33 U.S.C. & 1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C. & 7401 et seq.; Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. & 1251 et seq.; and any corresponding state laws or ordinances including the Texas Water Code ("TWC") & 26.001 et seq.; Texas Health & Safety Code ("THSC") & 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations.

**Event of Default:** Any happening or occurrence described in Section 8.1 of this Agreement.

**Financing Statement:** The financing statement or financing statements (on Standard Form UCC-1 or otherwise) executed and delivered by Borrower in connection with the Loan Documents.

**Governmental Authority:** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

**Governmental Requirements:** All statutes, laws, ordinances, rules, regulations, orders, writs, injunctions or decrees of any Governmental Authority applicable to Borrower, Guarantor or the Mortgaged Property.

**Guarantor:** STRATUS PROPERTIES, INC., a Delaware corporation.

**Guaranty:** That or those instruments of guaranty now or hereafter in effect from Guarantor to Lender guaranteeing the repayment of all or any part of the Loan, the satisfaction of, or continued compliance with, the covenants contained in the Loan Documents, or both.

**Hazardous Substance:** Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(11) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(11) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

**Improvements:** Collectively, the Phase I Improvements and the Phase II Improvements.

**Indebtedness:** As defined in the Deed of Trust.

**Initial Advance:** The Advance to be made at the time Borrower satisfies the conditions set forth in Sections 3.1 and 3.2 of this Agreement.

**Inspecting Person:** A representative of AECC will from time to time inspect the Phase I Improvements and the development of Phase II Improvements for the benefit of Lender.

**Land:** The real property or interest therein described in Exhibit A attached hereto and incorporated herein by this reference upon which the Phase I and Phase II Improvements are to be constructed.

Loan: The loan evidenced by the Note and governed by this Agreement.

Loan Amount: Up to a maximum amount of EIGHTEEN MILLION  
**THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$18,350,000.00).**

Loan Documents: The Note, the Deed of Trust, this Agreement, the Security Agreement, the Financing Statement, the Guaranty, the Assignment, and any and all other documents now or hereafter executed by the Borrower, Guarantor, or any other person or party in connection with the Loan, the indebtedness evidenced by the Note, or the covenants contained in this Agreement.

Loan Extension: That certain twelve (12) month extension of the Maturity Date of the Loan provided the conditions of Section 2.9 are satisfied.

Material Adverse Effect: Any material and adverse effect on  
(i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of the Borrower, taken as a whole, (ii) the value of the Mortgaged Property, (iii) the ability of Borrower or any Guarantor (or if the Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or such Guarantor) to pay and perform the Indebtedness or any other Obligations, or  
(iv) the validity, enforceability or binding effect of any of the Loan Documents.

Mortgaged Property: Collectively, the Land, the Phase I Improvements and the Phase II Improvements if constructed, and all other collateral covered by the Loan Documents.

Note: The promissory note dated as of even date herewith in the principal sum of the Loan Amount (together with all renewals and extensions thereof) executed and delivered by Borrower payable to the order of Lender, evidencing the Loan.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor, or any other person or party to the Loan Documents to Lender, the trustee of the Deed of Trust, or others as set forth in the Loan Documents, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Phase I Improvements: That certain 77,500 square foot office building, together with a parking deck providing approximately one hundred (100) covered spaces and all other amenities, to be constructed on the Mortgaged Property, all as more particularly described in the Plans and Specifications.

Phase II Improvements: A second office building consisting of 77,500 square feet of space to be constructed on the Mortgaged Property, together with all amenities, which shall be constructed in accordance with the Plans and Specifications and which shall be funded out of the loan proceeds of this Loan PROVIDED the conditions of Lender are met in accordance with this Agreement (the "Phase II Conditions").

Plans and Specifications: The plans and specifications for the development and construction of the Phase I Improvements, prepared by Borrower or the Design Professional and approved by Lender as required herein, by all applicable Governmental Authorities, by any party to a purchase or construction contract with a right of approval, all amendments and modifications thereof approved in writing by the same, and all other design, engineering or architectural work, test reports, surveys, shop drawings, and related items.

Security Agreement: The Security Agreement shall mean all security agreements, whether contained in the Deed of Trust, a separate security agreement or otherwise creating a security interest in all personal property and fixtures of Borrower (including replacements, substitutions and after-acquired property) now or hereafter located in or upon the Land or the Phase I and Phase II Improvements, or used or intended to be used in the operation thereof, to secure the Loan.

Soft Costs: All architectural, engineering, interior and landscape design, legal, consulting and other related fees, taxes on land and improvements, bond and insurance costs, and commitment fees, interest and other financing charges, all as set forth in the Approved Budget.

Subordinate Mortgage: Any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Mortgaged Property executed and delivered by Borrower, the lien of which is subordinate and inferior to the lien of the Deed of Trust.

Special Account: An account established by Borrower with Lender (in which Borrower shall at all times maintain a minimum balance of \$1,000.00) into which all Advances made directly to Borrower will be deposited.

Tenant Leases: All written leases or rental agreements by which Borrower, as landlord, grants to a tenant a leasehold interest in a portion of the leasable space within the Mortgaged Property.

Title Insurance: One or more title insurance commitments, binders or policies, as Lender may require, issued by the Title Company, on a

coinsurance or reinsurance basis (with direct access endorsement or rights) if and as required by Lender, in the maximum amount of the Loan insuring or committing to insure that the Deed of Trust constitutes a valid lien covering the Land and the Phase I and Phase II Improvements, subject only to those exceptions which Lender may approve.

Title Company: The Title Company (and its issuing agent, if applicable) issuing the Title Insurance, which shall be acceptable to Lender in its sole and absolute discretion.

## **ARTICLE II**

### **THE LOAN**

II.1 Agreement to Lend. Lender hereby agrees to lend up to but not in excess of the Loan Amount to Borrower, and Borrower hereby agrees to borrow such sum from Lender, all upon and subject to the terms and provisions of this Agreement, such sum to be evidenced by the Note. No principal amount repaid by Borrower may be reborrowed by Borrower. Borrower's liability for repayment of the interest on account of the Loan shall be limited to and calculated with respect to Loan proceeds actually disbursed to Borrower pursuant to the terms of this Agreement and the Note and only from the date or dates of such disbursements. After notice to Borrower, Lender may, in Lender's sole discretion, disburse Loan proceeds by journal entry to pay interest and financing costs and, following an uncured Event of Default, disburse Loan proceeds directly to third parties to pay costs or expenses required to be paid by Borrower pursuant to this Agreement. Loan proceeds disbursed by Lender by journal entry to pay interest or financing costs, and Loan proceeds disbursed directly by Lender to pay costs or expenses required to be paid by Borrower pursuant to this Agreement, shall constitute Advances to Borrower. Borrower hereby acknowledges and agrees that the maximum amount to be funded by Lender for the Phase I Improvements shall be \$9,175,000.00 and that no Advances shall be used by Borrower to pay for any development or construction costs for the Phase II Improvements unless and until the Phase II Conditions of Article VI hereafter have been fully satisfied and Lender and Borrower have entered into a modification agreement acceptable to the parties hereto whereby the commencement and completion dates for the Phase II Improvements and such other terms and conditions as Lender may require has been executed.

II.2 Advances. The purposes for which Loan proceeds are allocated and the respective amounts of such Allocations are set forth in the Budget, which Advances shall be limited to the value of the work in place as determined by the Inspecting Person.

II.3 Allocations. The Allocations shall be disbursed only for the purposes set forth in the Budget. Lender shall not be obligated to make an Advance for an Allocation set forth in the Budget to the extent that the amount of the Advance for such Allocation would, when added to all prior Advances for such Allocation, exceed the total of such Allocation as set forth in the Budget.

II.4 Limitation on Advances. To the extent that Loan proceeds disbursed by Lender pursuant to the Allocations are insufficient to pay all costs required for the acquisition, development, construction and completion of the Mortgaged Property, Borrower shall pay such excess costs with funds derived from sources other than the Loan. Under no circumstances shall Lender be required to disburse any proceeds of the Loan for the construction of the Phase II Improvements until the Phase II Conditions have been satisfied or in excess of the Loan Amount.

II.5 Reallocations. Lender reserves the right, at its option, to disburse Loan proceeds allocated to any of the Allocations for such other purposes or in such different proportions as Lender may, in its sole discretion, deem necessary or advisable. Borrower shall not be entitled to require that Lender reallocate funds among the Allocations.

II.6 Contingency Allocations. Any amount allocated in the Budget for "contingencies" or other non-specific purposes may, in the Lender's discretion, be disbursed by Lender to pay future contingent costs and expenses of maintaining, leasing and promoting the Mortgaged Property and such other costs or expenses as Lender shall approve. Under no circumstances shall the Borrower have the right to require Lender to disburse any amounts so allocated and Lender may impose such requirements and conditions as it deems prudent and necessary should it elect to disburse all or any portion of the amounts so allocated.

II.7 Withholding. Lender may withhold from an Advance or, on account of subsequently discovered evidence, withhold from a later Advance under this Agreement or require Borrower to repay to Lender the whole or any part of any earlier Advance to such extent as may be necessary to protect the Lender from loss on account of (i) defective work not remedied or requirements of this Agreement not performed, (ii) liens filed or reasonable evidence indicating probable filing of liens which are not bonded, (iii) failure of Borrower to make payments to the Contractor for material or labor, except as is permitted by the Construction Contract, or (iv) a reasonable doubt that the construction of the Phase I Improvements can be completed for a maximum amount of \$9,175,000.00, or, if the Phase II Conditions have been met, that the Phase II Improvements can be completed for the balance of the Loan Amount then undisbursed. When all such grounds are removed, payment shall be made of any amount so withheld because of them.

II.8 Loan Limitation. It is expressly agreed and understood that, in accordance with the Budget, to the extent an Advance is for construction costs of the Phase I Improvements, such Advance, except for the final payment under the Loan, shall not exceed ninety percent (90%) of the actual construction costs to which such Advance relates; and

II.9 Loan Extension. Provided the following conditions precedent shall have been satisfied, then Borrower shall be entitled to extend the maturity of the Note by an additional twelve (12) months. The conditions precedent to extension of the Note for the twelve (12) month period

are as follows:

- (a) Written notice of such extension shall be given by Borrower at least thirty (30) days prior to the expiration of the original Maturity Date (as defined in the Note) of the Note; and, with such notice, Borrower shall pay to the Lender, in cash, the Extension Fee of \$22,937.50 for the extension;
- (b) The Lender shall have received a current tenant estoppel certificate (which certificate shall be reasonably satisfactory to the Lender in form and substance) from each tenant who has entered into a Lease for a portion of the Mortgaged Property.
- (c) No Event of Default, or any event, circumstance or action of which the Borrower is aware (by notice from Lender or otherwise) and with the passage of time or failure to cure would give rise to an Event of Default, has occurred and is then existing;
- (d) No event, claim, liability or circumstance shall have occurred which, in the Lender's determination, could be expected to have or have had a Material Adverse Effect;
- (e) Written evidence being provided by Borrower and reasonably satisfactory to the Lender indicating that the Debt Coverage Ratio (as defined in Section 5.20 below) calculated for the three (3) month calendar period ending as of the last day of the then term (absent extension pursuant to this Section 2.9) shall be not less than 1.20X of the then outstanding Indebtedness; or Borrower shall have prepaid the Curative Amount pursuant to Section 5.20(d) below necessary to achieve a 1.20 Debt Coverage Ratio or pledged adequate liquid collateral pursuant to Section 5.20(e) below; and
- (f) Net Operating Income (as defined in Section 5.20 below) shall be a minimum of \$1,100,000.00.
- (g) Lender shall have received an updated appraisal of the Mortgaged Property, at Borrower's expense, prepared by an appraiser acceptable to Lender and based upon such standards as Lender may require.

### ARTICLE III

#### ADVANCES

III.1 Conditions to Initial Advance. The obligation of Lender to make the Initial Advance hereunder is subject to the prior or simultaneous occurrence of each of the following conditions:

- (a) Lender shall have received from Borrower all of the Loan Documents duly executed by Borrower and, if applicable, by Guarantor.
- (b) Lender shall have received certified copies of resolutions of Borrower, if Borrower is a corporation, or a certified copy of a consent of partners, if Borrower is a partnership, authorizing execution, delivery and performance of all of the Loan Documents and authorizing the borrowing hereunder, along with such certificates of existence, certificates of good standing and other certificates or documents as Lender may reasonably require to evidence Borrower's authority.
- (c) Lender shall have received true copies of all organization documents of Borrower, including all amendments or supplements thereto, if Borrower is a legal entity other than a corporation, along with such certificates or other documents as Lender may reasonably require to evidence Borrower's authority.
- (d) Lender shall have received evidence that the Mortgaged Property is not located within any designated flood plain or special flood hazard area; or evidence that Borrower has applied for and received flood insurance covering the Mortgaged Property in the amount of the Loan or the maximum coverage available to Lender.
- (e) Lender shall have received evidence of compliance with all Governmental Requirements.
- (f) Lender shall have received a full-size, single sheet copy of all recorded subdivision or plat maps of the Land approved (to the extent required by Governmental Requirements) by all Governmental Authorities, if applicable, and legible copies of all instruments representing exceptions to the state of title to the Mortgaged Property.
- (g) Lender shall have received policies of all-risk builder's risk insurance (non-reporting form) for the construction of the Phase I Improvements, owner's and contractor's liability insurance, workers' compensation insurance, and such other insurance as Lender may reasonably require, with standard endorsements attached naming Lender as the insured mortgagee or additional insured, whichever is applicable, such policies to be in form and content and issued by companies reasonably satisfactory to Lender, with copies, or certificates thereof, being delivered to Lender. In the event the Phase II Conditions are met, the requirements of this paragraph shall then also be in place for the Phase II Improvements.
- (h) Lender shall have received the Title Insurance, at the sole expense of Borrower.

(i) Lender shall have received from Borrower such other instruments, evidence and certificates as Lender may reasonably require, including the items indicated below:

- (1) Evidence that all the streets furnishing access to the Mortgaged Property have been dedicated to public use and installed and accepted by applicable Governmental Authorities.
- (2) A current survey of the Land prepared by a registered surveyor or engineer and certified to Lender, Borrower and the Title Company, in form and substance reasonably acceptable to Lender, showing all easements, building or setback lines, rights-of-way and dedications affecting said land and showing no state of facts objectionable to Lender.
- (3) Evidence reasonably satisfactory to Lender showing the availability of all necessary utilities at the boundary lines of the Land, including sanitary and storm sewer facilities, potable water, telephone, electricity, gas, and municipal services.
- (4) Evidence that the current and proposed use of the Mortgaged Property and the construction of the Phase I Improvements complies with all Governmental Requirements.
- (5) An opinion of counsel for Borrower, which counsel shall be satisfactory to Lender, to the effect that (i) Borrower possesses full power and authority to own the Mortgaged Property, to construct the Phase I Improvements and to perform Borrower's obligations hereunder; (ii) the Loan Documents have been duly authorized, executed and delivered by Borrower and, where required, by Guarantor, and constitute the valid and binding obligations of Borrower and Guarantor, not subject to any defense based upon usury, capacity of Borrower or otherwise; (iii) the Loan Documents are enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency and other laws affecting creditors' rights generally, and except that certain remedial provisions thereof may be limited by the laws of the State of Texas; (iv) to the knowledge of such counsel, there are no actions, suits or proceedings pending or threatened against or affecting Borrower, Guarantor or the Mortgaged Property, or involving the priority, validity or enforceability of the liens or security interests arising out of the Loan Documents, at law or in equity, or before or by any Governmental Authority, except actions, suits or proceedings fully covered by insurance or which, if adversely determined, would not substantially impair the ability of Borrower or Guarantor to pay when due any amounts which may become payable in respect to the Loan as represented by the Note; (v) to the knowledge of such counsel, neither Borrower nor Guarantor is in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority of which such counsel has knowledge; (vi) to the knowledge of such counsel, the consummation of the transactions hereby contemplated and the performance of this Agreement and the execution and delivery of the Guaranty will not violate or contravene any provision of any instrument creating or governing the business operations of Borrower or Guarantor and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement or other instrument to which Borrower or any Guarantor is a party or by which Borrower, Guarantor or the Mortgaged Property may be bound or affected; and (vii) such other matters as Lender may reasonably request.
- (6) A cost breakdown satisfactory to Lender showing the total costs, including, but not limited to, such related nonconstruction items as interest during construction, commitment, legal, design professional and real estate agents' fees, plus the amount of the Land cost and direct construction costs required to be paid to satisfactorily complete the Phase I Improvements, free and clear of liens or claims for liens for material supplied and for labor services performed.
- (7) Original or a copy of each proposed Construction Contract.
- (8) Original or a copy of each fully executed Design Services Contract.
- (9) Waiver of lien or lien subordination agreement(s) for the prior month's draw request executed by Contractor and by each contractor, laborer and suppliers furnishing labor or materials to the Mortgaged Property, in a form acceptable to Lender, together with Borrower's affidavit to Lender that all changes and expenses incurred to date for the Mortgaged Property have been paid in full.
- (10) A copy of the Plans and Specifications for the Phase I Improvements.
- (11) Building permit(s), grading permit(s) and all other permits required with respect to the construction of the Phase I Improvements.
- (12) Evidence that all applicable zoning ordinances and restrictive covenants affecting the Land permit the use for which the Phase I and Phase II Improvements are intended and have been or will be complied with.
- (13) Evidence of payment of required sums for insurance, taxes, expenses, charges and fees customarily required or recommended by Lender or any Governmental Authority, corporation, or person guaranteeing, insuring or purchasing, committing to guaranty, insure, purchase or refinance the Loan or any portion thereof.
- (14) A current financial statement of Guarantor certified by said Guarantor.
- (15) A Guaranty executed by the Guarantor.
- (16) A schedule of construction progress for the Phase I Improvements with the anticipated commencement and completion dates of each phase of construction and the anticipated date and amounts of each Advance for the same.

(17) Copies of all agreements entered into by Borrower or its operating partner pertaining to the development, construction and completion of the Phase I Improvements or pertaining to materials to be used in connection therewith, together with a schedule of anticipated dates and amounts of each Advance for the same.

(18) Environmental site assessment report with respect to the Mortgaged Property prepared by a firm of engineers approved by Lender, which report shall be satisfactory in form and substance to Lender, certifying that there is no evidence that any Hazardous Substance have been generated, treated, stored or disposed of on any of the Mortgaged Property and none exists on, under or at the Mortgaged Property.

(19) A soils and geological report covering the Land issued by a laboratory approved by Lender, which report shall be satisfactory in form and substance to Lender, and shall include a summary of soils test borings.

(20) Such other instruments, evidence or certificates as Lender may reasonably request.

(j) Lender shall have ordered and received, at Borrower's expense, an appraisal of the Mortgaged Property, prepared by an appraiser acceptable to Lender and presented and based upon such standards as may be required by Lender.

(k) Lender shall have received payment of \$45,875.00 of the Commitment Fee.

(l) Borrower shall have furnished evidence to Lender that it has contributed cash equity and/or the Land (at its fair market value) of an amount not less than \$3,431,177.00 in the aggregate.

III.2 Conditions to Advances. The obligation of Lender to make each Advance hereunder, including the Initial Advance, shall be subject to the prior or simultaneous occurrence or satisfaction of each of the following conditions:

(a) The Loan Documents shall be and remain outstanding and enforceable in all material respects in accordance with their terms, all as required hereunder.

(b) Lender shall have received a title report dated within two (2) days of the requested Advance from the Title Company showing no state of facts objectionable to Lender, including, but not limited to, a showing that title to the Land is vested in Borrower and that no claim for mechanics' or materialmen's liens has been filed against the Mortgaged Property.

(c) A monthly construction status report for the Phase I Improvements shall be prepared and submitted by Borrower to Lender on or before the tenth (10th) day of each month, commencing on or before May 10, 2001 and continuing for each month thereafter.

(d) The representations and warranties made by Borrower, as contained in this Agreement and in all other Loan Documents shall be true and correct as of the date of each Advance; and if requested by Lender, Borrower shall give to Lender a certificate to that effect.

(e) The covenants made by Borrower to Lender, as contained in this Agreement and in all other Loan Documents shall have been fully complied with, except to the extent such compliance may be limited by the passage of time or the completion of construction of the Phase I Improvements.

(f) Lender shall have received (i) a fully executed copy of each Construction Contract or copy thereof (to be dated after the date of recordation of the Deed of Trust); and (ii) a report of any changes, replacements, substitutions, additions or other modification in the list of contractors, subcontractors and materialmen involved or expected to be involved in the construction of the Phase I Improvements.

(g) Except in connection with the Initial Advance, Lender shall have received from Borrower a Draw Request for such Advance, completed, executed and sworn to by Borrower and Contractor, with the Inspecting Person's approval noted thereon, stating that the requested amount does not exceed ninety percent (90%) of the then unpaid cost of construction of the Phase I Improvements since the last certificate furnished hereunder; that said construction was performed in accordance with the Plans and Specifications in all material respects; and that, in the opinion of Borrower, Contractor and the Design Professional, construction of the Phase I Improvements can be completed on or before the Completion Date for an additional cost not in excess of the amount then available under the Loan. To the extent approved by Lender and included in the Budget, such expenses will be paid from the proceeds of the Loan.

(h) Except in connection with the Initial Advance, Borrower shall have furnished to Lender, from each contractor, subcontractor and materialman, including Contractor, an invoice, lien waiver and such other instruments and documents as Lender may from time to time specify, in form and content, and containing such certifications, approvals and other data and information, as Lender may reasonably require. The invoice, lien waiver and other documents shall cover and be based upon work actually completed or materials actually furnished and paid under a prior application for payment. The lien waiver for the prior month's draws of each contractor, subcontractor and materialman shall, if required by Lender, be received by Lender simultaneously with the making of any Advance hereunder for the benefit of such contractor, subcontractor or materialman.

(i) There shall exist no default or breach by any obligated party (other than Lender) under the Loan Documents.

(j) The Phase I Improvements shall not have been materially injured, damaged or destroyed by fire or other casualty, nor shall any part of the Mortgaged Property be subject to condemnation proceedings or negotiations for sale in lieu thereof.

(k) All work typically done at the stage of construction when the Advance is requested shall have been done, and all materials, supplies, chattels and fixtures typically furnished or installed at such stage of construction shall have been furnished or installed.

(l) All personal property not yet incorporated into the Phase I Improvements but which is to be paid for out of such Advance, must then be located upon the Land, secured in a method acceptable to Lender, and Lender shall have received evidence thereof, or if stored off-site, must be stored in a secured area and must be available for inspection by the Inspecting Person.

(m) Borrower shall have complied with all reasonable requirements of the Inspecting Person to insure compliance with the Plans and Specifications and all requirements of the Governmental Authorities.

(n) Except in connection with the Initial Advance, if the Phase I Improvements are being built for any party under a purchase or construction contract, then Lender at its election may require the approval of such purchaser before making any additional Advance.

(o) Borrower shall have fully completed (to the extent applicable), signed, notarized and delivered to Lender the Draw Request Form.

(p) If any portion of the Phase I Improvements are being built for a specific lessee, the approval by such lessee of the construction thereof with respect to the applicable portion of the Phase I Improvements subject to such lease shall be obtained and furnished to Lender, upon request therefor by Lender.

(q) Borrower shall have funded all Borrower equity requirements indicated on the Budget.

**III.3 Advance Not A Waiver.** No Advance of the proceeds of the Loan shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances, nor, in the event Borrower is unable to satisfy any such condition, shall any such Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default.

**III.4 Borrower's Deposit.** If at any time Lender shall in its sole discretion deem that the undisbursed proceeds of the Loan are insufficient to meet the costs of completing construction of the Phase I Improvements, plus any and all Soft Costs for the Phase I Improvements, Lender may refuse to make any additional Advances to Borrower hereunder until Borrower shall have deposited with Lender sufficient additional funds ("Borrower's Deposit") to cover the deficiency which Lender deems to exist. Such Borrower's Deposit will be disbursed by Lender to Borrower pursuant to the terms and conditions hereof as if they constituted a portion of the Loan being made hereunder. Borrower agrees upon fifteen (15) days written demand by Lender to deposit with Lender such Borrower's Deposit. Lender agrees that the Borrower's Deposit shall be placed in an interest-bearing account.

**III.5 Advance Not An Approval.** The making of any Advance or part thereof shall not be deemed an approval or acceptance by Lender of the work theretofore done. Lender shall have no obligation to make any Advance or part thereof after the happening of any Event of Default, but shall have the right and option so to do; provided that if Lender elects to make any such Advance, no such Advance shall be deemed to be either a waiver of the right to demand payment of the Loan, or any part thereof, or an obligation to make any other Advance.

**III.6 Time and Place of Advances.** All Advances are to be made at the office of Lender, or at such other place as Lender may designate; and Lender shall require five (5) days prior notice in writing before the making of any such Advance. Lender shall not be obligated to undertake any Advance hereunder more than once in any 30-day period. Except as set forth in this Agreement, all Advances are to be made by direct deposit into the Special Account. In the event Borrower shall part with or be in any manner whatever deprived of Borrower's interests in the Land, Lender may, at Lender's option but without any obligation to do so, continue to make Advances under this Agreement, and subject to all its terms and conditions, to such person or persons as may succeed to Borrower's title and interest and all sums so disbursed shall be deemed Advances under this Agreement and secured by the Deed of Trust and all other liens or security interests securing the Loan.

**III.7 Retainage.** An amount equal to ten percent (10%) of the cost of construction of the Phase I Improvements shall be retained by Lender and shall be paid over by Lender to Borrower, provided that no lien claims are then filed against the Mortgaged Property, when all of the following have occurred to the satisfaction of Lender with respect to the Phase I Improvements:

(a) Lender has received a completion certificate prepared by the Inspecting Person and executed by Borrower and the Design Professional stating that the Phase I Improvements have been completed in accordance with the Plans and Specifications, together with such other evidence that no mechanics or materialmen's liens or other encumbrances have been filed and remain in effect against the Mortgaged Property which have not been bonded to Lender's satisfaction and that all offsite utilities and streets, if any, have been completed to the satisfaction of Lender and any applicable Governmental Authority;

(b) each applicable Governmental Authority shall have duly inspected and approved the Phase I Improvements and issued the appropriate permit, license or certificate to evidence such approval;

(c) thirty (30) days shall have elapsed from the later of (i) the date of completion of the Phase I Improvements, as specified in Texas Property

Code &53.106, if the Affidavit of Completion provided for in this Agreement is filed within ten (10) days after such date of completion, or (ii) the date of filing of such Affidavit of Completion if such Affidavit of Completion is filed ten (10) days or more after the date of the completion of the Phase I Improvements as specified in Texas Property Code &53.106; and

(d) receipt by Lender of evidence satisfactory to Lender that payment in full has been made for all obligations incurred in connection with the construction and completion of all off-site utilities and improvements (if any) as required by Lender or any Governmental Authority.

III.8 No Third Party Beneficiaries. The benefits of this Agreement shall not inure to any third party, nor shall this Agreement be construed to make or render Lender liable to any materialmen, subcontractors, contractors, laborers or others for goods and materials supplied or work and labor furnished in connection with the construction of the Phase I Improvements or for debts or claims accruing to any such persons or entities against Borrower. Lender shall not be liable for the manner in which any Advances under this Agreement may be applied by Borrower, Contractor and any of Borrower's other contractors or subcontractors. Notwithstanding anything contained in the Loan Documents, or any conduct or course of conduct by the parties hereto, before or after signing the Loan Documents, this Agreement shall not be construed as creating any rights, claims or causes of action against Lender, or any of its officers, directors, agents or employees, in favor of any contractor, subcontractor, supplier of labor or materials, or any of their respective creditors, or any other person or entity other than Borrower. Without limiting the generality of the foregoing, Advances made to any contractor, subcontractor or supplier of labor or materials, pursuant to any requests for Advances, whether or not such request is required to be approved by Borrower, shall not be deemed a recognition by Lender of a third-party beneficiary status of any such person or entity.

## ARTICLE IV

### WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents to Lender, as of the date hereof and at all times during the term of the Agreement, as follows:

IV.1 Plans and Specifications. The Plans and Specifications for the Phase I Improvements are satisfactory to Borrower, are in compliance with all Governmental Requirements in all material respects and, to the extent required by Governmental Requirements or any effective restrictive covenant, have been approved by each Governmental Authority and/or by the beneficiaries of any such restrictive covenant affecting the Mortgaged Property.

IV.2 Governmental Requirements. No violation of any Governmental Requirements exists or will exist with respect to the Mortgaged Property and neither the Borrower nor the Guarantor is, nor will either be, in default with respect to any Governmental Requirements.

IV.3 Utility Services. All utility services of sufficient size and capacity necessary for the construction of the Phase I Improvements and the use thereof for their intended purposes are available at the property line(s) of the Land for connection to the Phase I Improvements, including potable water, storm and sanitary sewer, gas, electric and telephone facilities.

IV.4 Access. All roads necessary for the full utilization of the Phase I Improvements for their intended purposes have been completed and have been dedicated to the public use and accepted by the appropriate Governmental Authority.

IV.5 Financial Statements. Each financial statement of Borrower and Guarantor delivered heretofore, concurrently herewith or hereafter to Lender was and will be prepared in conformity with general accepted accounting principles, or other good accounting principles approved by Lender in writing, applied on a basis consistent with that of previous statements and completely and accurately disclose the financial condition of Borrower and Guarantor (including all contingent liabilities) as of the date thereof and for the period covered thereby, and there has been no material adverse change in either Borrower's or Guarantor's financial condition subsequent to the date of the most recent financial statement of Borrower and Guarantor delivered to Lender.

IV.6 Statements. No certificate, statement, report or other information delivered heretofore, concurrently herewith or hereafter by Borrower or Guarantor to Lender in connection herewith, or in connection with any transaction contemplated hereby, contains or will contain any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading, and same were true, complete and accurate as of the date hereof.

IV.7 Disclaimer of Permanent Financing. Borrower acknowledges and agrees that Lender has not made any commitments, either express or implied, to extend the term of the Loan past its stated maturity date or to provide Borrower with any permanent financing except as expressly set forth herein.

## ARTICLE V

### COVENANTS OF BORROWER

Borrower hereby unconditionally covenants and agrees with Lender, until the Loan shall have been paid in full and the lien of the Deed of Trust shall have been released, as follows:

V.1 Commencement and Completion. Borrower will cause the construction of the Phase I Improvements to commence by the Commencement Date and to be prosecuted with diligence and continuity and will complete the same in all material respects in accordance with the Plans and Specifications for the Phase I Improvements on or before the Completion Date, free and clear of liens or claims for liens for material supplied and for labor services performed in connection with the construction of the Phase I Improvements. If the Phase II Conditions as set forth in Article VI below are met, then Lender and Borrower shall agree upon a commencement date and a completion date for the Phase II Improvements, and the warranties and representations and covenants of Borrower shall be applicable to the Phase II Improvements as are set forth above with respect to the Phase I Improvements.

V.2 No Changes. Borrower will not amend, alter or change (pursuant to change order, amendment or otherwise) the Plans and Specifications for the Phase I Improvements unless the same shall have been approved in advance in writing by Lender, by all applicable Governmental Authorities, and by each surety under payment or performance bonds covering the Construction Contract or any other contract for construction of all or a portion of the Phase I Improvements; provided, however, Borrower shall have the right to approve change orders without Lender's consent which do not individually exceed \$25,000.00, or in the aggregate exceed \$100,000.00 for the Phase I Improvements..

V.3 Advances. Borrower will receive the Advances and will hold same as a trust fund for the purpose of paying the cost of construction of the Phase I Improvements and related nonconstruction costs related to the Mortgaged Property as provided for herein. Borrower will apply the same promptly to the payment of the costs and expenses for which each Advance is made and will not use any part thereof for any other purpose.

V.4 Lender's Expenses. Borrower will reimburse Lender for all out-of-pocket expenses of Lender, including reasonable attorneys' fees, incurred in connection with the preparation, execution, delivery, administration and performance of the Loan Documents.

V.5 Surveys. Borrower will furnish Lender at Borrower's expense (i) a foundation survey and (ii) an as-built survey, each prepared by a registered engineer or surveyor acceptable to Lender, showing the locations of the Phase I Improvements, and certifying that same are entirely within the property lines of Land, do not encroach upon any easement, setback or building line or restrictions, are placed in accordance with the Plans and Specifications, all Governmental Requirements and all restrictive covenants affecting the Land and/or the Phase I Improvements, and showing no state of facts objectionable to Lender. All surveys shall be in form and substance and from a registered public surveyor acceptable to Lender.

V.6 Defects and Variances. Borrower will, upon demand of Lender and at Borrower's sole expense, correct any structural defect in the Phase I Improvements or any variance from the Plans and Specifications for the Phase I Improvements which is not approved in writing by Lender.

V.7 Estoppel Certificates. Borrower will deliver to Lender, promptly after request therefor, estoppel certificates or written statements, duly acknowledged, stating the amount that has then been advanced to Borrower under this Agreement, the amount due on the Note, and whether any known offsets or defenses exist against the Note or any of the other Loan Documents.

V.8 Inspecting Person. Borrower will pay the fees and expenses of, and cooperate, with the Inspecting Person and will cause the Design Professional, the Contractor, each contractor and subcontractor and the employees of each of them to cooperate with the Inspecting Person and, upon request, will furnish the Inspecting Person whatever the Inspecting Person may consider necessary or useful in connection with the performance of the Inspecting Person's duties. Without limiting the generality of the foregoing, Borrower shall furnish or cause to be furnished such items as working details, Plans and Specifications and details thereof, samples of materials, licenses, permits, certificates of public authorities, zoning ordinances, building codes and copies of the contracts between such person and Borrower (if applicable). Borrower will permit Lender, the Inspecting Person and their representative to enter the Mortgaged Property for the purposes of inspecting same. Borrower acknowledges that the duties of the Inspecting Person run solely to Lender and that the Inspecting Person shall have no obligations or responsibilities whatsoever to Borrower, Contractor, the Design Professional, or to any of Borrower's or Contractor's agents, employees, contractors or subcontractors.

V.9 BROKERS. BORROWER WILL INDEMNIFY LENDER FROM CLAIMS OF BROKERS ARISING BY REASON OF THE EXECUTION HEREOF OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY TO THE EXTENT SUCH BROKER WAS CONTACTED OR HIRED BY BORROWER OR EITHER OF ITS JOINT VENTURERS.

V.10 Personalty and Fixtures. Borrower will deliver to Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Phase I Improvements or subject to the lien of the Deed of Trust or to the security interest of the Security Agreement.

V.11 Compliance with Governmental Requirements. Borrower will comply promptly with all Governmental Requirements.

V.12 Compliance with Restrictive Covenants. Borrower will comply with all restrictive covenants, if any, affecting the Mortgaged Property. Construction of the Phase I Improvements will be performed in a good and workmanlike manner, within the perimeter boundaries of the Land and within all applicable building and setback lines in accordance with all Governmental Requirements and the Plans and Specifications. There are, and will be, no structural defects in the Phase I Improvements.

V.13 Affidavit of Commencement. Borrower has filed in the appropriate records of the county in which the Land is situated, an Affidavit of

Commencement ("Affidavit of Commencement"), substantially in the form of Exhibit C attached hereto and incorporated herein by this reference, duly executed by Borrower and Contractor. The date of commencement of work set forth in such Affidavit of Commencement shall not be the date of or prior to the date on which the original Deed of Trust was recorded.

V.14 Affidavit of Completion. Borrower, within ten (10) days after construction of the Phase I Improvements has been completed, shall file in the appropriate records in the county in which the Land is situated an Affidavit of Completion ("Affidavit of Completion") in the form of Exhibit D attached hereto and incorporated herein by this reference.

V.15 Payment of Expenses. Borrower shall pay or reimburse to Lender all out-of-pocket costs and expenses relating to the Mortgaged Property and for which an Advance is made, including (without limitation), title insurance and examination charges, survey costs, insurance premiums, filing and recording fees, and other expenses payable to third parties incurred by Lender in connection with the consummation of the transactions contemplated by this Agreement.

V.16 Notices Received. Borrower will promptly deliver to Lender a true and correct copy of all notices received by Borrower from any person or entity with respect to Borrower, Guarantor, the Mortgaged Property, or any or all of them, which in any way relates to or affects the Loan or the Mortgaged Property.

V.17 Advertising by Lender. Borrower agrees that during the term of the Loan, Borrower shall erect and thereafter shall maintain on the Mortgaged Property one or more advertising signs furnished by Lender indicating that the financing for the Mortgaged Property has been furnished by Lender.

V.18 Approval to Lease Required. Borrower will obtain the prior written consent of Lender, which consent shall be granted or denied in Lender's sole discretion, as to any tenant lease ("Lease") proposed to be entered into by Borrower for space in the Phase I Improvements and will not thereafter materially modify any Lease as to the rental rate, term or any credit enhancement issue without Lender's prior consent. Lender agrees that it will respond to any request for review of a Lease, or change thereto, within ten (10) days of receipt of a written request from Borrower. Borrower agrees to submit to each tenant in connection with a proposed lease the Lender's required form of Subordination, Non-Disturbance and Attornment Agreement (the "SNDA"), substantially in the form attached hereto as Exhibit E.

V.19 Statements and Reports. Borrower agrees to deliver to Lender, during the term of the Loan and until the Loan has been fully paid and satisfied, the following statements and reports:

(a) Annual, audited financial statements of Borrower, each general partner of Borrower and Guarantor within ninety-five (95) days after the end of each calendar year, commencing in the calendar year 2002, prepared and certified to by Guarantor and, in the case of Borrower, the chief financial officer of the general partner of Borrower;

(b) Monthly marketing reports with detailed information as to leasing activities shall be provided Lender on or before the fifteenth (15th) day of the following month;

(c) Copies of all state and federal tax returns prepared with respect to Borrower, each Guarantor and the general partner of Borrower within ten (10) days of such returns being filed with the Internal Revenue Service or applicable state authority;

(d) Copies of extension requests or similar documents with respect to federal or state income tax filings for Borrower, each Guarantor and the general partner of Borrower within ten (10) days of such documents being filed with the Internal Revenue Service or applicable state authority;

(e) Annual operating statements with respect to the Mortgaged Property within ninety-five (95) days after the end of each calendar year, prepared in such form and detail as Lender may require and certified to by the chief financial officer of the general partner of Borrower;

(f) Monthly operating statements and a rent roll with respect to the Phase I Improvements, within thirty (30) days after the end of each calendar month, commencing upon lease-up of said property, prepared in such form and detail as Lender may reasonably require and in accordance with generally accepted accounting principles and certified to by the chief financial officer of the general partner of Borrower; and

(g) Such other reports and statements as Lender may reasonably require from time to time.

V.20 Debt Coverage. If, at any time after the commencement of the Loan Extension, the Borrower should maintain with respect to the Mortgaged Property a Debt Coverage Ratio (hereinafter defined) of less than 1.20, then Borrower must partially prepay the Note to the extent of the Curative Amount (hereinafter defined).

(a) Calculation. The Debt Coverage Ratio calculation shall be undertaken for each three (3) month calendar period (the "Calendar Period"). The term "Debt Coverage Ratio" means Net Operating Income (hereinafter defined) for a Calendar Period divided by Debt Service Requirements (hereinafter defined) with respect to such same Calendar Period. Borrower shall provide written evidence and documents to Lender indicating the calculations and backup information for the Debt Coverage Ratio for each Calendar Period within fifteen (15) days after the expiration of each such Calendar Period. The Lender shall be entitled to request and require such backup documentation, including but not limited to certified financial information, as may be reasonably required by the Lender in order to satisfy itself as to the correct calculation of the Debt

Coverage Ratio for any Calendar Period.

(b) Debt Service Requirements. For Calendar Periods occurring from and after Loan Extension, the term "Debt Service Requirements" shall mean all principal and interest payments with respect to the Loan which would be owing during such Calendar Period, based upon a hypothetical payment schedule calculated using the outstanding balance of the Note at Loan Extension, utilizing an interest rate based upon a level-payment mortgage amortization schedule of twenty-five (25) years and is the greater of: (i) two hundred (200) basis points over the ten (10) year Treasury Index, or (ii) eight and 50/100 percent (8.50%).

(c) Net Operating Income. The term "Net Operating Income" shall mean, for each applicable Calendar Period, the Gross Income less Operating Expenses, determined on a cash basis of accounting except as otherwise provided herein. As used herein, the following terms shall have the respective meanings set forth below.

(1) Gross Income. The term "Gross Income" for each Calendar Period shall mean rentals, revenues and other cash forms of consideration, received by, or paid to or for the account of or for the benefit of, Borrower resulting from or attributable to the operation, leasing and occupancy of the Mortgaged Property, determined on a cash basis (except as specified herein), including, but not limited to, the following:

- (i) rents by any lessees or tenants of the Mortgaged Property actually in occupancy;
- (ii) rents and receipts received by or for the benefit of Borrower with respect to the full or partial reimbursement of Operating Expenses from any lessee or tenant of the Mortgaged Property;
- (iii) installments of proceeds received by or for the benefit of Borrower in connection with any rental loss or business interruption insurance with respect to the Mortgaged Property calculated on an accrual basis;
- (iv) any other fees or rents collected by, for or on behalf of Borrower with respect to the leasing and operation of the Mortgaged Property;
- (v) any refunds of deposits for obtaining, using or maintaining utility services for all or any portion of the Mortgaged Property;
- (vi) interest, if any, earned by Borrower on security and other type deposits of and advance rentals paid by, any lessees or tenants of the Mortgaged Property; and
- (vii) the amount of any security and other type deposits and advance rentals relating to the Mortgaged Property which have been forfeited.

Notwithstanding anything included within the above definition of Gross Income, there shall be excluded from Gross Income the following: (i) any security or other deposits of lessees and tenants, unless and until the same actually are either applied to actual rentals owed or other charges or fees or forfeited; (ii) the proceeds of any financing or refinancing with respect to all or any part of the Mortgaged Property; (iii) the proceeds of any sale or other capital transaction (excluding leases for occupancy purposes only) of all or any portion of the Mortgaged Property; (iv) any insurance or condemnation proceeds paid with respect to the Mortgaged Property, except for rental loss or business interruption insurance; and (v) any insurance and condemnation proceeds applied in reduction of the principal of the Note in accordance with the terms of the Deed of Trust or the other Loan Documents; provided, however, nothing set forth herein shall in any manner imply the Lender's consent to a sale, refinancing or other capital transaction.

(2) Operating Expenses. The term "Operating Expenses" shall mean the greater of (a) the pro-forma expenses (as assumed in the Appraisal dated March 16, 2001, prepared by Frederick & Hornsby) allocable to the applicable period which shall be not less than \$7.99 per square foot for either the Phase I Improvements or the Phase II Improvements (inclusive of the management fee), or (b) those amounts actually incurred and paid with respect to the ownership, operation, management, leasing and occupancy of the Mortgaged Property, determined on a cash basis, except as otherwise specified herein, including, but not limited to, any and all of the following (but without duplication of any item):

- (i) ad valorem taxes calculated on an accrual basis (and not on the cash basis) of accounting for the Calendar Period; such accrual accounting for ad valorem taxes shall be based upon taxes actually assessed for the current calendar year, or if such assessment for the current calendar year has not been made, then until such assessment has been made (and with any retroactive adjustments for prior calendar months as may ultimately be needed when the actual assessments has been made) ad valorem taxes for the Calendar Period shall be estimated based on the last such assessment for the Mortgaged Property;
- (ii) foreign, U.S., state and local sales, use or other taxes, except for taxes measured by net income;
- (iii) installments of special assessments or similar charges against the Mortgaged Property calculated on an accrual basis;
- (iv) costs of utilities, air conditioning and heating for the Mortgaged Property to the extent not directly paid by lessees or tenants;
- (v) maintenance and repair costs for the Mortgaged Property;
- (vi) management fees provided, however, the amount of such management fees which may be charged hereunder shall not be less than the sum

of four percent (4%) of the Gross Income for each applicable calendar month;

(vii) all salaries, wages and other benefits to "on-site" employees of the Borrower (excluding all salaries, wages and other benefits of officers and supervisory personnel, and other general overhead expenses of Borrower and Borrower's property manager) employed in connection with the leasing, maintenance and management of the Mortgaged Property;

(viii) insurance premiums calculated on an accrual basis (and not on the cash basis) of accounting for the Calendar Period; such accrual accounting for insurance premiums shall be based upon the insurance premiums for the Mortgaged Property which was last billed to the Borrower, adjusted to an annualized premium if necessary;

(ix) to the extent not included in the Budget, costs, including leasing commissions, advertising and promotion costs, to obtain new leases or to extend or renew existing leases, and the costs of work performed and materials provided to ready tenant space in the Mortgaged Property for new or renewal occupancy under leases; provided, however, such costs shall be amortized throughout the period of the primary term of the applicable Lease;

(x) outside accounting and audit fees and costs and administrative expenses in connection with the direct operation and management of the Mortgaged Property; and

(xi) any payments, and any related interest thereon, to lessees or tenants of the Mortgaged Property with respect to security deposits or other deposits required to be paid to tenants but only to the extent any such security deposits and related interest thereon have been previously included in Gross Income.

Notwithstanding anything to the contrary as being included in the definition of Operating Expenses, there shall be excluded from Operating Expenses the following: (i) depreciation and any other non-cash deduction allowed to Borrower for income tax purposes, and (ii) costs incurred to obtain new leases or to extend or renew existing leases to the extent included in the Budget (i.e., leasing commissions, advertising and promotion costs, costs of work performed and material provided to ready tenant space in the Mortgaged Property).

(d) Curative Amount. In the event the Debt Coverage Ratio for any Calendar Period should be less than 1.20, and unless Borrower otherwise elects to pledge Additional Collateral as provided in Section 5.20(e) below, then, within fifteen (15) days after written notice from the Lender to Borrower, Borrower shall prepay a portion of the Note (the "Curative Amount") such that a minimum Debt Coverage Ratio of 1.20 or more is created based on (1) the actual Net Operating Income for the immediately preceding Calendar Period and (2) a revised Debt Service Requirement for the then current Calendar Period, determined as of the beginning of such Calendar Period, which results from a reamortization of such reduced balance of the Loan sufficient to fully amortize such Loan on a level-payment mortgage amortization basis in 25-years from the date of Loan Extension. Failure of Borrower to timely fund any required Curative Amount shall be deemed an "Event of Default" pursuant to this Agreement in addition to any other "Events of Default" specified herein.

(e) Pledge of Liquid Collateral. As an alternative to payment of the Curative Amount, Borrower shall be entitled, in the event the Debt Coverage Ratio for any Calendar Period should be determined to be less than 1.20, to pledge additional collateral to secure the Loan. The collateral to be so pledged to the Lender must be in the form of cash, certificates of deposit, letters of credit, stocks, bonds or other highly liquid investments acceptable in all respects to the Lender in its sole and absolute discretion (for purposes of this Agreement, the term "Additional Collateral" shall mean and refer to such additional collateral as shall be approved by the Lender and pledged pursuant to this Section 5.20[e]). The amount or value of the Additional Collateral required to be pledged shall be a function of the liquidation value of such collateral, as determined by the Lender in its reasonable discretion, and shall be such amount properly margined (i.e., the liquidation value) as would, if subtracted from the total amount of indebtedness evidenced and represented by the Note at such time, result in a Debt Coverage Ratio (calculated as provided above) equal to 1.20. In connection with such pledge of Additional Collateral, and not later than fifteen (15) days after written notice from the Lender to Borrower of Borrower's obligation to either pay the Curative Amount or to pledge the Additional Collateral, and provided that Borrower has not instead paid the Curative Amount required at that time pursuant to Section 5.20(d) above, Borrower shall execute and deliver to the Lender all pledge and security agreements, financing statements and other instruments, certificates and agreements as the Lender shall reasonably require, and shall deliver to the Lender the Additional Collateral or such instruments, certificates, acknowledgments, stock powers, authorizations, powers of attorney, consents and any and all other documentation, as executed by all appropriate parties as may be necessary to effectuate the collateral pledge and assignment of such collateral to the Lender, as the Lender and its counsel shall reasonably deem necessary or appropriate. If, after the Borrower's provision of Additional Collateral, the Debt Coverage Ratio should improve so as to be 1.20 or more for any Calendar Period (without taking into account the Additional Collateral), then Borrower shall be entitled to a release of the Additional Collateral. Borrower shall thereafter be required to either pay to Lender the Curative Amount or repledge Additional Collateral to the extent the required Debt Coverage Ratio should fail to be met during any subsequent Calendar Period and shall likewise be entitled to a re-release of any such subsequently pledged Additional Collateral consistent with the immediately preceding sentence.

## ARTICLE VI

### PHASE II CONDITIONS

VI.1 Agreement to Lend Additional Funds Under the Note. As set forth in Section 2.1 above, Lender has agreed to lend up to but not in excess

of \$9,175,000.00 in connection with construction of the Phase I Improvements. Lender hereby agrees to lend up to the additional sum of \$9,175,000.00 for construction of the Phase II Improvements, such total loan amount not to exceed the sum of \$18,350,000.00 as evidenced by the Note provided that the following conditions are satisfied by Borrower:

- (a) At least seventy-five percent (75%) of the rentable space in the Phase I Improvements has been leased on terms and conditions and with tenants approved by the Lender and written leases for said space have been executed and delivered to the Lender, together with a tenant estoppel certificate and subordination, non-disturbance and attornment agreement, each of which shall be reasonably satisfactory to the Lender in form and substance from each tenant who has entered into a lease for space in the Phase I Improvements;
- (b) No Event of Default, or any event, circumstance or action of which the Borrower is aware (by notice from Lender or otherwise), and with the passage of time or failure to cure would give rise to an Event of Default, has occurred and is then existing either under the Loan or under that certain \$30,000,000.00 loan from Lender to Stratus Properties, Inc. dated the 16th day of December, 1999, as modified on December 27, 2000, and which is secured by multiple properties located in Travis, Hays, Bexar, Denton and Harris Counties, Texas, or under that certain \$6,600,000.00 loan from Lender to Stratus 7000 West Joint Venture dated April 9, 1999, which is secured by that certain office building located in Travis County, Texas (the "\$6,600,000.00 Stratus 7000 West Loan"), said \$6,600,000.00 Stratus 7000 West Loan having been modified pursuant to Modification Agreement dated August 16, 1999, or under that certain \$7,700,000.00 loan from Lender to Stratus 7000 West Joint Venture dated February 24, 2000, which is secured by that certain office building located in Travis County, Texas (the "\$7,700,000.00 Stratus 7000 West Loan").
- (c) No event, claim, liability or circumstance shall have occurred which, in the Lender's determination, could be expected to have or have had a Material Adverse Effect;
- (d) There shall have been no material adverse change in the Austin, Texas office market;
- (e) Lender shall have received an updated appraisal in form and substance acceptable to the Lender;
- (f) The first Advance under the Note for the funding of the Phase II Improvements shall commence no later than twelve (12) months from the date hereof; and
- (g) Borrower shall have furnished evidence satisfactory to Lender that it has contributed additional equity (over and above the equity contributed in connection with the Phase I Improvements) of either cash or the Land (at its fair market value) in an amount of not less than \$2,918,632.00.

Provided the above conditions are satisfied within twelve (12) months from the date hereof, then Borrower and Lender agree that a modification agreement acceptable to the parties shall be entered into and which shall contain the following terms for the funds to be advanced for the Phase II Improvements as follows:

- (a) The interest rate for the funds to be advanced for the Phase II Improvements shall be the same as the interest rate set forth in the Note of even date herewith;
- (b) A 0.50% commitment fee shall be due and payable in advance for the \$9,175,000.00 in loan funds to be advanced for the Phase II Improvements;
- (c) The term of the indebtedness for the Phase II funds shall be twenty-four (24) months from funding, with one twelve (12) month extension option, such extension option to be granted provided the terms and conditions set forth in Section 2.9 above are also met for the Phase II Improvements;
- (d) The Cross-Default Agreement of even date herewith executed by Guarantor shall be in full force and effect and no Event of Default shall have occurred thereunder;
- (e) All of the conditions and requirements for advances as set forth in Section 3.1 above shall also be required for any advances requested for the Phase II Improvements, and all of the covenants of Borrower set forth in Article V above and the representations and warranties of Borrower set forth in Article IV above shall be reaffirmed and applicable to the Phase II Improvements.

VI.2 Borrower's Right to Purchase the Note. Borrower shall have the right, at Borrower's option by written notice to Lender, to purchase the Note, related loan documents and liens securing same (collectively, this "Construction Loan") from Lender for the sum of all funds advanced by Lender under the Note provided that Borrower has released, or simultaneously with such purchase, causes the release of any liens of Lender against the Mortgaged Property securing the Senior Debt (defined below) in accordance with the Release Provisions set forth in Addendum 3 of the Loan Agreement dated December 16, 1999 between Lender and Stratus Properties, Inc., Stratus Properties Operating Co., L.P., Circle C Land Corp., and Austin 290 Properties, Inc. (as amended from time to time, the "Stratus Loan Agreement"), which Stratus Loan Agreement sets forth the terms and conditions of a \$30,000,000.00 loan from Lender to said entities (the "Senior Debt") and which Senior Debt is currently secured by a prior lien on the Mortgaged Property pursuant to that certain prior deed of trust dated December 16, 1999 and recorded under Document No. 1999158707 of the Official Public Records of Travis County, Texas, as modified by instrument recorded under Document No. 2000204551 of the Official Public Records of Travis County, Texas. Borrower may assign its right to purchase the Construction Loan to a third

party. Any acquisition of the Construction Loan by Borrower, or its assignee, will be consummated pursuant to an endorsement to the Note and an assignment of note and liens in form reasonably acceptable to the Borrower and the Lender. Borrower and Lender will endeavor to consummate the sale and purchase of the Construction Loan within fourteen (14) days of Borrower's exercise of its option to acquire the Construction Loan.

## ARTICLE VII

### ASSIGNMENTS

VII.1 Assignment of Construction Contract. As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Construction Contract upon the following terms and conditions:

(a0 Borrower represents and warrants that the copy of each Construction Contract the Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b0 Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Construction Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Construction Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**

(c0 Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Construction Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH ACTION.**

(d0 Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Construction Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e0 Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Construction Contract, provided that Borrower shall not cancel or amend any Construction Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f0 This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

VII.2 Assignment of Plans and Specifications. As additional security for the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's right, title and interest in and to the Plans and Specifications and hereby represents and warrants to and agrees with Lender as follows:

(a0 Each schedule of the Plans and Specifications for the Phase I Improvements delivered or to be delivered to Lender is and shall be a complete and accurate description of such Plans and Specifications.

(b0 The Plans and Specifications for the Phase I Improvements are and shall be complete and adequate for the construction of the Phase I Improvements and there have been no modifications thereof except as described in such schedule. The Plans and Specifications shall not be modified without the prior consent of Lender.

(c0 Lender may use the Plans and Specifications for the Phase I Improvements for any purpose relating to the Phase I Improvements, including but not limited to inspections of construction and the completion of the Phase I Improvements.

(d0 Lender's acceptance of this assignment shall not constitute approval of the Plans and Specifications by Lender. Lender has no liability or obligation in connection with the Plans and Specifications and no responsibility for the adequacy thereof or for the construction of the Phase I Improvements contemplated by the Plans and Specifications for the Improvements. Lender has no duty to inspect the Phase I Improvements, and if Lender should inspect the Phase I Improvements, Lender shall have no liability or obligation to Borrower or any other party arising out of such inspection. No such inspection nor any failure by Lender to make objections after any such inspection shall constitute a representation by Lender that the Phase I Improvements are in accordance with the Plans and Specifications or any other requirement or constitute a waiver of

Lender's right thereafter to insist that the Phase I Improvements be constructed in accordance with the Plans and Specifications or any other requirement.

(e0 This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

**VII.3 Assignment of Design Services Contract.** As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Design Services Contract upon the following terms and conditions:

(a0 Borrower represents and warrants that the copy of each Design Services Contract the Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b0 Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Design Services Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Design Services Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**

(c0 Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Design Services Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH ACTION.**

(d0 Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Design Services Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e0 Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Design Services Contract, provided that Borrower shall not cancel or amend any Design Services Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f0 This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

**VII.4 Assignment of Proceeds.** Borrower hereby further collaterally transfers and assigns to Lender and acknowledges that Lender shall be entitled to receive (i) any and all sums which may be awarded and become payable to Borrower for condemnation of all or any portion of the Mortgaged Property, or (ii) the proceeds of any and all insurance upon the Mortgaged Property (other than the proceeds of general public liability insurance).

(a0 Borrower shall, upon request of Lender, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Lender to collect and receipt for any of such insurance or condemnation proceeds.

(b0 Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums.

(c0 Any sums so received by Lender pursuant to this Section 7.4 may, in Lender's sole discretion, be provided back to Borrower for restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements in documents as Lender may require, or shall be applied to the liquidation of the Indebtedness in accordance with the provisions of Section 7.4 of the Deed of Trust; provided, however, if Lender determines that the Mortgaged Property can be restored prior to the maturity date of the Note, and no Event of Default exists, then Lender will apply the proceeds to the restoration of the Mortgaged Property.

## **ARTICLE VIII**

### **EVENTS OF DEFAULT**

VIII.1 Events of Default. Each of the following shall constitute an "Event of Default" hereunder:

(a0 If Borrower shall fail, refuse, or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise and such default shall continue for a period of ten (10) calendar days beyond any due date.

(b0 If Borrower shall fail, refuse or neglect, or cause others to fail, refuse, or neglect to comply with, perform and discharge fully and timely any of the Obligations as and when called for, and such failure shall continue for a period of ten (10) days after receipt of written notice from Lender; provided, however, Borrower shall have the right to attempt to cure said default for up to an additional thirty (30) days if Borrower is diligently prosecuting a cure of said default.

(c0 If any representation, warranty, or statement made by Borrower, Guarantor, or others in, under, or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Indebtedness is determined by Lender to be false or misleading in any material respect as of the date hereof or thereof or shall become so at any time prior to the repayment in full of the Indebtedness.

(d0 If Borrower shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property which is not cured within any notice or grace period.

(e0 If an Event of Default occurs under either (i) the \$6,600,000.00 Stratus 7000 West Loan as defined in that certain Construction Loan Agreement dated April 9, 1999, between Lender and Stratus 7000 West Joint Venture; or under (ii) the \$7,700,000.00 Stratus 7000 West Loan as defined in that certain Construction Loan Agreement dated February 24, 2000, between Lender and Stratus 7000 West Joint Venture.

(f0 If Borrower (i) shall execute an assignment for the benefit of creditors or an admission in writing by Borrower of Borrower's inability to pay, or Borrower's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Borrower or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty (60) days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks of the benefit or benefits of any Debtor Relief Law (as defined in the Deed of Trust), or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Lender or the trustee under the Deed of Trust granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Borrower as a debtor under any Debtor Relief Law or seeks appointment of a receiver, trustee, custodian or liquidator of Borrower or of the Mortgaged Property, or any part thereof, or of any significant portion of Borrower's other property and (a) Borrower admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Borrower, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of filing.

(g0 If Borrower, any Constituent Party (as defined in the Deed of Trust), or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or become permanently disabled.

(h0 If Borrower creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions.

(i0 If Borrower makes a Disposition, without the prior written consent of Lender.

(j0 If any condemnation proceeding is instituted or threatened which would, in Lender's sole judgment, materially impair the use and enjoyment of the Mortgaged Property for its intended purposes.

(k0 If the Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Lender's judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.

(l0 If Lender reasonably determines that any event shall have occurred that could be expected to have a Material Adverse Effect.

(m0 If Borrower abandons all or any portion of the Mortgaged Property.

(n0 The occurrence of any event referred to in Sections 8.1(e) and (f) hereof with respect to any Guarantor, Constituent Party or other person or entity obligated in any manner to pay or perform the Indebtedness or Obligations, respectively, or any part thereof (as if such Guarantor, Constituent Party or other person or entity were the "Borrower" in such Sections).

(o0 An Event of Default as defined in any of the Loan Documents.

(p0 If the construction of the Phase I Improvements are, at any time, (i) discontinued due to acts or matters within Borrower's control for a period of ten (10) or more consecutive days, (ii) not carried on with reasonable dispatch, or (iii) not completed by the Completion Date; subject, however, to Force Majeure (hereinafter defined). "Force Majeure" shall be deemed to mean that Borrower is delayed or hindered in or prevented from the performance of any act required hereunder, not the failure of Borrower, by reason of (i) inability to procure materials or reasonable substitutes thereof, (ii) failure of power, (iii) civil commotion, riots, insurrection or war, (iv) unavoidable fire or other casualty, or acts of God (v) strikes, lockouts or other labor disputes (not by Borrower's employees), (vi) restrictive governmental law or regulation, (vii) delay by Lender of any act required of it hereunder, or (viii) any other causes of a like nature to the above listed

(i) through (vii). Financial inability on the part of Borrower shall not be construed a Force Majeure hereunder. Borrower agrees to use its best efforts to resume the construction of the Phase I Improvements as soon as practicable after the cause of such delay has been removed or cancelled.

(q0 If Borrower is unable to satisfy any condition of Borrower's right to receive Advances hereunder for a period in excess of thirty (30) days after Lender's refusal to make any further Advances.

(r0 If Borrower executes any conditional bill of sale, chattel mortgage or other security instrument covering any materials, fixtures or articles intended to be incorporated in the Phase I Improvements or the appurtenances thereto, or covering articles of personal property placed in the Phase I Improvements, or files a financing statement publishing notice of such security instrument, or if any of such materials, fixtures or articles are not purchased in such a manner that the ownership thereof vests unconditionally in Borrower, free from encumbrances, on delivery at the Phase I Improvements, or if Borrower does not produce to Lender upon reasonable demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which Borrower claims title to such materials, fixtures and articles.

(s0 If any levy, attachment or garnishment is issued, or if any lien for the performance of work or the supply of materials is filed, against any part of the Mortgaged Property and remains unsatisfied or unbonded following the earlier of (i) fifteen (15) days after the date of filing thereof or (ii) the requesting by Borrower of an Advance.

VIII.2 Remedies. Lender shall have the right, upon the happening of an Event of Default, in addition to any rights or remedies available to it under all other Loan Documents, to enter into possession of the Mortgaged Property and perform any and all work and labor necessary to complete the Phase I Improvements in accordance with the Plans and Specifications. All amounts so expended by Lender shall be deemed to have been disbursed to Borrower as Loan proceeds and secured by the Deed of Trust. For this purpose, Borrower hereby constitutes and appoints (which appointment is coupled with an interest and is therefore irrevocable) Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution to complete the Phase I Improvements in the name of Borrower, and hereby empowers Lender, acting as Borrower's attorney-in-fact, as follows: to use any funds of Borrower, including any balance which may be held in escrow, any Borrower's Deposit and any funds which may remain unadvanced hereunder, for the purpose of completing the Phase I Improvements in the manner called for by the Plans and Specifications; to make such additions and changes and corrections in the Plans and Specifications which shall be necessary or desirable to complete the Phase I Improvements in the manner contemplated by the Plans and Specifications; to continue all or any existing construction contracts or subcontracts; to employ such contractors, subcontractors, agents, design professionals and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property, or may be necessary or desirable for the completion of the work or the clearing of title; to execute all the applications and certificates in the name of Borrower which may be required by any construction contract; and to do any and every act with respect to the construction of the Phase I Improvements which Borrower could do in Borrower's own behalf. Lender, acting as Borrower's attorney-in-fact, shall also have power to prosecute and defend all actions or proceedings in connection with the Mortgaged Property and to take such action and require such performance as is deemed necessary.

## ARTICLE IX

### LENDER'S DISCLAIMERS - BORROWER'S INDEMNITIES

IX.1 No Obligation by Lender to Construct. Lender has no liability or obligation whatsoever or howsoever in connection with the Mortgaged Property or the development, construction or completion thereof or work performed thereon, and has no obligation except to disburse the Loan proceeds as herein agreed, Lender is not obligated to inspect the Phase I Improvements nor is Lender liable, and under no circumstances whatsoever shall Lender be or become liable, for the performance or default of any contractor or subcontractor, or for any failure to construct, complete, protect or insure the Mortgaged Property, or any part thereof, or for the payment of any cost or expense incurred in connection therewith, or for the performance or nonperformance of any obligation of Borrower or Guarantor to Lender nor to any other person, firm or entity without limitation. Nothing, including without limitation, any disbursement of Loan proceeds or the Borrower's Deposit nor acceptance of any document or instrument, shall be construed as such a representation or warranty, express or implied, on Lender's part.

IX.2 No Obligation by Lender to Operate. Any term or condition of any of the Loan Documents to the contrary notwithstanding, Lender shall not have, and by its execution and acceptance of this Agreement hereby expressly disclaims, any obligation or responsibility for the management, conduct or operation of the business and affairs of Borrower or Guarantor. Any term or condition of the Loan Documents which permits Lender to disburse funds, whether from the proceeds of the Loan, the Borrower's Deposit or otherwise, or to take or refrain from taking any action with respect to Borrower, Guarantor, the Mortgaged Property or any other collateral for repayment of the Loan, shall be deemed to

be solely to permit Lender to audit and review the management, operation and conduct of the business and affairs of Borrower and Guarantor, and to maintain and preserve the security given by Borrower to Lender for the Loan, and may not be relied upon by any other person. Further, Lender shall not have, has not assumed and by its execution and acceptance of this Agreement hereby expressly disclaims any liability or responsibility for the payment or performance of any indebtedness or obligation of Borrower or Guarantor and no term or condition of the Loan Documents, shall be construed otherwise. Borrower hereby expressly acknowledges that no term or condition of the Loan Documents shall be construed so as to deem the relationship between Borrower, Guarantor and Lender to be other than that of borrower, guarantor and lender, and Borrower shall at all times represent that the relationship between Borrower, Guarantor and Lender is solely that of borrower, guarantor and lender.

**BORROWER HEREBY INDEMNIFIES AND AGREES TO HOLD LENDER HARMLESS FROM AND AGAINST ANY COST, EXPENSE OR LIABILITY INCURRED OR SUFFERED BY LENDER AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY OBLIGATION OR RESPONSIBILITY OF LENDER FOR THE MANAGEMENT, OPERATION AND CONDUCT OF THE BUSINESS AND AFFAIRS OF BORROWER OR GUARANTOR, OR AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY LIABILITY OR RESPONSIBILITY OF LENDER FOR THE PAYMENT OR PERFORMANCE OF ANY INDEBTEDNESS OR OBLIGATION OF BORROWER OR GUARANTOR.**

**IX.3 INDEMNITY BY BORROWER. BORROWER HEREBY INDEMNIFIES LENDER AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM, AND HOLDS EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES TO WHICH ANY OF THEM MAY BECOME SUBJECT, INsofar AS SUCH LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES ARISE FROM OR RELATE TO ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY OR FROM ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING RELATING TO ANY OF THE FOREGOING.** Without intending to limit the remedies available to Lender with respect to the enforcement of its indemnification rights as stated herein or as stated in any Loan Document, in the event any claim or demand is made or any other fact comes to the attention of Lender in connection with, relating or pertaining to, or arising out of the transactions contemplated by this Agreement, which Lender reasonably believes might involve or lead to some liability of Lender, Borrower shall, immediately upon receipt of written notification of any such claim or demand, assume in full the personal responsibility for and the defense of any such claim or demand and pay in connection therewith any loss, damage, deficiency, liability or obligation, including, without limitation, legal fees and court costs incurred in connection therewith. In the event of court action in connection with any such claim or demand, Borrower shall assume in full the responsibility for the defense of any such action and shall immediately satisfy and discharge any final decree or judgment rendered therein. Lender may, in its sole discretion, make any payments sustained or incurred by reason of any of the foregoing; and Borrower shall immediately repay to Lender, in cash and not with proceeds of the Loan, the amount of such payment, with interest thereon at the Default Rate (as defined in the Note) from the date of such payment. Lender shall have the right to join Borrower as a party defendant in any legal action brought against Lender, and Borrower hereby consents to the entry of an order making Borrower a party defendant to any such action.

**IX.4 No Agency.** Nothing herein shall be construed as making or constituting Lender as the agent of Borrower in making payments pursuant to any construction contracts or subcontracts entered into by Borrower for construction of the Phase I Improvements or otherwise. The purpose of all requirements of Lender hereunder is solely to allow Lender to check and require documentation (including, but not limited to, lien waivers) sufficient to protect Lender and the Loan contemplated hereby. Borrower shall have no right to rely on any procedures required by Lender, Borrower hereby acknowledging that Borrower has sole responsibility for constructing the Phase I Improvements and paying for work done in accordance therewith and that Borrower has solely, on Borrower's own behalf, selected or approved each contractor, each subcontractor and each materialman, Lender having no responsibility for any such persons or entities or for the quality of their materials or workmanship.

## **ARTICLE X**

### **MISCELLANEOUS**

**X.1 Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, Borrower and Lender, and their respective heirs, legal representatives, successors and assigns; provided, however, that Borrower may not assign any rights or obligations under this Agreement without the prior written consent of Lender.

**X.2 Headings.** The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define or be used in construing the text of such Articles, Sections or Subsections.

**X.3 Survival.** The provisions hereof shall survive the execution of all instruments herein mentioned, shall continue in full force and effect until the Loan has been paid in full and shall not be affected by any investigation made by any party.

**X.4 APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. COURTS WITHIN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN BORROWER AND LENDER, WHETHER IN LAW OR EQUITY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT; AND VENUE IN ANY SUCH DISPUTE WHETHER IN FEDERAL OR STATE COURT SHALL BE LAID IN DALLAS COUNTY, TEXAS.**

X.5 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth on page 1 of this Agreement; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth herein.

X.6 Reliance by Lender. Lender is relying and is entitled to rely upon each and all of the provisions of this Agreement; and accordingly, if any provision or provisions of this Agreement should be held to be invalid or ineffective, then all other provisions hereof shall continue in full force and effect notwithstanding.

X.7 Participations. Lender shall have the right at any time and from time to time to grant participations in the Loan and Loan Documents. Each participant shall be entitled to receive all information received by Lender regarding the creditworthiness of Borrower, any of its principals and the Guarantor, including (without limitation) information required to be disclosed to a participant pursuant to Banking Circular 181 (Rev., August 2, 1984), issued by the Comptroller of the Currency (whether the participant is subject to the circular or not).

X.8 Maximum Interest. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (as defined in the Deed of Trust) (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to any of the Indebtedness, (ii) contracted for, charged or received by reason of Lender's exercise of the option to accelerate the maturity of the Note and/or any other portion of the Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of the Note and/or any of the other Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate (as defined in the Deed of Trust) shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of the Note and/or any of the other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against any other Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or other Indebtedness then owing by Borrower to Lender. All sums contracted for, charged or received by Lender for the use, forbearance or detention of any of the Indebtedness, including any portion of the debt evidenced by the Note shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or other Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or other Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Note and/or the other Indebtedness for so long as any Indebtedness is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note and/or any of the other Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

X.9 Controlling Document. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any other Loan Document, the terms and conditions of this Agreement shall control.

X.10 Construction of Agreement. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term, whether such is singular or plural in nature, as the context may suggest or require.

X.11 Counterpart Execution. To facilitate execution, this Agreement may be executed in one or more counterparts as may be convenient or required, with all such counterparts collectively constituting a single instrument.

X.12 NOTICE OF INDEMNIFICATION. BORROWER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS PURSUANT TO SECTIONS 5.9, 7.1, 7.3, 9.2 AND 9.3 HEREOF.

X.13 ENTIRE AGREEMENT. THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES HERETO.

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

**LENDER:**

**COMERICA BANK-TEXAS,**  
a state banking association

By: /s/ Shery R. Layne  
-----

Name: Shery R. Layne  
Title: Senior Vice President

**BORROWER:**

**7500 RIALTO BOULEVARD, L.P.,**  
a Texas limited partnership

By: STRS L.L.C.,  
a Delaware limited liability company,  
its General Partner

By: Stratus Properties, Inc.,  
a Delaware corporation,  
its Sole Member

By: /s/ William H. Armstrong, III  
-----

William H. Armstrong, III  
Chairman of the Board,  
President and Chief  
Executive Officer

## GUARANTY

This GUARANTY ("Guaranty") is executed as of June 11, 2001, by STRATUS PROPERTIES, INC., a Delaware corporation ("Guarantor"), for the benefit of COMERICA BANK-TEXAS, a state banking association ("Lender").

### WITNESSETH:

WHEREAS, Lender has entered into a Construction Loan Agreement ("Loan Agreement") of even date herewith, with 7500 Rialto Boulevard, L.P., a Texas limited partnership ("Borrower"), pursuant to which Borrower has executed that certain Promissory Note dated of even date herewith payable to the order of the Lender in the original principal amount of \$18,350,000.00 (together with all renewals, modifications, increases and extensions thereof, the "Note") under which Borrower has become indebted, and may from time to time be further indebted, to Lender with respect to a loan ("Loan") made or to be made by Lender to Borrower, up to the principal amount of the Note, to finance the cost of development and construction of an office building consisting of approximately 77,500 square feet of leasable space and related amenities and improvements specifically including, but not limited to, a parking garage with approximately one hundred (100) parking spaces (the "Phase I Improvements") upon certain real property (the "Land") located in Travis County, Texas, which Loan is secured by the liens and security interests of an Amended and Restated Deed of Trust (herein so called) upon the Land (as more fully defined in the Loan Agreement). Provided certain leasing criteria is met for the Phase I Improvements, said Loan will also finance the cost of development and construction of a second office building to be constructed on the Land also consisting of approximately 77,500 square feet of leasable space and related amenities and improvements (the "Phase II Improvements"), said Phase I Improvements and Phase II Improvements being more fully described in the Loan Agreement and collectively referred to herein as the "Project". Said Note is further evidenced, secured or governed by other instruments and documents executed in connection with the Loan of even date herewith (collectively the "Loan Documents"); and

WHEREAS, Lender is not willing to make the Loan, or otherwise extend credit, to Borrower unless Guarantor unconditionally guarantees payment to Lender of the Guaranteed Obligations (as herein defined) and unless Guarantor is willing to guarantee the completion of the Project; and

WHEREAS, Guarantor is the owner of a direct or indirect interest in Borrower, and Guarantor will directly benefit from Lender's making the Loan to Borrower.

WHEREAS, any capitalized terms not otherwise defined herein shall have the meaning ascribed to said term in the Loan Agreement.

NOW, THEREFORE, as an inducement to Lender to enter into the Loan Agreement and to make the Loan to Borrower as described therein, and to extend such additional credit as Lender may from time to time agree to extend, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

## ARTICLE I

### NATURE AND SCOPE OF GUARANTY

I.1 Guaranty of Obligation. Guarantor hereby irrevocably and unconditionally guarantees to Lender and its successors and assigns the PAYMENT and PERFORMANCE of the "Guaranteed Obligations" (as herein defined) as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as a primary obligor. As used herein, the term "Guaranteed Obligations" means the following Payment Obligations and Performance Obligations, together with Guarantor's indemnification of and agreement to hold Lender harmless from any and all losses, costs, liabilities or expenses incurred in connection with the construction of the Project, including but not limited to any losses, costs, liabilities or expenses of delay:

#### A. Payment Obligations:

(1) all principal, interest, attorneys' fees, commitment fees, liabilities for costs and expenses and other indebtedness, obligations and liabilities of Borrower to Lender at any time created or arising in connection with the Loan, or any amendment thereto or substitution therefor, including but not limited to all indebtedness, obligations and liabilities of Borrower to Lender arising under the Note or under the Loan Documents;

(2) all liabilities of Borrower for future advances, extensions of credit, sales on account or other value at any time given or made by Lender to Borrower arising under the Loan Documents whether or not the advances, credit or value are given pursuant to commitment;

(3) any and all other indebtedness, liabilities, obligations and duties of every kind and character of Borrower to Lender arising under the Loan Documents, whether now or hereafter existing or arising, regardless of whether such present or future indebtedness, liabilities, obligations or duties be direct or indirect, related or unrelated, liquidated or unliquidated, primary or secondary, joint, several, or joint and several, or fixed or contingent;

(4) any and all post-petition interest and expenses (including attorney's fees) whether or not allowed under any bankruptcy, insolvency, or other similar law; and

(5) all costs, expenses and fees, including but not limited to court costs and attorneys' fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Borrower to Lender described in items (1) through (4) of this Section.

**B. Performance Obligations.** If for any reason whatsoever, Borrower

(i) fails or neglects to complete the Project within the time specified therefor in the Loan Agreement, including, but not limited to paying for all permits, certificates, tap fees, and other costs of compliance with Governmental Requirements (as defined in the Loan Agreement) and in compliance with all governmental or quasi-governmental agencies and the costs of all bonding, insurance, and other expenses related to such construction, (ii) fails to prosecute with diligence and continuity the construction of the Project in accordance with the Loan Agreement, which Project shall specifically include, but not be limited to, all tenant finish-out which is required to be completed by Borrower under the terms of any Tenant Leases (as defined in the Loan Agreement) during the term of the Loan and obtaining and paying for certificates of occupancy for the Project issued by the City of Austin, (iii) fails to pay all bills and obtain all lien waivers and releases in connection with such construction as required by the Loan Agreement, (iv) fails or neglects to take such action as may be required to enforce the rights of Stratus Properties Operating Co. under the Austin Water Agreement (as defined in the Loan Agreement) or fails to comply with the requirements under the Loan Agreement as to the Borrower's Deposit (as defined in the Loan Agreement), (v) commits or permits to exist an event of default under any one or more of the Loan Documents, or (vi) is unable to satisfy any condition precedent to obtaining an advance of the Loan proceeds under the Loan Agreement, then Lender, in addition to Lender's other rights, remedies and recourses whether existing hereunder, under the Loan Documents, or otherwise, may proceed under this paragraph. In any such event, within five (5) days from the date Lender notifies Guarantor of Borrower's failure to satisfy any condition enumerated in the first sentence of this paragraph, Guarantor agrees, at Guarantor's sole cost and expense, to diligently pursue the completion of construction of the Project within the time and in the manner specified in the Loan Agreement and shall include, but not be limited to, the obligation to

(i) pay for all permits, certificates, tap fees and other costs of compliance with Governmental Requirements (as defined in the Loan Agreement) and in compliance with all governmental or quasi-governmental agencies and the costs of all bonding, insurance, and other expenses related to such construction, which construction shall specifically include, but not be limited to, all tenant finish-out which is required to be completed by Borrower under the terms of any Tenant Leases and to obtain and pay for certificates of occupancy for the Project issued by the City of Austin; (ii) pay all bills and obtain all lien waivers and releases in connection with such construction as is required by the Loan Agreement; and (iii) take such action as is necessary to enforce Stratus Properties Operating Co.'s right under the Austin Water Agreement and to deposit such sums with Lender as may be required for Borrower's Deposit. PROVIDED, HOWEVER, in the event the Phase II Conditions (as defined in the Loan Agreement) are not met and Lender elects not to fund the Phase II Improvements, then, for purposes of this Guaranty, the Performance Obligations of Guarantor shall mean the Phase I Improvements only, and the definition of "Project" shall mean the Phase I Improvements only.

**I.2 Nature of Guaranty.** This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance and not a guaranty of collection. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after (if Guarantor is a natural person) Guarantor's death (in which event this Guaranty shall be binding upon Guarantor's estate and Guarantor's legal representatives and heirs). The fact that at any time or from time to time the Guaranteed Obligations may be increased, reduced or paid in full shall not release, discharge or reduce the obligation of Guarantor to Lender with respect to indebtedness or obligations of Borrower thereafter incurred (or other Guaranteed Obligations thereafter arising) under the Note or otherwise. This Guaranty may be enforced by Lender and any subsequent holder of the Guaranteed Obligations and shall not be discharged by the assignment or negotiation of all or part of the Guaranteed Obligations.

**I.3 Lender's Additional Rights and Remedies.** If Guarantor shall fail to perform Guarantor's Obligations, Lender shall have the following rights and remedies in addition to any other rights and remedies hereunder or under the Loan Documents:

(i) If such failure of Guarantor occurs after any trustee's sale or foreclosure and/or sale of the property or collateral covered by the Loan Documents, Lender shall have an immediate right to obtain from Guarantor damages in an amount which is equal to the sum necessary to complete construction of the Project as such sum may be established by construction contracts, appraisals, or other competent evidence and including any additional costs incurred due to any delay in construction caused by Borrower or Guarantor or any need to correct work improperly or incompletely performed, without any necessity of completing or beginning actual construction of the Project, less the sum equal to the undisbursed balance of the Loan less interest accruing with respect to the Loan and any expenses incurred by Lender in connection with any trustee's sale or foreclosure and/or sale of all or any of the property or collateral covered by the Loan Documents, and Lender shall have an immediate right to obtain judgment against Guarantor in such amount and Lender may also exercise all remedies available under the laws of the State of Texas for action on a matured contractual indebtedness.

(ii) Regardless of whether such failure of Guarantor occurs before or after any trustee's sale or foreclosure and/or sale of the property or collateral covered by the Loan Documents, Lender, at Lender's sole option, shall have the right, but shall have no obligation, to complete construction of the Project in the manner specified in the Loan Agreement by or through any agent, contractor or subcontractor of its selection and to recover from Guarantor as damages the amount of any and all expenditures made by Lender in connection with such completion and including any additional costs incurred due to any delay in construction caused by Borrower or Guarantor or any need to correct work improperly or incompletely performed.

**I.4 Guaranteed Obligations Not Reduced by Offset.** The Guaranteed Obligations and the liabilities and obligations of Guarantor to Lender

hereunder, shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Borrower, or any other party, against Lender or against payment of the Guaranteed Obligations, whether such offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise. Without limiting the foregoing or the Guarantor's liability hereunder, to the extent that Lender advances funds or extends credit to Borrower, and does not receive payments or benefits thereon in the amounts and at the times required or provided by applicable agreements or laws, Guarantor is absolutely liable to make such payments of the Guaranteed Obligations to (and confer such benefits on) Lender, on a timely basis.

I.5 Payment by Guarantor. If all or any part of the Guaranteed Obligations shall not be punctually paid when due, whether at maturity or earlier by acceleration or otherwise, Guarantor shall, immediately upon demand by Lender, and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity, or any other notice whatsoever, pay in lawful money of the United States of America, the amount due on the Guaranteed Obligations to Lender at Lender's address as set forth herein. Such demand(s) may be made at any time coincident with or after the time for payment of all or part of the Guaranteed Obligations, and may be made from time to time with respect to the same or different items of Guaranteed Obligations. Such demand shall be deemed made, given and received in accordance with the notice provisions hereof.

I.6 No Duty to Pursue Others. It shall not be necessary for Lender (and Guarantor hereby waives any rights which Guarantor may have to require Lender), in order to enforce such payment by Guarantor, first to (i) institute suit or exhaust its remedies against Borrower or others liable on the Guaranteed Obligations or any other person, (ii) enforce Lender's rights against any collateral which shall ever have been given to secure the Guaranteed Obligations, (iii) enforce Lender's rights against any other guarantors of the Guaranteed Obligations, (iv) join Borrower or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty, (v) exhaust any remedies available to Lender against any collateral which shall ever have been given to secure the Guaranteed Obligations, or (vi) resort to any other means of obtaining payment of the Guaranteed Obligations. Lender shall not be required to mitigate damages or take any other action to reduce, collect or enforce the Guaranteed Obligations.

I.7 Waivers. Guarantor agrees to the provisions of the Loan Documents, and hereby waives notice of (i) any loans or advances made by Lender to Borrower, (ii) acceptance of this Guaranty, (iii) any amendment or extension of the Note or of any other Loan Documents, (iv) the execution and delivery by Borrower and Lender of any other loan or credit agreement or of Borrower's execution and delivery of any promissory notes or other documents arising under the Loan Documents or in connection with the Project, (v) the occurrence of any breach by Borrower or Event of Default (as defined in the Loan Documents), (vi) Lender's transfer or disposition of the Guaranteed Obligations, or any part thereof, (vii) sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral for the Guaranteed Obligations, (viii) protest, proof of non-payment or default by Borrower, or (ix) any other action at any time taken or omitted by Lender, and, generally, all demands and notices of every kind in connection with this Guaranty, the Loan Documents, any documents or agreements evidencing, securing or relating to any of the Guaranteed Obligations and the obligations hereby guaranteed. The parties intend that Guarantor shall not be considered a "debtor" as defined in Tex. Bus. & Com. Code Ann. & 9.105, as amended (and any successor statute thereto).

I.8 Payment of Expenses. In the event that Guarantor should breach or fail to timely perform any provisions of this Guaranty, Guarantor shall, immediately upon demand by Lender, pay Lender all costs and expenses (including court costs and attorneys' fees) incurred by Lender in the enforcement hereof or the preservation of Lender's rights hereunder. The covenant contained in this Section shall survive the payment of the Guaranteed Obligations.

I.9 Effect of Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, or any judgment, order or decision thereunder, Lender must rescind or restore any payment, or any part thereof, received by Lender in satisfaction of the Guaranteed Obligations, as set forth herein, any prior release or discharge from the terms of this Guaranty given to Guarantor by Lender shall be without effect, and this Guaranty shall remain in full force and effect. It is the intention of Borrower and Guarantor that Guarantor's obligations hereunder shall not be discharged except by Guarantor's performance of such obligations and then only to the extent of such performance.

I.10 Waiver of Subrogation, Reimbursement and Contribution. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor hereby unconditionally and irrevocably waives, releases and abrogates any and all rights it may now or hereafter have under any agreement, at law or in equity (including, without limitation, any law subrogating the Guarantor to the rights of Lender) to assert any claim against or seek contribution, indemnification or any other form of reimbursement from Borrower or any other party liable for payment of any or all of the Guaranteed Obligations for any payment made by Guarantor under or in connection with this Guaranty or otherwise until the Loan is paid in full.

I.10 "Borrower". The term "Borrower" as used herein shall include any new or successor corporation, association, partnership (general or limited), joint venture, trust or other individual or organization formed as a result of any merger, reorganization, sale, transfer, devise, gift or bequest of Borrower or any interest in Borrower.

## ARTICLE II

### EVENTS AND CIRCUMSTANCES NOT REDUCING OR DISCHARGING GUARANTOR'S OBLIGATIONS

Guarantor hereby consents and agrees to each of the following, and agrees that Guarantor's Obligations under this Guaranty shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any common law, equitable, statutory or other rights (including without limitation rights to notice) which Guarantor might otherwise have as a result of or in connection with any of the following:

II.1 Modifications. Any renewal, extension, increase, modification, alteration or rearrangement of all or any part of the Guaranteed Obligations, Note, Loan Documents, or other document, instrument, contract or understanding between Borrower and Lender, or any other parties, pertaining to the Guaranteed Obligations or any failure of Lender to notify Guarantor of any such action.

II.2 Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Lender to Borrower.

II.3 Condition of Borrower or Guarantor. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Borrower, Guarantor or any other party at any time liable for the payment of all or part of the Guaranteed Obligations; or any dissolution of Borrower or Guarantor, or any sale, lease or transfer of any or all of the assets of Borrower or Guarantor, or any changes in the shareholders, partners or members of Borrower or Guarantor; or any reorganization of Borrower or Guarantor.

II.4 Invalidity of Guaranteed Obligations. The invalidity, illegality or unenforceability of all or any part of the Guaranteed Obligations, or any document or agreement executed in connection with the Guaranteed Obligations, for any reason whatsoever, including without limitation the fact that (i) the Guaranteed Obligations, or any part thereof, exceeds the amount permitted by law, (ii) the act of creating the Guaranteed Obligations or any part thereof is ultra vires, (iii) the officers or representatives executing the Note or the other Loan Documents or otherwise creating the Guaranteed Obligations acted in excess of their authority, (iv) the Guaranteed Obligations violates applicable usury laws, (v) the Borrower has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Guaranteed Obligations wholly or partially uncollectible from Borrower, (vi) the creation, performance or repayment of the Guaranteed Obligations (or the execution, delivery and performance of any document or instrument representing part of the Guaranteed Obligations or executed in connection with the Guaranteed Obligations, or given to secure the repayment of the Guaranteed Obligations) is illegal, uncollectible or unenforceable, or (vii) the Note or any of the other Loan Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other person be found not liable on the Guaranteed Obligations or any part thereof for any reason.

II.5 Release of Obligors. Any full or partial release of the liability of Borrower on the Guaranteed Obligations, or any part thereof, or of any co-guarantors, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Guaranteed Obligations, or any part thereof, it being recognized, acknowledged and agreed by Guarantor that Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support of any other party, and Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other parties will be liable to pay or perform the Guaranteed Obligations, or that Lender will look to other parties to pay or perform the Guaranteed Obligations.

II.6 Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Guaranteed Obligations.

II.7 Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including without limitation negligent, willful, unreasonable or unjustifiable impairment) of any collateral, property or security, at any time existing in connection with, or assuring or securing payment of, all or any part of the Guaranteed Obligations.

II.8 Care and Diligence. The failure of Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security, including but not limited to any neglect, delay, omission, failure or refusal of Lender (i) to take or prosecute any action for the collection of any of the Guaranteed Obligations or (ii) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon any security therefor, or (iii) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Obligations.

II.9 Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Guaranteed Obligations, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by Guarantor that Guarantor is not entering into this Guaranty in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the Guaranteed Obligations.

II.10 Offset. The Note, the Guaranteed Obligations and the liabilities and obligations of Guarantor to Lender hereunder, shall not be reduced, discharged or released because of or by reason of any existing or future right of offset, claim or defense of Borrower against Lender, or any other party, or against payment of the Guaranteed Obligations, whether such right of offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise.

II.11 Merger. The reorganization, merger or consolidation of Borrower into or with any other corporation or entity.

II.12 Preference. Any payment by Borrower to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to Borrower or someone else.

II.13 Other Actions Taken or Omitted. Any other action taken or omitted to be taken with respect to the Loan Documents, the Guaranteed Obligations, or the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to pay the Guaranteed Obligations pursuant to the terms hereof, it is the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever, whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Guaranteed Obligations.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES**

To induce Lender to enter into the Loan Documents and extend credit to Borrower, Guarantor represents and warrants to Lender as follows:

III.1 Benefit. Guarantor is an affiliate of Borrower, is the owner of a direct or indirect interest in Borrower, and has received, or will receive, direct or indirect benefit from the making of this Guaranty with respect to the Guaranteed Obligations.

III.2 Familiarity and Reliance. Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of the Borrower and is familiar with the value of any and all collateral intended to be created as security for the payment of the Note or Guaranteed Obligations; however, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty.

III.3 No Representation by Lender. Neither Lender nor any other party has made any representation, warranty or statement to Guarantor in order to induce the Guarantor to execute this Guaranty.

III.4 Guarantor's Financial Condition. As of the date hereof, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is, and will be, solvent, and has and will have assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and has and will have property and assets sufficient to satisfy and repay its obligations and liabilities.

III.5 Legality. The execution, delivery and performance by Guarantor of this Guaranty and the consummation of the transactions contemplated hereunder do not, and will not, contravene or conflict with any law, statute or regulation whatsoever to which Guarantor is subject or constitute a default (or an event which with notice or lapse of time or both would constitute a default) under, or result in the breach of, any indenture, mortgage, deed of trust, charge, lien, or any contract, agreement or other instrument to which Guarantor is a party or which may be applicable to Guarantor. This Guaranty is a legal and binding obligation of Guarantor and is enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights.

III.6 Financial Information. All of the financial information provided by Guarantor to Lender is true and correct in all respects. Guarantor shall furnish to Lender quarterly and annual certified financial statements of Guarantor, including cash flow and contingent liability information, prepared in accordance with generally accepted accounting principles consistently applied by, and (i) as to the annual financial statements, said annual statements shall be certified to be true and correct by an independent certified public accountant; and (ii) as to the quarterly financial statements, said quarterly statements shall be certified as true and correct by the Guarantor's chief financial officer. Each such annual financial statement shall be delivered to Lender within ninety-five (95) days after the end of such calendar year.

III.7 Survival. All representations and warranties made by Guarantor herein shall survive the execution hereof.

### **ARTICLE IV**

#### **SUBORDINATION OF CERTAIN INDEBTEDNESS**

IV.1 Subordination of All Guarantor Claims. As used herein, the term "Guarantor Claims" shall mean all debts and liabilities of Borrower to Guarantor, whether such debts and liabilities now exist or are hereafter incurred or arise, or whether the obligations of Borrower thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or liabilities be evidenced by note, contract, open account, or otherwise, and irrespective of the person or persons in whose favor such debts or liabilities may, at their inception, have been, or may hereafter be created, or the manner in which they have been or may hereafter be acquired by Guarantor. The Guarantor Claims shall include without limitation all rights and claims of Guarantor against Borrower (arising as a result of subrogation or otherwise) as a result of Guarantor's payment of all or a portion of the Guaranteed Obligations. Upon the occurrence of an Event of Default (as defined in the Loan Documents) or the occurrence of an event which would, with the giving of notice or the passage of time, or both, constitute an Event of Default, Guarantor shall not receive or collect, directly or indirectly, from Borrower or any other party any amount upon the Guarantor Claims.

IV.2 Claims in Bankruptcy. In the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief, or other insolvency proceedings involving Guarantor as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims. Guarantor hereby assigns such dividends and payments to Lender. Should Lender receive, for application upon the Guaranteed Obligations, any such dividend or payment which is otherwise payable to Guarantor, and which, as between Borrower and Guarantor, shall constitute a credit upon the Guarantor Claims, then upon payment to Lender in full of the Guaranteed Obligations, Guarantor shall become subrogated to the rights of Lender to the extent that such payments to Lender on the Guarantor Claims have contributed toward the liquidation of the Guaranteed Obligations, and such subrogation shall be with respect to that proportion of the Guaranteed Obligations which would have been unpaid if Lender had not received dividends or payments upon the Guarantor Claims.

IV.3 Payments Held in Trust. In the event that, notwithstanding anything to the contrary in this Guaranty, Guarantor should receive any funds, payment, claim or distribution which is prohibited by this Guaranty, Guarantor agrees to hold in trust for Lender an amount equal to the amount of all funds, payments, claims or distributions so received, and agrees that it shall have absolutely no dominion over the amount of such funds, payments, claims or distributions so received except to pay them promptly to Lender, and Guarantor covenants promptly to pay the same to Lender.

IV.4 Liens Subordinate. Guarantor agrees that any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests, judgment liens, charges or other encumbrances upon Borrower's assets securing payment of the Guaranteed Obligations, regardless of whether such encumbrances in favor of Guarantor or Lender presently exist or are hereafter created or attach. Without the prior written consent of Lender, Guarantor shall not

(i) exercise or enforce any creditor's right it may have against Borrower, or (ii) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including without limitation the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interest, collateral rights, judgments or other encumbrances on assets of Borrower held by Guarantor.

## ARTICLE V

### MISCELLANEOUS

V.1 Waiver. No failure to exercise, and no delay in exercising, on the part of Lender, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. The rights of Lender hereunder shall be in addition to all other rights provided by law. No modification or waiver of any provision of this Guaranty, nor consent to departure therefrom, shall be effective unless in writing and no such consent or waiver shall extend beyond the particular case and purpose involved. No notice or demand given in any case shall constitute a waiver of the right to take other action in the same, similar or other instances without such notice or demand.

V.2 Notices. All notices or other communications required or permitted to be given pursuant hereto shall be in writing and shall be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. Either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth herein. For purposes of such notices, the addresses of the parties shall be as follows:

Lender: Comerica Bank-Texas  
1601 Elm Street, 2nd Floor  
Dallas, Texas 75201  
Attn: Real Estate Department

Guarantor: Stratus Properties, Inc.  
98 San Jacinto Boulevard  
Suite 220  
Austin, Texas 78701  
Attn.: William H. Armstrong, III

With a copy to: Armbrust Brown & Davis, L.L.P.  
100 Congress Avenue  
Suite 1300

V.3 GOVERNING LAW. THIS GUARANTY IS EXECUTED AND DELIVERED AS AN INCIDENT TO A LENDING TRANSACTION NEGOTIATED, CONSUMMATED, AND PERFORMABLE IN TRAVIS COUNTY, TEXAS, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. ANY ACTION OR PROCEEDING AGAINST GUARANTOR UNDER OR IN CONNECTION WITH THIS GUARANTY MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT IN TRAVIS COUNTY, TEXAS. GUARANTOR HEREBY IRREVOCABLY (i) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS, AND (ii) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. GUARANTOR AGREES THAT SERVICE OF PROCESS UPON IT MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, AT ITS ADDRESS SPECIFIED HEREIN. NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY OTHER MATTER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST GUARANTOR OR WITH RESPECT TO ANY OF GUARANTOR'S PROPERTY IN COURTS IN OTHER JURISDICTIONS. ANY ACTION OR PROCEEDING BY GUARANTOR AGAINST LENDER SHALL BE BROUGHT ONLY IN A COURT LOCATED IN TRAVIS COUNTY, TEXAS.

V.4 Invalid Provisions. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Guaranty, such provision shall be fully severable and this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty, and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty, unless such continued effectiveness of this Guaranty, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

V.5 Amendments. This Guaranty may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced.

V.6 Parties Bound; Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives; provided, however, that Guarantor may not, without the prior written consent of Lender, assign any of its rights, powers, duties or obligations hereunder.

V.7 Headings. Section headings are for convenience of reference only and shall in no way affect the interpretation of this Guaranty.

V.8 Recitals. The recital and introductory paragraphs hereof are a part hereof, form a basis for this Guaranty and shall be considered prima facie evidence of the facts and documents referred to therein.

V.9 Counterparts. To facilitate execution, this Guaranty may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Guaranty to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

V.10 Rights and Remedies. If Guarantor becomes liable for any indebtedness owing by Borrower to Lender, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may ever have against Guarantor. The exercise by Lender of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy.

V.11 ENTIRETY. THIS GUARANTY EMBODIES THE FINAL, ENTIRE AGREEMENT OF GUARANTOR AND LENDER WITH RESPECT TO GUARANTOR'S GUARANTY OF THE GUARANTEED OBLIGATIONS AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF. THIS GUARANTY IS INTENDED BY GUARANTOR AND LENDER AS A FINAL AND COMPLETE EXPRESSION OF THE TERMS OF THE GUARANTY, AND NO COURSE OF DEALING BETWEEN GUARANTOR AND LENDER, NO COURSE OF PERFORMANCE, NO TRADE PRACTICES, AND NO EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OR OTHER EXTRINSIC EVIDENCE OF ANY NATURE SHALL BE USED TO CONTRADICT, VARY, SUPPLEMENT OR MODIFY ANY TERM OF THIS GUARANTY AGREEMENT. THERE ARE NO ORAL AGREEMENTS BETWEEN GUARANTOR AND LENDER.

V.12 Release of Guaranty. Upon full and final payment of the indebtedness evidenced by the Note, performance of all Obligations under the

Loan Agreement and satisfaction of all the Guaranteed Obligations described in this Guaranty, this Guaranty shall be released and of no further force and effect.

EXECUTED as of the day and year first above written.

**GUARANTOR:**

**STRATUS PROPERTIES, INC.,**  
a Delaware corporation

By: /s/ William H. Armstrong, III  
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Name: William H. Armstrong, III  
Title: President and Chief  
Executive Officer

**STATE OF TEXAS &**

&

COUNTY OF \_\_\_\_\_ &

This instrument was ACKNOWLEDGED before me this \_\_\_\_\_ day of June, 2001, by \_\_\_\_\_, the  
\_\_\_\_\_ of STRATUS PROPERTIES, INC., a Delaware corporation, on behalf of said corporation.

[S E A L]

Notary Public - State of Texas My Commission Expires:

\_\_\_\_\_ Printed Name of Notary Public

**List of Subsidiaries of  
STRATUS PROPERTIES INC.**

Name Under Which

Entity Organized It Does Business

Stratus Properties Operating Co. L.P. Delaware Same

Circle C Land Corp. Texas Same

**Exhibit 23.1**

**CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS**

As independent public accountants, we hereby consent to the incorporation of our reports included in this Form 10-K, into Stratus Properties Inc.'s previously filed Registration Statements on Forms S-8 (File Nos. 33-78798, 333-31059 and 333-52995).

*/s/ Arthur Andersen LLP*

*Austin, Texas  
March 21, 2002*

March 22, 2002

Stratus Properties Inc.  
98 San Jacinto Blvd., Suite 220  
Austin, Texas 78701

To the Stockholders and Board of Directors of Stratus Properties Inc.:

We represent that this audit was subject to our quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards, that there was appropriate continuity of Arthur Andersen personnel working on the audit and availability of national office consultation. Availability of personnel at foreign affiliates of Arthur Andersen is not relevant to this audit.

Very truly yours,

*/s/ Arthur Andersen LLP.*

**Stratus Properties Inc.**

**Secretary's Certificate**

I, Douglas N. Currault II, Assistant Secretary of Stratus Properties Inc. (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, do hereby certify that the following resolution was duly adopted by the Board of Directors of the Corporation at a meeting held on February 10, 1993, and that such resolution has not been amended, modified or rescinded and is in full force and effect:

RESOLVED, That any report, registration statement or other form filed on behalf of this corporation pursuant to the Securities Exchange Act of 1934, or any amendment to any such report, registration statement or other form, may be signed on behalf of any director or officer of this corporation pursuant to a power of attorney executed by such director or officer.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of the Corporation on this 20th day of March, 2002.

*/s/ Douglas N. Currault II*

-----  
*Douglas N. Currault II*  
*Assistant Secretary*

*Seal*

**Exhibit 24.2**

**POWER OF ATTORNEY**

BE IT KNOWN: That the undersigned, in his capacity or capacities as an officer and/or a member of the Board of Directors of Stratus Properties Inc., a Delaware corporation (the "Company"), does hereby make, constitute and appoint KENNETH N. JONES, his true and lawful attorney-in-fact with full power of substitution, to execute, deliver and file, for and on behalf of him, in his name and in his capacity or capacities as aforesaid, an Annual Report of the Company on Form 10-K for the year ended December 31, 2001, and any amendment or amendments thereto and any other document in support thereof or supplemental thereto, and the undersigned hereby grants to said attorney, full power and authority to do and perform each and every act and thing whatsoever that said attorney may deem necessary or advisable to carry out fully the intent of the foregoing as the undersigned might or could do personally or in the capacity or capacities as aforesaid, hereby ratifying and confirming all acts and things which said attorney may do or cause to be done by virtue of this Power of Attorney.

**EXECUTED this 20th day of March, 2002.**

*/s/ William H. Armstrong III*

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*William H. Armstrong III*

**POWER OF ATTORNEY**

BE IT KNOWN: That the undersigned, in his capacity or capacities as an officer and/or a member of the Board of Directors of Stratus Properties Inc., a Delaware corporation (the "Company"), does hereby make, constitute and appoint WILLIAM H. ARMSTRONG III and KENNETH N. JONES, and each of them acting individually, his true and lawful attorney-in-fact with power to act without the others and with full power of substitution, to execute, deliver and file, for and on behalf of him, in his name and in his capacity or capacities as aforesaid, an Annual Report of the Company on Form 10-K for the year ended December 31, 2001, and any amendment or amendments thereto and any other document in support thereof or supplemental thereto, and the undersigned hereby grants to said attorneys, and each of them, full power and authority to do and perform each and every act and thing whatsoever that said attorney or attorneys may deem necessary or advisable to carry out fully the intent of the foregoing as the undersigned might or could do personally or in the capacity or capacities as aforesaid, hereby ratifying and confirming all acts and things which said attorney or attorneys may do or cause to be done by virtue of this Power of Attorney.

**EXECUTED this 20th day of March, 2002.**

*/s/ James C. Leslie*

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*James C. Leslie*

**POWER OF ATTORNEY**

BE IT KNOWN: That the undersigned, in his capacity or capacities as an officer and/or a member of the Board of Directors of Stratus Properties Inc., a Delaware corporation (the "Company"), does hereby make, constitute and appoint WILLIAM H. ARMSTRONG III and KENNETH N. JONES, and each of them acting individually, his true and lawful attorney-in-fact with power to act without the others and with full power of substitution, to execute, deliver and file, for and on behalf of him, in his name and in his capacity or capacities as aforesaid, an Annual Report of the Company on Form 10-K for the year ended December 31, 2001, and any amendment or amendments thereto and any other document in support thereof or supplemental thereto, and the undersigned hereby grants to said attorneys, and each of them, full power and authority to do and perform each and every act and thing whatsoever that said attorney or attorneys may deem necessary or advisable to carry out fully the intent of the foregoing as the undersigned might or could do personally or in the capacity or capacities as aforesaid, hereby ratifying and confirming all acts and things which said attorney or attorneys may do or cause to be done by virtue of this Power of Attorney.

**EXECUTED this 20th day of March, 2002.**

*/s/ Michael D. Madden*

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*Michael D. Madden*

**POWER OF ATTORNEY**

BE IT KNOWN: That the undersigned, in his capacity or capacities as an officer and/or a member of the Board of Directors of Stratus Properties Inc., a Delaware corporation (the "Company"), does hereby make, constitute and appoint WILLIAM H. ARMSTRONG III and KENNETH N. JONES, and each of them acting individually, his true and lawful attorney-in-fact with power to act without the others and with full power of substitution, to execute, deliver and file, for and on behalf of him, in his name and in his capacity or capacities as aforesaid, an Annual Report of the Company on Form 10-K for the year ended December 31, 2001, and any amendment or amendments thereto and any other document in support thereof or supplemental thereto, and the undersigned hereby grants to said attorneys, and each of them, full power and authority to do and perform each and every act and thing whatsoever that said attorney or attorneys may deem necessary or advisable to carry out fully the intent of the foregoing as the undersigned might or could do personally or in the capacity or capacities as aforesaid, hereby ratifying and confirming all acts and things which said attorney or attorneys may do or cause to be done by virtue of this Power of Attorney.

**EXECUTED this 20th day of March, 2002.**

*/s/ C. Donald Whitmire, Jr.*

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*C. Donald Whitmire, Jr.*

# End of Filing