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SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

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

Date of report (Date of earliest event reported) **August 9, 2002**
(**July 26, 2002**)

THE MACERICH COMPANY

(Exact Name of Registrant as Specified in Charter)

Maryland	**1-12504**	**95-4448705**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

401 Wilshire Boulevard, Suite 700, Santa Monica, CA 90401
(Address of Principal Executive Offices)

Registrant's telephone number, including area code **(310) 394-6000**

N/A
(Former Name or Former Address, if Changed Since Last Report)

Item 2. Acquisition or Disposition of Assets

On July 26, 2002, The Macerich Partnership, L.P., a subsidiary and the operating partnership of The Macerich Company (the "Registrant"), acquired Westcor Realty Limited Partnership and its affiliated companies ("Westcor") from the Westcor partners and entities identified in the purchase and sale agreements filed as exhibits hereto. The assets acquired include interests in (i) nine regional malls with nearly 10 million square feet of space located in Arizona and Colorado and (ii) 18 urban village and specialty retail assets generally located in close proximity to the malls. The gross leasable area in the acquired Westcor portfolio totals 15.6 million square feet. In addition, the Westcor portfolio includes two retail properties in Arizona that recently broke ground, as well as option rights for over 1,000 acres of undeveloped land.

The total purchase price was approximately $1.475 billion and was determined in good faith, arms length negotiations between the Registrant and Westcor. The purchase price includes the assumption of $733 million in existing debt and the issuance of approximately $72 million of convertible preferred operating partnership units at a price of $36.55 per unit in a private placement. Each preferred operating partnership unit is convertible into a common operating partnership unit which is in turn redeemable for, at the election of the Registrant, shares of the Registrant's common stock or cash. The balance of the purchase price was paid in cash which was provided primarily from a $380 million interim loan with a term of up to 18 months bearing interest at an average rate of LIBOR plus 3.25% and a $250 million term loan with a maturity of up to five years with an interest rate ranging from LIBOR plus 2.75% to LIBOR plus 3.00% depending on the company's overall leverage. Co-lead arrangers on these credit facilities were Deutsche Bank Securities Inc. and JP Morgan Securities Inc.

In negotiating the purchase price of the transaction, the Registrant considered, among other factors, the malls' historical and projected cash flow, the nature and term of existing tenancies and leases, the current operating costs, the expansion, development and redevelopment availability of the properties, the physical condition of the properties, and the terms and conditions of available financing. No independent appraisals were obtained by the Registrant. The Registrant intends to continue operating each mall as currently operated and leasing the space therein to national and local retailers.

The description contained herein of the acquisition does not purport to be complete and is qualified in its entirety by reference to the various agreements filed as exhibits hereto.

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits

(a) Financial Statements of Business Acquired (Westcor)*

(b) Pro Forma Financial Information (Westcor)*

(c) Exhibits

2.1 Master Agreement dated as of June 29, 2002, by and among Westcor Realty Limited Partnership ("WRLP"), The Macerich Partnership, L.P., Macerich Galahad L.P, The Westcor Company Limited Partnership, The Westcor Company II Limited Partnership, Macerich TWC II LLC, Macerich TWC II Corp., Macerich WRLP LLC, Macerich WRLP Corp., Eastrich No. 128 Corp., and each of the limited partners of WRLP. (The Registrant agrees to furnish supplementally a copy of any unfiled exhibits and schedules to this agreement to the SEC upon request.)

2.2 Purchase and Sale and Contribution Agreement dated as of June 29, 2002, by and among WRLP, The Macerich Partnership, L.P., Macerich Galahad LP, Macerich WRLP LLC, Macerich WRLP Corp., Eastrich No. 128 Corp., and each of the limited partners of WRLP. (The Registrant agrees to furnish supplementally a copy of any unfiled exhibits to this agreement to the SEC upon request.)

2.3 Partnership Interest Purchase and Sale Agreement dated as of June 29, 2002, by and among WRLP, The Westcor Company Limited Partnership, as sellers, The Macerich Partnership, L.P., Macerich TWC II LLC, and Macerich TWC II Corp., as buyers, and The Westcor Company II Limited Partnership (The Registrant agrees to furnish supplementally a copy of any unfiled exhibits to this agreement to the SEC upon request.)

3.1 Articles Supplementary of the Registrant (Series D Preferred Stock).

10.1 Ninth Amendment to the Amended and Restated Limited Partnership Agreement of The Macerich Partnership, L.P.

10.2 Form of Registration Rights Agreement with Series D Preferred Unit Holders.

10.3 List of Omitted Registration Rights Agreements.

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* It is impracticable to provide the required financial statements and pro forma financial information regarding the acquisition of Westcor with this report. The required financial statements and pro forma financial information will be filed under cover of Form 8-K/A as soon as practicable, but no later than 60 days after the date on which this Current Report on Form 8-K must be filed.

SIGNATURES

Pursuant to the requirements of the Securities and Exchange Act of 1934, The Macerich Company has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized, in the City of Santa Monica, State of California, on August 9, 2002.

THE MACERICH COMPANY

By: /s/ THOMAS O'HERN

Thomas O'Hern
Executive Vice President and
Chief Financial Officer

Exhibit 2.1

EXECUTION COPY

MASTER AGREEMENT

dated as of June 29, 2002

by and among

WESTCOR REALTY LIMITED PARTNERSHIP,
THE WESTCOR COMPANY LIMITED PARTNERSHIP
and
THE WESTCOR COMPANY II LIMITED PARTNERSHIP

and

EASTRICH NO. 128 CORP.
and
THE LIMITED PARTNERS OF WESTCOR REALTY LIMITED PARTNERSHIP

and

THE MACERICH PARTNERSHIP, L.P.,
MACERICH GALAHAD LP,
MACERICH TWC II LLC,
MACERICH TWC II CORP.,
MACERICH WRLP LLC,
and
MACERICH WRLP CORP.

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MASTER AGREEMENT

THIS MASTER AGREEMENT (this "***Agreement***") is dated as of June 29, 2002, by and among WESTCOR REALTY LIMITED PARTNERSHIP, a Delaware limited partnership (the "***Company***"), THE MACERICH PARTNERSHIP, L.P., a Delaware limited partnership (the "***Buyer***"), MACERICH GALAHAD LP, a Delaware limited partnership and a subsidiary of the Buyer ("***Macerich Galahad***"), THE WESTCOR COMPANY LIMITED PARTNERSHIP, an Arizona limited partnership ("***TWC***"), THE WESTCOR COMPANY II LIMITED PARTNERSHIP, an Arizona limited partnership ("***TWC II***"), MACERICH TWC II LLC, a Delaware limited liability company ("***Macerich TWC II LLC***"), MACERICH TWC II CORP., a Delaware corporation ("***Macerich TWC II Corp***."), MACERICH WRLP LLC, a Delaware limited liability company ("***Macerich WRLP LLC***"), MACERICH WRLP CORP., a Delaware corporation ("***Macerich WRLP Corp.***"), EASTRICH NO. 128 CORP., a Massachusetts corporation and the general partner of the Company ("***Eastrich***"), and each of the individuals, partnerships, trusts, limited liability companies and other entities listed on Exhibit A hereto (together with Eastrich, collectively, the "***Partners***").

WHEREAS, the Company, the Buyer and Macerich Galahad entered into the Agreement and Plan of Merger, dated as of May 30, 2002 (the "***Original Agreement***"), pursuant to which, inter alia, Macerich Galahad, a subsidiary of the Buyer, would merge with and into the Company and the Company would become a subsidiary of the Buyer;

WHEREAS, as set forth in Section 2.11 of the Original Agreement, the Company, the Buyer and Macerich Galahad contemplated restructuring the transactions contemplated under the Original Agreement in a mutually agreeable manner, in accordance with such Section 2.11 and the Terms of Proposed Alternative Transaction Structure appended to the Original Agreement as Exhibit G thereto;

WHEREAS, the Buyer, the Company and Macerich Galahad desire to modify the structure of the transactions contemplated under the Original Agreement to effect an alternative structure contemplated by Section 2.11 of and Exhibit G to the Original Agreement;

WHEREAS, Section 9.5 of the Original Agreement requires that the Buyer and Macerich Galahad, on one hand, and the Company, on the other, approve any amendment or other modification to the Original Agreement;

WHEREAS, concurrently herewith, Macerich TWC II LLC and Macerich TWC Corp., on the one hand, and the Company and TWC, on the other, are entering into the Partnership Interest Purchase and Sale Agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time in accordance with its terms, the "***TWC II Sale Agreement***"), and Macerich Galahad, Macerich WRLP LLC and Macerich WRLP Corp., on the one hand, and the Company and the Partners, on the other, are entering into the Purchase and Sale and Contribution Agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time in accordance with its terms, the "***Sale and Contribution Agreement***");

WHEREAS, this Agreement and the consummation of the Transactions (as defined below) to which each of the Buyer Parties (as defined below) is party have been approved by, in the case of the Buyer, the board of directors of The Macerich Company, a Maryland corporation ("***Macerich***"), the general partner of the Buyer, the board of directors of Macerich Galahad GP Corp., a Delaware corporation, and the general partner of Macerich Galahad, and, in the case of each other Buyer Party, by the board of directors of such Buyer Party (or of the general partner or the member of such Buyer Party, as applicable);

WHEREAS, this Agreement and the consummation of the Transactions have been approved by all necessary parties in accordance with the Limited Partnership Agreement of the Company dated as of July 28, 1994, as amended (the "***Limited Partnership Agreement***") on behalf of the Company and in its capacity as the general partner of each of TWC and TWC II; and

WHEREAS, concurrently herewith, the Partners have executed and delivered the Amended and Restated Partners Joinder Agreement, dated as of the date hereof (the "***Joinder Agreement***"), pursuant

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to which, inter alia, each Partner joins and agrees to be bound by this Agreement and the Sale and Contribution Agreement with the same force and effect as if a signatory hereto and thereto, subject only to the terms of such Amended and Restated Partners Joinder Agreement

NOW THEREFORE, in consideration of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby amend and restate the Original Agreement in its entirety as set forth below, and further agree, as follows:

ARTICLE I
DEFINITIONS

Section 1.1 ***Certain Defined Terms***. As used in this Agreement, the following defined terms shall have the following meanings (such meanings to be equally applicable to the singular and plural forms of the terms defined):

"***1998 Plans***" shall mean, collectively, the 1998 Incentive Plan and the 1998 Equity Plan.

"***Acquired Companies***" shall mean the Company and the Subsidiaries.

"***Adjusted Liabilities***" shall mean, with respect to any Person and without duplication, the sum of: (a) non-mortgage liabilities (exclusive of contingent liabilities under GAAP), including, without limitation, accounts payable, sales tax payable, property tax payable, accrued taxes, incentive compensation to the extent unfunded or unpaid (and excluding, for the avoidance of doubt, the 1998 Incentive Plan and 1998 Equity Plan), liability for non-qualified deferred compensation plans, interest payable, tenant allowances payable, notes payable to any Acquired Company or Affiliated Property Owner less amounts due any Acquired Company or Affiliated Property Owner, assessments payable, contracts payable and other payables (excluding, for the avoidance of doubt, obligations pursuant to the Arrowhead Master Lease to the extent of the Arrowhead Escrow), prepaid rents, and tenant security deposits, but excluding reserves for construction at the Property commonly known as Desert Sky Mall; (b) Net Change in Mortgage Debt (adding the absolute value of any negative Net Change in Mortgage Debt and subtracting the absolute value of any positive Net Change in Mortgage Debt, as the case may be); and (c) budgeted but unpaid tenant improvement allowances that are reflected in leases signed before the Closing Date, of such Person.

"***Adjustment Escrow Amount***" shall have the meaning ascribed thereto in the Indemnification Escrow Agreement.

"***Affiliate***" of any Person shall mean another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

"***Affiliated Property Owners***" shall mean those entities, other than the Acquired Companies, that own directly or indirectly any of the Properties and in which one or more Acquired Companies owns a direct or indirect equity interest.

"Aggregate Additional Amount" shall mean the result obtained by subtracting (a) $2,000,000 from (b) the total cash amount equal to the product of (i) the number of days in calendar year 2002 occurring prior to the Closing Date (and exclusive of the Closing Date) multiplied by (ii) the quotient equal to (x) the aggregate amount of Percentage Rent actually received by, or directly or indirectly credited for the account of, the Buyer or any of its Affiliates or any of their respective successors or assigns with respect to the calendar year in which the Closing occurs divided by (y) 365.

"***Arrowhead Master Lease***" shall mean the master lease entered into by TWC II with respect to the Property commonly known as the Arrowhead Marketplace in connection with the Purchase and Sale Agreement and Joint Escrow Instructions, dated as of June 13, 2001, between Parcel 18 Associates, LLC, as seller, and GDA Real Estate Services, LLC, as buyer.

"***Award***" shall have the meaning ascribed to such term in the 1998 Incentive Plan and the 1998 Equity Plan (in such case, as calculated with reference to a Change of Control (as defined therein) transaction), as applicable.

"***Balance Sheet Adjustment Amount***" shall mean, as of the Closing Date and after giving effect to the Pre-Closing Distributions, the aggregate amount of (a) with respect to any Acquired Company, the difference between (i) the Tangible Non-Real Estate Assets of such Acquired Company and (ii) the Adjusted Liabilities of such Acquired Company, and (b) with respect to any Affiliated Property Owner, the Acquired Companies' pro rata portion of (i) the Tangible Non-Real Estate Assets of such Affiliated Property Owner and (ii) the Adjusted Liabilities of such Affiliated Property Owner.

"Balance Sheet Adjustment Amount Differential" shall mean the difference between (a) the aggregate Balance Sheet Adjustment Amounts shown on the Estimated Closing Date Balance Sheets for all Acquired Companies and Affiliated Property Owners and (b) the aggregate Balance Sheet Adjustment Amounts shown on the Post-Closing Audited Balance Sheets for all Acquired Companies and Affiliated Property Owners.

"***Business Day***" shall mean any day that is not a Saturday, a Sunday or other day on which banks are required by law to be closed in New York City, Boston, Massachusetts, or Phoenix, Arizona.

"***Buyer Party***" shall mean each of Macerich, the Buyer, Macerich TWC II LLC, Macerich TWC II Corp., Macerich WRLP LLC, and Macerich WRLP Corp.

"***Class C Interest***" shall mean a limited partnership interest in the Company with the terms and conditions, and issued upon the terms and conditions, set forth on Exhibit I hereto.

"***Code***" shall mean the Internal Revenue Code of 1986, as amended.

"***Company Sale***" shall mean, collectively, the purchase, sale and contribution of the Interests pursuant to the Sale and Contribution Agreement.

"***Consent and Indemnification Agreement***" shall mean the consent by certain Participants in the 1998 Equity Plan pursuant to Section 8(d) of the 1998 Equity Plan in the form of Exhibit H, pursuant to which consent such Participants consent to convert their right to receive a portion of their Awards under the 1998 Equity Plan (as reflected on Exhibit A to the Consent and Indemnification Agreement) into Class C Interests.

"***Contractual Debt Payments***" shall mean, with respect to any Person, all indebtedness of such Person that (a) is accrued and unpaid at Closing, (b) arises under contract (including, without limitation, trade payables, construction costs and tenant improvement allowances, but excluding Mortgage Debt, Funded Debt Payments and construction loans) and (c) is for goods and services delivered or rendered (or deemed to have been delivered or rendered pursuant to the applicable contract) on or prior to the Closing Date.

"***Encumbrance***" shall mean any security interest, pledge, mortgage, deed of trust, lien (including without limitation, environmental and tax liens), charge, encumbrance adverse claim, preferential arrangement or restriction of any kind.

"***Equity Consenting Participant***" shall mean a Participant in his or her capacity as a Participant in the 1998 Equity Plan who has executed and delivered (and not revoked) the Consent and Indemnification Agreement on or prior to the Election Deadline and otherwise in compliance with the conditions to participation (and, for the avoidance of doubt, shall exclude any such Person in his or her capacity as a Participant under the 1998 Incentive Plan or as a Participant under the 1998 Equity Plan with respect to any Award thereunder not converted into Class C Interests).

"***Funded Debt Payments***" shall mean, with respect to any Person, accrued and unpaid scheduled payments of principal of and interest on (and fees and costs corresponding thereto) indebtedness for borrowed money of such Person for periods ending on or prior to the Closing Date.

"***GAAP***" shall mean United States generally accepted accounting principles consistently applied.

"***Home Office***" shall mean the offices of the Company located at 11405, 11411 and 1805 N. Tatum Boulevard, Phoenix, Arizona.

"***Indemnification Escrow Amount***" shall have the meaning set forth in the Indemnification Escrow Agreement.

"***Interest***" shall mean, with respect to any Partner, the interest (expressed as a percentage) set forth with respect to such Partner on Exhibit A attached hereto, which represents such Partner's right, title and interest in and to the Company. For the avoidance of doubt, the term "Interest" shall not include or be a reference to any Class C Interest.

"***Losses***" of a Person shall mean any and all losses, liabilities (including liabilities for Taxes), damages, claims, awards, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) actually suffered or incurred by such Person.

"***Mortgage Debt***" shall mean the indebtedness for borrowed money secured by a mortgage or a deed of trust set forth on Schedule 2.6 hereto.

"***Net Change in Mortgage Debt***" shall mean, with respect to any Person, the difference between the aggregate amount of the Mortgage Debt of such Person reflected on Schedule 2.6 and the aggregate amount of the Mortgage Debt as of the Closing Date.

"***Participant***" shall have the meaning ascribed thereto in the 1998 Plans, as applicable, and shall mean and be a reference to any "Participant" under either 1998 Plan unless otherwise specified.

"Percentage Rent" shall mean that portion of rent payable by any tenant at any of the Properties, including cart, kiosk and seasonal lease tenants, that is based upon a percentage of such tenant's sales.

"Per Interest Additional Amount" shall mean, with respect to any Partner, the product of such Partner's Interest multiplied by the amount by which the Aggregate Additional Amount exceeds zero.

"***Person***" shall mean an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

"***Retained Cash***" shall mean the Tier I Retained Cash and the Tier II Retained Cash.

"***Schedule***" shall mean any "Company Disclosure Schedule" or any "Buyer Disclosure Schedule."

"***Signing Date***" shall mean May 30, 2002.

"***Subsidiaries***" shall mean Westcor Partners, L.L.C., an Arizona limited liability company, TWC and TWC II and each other entity that is 100% owned directly or indirectly by any of the foregoing, and the term "***Subsidiary***" shall mean any of them.

"***Tangible Non-Real Estate Assets***" shall mean, with respect to any Person, the aggregate value of the tangible assets exclusive of real estate and associated personal property (such real estate and associated personal property shall include, for these purposes (w) the proceeds of any sale or other disposition, which proceeds are required to be retained in the applicable Acquired Company or Affiliated Property Owner pursuant to Section 5.1(b)(i) hereof, (x) the reserve for construction at the Property commonly known as Superstition Mall, (y) an additional $608,432 and (z) any receivable or liability associated with straight-lining of rents) of such Person, including, without limitation, Retained Cash (other than Retained Cash consisting of retained proceeds as contemplated above), other cash and cash equivalents, accounts receivable less reserves for doubtful accounts in accordance with GAAP, notes

receivable less amounts due from any Acquired Company or Affiliated Property Owner and a reserve for doubtful payments in accordance with GAAP, if any, interest receivable, restricted investments (including assets of any non-qualified deferred compensation plan), prepaid expenses, impounds and deposits.

"***Tier I Retained Cash***" shall mean cash and cash equivalents of the Acquired Companies with an aggregate value equal to the amount of the following payment and other obligations of each such Acquired Company, in each case, as reflected on such entity's Estimated Closing Date Balance Sheet and without duplication: (a) Contractual Debt Payments; (b) Funded Debt Payments; (c) accrued and unpaid commitment fees for periods ending on or prior to the Closing Date on any revolving credit facility of such Acquired Company; (d) accrued and unpaid payroll obligations of such Acquired Company for periods ending on or prior to Closing, including, without limitation, payroll taxes, employer 401(k) matching funds obligations, and employer contributions to employee benefits programs (other than the 1998 Equity Plan and the 1998 Incentive Plan); (e) amounts accrued to fund incentive programs of such Acquired Company, including long-term incentive programs, annual incentive programs and annual bonus programs (other than the 1998 Equity Plan and the 1998 Incentive Plan); (f) accrued and unpaid overhead and other costs allocated to the Home Office for periods ending on or prior to the Closing Date, including, without limitation, rent, allocated property taxes, service contracts and utilities; and (g) obligations payable with respect to periods ending on or prior to the Closing Date by such Acquired Company for development costs of any Affiliated Property Owner pursuant to the partnership or limited liability company operating agreement of such Affiliated Property Owner.

"***Tier II Retained Cash***" shall mean the Acquired Companies' pro rata portion of cash and cash equivalents of the Affiliated Property Owners, with an aggregate value equal to the aggregate amount of the following payment and other obligations of each such Acquired Companies' pro rata portion of each such Affiliated Property Owner, in each case, as reflected on such entity's Estimated Closing Date Balance Sheet and without duplication: (a) Contractual Debt Payments; (b) Funded Debt Payments; (c) accrued and unpaid property taxes for the Properties, net of any impounds, for the period ending on or prior to the Closing Date; (d) all tenant security deposits; (e) prepaid rents and all other prepayments of amounts due from any tenant under any lease with respect to any period subsequent to the Closing Date; (f) reserves for construction at the Properties commonly known as Superstition Springs Center and Desert Sky Mall; and (g) restricted cash balances with respect to the Property commonly known as Chandler Gateway.

"***Transaction Documents***" shall mean this Agreement, the TWC II Sale Agreement, the Sale and Contribution Agreement, the Deposit Escrow Agreement, the Indemnification Escrow Agreement, the Confidentiality Agreement, each Election Form delivered and not revoked by a Class B Partner, and each agreement, instrument, election and certificate delivered pursuant to the terms hereof and thereof.

"***Transactions***" shall mean the TWC II Distribution, Pre-Closing Cash Distributions, the TWC II Sale, the Company Sale, and the other transactions contemplated hereunder and under the other Transaction Documents.

"***TWC II Distributed Property***" shall mean the following property of TWC II: (a) a 99% non-managing member interest in TWC Scottsdale Mezzanine, L.L.C., (b) all of the capital stock of TWC Scottsdale Corp., (c) a 33.33% general partnership interest in New River Associates, (d) a 33.33% limited liability company interest in East Mesa Mall, LLC and (e) a 50% limited liability company interest in East Mesa Land LLC.

"***TWC II Sale***" shall mean the sale by the Company and TWC, on the one hand, and purchase by Macerich TWC II LLC and Macerich TWC Corp., on the other hand, of 100% of the general partnership interest and 100% of the limited partnership interests of TWC II on the terms and conditions set forth in the TWC II Sale Agreement.

"***Unit Consideration***" shall mean the aggregate number of Preferred Units issued to the Class B Partners pursuant to the Sale and Contribution Agreement.

Section 1.2 ***Additional Defined Terms***. As used in this Agreement, the following defined terms shall have the meanings ascribed thereto, respectively, in the Section of this Agreement referenced with respect to each such defined term (such meanings to be equally applicable to the singular and plural forms of the terms defined):

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Section 1.3 ***Incorporation by Reference of Certain Defined Terms.*** As used in this Agreement, capitalized terms used herein and not defined herein have the meanings ascribed to such capitalized terms, respectively, in the Sale and Contribution Agreement and, if not therein defined or referenced, in the TWC II Sale Agreement, in each case with the same force and effect as if such definitions and references, as the case may be, were set forth in full in this Agreement. The definitions incorporated herein by reference to the Sale and Contribution Agreement include, without limitation, the definitions of the following terms: "*Aggregate Cash Price*", "*Class B Partners*"; "*Election Deadline*", "*Election Period*", "*Investment Election*", "*Per Interest Price*" and "*Preferred Units*". The definitions incorporated herein by reference to the TWC II Sale Agreement include, without limitation, the definitions of the following terms: "*TWC*", "*TWC Limited Partnership Agreement*", "*TWC II Purchase Price*".

ARTICLE II
THE TRANSACTIONS; CLOSING

Section 2.1 ***Transactions' Sequence***; ***Master Agreement***.

(a) Notwithstanding any provision to the contrary set forth in this Agreement, the TWC II Sale Agreement, the Sale and Contribution Agreement or any other Transaction Document, the parties hereto hereby agree that the Transactions shall be deemed to have occurred for all purposes in the sequence set forth on Exhibit B.

(b) Each of the Buyer Parties party hereto, the Company, TWC, TWC II and each Partner agree to treat the Transactions for tax purposes, and to prepare and file all tax returns consistently therewith (as applicable), as (i) a taxable sale of the partnership interests in TWC II, (ii) which sale is followed by a non-liquidating distribution of cash by the Company to the Partners pursuant to Section 731 of the Code, and (iii) which distribution, in turn, is followed by a separate sale or contribution of the Interests to the Buyer in a taxable sale of such Interests for cash or a non-taxable contribution under Section 721 of the Code for Preferred Units, as the case may be, to the extent permitted by Law.

(c) Contemporaneously herewith the Company and the Buyer (together with certain Acquired Companies and other Buyer Parties) are entering into the TWC II Sale Agreement and the Sale and Contribution Agreement. The provisions of this Agreement shall control in each case in which a provision hereof conflicts with a provision (or provisions) of any other Transaction Document notwithstanding any provision to the contrary set forth in this Agreement or any other Transaction Document, subject to the provisions of Section 9.5 hereof; provided that, except in any case in which such conflict is a direct and express conflict, the applicable Acquired Companies and Buyer Parties shall use good faith efforts to agree on an interpretation of any provisions herein and in any other Transaction Document that conflict (or purport to conflict). Such agreed upon interpretation, if reduced to writing and executed by the applicable Acquired Companies and Buyer Parties, shall automatically amend, supplement and modify (as applicable) the relevant provisions herein and in such other Transaction Document without any additional action by or on behalf of such parties or any other party hereto, which amendment, supplement or other modification, as the case may be, shall be binding upon all parties hereto and, or thereto.

(d) The TWC II Purchase Price shall be reduced by an amount equal to ninety-nine percent (99%) of the aggregate amount of the Awards (or portions thereof, as the case may be), if any, of the Equity Consenting Participants converted into Class C Interests in the Class C Interests Grant (the TWC II Purchase Price as so adjusted, the "***Adjusted TWC II Purchase Price***").

(e) The Class B Partners (or any of them) shall have the right to make the Investment Elections provided in Article III of the Sale and Contribution Agreement if, and only if, the sum of (i) the aggregate amount of the Per Interest Price elected to be received in Preferred Units of all Investing Partners is at least Forty-Five Million Dollars ($45,000,000) (such amount, the "***Investment Threshold***"). The calculations required to be made under the preceding sentence, shall be made by the Buyer and the Company as of the close of business on the Election Deadline and (unless the Buyer and the Company shall disagree on such calculations) shall be binding on all parties hereto. If the Investment Threshold has not been reached as of the close of business on the Election Deadline, any Investment Election theretofore made shall be, and shall be deemed to be, void ab initio and to have been revoked prior to the Election Deadline for all purposes hereunder and under the other Transaction Documents (including Section 3.2(b) of the Sale and Contribution Agreement).

Section 2.2 ***Deposits***.

(a) On May 31, 2002 the Buyer delivered to US Bank Trust National Association, as escrow agent (the "***Escrow Agent***"), the sum of Five Million Dollars ($5,000,000) as a non-refundable deposit (the "***Signing Deposit***"). Prior to 12:00 p.m. (Arizona time) on July 1, 2002 (and assuming the Buyer does not exercise its termination rights during the Physical Inspection Period), the Buyer shall deliver to the Escrow Agent the sum of Twenty Million Dollars ($20,000,000) (the "***Physical Inspection Deposit***", and together with the Signing Deposit, the "***Deposits***"). The Deposits shall be held in escrow

by the Escrow Agent in an interest-bearing account pursuant to and in accordance with the Deposit Escrow Agreement, dated as of May 30, 2002 (the "***Deposit Escrow Agreement***"), among the Company, the Buyer and the Escrow Agent. Subject to the terms and conditions set forth in Article VIII with respect to the termination of this Agreement, the Deposits, together with any income earned thereon, shall be delivered, as set forth in Section 2.4(g) below, to the Escrow Agent at the Closing, whereupon the amounts of the Deposits shall constitute (in whole or in part as provided herein) the Indemnification Escrow Amount and the Adjustment Escrow Amount, respectively. Any Taxes due on any income earned on the Deposit shall be the responsibility of the party that receives such income, subject to the terms and as set forth in the Deposit Escrow Agreement and the Indemnification Escrow Agreement.

(b) As an alternative to making the Physical Inspection Deposit in cash, the Buyer may elect to deliver to the Escrow Company one or more irrevocable, clean standby letters of credit in the amount of such Deposit (each a "***Deposit L/C***"). Each Deposit L/C shall be (i) in a form reasonably acceptable to the Company and (ii) issued in favor of the Escrow Agent.

Section 2.3 ***Closing***. The closing of the Transactions (the "***Closing***") shall be held at the offices of Goodwin Procter LLP, 53 State Street, Boston, Massachusetts, at 10:00 a.m. (local time) on the date that is five (5) Business Days following the date on which the conditions set forth herein with respect thereto shall be satisfied or duly waived or such other place or date as may be fixed by mutual agreement of the Buyer and the Company; provided that the Closing shall not occur prior to the expiration of the Election Period. The date on which the Closing is actually held hereunder is sometimes referred to herein as the "***Closing Date***".

Section 2.4 ***Actions at Closing***. Subject to the terms and conditions set forth in this Agreement, at the Closing:

(a) TWC II shall make the TWC II Distribution;

(b) the Company and TWC, on the one hand, and the Buyer, Macerich TWC II LLC and Macerich TWC II Corp., on the other hand, shall consummate the TWC II Sale in accordance with the terms and conditions of the TWC II Sale Agreement;

(c) the Company shall (or cause the Subsidiaries and Affiliated Property Owners to) make the Pre-Closing Cash Distributions and fund the Escrow Amounts;

(d) the Company shall make the Class C Interests Grant (if it has elected to do so in accordance with Section 5.9(d)(ii));

(e) the Buyer, Macerich Galahad, Macerich WRLP LLC and Macerich WRLP Corp., on the one hand, and the Partners, on the other hand, shall consummate the Company Sale in accordance with the terms and conditions of the Sale and Contribution Agreement;

(f) the Company, TWC, TWC II and the Partners shall deliver to the Buyer and, as applicable, the other Buyer Parties, the various certificates, instruments and documents referred to in Section 6.3 and each other certificate, instrument and document required to be so delivered under any other Transaction Document;

(g) the applicable Buyer Parties shall deliver to the Company and, as applicable, the Partners the various certificates, instruments and documents referred to in Section 6.2 and each other certificate, instrument and document required to be so delivered under any other Transaction Document; and

(h) the Escrow Agent shall retain the Deposits and any income earned thereon and transfer such amounts in escrow (such aggregate amounts, together with any additional cash or property added thereto as provided herein, collectively, the "***Escrow Amounts***") in interest-bearing accounts pursuant to and in accordance with the provisions of the escrow agreement to be executed at the Closing in the form of Exhibit C attached hereto (the "***Indemnification Escrow Agreement***") for the purpose of securing (i) in the case of the Adjustment Escrow Amount, the obligations of the Partners under Section 2.6(c) hereof to pay the Balance Sheet Adjustment Amount Differential, if any, to the Buyer, and (ii) in the case of the Indemnification Escrow Amount, the indemnification obligations of the Partners set forth in Article VII of this Agreement. The Escrow Amounts shall be held as trust funds and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any party, and shall be held and disbursed solely for the purposes and in accordance with the terms of the Indemnification Escrow Agreement. Notwithstanding the fact that the Escrow Agent shall retain the Deposits and apply them as contemplated above, the Deposits shall be deemed to have been delivered by the Escrow Agent to the Company and then distributed to the Partners on a pro rata basis as part of the Pre-Closing Cash Distributions in accordance with Section 2.5(b), and then delivered by the Partners to the Escrow Agent. Each Partner shall be deemed to have delivered a portion of his, her or its share of the Pre-Closing Cash Distributions equal to his, her or its pro rata share of the Deposits to the Escrow Agent for the purpose of securing his, her or its obligations described above. Each Partner hereby consents to, and instructs the Company, on his, her or its behalf, to take such actions, including, without limitation, the delivery of the joint written instructions to the Escrow Agent contemplated under Sections 6.2 and 6.3 hereof, to effect the delivery of funds into escrow through the physical retention of the Deposits by the Escrow Agent as on behalf of such Partner this Section 2.4(h);

Section 2.5 ***Pre-Closing Distributions***.

(a) *TWC II Distribution*. The parties hereto acknowledge and agree that, prior to the consummation of the TWC II Sale, the Company shall cause TWC II to distribute, to the Company, as the general partner of TWC II, the TWC II Distributed Property (the "***TWC II Distribution***").

(b) *Pre-Closing Cash Distributions*. The parties hereto acknowledge and agree that, prior to the consummation of the Company Sale, the Company shall cause each Affiliated Property Owner and each Subsidiary to distribute to such entities' partners or members, as applicable, all cash and cash equivalents of such Affiliated Property Owner or Subsidiary other than Retained Cash, and the Company shall distribute, subject to the following sentence, to the Partners all of its cash and cash equivalents (including, without limitation, the Adjusted TWC II Purchase Price) other than Retained Cash (all such cash and cash equivalents, the "***Aggregate Partner Distribution Amount***"); provided that no such distribution shall be in violation of any loan agreement or other contractual restriction on the distribution of funds, or the covenant regarding construction loans contained in Section 5.1 hereof (such distributions, the "***Pre-Closing Cash Distributions***", and, together with the TWC II Distribution, the "***Pre-Closing Distributions***"). Subject to Section 2.4(h) above, unless otherwise agreed in writing by the Buyer, the Company and the Indemnification Representative (on behalf of the Partners),

the Company shall make the Pre-Closing Cash Distributions to the Partners, and, on behalf of the Partners, in each case by wire transfer in immediately available funds, as follows:

(i) an amount equal to the sum of (x) the Signing Deposit and (y) the aggregate Pre-Closing Cash Distributions less the Adjusted TWC II Purchase Price to the Escrow Agent whereupon such amount shall be and shall be deemed to be the Adjustment Escrow Amount;

(ii) an amount equal to the Physical Inspection Deposit to the Escrow Agent, whereupon such amount shall be and shall be deemed to be the Indemnification Escrow Amount;

(iii) at the Company's discretion or upon written direction from the Indemnification Representative, cash in an amount specified in a written notice to the Buyer, which notice shall be delivered at least five (5) Business Days prior to the Closing, into the Holdback Escrow or into the control of the Indemnification Representative; and

(iv) unless otherwise agreed in writing by the Buyer and the Company, Five Hundred Thousand Dollars ($500,000) into an escrow account established by the Company and the Buyer and subject to the general terms and conditions applicable to the Indemnification Escrow Amount under the Indemnification Escrow Agreement, but which shall be an escrow account separate from the other Indemnification Escrow Amounts (such escrow arrangement, the "***Arrowhead Escrow***"); and

(v) the amount of Pre-Closing Cash Distributions remaining after making the foregoing deliveries, to the Partners pro rata based on each Partner's Interest.

Section 2.6 ***Closing Date and Post-Closing Balance Sheet Adjustment***.

(a) *Closing Date Adjustment*. Prior to the Closing Date, the Company shall in good faith prepare, with the assistance of the Buyer, an estimated balance sheet for each Affiliated Property Owner and Acquired Company as of the Closing Date after taking into account the Pre-Closing Distributions (the "***Estimated Closing Date Balance Sheets***"). The Estimated Closing Date Balance Sheets shall be prepared in accordance with GAAP consistently applied, and otherwise consistent with the methodology used to prepare each such entity's most recent regularly prepared balance sheet. Not later than five (5) Business Days prior to the Closing Date, the Company shall deliver to the Buyer the Estimated Closing Date Balance Sheets, together with worksheets and data that

support the Estimated Closing Date Balance Sheets and any other information that the Buyer may reasonably request in order to verify the amounts reflected on the Estimated Closing Date Balance Sheets. The Aggregate Partner Distribution Amount to be distributed at the Closing shall be: (i) increased, dollar for dollar, to the extent that the aggregate Balance Sheet Adjustment Amounts shown on the Estimated Closing Date Balance Sheets for all Acquired Companies and Affiliated Property Owners is positive, by the amount of the aggregate Balance Sheet Adjustment Amounts; and (ii) decreased, dollar for dollar, to the extent that the aggregate Balance Sheet Adjustment Amounts shown on the Estimated Closing Date Balance Sheets for all Acquired Companies and Affiliated Property Owners is negative, by the absolute value of the Balance Sheet Adjustment Amounts.

(b) *Confirmation of Closing Date Adjustment.* As soon as practical after the Closing Date, Ernst and Young LLP (the "***Accountant***") shall review the Company's books and records and also shall review the Estimated Closing Date Balance Sheets in accordance with GAAP consistently applied and otherwise consistent with the methodology used to prepare such entity's most recent regularly prepared balance sheet (taking into account the Pre-Closing Distributions) and make any adjustments necessary thereto (the "***Post-Closing Audited Balance Sheets***") consistent with the provisions of this Section 2.6. The Company shall pay all fees and expenses of the Accountant, which shall be paid (unless otherwise off-set) from the Indemnification Escrow Amount in accordance with the terms of the Indemnification Escrow Agreement, and, in all events, shall be accounted for as a credit against the Aggregate Partner Distribution Amount. The Accountant shall, within forty-five (45) days following the Closing Date, deliver the Post-Closing Audited Balance Sheets to the Indemnification Representative and the Buyer, together with worksheets and data that detail any adjustments and the basis thereof and any other information that the Indemnification Representative may reasonably request in order to verify the amount of any such adjustments. The Post-Closing Audited Balance Sheets, and the Balance Sheet Adjustment Amount attributable to each Affiliated Property Owner and Acquired Company at the Closing reflected on the Post-Closing Audited Balance Sheet applicable to such entity, shall be binding upon the parties upon approval by the Indemnification Representative and the Buyer of such Post-Closing Audited Balance Sheets. If the Indemnification Representative and the Buyer do not both approve of the Post-Closing Audited Balance Sheets and the calculation of the Balance Sheet Adjustment Amount attributable to each Affiliated Property Owner and Acquired Company at the Closing stated thereon, and the Buyer and the Indemnification Representative cannot mutually agree on any proposed modifications, then within the later of (i) sixty (60) days after the Closing Date and (ii) fifteen (15) days following receipt by the Indemnification Representative and the Buyer of the Post-Closing Audited Balance Sheets, the Buyer and the Indemnification Representative shall select a nationally recognized independent accounting firm with no affiliation to the Buyer, the Company or the Indemnification Representative and who is mutually satisfactory to the Buyer and the Indemnification Representative to resolve such dispute (the "***Neutral Auditor***"), and shall submit in writing to the Neutral Auditor their respective positions with respect to the Post-Closing Audited Balance Sheets and the calculation of the Balance Sheet Adjustment Amount attributable to each Affiliated Property Owner and Acquired Company at the Closing. The Neutral Auditor shall review the Post-Closing Audited Balance Sheets and, within ten (10) Business Days of its appointment, shall make any adjustments necessary thereto, and, upon completion of such review, such Post-Closing Audited Balance Sheets and the Balance Sheet Adjustment Amount at the Closing for each Affiliated Property Owner and Acquired Company stated thereon as determined by the Neutral Auditor shall be binding upon the parties. The fees and expenses associated with such a review shall be borne by the non-prevailing party, which shall be the party whose written position submitted to the Neutral Auditor is furthest from the position determined by the Neutral Auditor.

(c) *Post-Closing Balance Sheet Adjustment*.

(i) In the event the Balance Sheet Adjustment Amount Differential is negative, the Buyer and the Indemnification Representative jointly shall authorize and direct the Escrow Agent to pay, on behalf of each Partner, to the Buyer, by check or wire transfer of immediately available funds, to the extent available in the Adjustment Escrow Amount, an amount equal to the absolute value of the Balance Sheet Adjustment Amount

Differential multiplied by such Partner's Interest. Such authorization and direction shall instruct the Escrow Agent to make such payments within four (4) Business Days following delivery to each Partner and the Escrow Agent of joint notice from the Buyer and the Indemnification Representative as to the determination of Balance Sheet Adjustment Amount Differential in accordance with this Section 2.6.

(A) If the Adjustment Escrow Amount exceeds the Balance Sheet Adjustment Amount Differential, concurrently with the Buyer's and the Indemnification Representative's delivery of such joint authorization and direction, the Buyer and the Indemnification Representative shall deliver to the Escrow Agent a joint notice and instruction directing the Escrow Agent to pay to each Partner, by check or wire transfer of immediately available funds, an amount equal to (1) the Adjustment Escrow Amount less the Balance Sheet Adjustment Amount Differential, multiplied by (2) such Partner's Interest. All such disbursements shall be paid contemporaneously with the payment of the Balance Sheet Adjustment Amount to the Buyer.

(B) If the Balance Sheet Adjustment Amount Differential exceeds the Adjustment Escrow Amount, each Partner shall, severally (pro rata in accordance with his, her or its Interest) and not jointly, indemnify the Buyer Parties and the Company with respect to any shortfall, in an amount equal to the aggregate amount of such shortfall multiplied by such Partner's Interest (the amount of such payment with respect to any Partner, such Partner's "***Additional Adjustment Payment***"). At the Buyer's option, the Buyer shall be entitled to request payment of, and the Escrow Agent shall pay, the entire amount of all Additional Adjustment Payments (but not less than such entire amount) from the Indemnification Escrow Amount, and each Partner shall be obligated to repay promptly the amount of its Additional Adjustment Payment, together with any accrued interest, to the Indemnification Escrow Amount. The Indemnification Representative shall cooperate with the Buyer and the Escrow Agent in seeking repayment of any such funds to the Indemnification Escrow Amount.

(ii) In the event the Balance Sheet Adjustment Amount Differential is positive, the Buyer shall, within four (4) Business Days following the determination of Balance Sheet Adjustment Amount Differential in accordance with Section 2.6(b) above, (A) pay to each of the Partners an amount equal to the Balance Sheet Adjustment Amount Differential multiplied by such Partner's Interest by wire transfer of immediately available funds in accordance with the wire transfer instructions provided to the Buyer prior to the Closing (unless such wire transfer instructions are subsequently updated or amended by any particular Partner and confirmed by the Buyer with the Indemnification Representative prior to wiring) and (B) deliver to the Escrow Agent, with Indemnification Representative, a joint notice and instruction, authorizing and directing the Escrow Agent to pay to the Partners the amount of the Adjustment Escrow Amount and any investment income earned thereon, in accordance with the terms of the Indemnification Escrow Agreement.

Section 2.7 ***Post-Closing Additional Adjustment Payment***.

(a) *Aggregate Additional Amount*. The Aggregate Partner Distribution Amount distributed to each Partner at the Closing shall be subject to a post-Closing adjustment with respect to each

Partner by an amount equal to the Per Interest Additional Payment of such Partner as provided in this Section 2.7. The Aggregate Partner Distribution Amount shall be increased, and the Aggregate Additional Amount shall be paid as set forth in Section 2.7(b)(i), to the extent that the Aggregate Additional Amount exceeds zero. The Aggregate Partner Distribution Amount shall be decreased, and the Aggregate Additional Amount shall be paid as set forth in Section 2.7(b)(ii), to the extent the Aggregate Additional Amount is less than zero. If the Aggregate Additional Amount is zero, the Aggregate Partner Distribution Amount shall not be adjusted under this Section 2.7, and no party shall have any payment obligation under Section 2.7(b).

(b) *Payment of Aggregate Additional Amount*.

(i) The Per Interest Additional Amount shall be distributed by the Company to the Partners on March 15, 2003 by wire transfer of immediately available funds in accordance with the wire transfer instructions provided to the Buyer prior to the Closing (unless such wire transfer instructions are subsequently updated or amended by any particular Partner) and confirmed by the Buyer with the Indemnification Representative prior to wiring (any payment of a Per Interest Additional Amount, a "***Per Interest Additional Payment***", and all such payments, collectively, the "***Aggregate Additional Distribution***"). To the extent that any Percentage Rent is owed to, but has not been actually received by, or directly or indirectly credited for the account of, the Buyer or any of its Affiliates or their respective successors or assigns prior to March 15, 2003, the Company will distribute such Aggregate Additional Distribution to the Partners promptly (but in no event more often than quarterly) following the receipt by (or direct or indirect crediting for the account of) the Buyer or any of its Affiliates or their respective successors or assigns of all or any portion of such Percentage Rent so paid or credited on or after March 15, 2003 in the amount necessary to increase the total cash distributions received by each Partner pursuant to this Section 2.7(b) to the amount of such Partner's Per Interest Additional Amount calculated as if such Percentage Rent had been received (or credited) timely. (It being understood that any additional distributions made pursuant to the preceding sentence shall be considered and deemed to be part of the "Aggregate Additional Amount" and, with relation to any Partner, part of the "Per Interest Additional Amount" of such Partner.) At the time of any such distributions, the Company shall deliver concurrently to each Partner a statement showing the method used to compute the Aggregate Additional Amount and such Partner's Per Interest Additional Amount, certified by the chief financial officer of the Buyer as true and correct, together with reasonable back-up data for such computation (the "***Statement***") and shall also deliver to the Indemnification Representative such additional back-up data or documents as the Indemnification Representative from time to time may reasonably request in connection with the computation of the Aggregate Additional Amount. In furtherance of the foregoing, the Buyer hereby expressly agrees and undertakes, from and after the Closing, to cause the Company to perform its obligations under this Section 2.7(b)(i).

(ii) Each Partner shall, severally (pro rata in accordance with their Interests) and not jointly, indemnify the Buyer Parties for an amount equal to such Partner's Interest multiplied by the absolute value of the amount by which the Aggregate Additional Amount is less than zero, which right of indemnification shall be satisfied solely by recourse to the Indemnification Escrow Amount and shall otherwise be subject to the terms and conditions of Article VII, other than the Threshold Amount as set forth in Section 7.2(b); provided that in no case shall the aggregate obligations of the Partners under this Section 2.7 exceed $2,000,000.

(iii) The Buyer agrees to keep accurate records sufficient for the tracking of the Percentage Rent with respect to calendar year 2002 and computation of the Aggregate Additional Amount. The parties agree that they will keep each other informed as to the status of Percentage Rent collected and cooperate reasonably in good faith and jointly attempt to

resolve any disputes with tenants regarding the Percentage Rent owed by them. Following receipt of the Statement, the Indemnification Representative shall have a right to conduct a limited audit of the Buyer or any of its Affiliates or their respective successors or assigns solely for the purpose of determining the amount of Percentage Rents collected by (or directly or indirectly credited for the account of) the Buyer or any of its Affiliates or their respective successors or assigns with respect to calendar year 2002 and the Aggregate Additional Amount, subject to the condition that such audit be conducted upon reasonable advance notice during normal business hours. To the extent that the Buyer or any of its Affiliates effectively assigns its right to receive any Percentage Rents with respect to calendar year 2002, the Buyer shall provide in the agreements relating to such transfer a continuing right of the Indemnification Representative to conduct the foregoing limited audit for the purpose of determining the amount of such collected or credited Percentage Rents.

(c) *Disputes.* In the event that the Indemnification Representative disputes the calculation of the Aggregate Additional Amount, the Indemnification Representative shall deliver to the Buyer a written notice of objection (an "***Objection Notice***") within twenty (20) days following receipt of the Statement or the receipt of such additional back-up data or documents as the Indemnification Representative may have reasonably requested in connection therewith, as applicable, which notice shall include a statement showing the Indemnification Representative's method of computing the Aggregate Additional Amount and reasonable back-up data or documents to support the objection. During the fifteen (15) days following delivery of an Objection Notice, the Indemnification Representative and the Buyer shall in good faith attempt to resolve their differences with respect to the computation of the Aggregate Additional Amount. If the parties are unable to resolve their differences within such period, the matter will be referred as promptly as practicable to a nationally recognized independent accounting firm with no affiliation to the Buyer, the Company or the Indemnification Representative, selected by mutual agreement of the Buyer and the Indemnification Representative. Such accounting firm (the "***Arbiter***") shall make a determination as to the appropriate computation of the Aggregate Additional Amount and the Per Interest Additional Payments, which determination will be (i) in writing, (ii) furnished to the Buyer and the Indemnification Representative as soon as practicable following referral of the matter, (iii) made in accordance with this Agreement, and (iv) conclusive, binding and non-appealable, in the absence of fraud or manifest error, upon the Buyer, the Indemnification Representative and each of the Partners. Subject to a confidentiality agreement reasonably acceptable to the Buyer, the Arbiter shall have such access to the financial books and records of the Buyer or any of its Affiliates or their respective successors or assigns as is reasonably necessary to complete its evaluation. The Buyer shall promptly pay to the Partners any additional funds finally determined to have been owed as part of the Per Interest Additional Payments pursuant to Section 2.7(b) above. The expenses of the Arbiter shall be borne by the non-prevailing party.

Section 2.8 ***Physical Inspection Period***. The Buyer shall have the period beginning on the Signing Date of this Agreement and ending on June 29, 2002 (such period, the "***Physical Inspection Period***") to complete its physical and environmental inspections of the Properties, and the Buyer shall promptly provide to the Company a copy of any physical or environmental inspection report or similar report it obtains in connection with such inspections. If, but only if, a physical or environmental inspection report obtained by the Buyer and provided to the Company discloses a structural, building system or other physical or environmental deficiency or liability in the Properties that is not disclosed in the physical condition or environmental reports included in the Review Room and that would reasonably be expected to cost in excess of $20,000,000 (in the aggregate if there is more than one such deficiency) to remedy, then the Buyer shall be entitled to terminate this Agreement by giving written notice to the Company (the "***Termination Notice***"), with a copy to the Escrow Agent, which Termination Notice shall specify the grounds for such termination and which must be received by the Company by 5:00 p.m. (Arizona time) on June 29, 2002, whereupon the Company and the Buyer shall have no further

obligations or liabilities to each other hereunder, except as otherwise stated herein in this Agreement. If the Buyer does not give a Termination Notice to the Company prior to the expiration of the Physical Inspection Period, then the Buyer's right to terminate this Agreement pursuant to this Section 2.8 shall automatically expire and be of no further force or effect.

Section 2.9 ***Proposed Development Properties Transactions***. The parties hereto acknowledge that it is the intent of the Buyer and certain current employees of the Company to pursue a transaction, the material terms of which are set forth on the term sheet attached hereto as Exhibit F, concurrently with the Closing and consummation of the Transactions; provided, however, that the consummation of the transaction described in such term sheet shall not constitute a condition to the Closing or any Transactions.

Section 2.10 ***Time of the Essence***. The parties hereto acknowledge and agree that, subject only to satisfaction or waiver of the conditions to Closing (including the expiration of the Election Period) set forth hereunder and under the Purchase and Sale Agreement and TWC II Sale Agreement, and the express adjournment rights contained herein, time is of the essence in consummating the Transactions.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

As a material inducement to each Buyer Party to enter into the Transaction Documents to which it is party and to consummate the Transactions to which it is party, the Company represents and warrants to each Buyer Party as follows:

Section 3.1 ***Capitalization***. Exhibit A constitutes a complete and accurate list of all Partners and the percentage of the total outstanding Interests held by each Partner, which constitutes all the holders of all the Interests. The Interests and all of the issued and outstanding equity interests in the Subsidiaries have been duly authorized and validly issued and, to the Company's Knowledge, are free and clear of any and all Encumbrances (except for federal and state securities law restrictions of general applicability and certain transfer restrictions set forth in the Limited Partnership Agreement). Except as set forth on Schedule 3.1 or as contemplated under Section 5.9(d), there are no contracts or commitments relating to the issuance, sale or transfer of any equity securities or other securities of any Acquired Company, including, without limitation, options, warrants, call rights or preemptive rights. None of the outstanding equity securities or other securities of any Acquired Company was issued in violation of the Securities Act of 1933 (the "***Securities Act***") or other state securities laws. Except as set forth on Schedule 3.1, no Acquired Company owns, or has any contract to acquire, any equity securities or other securities of any Person (other than the Acquired Companies or the Affiliated Property Owners) or any direct or indirect equity or ownership interest in any other business. Except as set forth on Schedule 3.1, or as contemplated under Section 5.9(d), there are no voting trusts, equity holder agreements or understandings in effect with respect to the voting or transfer of the Interests, or any other securities of, or equity interests in, any Acquired Company.

Section 3.2 ***Organization of Acquired Companies; Authority***.

(a) *Organization of Acquired Companies.* Schedule 3.2(a) contains a complete and accurate list for each Acquired Company of its name, its jurisdiction of organization, other jurisdictions in which it is authorized to do business, and its capitalization (including the identity of each equity holder and the percentage interest held by each). Each Acquired Company is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all the requisite limited liability company or partnership, as applicable, power and authority to carry on its business as now being conducted and to own, operate and lease the Properties currently owned, operated and leased by it. Each of the Acquired Companies is qualified to do business and is in good standing in each jurisdiction in which the nature of its business requires it to be so qualified, except to the extent the failure to so qualify would not,

either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as hereinafter defined). The Company has delivered to the Buyer complete and correct copies of the partnership agreements or limited liability company agreements of each of the Acquired Companies, which are in full force and effect as of the date hereof. Schedule 3.2(a) lists all current appointed and acting officers and directors of each Acquired Company on the date of this Agreement.

(b) *Authority*. The Company and each other Acquired Company has full authority, right, power and capacity to enter into each Transaction Document to which it is party and each agreement, document and instrument to be executed and delivered by or on behalf of the Company or such Acquired Company pursuant to or as contemplated by the Transaction Documents (or any of them) and to carry out the Transactions and other transactions contemplated hereby and thereby. The execution, delivery and performance by the Company and each other Acquired Company of this Agreement, the other Transaction Documents and each such other agreement, document and instrument have been duly authorized by all necessary action of the Company and each other Acquired Company, respectively, and no other action on the part of the Company or such Acquired Company, is required in connection therewith. This Agreement and each agreement, document and instrument executed or to be executed and delivered by the Company and each other Acquired Company party thereto, pursuant to or as contemplated by the Transaction Documents (or any of them) constitute, or when executed and delivered will constitute, valid and binding obligations of the Company or such Acquired Company, respectively, enforceable in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and subject to the rules of law governing (and all limitations on) specific performance, injunctive relief and other equitable remedies. Except as provided in Schedule 3.2(b), and except as may result from any facts or circumstances relating solely to any of the Buyer and its Affiliates (including, without limitation, its sources of financing), and assuming that all consents, approvals, authorizations and other actions set forth on Schedule 3.6 have been obtained and all filings and notifications set forth on Schedule 3.6 have been made, the execution, delivery and performance by the Company and the other Acquired Companies, as the case may be, of this Agreement, the other Transaction Documents and each such other agreement, document and instrument pursuant to or as contemplated by the Transaction Documents (or any of them).

(i) do not and will not violate the governing documents of any of the Acquired Companies or the Affiliated Property Owners;

(ii) do not and will not violate any laws of the United States, or any state or other jurisdiction applicable to any Acquired Company or Affiliated Property Owner require any Acquired Company or Affiliated Property Owner to obtain any approval, consent or waiver of, or make any filing with, any Person (governmental or otherwise) that has not been obtained or made, except for such violations as would not reasonably be expected to have a material adverse effect on any Acquired Company, Affiliated Property Owner or Property; and

(iii) do not and will not result in a material breach of, constitute a material default under, accelerate any material obligation under or give rise to a material right of termination of any indenture or loan or credit agreement or any other agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award to which any Acquired Company or Affiliated Property Owner is a party or by which any of the Properties is bound or affected, or result in the creation or imposition of any material Encumbrance on any of the assets or properties of any Acquired Company or Affiliated Property Owner.

Section 3.3 ***Affiliated Property Owners***. Schedule 3.3 contains a complete and accurate list for each Affiliated Property Owner of its name, its jurisdiction of organization, other jurisdictions in which it is authorized to do business, and its capitalization (including the identity of each equity holder that is an Acquired Company and the percentage interest held by such holders and, to the Company's Knowledge, the identity of each other equity holder and the percentage interest held by such holders). Each Affiliated Property Owner is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all the requisite limited liability company or partnership power, as applicable, and authority to carry on its business as now being conducted and to own, operate and lease the properties owned, operated and leased by it. Each of the Affiliated Property Owners is qualified to do business and is in good standing in each jurisdiction in which the nature of its business requires it to be so qualified, except to the extent the failure to so qualify would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Acquired Company is and, to the Company's Knowledge, no equity holder of an Affiliated Property Owner that is not an Acquired Company is, in default of its obligations under the partnership or limited liability company agreement or other governing document for the Affiliated Property Owner of which it is an equity holder. There are no pending capital calls or capital calls currently being contemplated in the foreseeable future with respect to any Affiliated Property Owner other than the equity required to fund (as reflected in the Budget) the development of the Property commonly known as Scottsdale 101.

Section 3.4 ***Financial Statements; Undisclosed Liabilities***.

(a) Attached hereto as Schedule 3.4 is (i) the audited consolidated balance sheet as of December 31, 2001, 2000 and 1999 and statements of income, changes in partnership equity and cash flows of the Company and its Subsidiaries for the years ended December 31, 2001, 2000 and 1999 and (ii) the unaudited consolidated balance sheet as of March 31, 2002 (the "***Most Recent Balance Sheet***") and statements of income, changes in partnership equity and cash flows of the Acquired Companies and the Affiliated Property Owners for the three months ended March 31, 2002 (collectively, the "***Financial Statements***"). Such Financial Statements fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of the respective dates thereof and for the periods referred to therein and are consistent with the books and records of the Company. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, except as noted therein and for the fact that the unaudited financial statements may not include footnotes normally contained therein and are subject to normal year-end adjustments.

(b) As of the date hereof, except as set forth on Schedule 3.4, the Acquired Companies and Affiliated Property Owners have no liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated and whether due or to become due), except for (i) liabilities stated or adequately reserved against on the Most Recent Balance Sheet, (ii) liabilities that arose in the ordinary course of business after the date of the Most Recent Balance Sheet substantially consistent with past practice, (iii) liabilities resulting from routine litigation arising in the ordinary course of the Acquired Companies' or the Affiliated Property Owners' business or that are adequately covered by insurance, (iv) any liability that would not reasonably be expected to exceed $100,000 individually, and (v) liabilities under the Acquired Companies' existing contracts and agreements disclosed pursuant to Section 3.12 hereof but not required to be disclosed pursuant to GAAP.

Section 3.5 ***Absence of Certain Changes.*** Except as set forth on Schedule 3.5 or expressly as required in any Transaction Document to be performed by any Acquired Company prior to or on the Closing Date (including, without limitation, as contemplated under Section 7.1(b) of the Sale and Contribution Agreement and Section 4.1(b) of the TWC II Sale Agreement), since March 31, 2002, the Acquired

Companies and the Affiliated Property Owners have operated only in the ordinary course of business consistent with past practice and there has not been any of the following:

(a) any declaration, setting aside or payment of any distribution (whether in cash, partnership interests or property) to the holders of the Interests other than distributions in the ordinary course of business consistent with past practice and the distributions contemplated by Section 2.5 hereof;

(b) any amendment of the Limited Partnership Agreement or other organizational or governing document of any Acquired Companies or any Affiliated Property Owners;

(c) any redemption, repurchase or other acquisition of any Interests by the Company or any issuance of any equity interests or other securities (including any grant or issuance of any options, call, warrants or other rights or agreements relating to such issuance) other than the Class C Interest Grant;

(d) any change in, or effect on, the Acquired Companies or the Affiliated Property Owners or other event, damage or destruction relating to the business of the Acquired Companies, the Affiliated Property Owners or the Properties that has had, or would reasonably be expected to have, a Material Adverse Effect;

(e) incurrence of material amount of indebtedness or a guarantee of a material amount of indebtedness or other liability of any unaffiliated third party by any Acquired Company or Affiliated Property Owner;

(f) change in the accounting methods or principles used by the Company (with respect to the assets, liabilities, financial condition or results of operations of any Acquired Company), except for such adjustments as required by GAAP, or any change in any tax method or election by any Acquired Company;

(g) any revaluation by any of the Acquired Companies or the Affiliated Property Owners of any of their assets, including writing off of notes or accounts receivable other than in the ordinary course of business;

(h) any increase in, establishment of or amendment of any Benefit Plans or Employment Agreements, other than as set forth on Schedule 3.9, or any other increase in compensation payable or to become payable to any present or former directors, officers or key employees of any Acquired Company other than in the ordinary course of business consistent with past practice;

(i) any sale or Encumbrance of the Properties or other assets of the Acquired Companies or the Affiliated Property Owners other than in the ordinary course of business; or

(j) any material obligation or liability incurred by any of the Acquired Companies or Affiliated Property Owners other than in the ordinary course of business.

Section 3.6 ***Consents and Approvals***.

(a) To the Company's Knowledge, except as set forth on Schedule 3.6, the execution, delivery and performance of the Transaction Documents to which such Acquired Company is party by any Acquired Company will not, as of the Closing Date, require any consent, approval, authorization or other action by, or filing with or notification to, any federal, state, local, or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body (each, a "***Governmental Authority***"), except (i) the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "***HSR Act***"), if applicable, (ii) where the failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not (A) delay or prevent the consummation of the transactions contemplated by this Agreement or the other Transaction Documents or (B) have a material adverse effect on the ability of the Company to perform its

obligations under this Agreement or the other Transaction Documents, and (iii) as may be necessary as a result of any facts or circumstances relating solely to the Buyer (including, without limitation, its sources of financing).

(b) Except as set forth on Schedule 3.6, the execution, delivery and performance of the Transaction Documents to which such Acquired Company is party by any Acquired Company will neither, as of the Closing Date, require any third-party consents, approvals, authorizations or actions, nor trigger any rights of first offer or first refusal, buy/sell rights, put rights or other preferential rights in favor of third parties owning direct or indirect equity interests in Affiliated Property Owners, except (i) where the failure to obtain such consent, approval, authorization or action would not (A) delay or prevent the consummation of the transactions contemplated by this Agreement or the other Transaction Documents or (B) have a material adverse effect on the ability of the Company to perform its obligations under this Agreement or the other Transaction Documents and (ii) as may be necessary as a result of any facts or circumstances relating solely to the Buyer (including, without limitation, its sources of financing).

Section 3.7 ***Litigation***. To the Company's knowledge, except as set forth on Schedule 3.7, except for routine litigation arising in the ordinary course of the Acquired Companies' or the Affiliated Property Owners' business or that is adequately covered by insurance, there is no action, suit or proceeding, claim, arbitration or investigation against an Acquired Company or Affiliated Property Owner pending or, to the Company's Knowledge, threatened in writing.

Section 3.8 ***Taxes***.

(a) Except as set forth on Schedule 3.8:

(i) The Acquired Companies and the Affiliated Property Owners have paid or caused to be paid and will as of the Closing Date pay or cause to be paid all Taxes required to be so paid by the Acquired Companies or the Affiliated Property Owners, as applicable, prior to the Signing Date and prior to the Closing Date, have made adequate accruals, in accordance with GAAP, for all Taxes owed or accrued by the Acquired Companies or the Affiliated Property Owners, as applicable, through the date of this Agreement.

(ii) The Acquired Companies and the Affiliated Property Owners have timely filed or been included in, or will timely file or be included in, all Tax Returns (as hereinafter defined) required to be filed by them or in which they are required to be included with respect to Taxes for any period ending on or before the date of this Agreement and which such Tax Returns are due on or before the Closing Date, taking into account any extension of time to file granted to or obtained on behalf of the Acquired Companies or the Affiliated Property Owners, as applicable. All such filed Tax Returns are complete and accurate in all material respects.

(iii) Neither the Internal Revenue Service (the "***IRS***") nor any other Governmental Authority is asserting as of the date of this Agreement or the Closing by written notice to the Acquired Companies or the Affiliated Property Owners or, to the Company's Knowledge, is threatening in writing as of the date of this Agreement, to assert against the Acquired Companies or the Affiliated Property Owners, any deficiency, assessment or claim for any material amount of additional Taxes.

(iv) No federal, state, local or foreign audits or other administrative proceedings or court proceedings are pending or, to the Company's Knowledge, threatened with regard to any Taxes or Tax Returns of any of the Acquired Companies or the Affiliated Property Owners and none of the Acquired Companies or the Affiliated Property Owners has received a written notice prior to the date of this Agreement of any actual or threatened audits or proceedings or is otherwise aware of any such audits or proceedings.

(v) There are no agreements, waivers or arrangements currently in effect that extend the statutory period of limitations applicable to any claim for, or the period for the collection or assessment of, Taxes due from the Acquired Companies or the Affiliated Property Owners for any taxable period, and no powers of attorney have been granted by or with respect to the Acquired Companies or the Affiliated Property Owners with respect to Taxes that are currently in force. No closing agreement pursuant to Section 7121 of the Code (or any predecessor provision) or any similar provision of any state, local or foreign law has been entered into by the Acquired Companies or the Affiliated Property Owners that is currently in force or effect.

(vi) No Acquired Company or Affiliated Property Owner has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company).

(vii) No Acquired Company or Affiliated Property Owner is a party to any Tax sharing, Tax indemnity or other agreement or arrangement with any Person, or has actual or potential liability for any Taxes as a result of transactions, events or undertakings occurring prior to the Closing.

(viii) No power of attorney granted by any Acquired Company or Affiliated Property Owner is currently in force with respect to any matter relating to Taxes of any Acquired Company.

(ix) There are no outstanding or pending requests for rulings, determinations, letters or similar administrative pronouncements issued (or to be issued) by a Governmental Authority with respect to Taxes that will be (or if issued would be) binding upon any of the Acquired Companies or the Affiliated Property Owners after the Closing.

(x) All Taxes that any Acquired Company or Affiliated Property Owner is required by law to withhold or collect for payment have been duly withheld and collected, and have been paid or accrued, reserved against and added on the books of the applicable Acquired Company or Affiliated Property Owner. Each Acquired Company and Affiliated Property Owner has complied in all material respects with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts owing to any employee, independent contractor, creditor, equity holder or other third party.

(xi) Except as set forth on Schedule 3.8(xi), the Acquired Companies and Affiliated Property Owners have qualified either as "partnerships" or "disregarded entities" (within the meaning of Section 301.7701-3 of the federal regulations under the Code) for federal income Tax purposes at all times during their existence and no Tax authority has asserted any position to the contrary.

(b) "***Taxes***" shall mean (i) any and all taxes, charges, fees, levies or other assessments, including, without limitation, income, gross receipts, excise, real or personal property, sales, withholding, social security, retirement, employment, unemployment, occupation, disability, service, use, license, net worth, payroll, franchise, transfer, employee, gift, recapture, estimated, alternative minimum, add-on minimum, value-added, severance, premium, profit, windfall profit, customs, duties, capital stock, stamp, registration and recording taxes, fees, charges, levies or assessments imposed by the IRS or any taxing authority (whether domestic or foreign including, without limitation, any state, county, local or foreign government or any subdivision or taxing agency thereof (including a United States possession)), whether computed on a separate, consolidated, unitary, combined or other basis; and such term shall include any interest whether paid or received, fines, penalties or additional amounts attributable to, or imposed upon, or with respect

to, any such taxes, charges, fees, levies or other assessments, and (ii) any liability of any Acquired Company for the payment of amounts with respect to any Tax described in clause (i) whether imposed by Law, contractual agreement or otherwise, including liabilities imposed as a result of being a member

of an affiliated, consolidated, combined or unitary group, a transferee of or successor to any Person, or a party to any tax sharing arrangement or tax indemnity arrangement.

"***Tax Return***" shall mean any report, return, document, declaration or other information or filing required to be supplied to any taxing authority or jurisdiction (foreign or domestic) with respect to Taxes, including, without limitation, information returns, any document, with respect to or accompanying payments of estimated taxes, or with respect to or accompanying requests for the extension of time in which to file any such, report, return, document, declaration or other information.

Section 3.9 ***Employee Benefit Plans.*** All of the employee benefit plans and other similar programs and arrangements, including any plans or arrangements providing for "fringe benefits" or perquisites, maintained for the benefit of any current or former employee, partner, agent, officer or director or any dependents or beneficiaries of such individuals of any of the Acquired Companies (the "***Benefit Plans***") are listed on Schedule 3.9. With respect to such Benefit Plans, except as set forth in Schedule 3.9, (a) each Benefit Plan and any related trust intended to be qualified under Sections 401(a), 501(a) or 501(c) of the Code has been duly authorized by the appropriate board of directors or other governing body of the Company and each participating Subsidiary, is qualified in form and operation under Section 401(a) of the Code and each trust under such Benefit Plan is exempt from tax under Section 501(a) of the Code, has received a favorable determination letter from the IRS that it is so qualified and, to the Company's Knowledge, nothing has occurred that will or could give rise to disqualification or loss of tax-exempt status of any such Benefit Plan or trust under such sections, no event has occurred that will or could subject any such Benefit Plans to tax under Section 511 of the Code, and no non-exempt prohibited transaction (within the meaning of Section 4975 of the Code) or non-exempt party-in-interest transaction (within the meaning of Section 406 of the Employee Retirement and Income Security Act of 1974, as amended ("***ERISA***") has occurred with respect to any of such Benefit Plans, (b) each Benefit Plan has been operated in all material respects in accordance with the terms and requirements of applicable law including requirements under ERISA and the Code (including COBRA requirements under Section 4980B of the Code), (c) none of the Acquired Companies has incurred any direct or indirect liability under, arising out of or by operation of Title I or Title IV of ERISA in connection with any Benefit Plan or other retirement plan or arrangement, and no fact or event exists that would reasonably be expected to give rise to any such liability, (d) all contributions due and payable on or before the date of this Agreement in respect of each Benefit Plan have been made in full or properly accrued and as of the Closing, neither the Acquired Companies nor the Buyer shall have or assume any material liability that is unfunded or unaccrued related to any Benefit Plan, (e) none of the Acquired Companies, and no trade or business (whether or not incorporated) that is a member of a group of which the Company or any Subsidiary is a member and which is under common control within the meaning of Section 414(b) and (c) of the Code, has ever sponsored or been obligated to contribute to any "multiemployer plan" (as defined in Section 3(37) of ERISA), "multiple employer plan" (as defined in Section 413 of the Code) or "defined benefit plan" (as defined in Section 3(35) of ERISA) and/or Section 412 of the Code, (f) except as set forth on Schedule 3.9 and, except as otherwise required by Section 4980B of the Code and applicable state insurance laws, no Benefit Plan currently or previously maintained by the Acquired Companies provides any post-retirement health or life insurance benefits, and none of the Acquired Companies maintains any obligations to provide post-retirement health or life insurance benefits in the future, (g) all reporting and disclosure obligations imposed under ERISA and the Code have been satisfied with respect to each Benefit Plan in all material respects, (h) each Benefit Plan maintained for the benefit of any current or former employee, partner, agent, officer or director of any of the Acquired Companies is listed on Schedule 3.9 and true and complete copies of the current plan documents,

summary plan descriptions, most recent determination letters from the IRS and Forms 5500 (where applicable) for each such Benefit Plan have been provided to the Buyer, (i) there are no negotiations, demands or proposals that are pending or have been made which concern matters now covered by the Benefit Plans, or that would be covered by plans, agreements or arrangements of the type described in this section and there are not pending or, to the Company's Knowledge, threatened litigation or claims (other than routine claims for benefits) against the Benefit Plans or their assets or arising out of the Benefit Plans, and (j) no benefit or amount payable or which may become payable by the Acquired Companies pursuant to any Benefit Plan, agreement or contract with any employee, shall constitute an "excess parachute payment," within the meaning of Section 280G of the Code, which is or may be subject to the imposition of any excise tax under Section 4999 of the Code or which would not reasonably be expected to be deductible by reason of Section 280G of the Code. None of the Affiliated Property Owners has any employees and, thus, has no employee benefit plans, programs and arrangements maintained for the benefit of any employees.

Section 3.10 ***Properties.***

(a) *Properties*. Schedule 3.10(a) sets forth a list by commonly known name and address of all real properties in which the Acquired Companies have a direct or indirect interest (collectively, the "***Properties***" and each, a "***Property***"), which Schedule indicates the Acquired Company or Affiliated Property Owner that directly owns each Property and the direct or indirect interest of the Acquired Companies in such Property and/or entity, and the type of interest (e.g., fee, leasehold, option, etc.). The Properties listed on Schedule 3.10(a) are all of the real properties in which the Acquired Companies own a direct or indirect real property interest.

(b) *Leases*. The Company has made available true and complete copies of all leases, licenses, concession agreements or other occupancy agreements with respect to the Properties as of the date of this Agreement (the "***Leases***") and guarantees of the obligations of the tenant under the Lease, if any, as of the date of this Agreement, (which Leases and amendments thereto are listed on Schedule 3.10(b)), and, except as listed on Schedule 3.10(b) and except for the Excluded Occupancy Agreements (as hereinafter defined), there are no other Leases in effect with respect to the Properties. The term "Leases" excludes, however, all cart, kiosk and seasonal leases with a term of six (6) months or less (the "***Excluded Occupancy Agreements***"). Except as disclosed on Schedule 3.10(b): (i) with respect to the applicable Acquired Company or Affiliated Property Owner, each Lease is in full force and effect, and, with respect to tenants under the Leases, to the Company's Knowledge, each Lease is in full force and effect; (ii) the Company has received no written notice or a copy of a notice from any tenant claiming that the applicable Acquired Company or Affiliated Property Owner is currently in default under its obligations as landlord under any Lease; (iii) no tenant is in default in any rent or other material monetary obligation for any period in excess of three months or, to the Company's Knowledge, any material non-monetary obligation, under its Lease; and (iv) no rent has been paid by any tenant more than one month in advance and no tenant deposits have been applied to perform tenant obligations.

(c) *Rights to Purchase or Lease*. Except as set forth on Schedule 3.10(c), no Acquired Company or Affiliated Property Owner has granted any unexpired option agreements or rights of first refusal with respect to the purchase of a Property or the lease of more than twenty-five percent (25%) of such Property or any other unexpired rights (including pursuant to purchase and sale or other similar agreements and rights of first refusal, first offer or similar rights) in favor of third persons to purchase or otherwise acquire a Property or any interest in a Property or any interest in any Acquired Company or any interest of an Acquired Company in an Affiliated Property Owner, other than such rights in Leases of out-parcels that (i) are less than two acres or improved with less than 10,000 square feet, and (ii) have a fair market value of less than $100,000.

(d) *Reciprocal Easement Agreements*. The Company has made available true and complete copies of all reciprocal easement agreements affecting the Properties. Except as disclosed on Schedule 3.10(d), (i) the Company has received no written notice or a copy of a notice from any other party to any such reciprocal easement agreement or similar agreement claiming that the Company is currently in default under its obligations thereunder, (ii) to the Company's Knowledge, no third party to any such reciprocal easement agreement or similar agreement is in default of any of its material obligations thereunder, (iii) with respect to the applicable Acquired Company or Affiliated Property Owner, each such reciprocal easement agreement or similar agreement is in full force and effect and (iv) with respect to the other parties to any such agreement, to the Company's Knowledge, such reciprocal easement agreement or similar agreement is in full force and effect.

(e) *Condemnation*. There is no currently pending condemnation proceeding with respect to any Property and, to the Company's Knowledge, the Company has not received any written notice or copy of notice from any Governmental Authority to the effect that any condemnation proceeding is contemplated in connection with any Property.

(f) *Title Reports*. The Company has made available in the Review Room the most recent title reports commissioned by the Company with respect to each of the Properties and, to the Company's Knowledge, such title reports are accurate and complete in all material respects and do not fail to list any material exception to title.

Section 3.11 ***Labor and Employment Matters*.** Except as set forth on Schedule 3.11:

(a) None of the Acquired Companies is a party to any collective bargaining agreement or other current labor agreement with any labor union or organization, and, to the Company's Knowledge, there is no question involving current union representation of employees of the Acquired Companies, nor do the Acquired Companies know of any activity or proceeding of any labor organization (or representative thereof) or employee group (or representative thereof) to organize any such employees.

(b) There is no unfair labor practice charge or grievance arising out of a collective bargaining agreement or other grievance procedure pending, or, to the Company's Knowledge, threatened in writing against the Acquired Companies.

(c) To the Company's Knowledge, except for routine litigation arising in the ordinary course of business of any of the Acquired Companies or the Affiliated Property Owners, or that is adequately covered by insurance (or as set forth on Schedule 3.7), there is no complaint, lawsuit or proceeding in any forum by or on behalf of any present or former employee of any of the Acquired Companies, any applicant for employment with any of the Acquired Companies or any classes of the foregoing, alleging breach of any express or implied contract of employment, any Law or regulation governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct by any of the Acquired Companies in connection with the employment relationship pending or threatened in writing against the Acquired Companies.

(d) There is no strike, slowdown, work stoppage or lockout pending, or, to the Company's Knowledge, threatened against or involving the Acquired Companies.

(e) To the Company's Knowledge, the Acquired Companies Employees (as hereinafter defined) are lawfully authorized to work in the United States according to federal immigration Laws.

(f) Each of the Acquired Companies is in compliance in all material respects with all applicable Laws in respect of employment and employment practices, terms and conditions of employment, wages, hours of work, worker's compensation, non-discrimination, immigration and occupational safety and health.

(g) As of the date of this Agreement, there is no proceeding, claim, suit, action or governmental investigation pending or, to the Company's Knowledge, threatened in writing, with respect to which any current or former partner, officer, employee or agent of any of the Acquired Companies is claiming indemnification from any of the Acquired Companies.

Section 3.12 ***Contracts and Commitments.***

(a) Schedule 3.12 lists each of the following contracts or agreements (if any) of each of the Acquired Companies and Affiliated Property Owners:

(i) material management contracts with respect to the Properties;

(ii) all material documents evidencing or creating indebtedness for borrowed money, or giving rise to a guarantee of such indebtedness, of the Acquired Companies or of an Affiliated Property Owner relating to a Property with a remaining principal balance in excess of $100,000**;**

(iii) partnership agreements, limited liability company agreements and joint venture agreements to which any Acquired Company is a party (and having as another party any Person who is not an Acquired Company);

(iv) leases relating to any material personal property leased by the Acquired Companies or any Affiliated Property Owner or other real property leased by the Acquired Companies or any Affiliated Property Owner;

(v) all of the employment agreements between any of the Acquired Companies and any of the Acquired Companies Employees in effect as of the date hereof (the "***Employment Agreements***"), any severance agreement or arrangement with any Acquired Companies Employee, and all agreements pursuant to which consulting services are rendered to any Acquired Company that are likely to involve payments in excess of $100,000 per year;

(vi) agreements granting to any unaffiliated third party a first-refusal, first-offer or other right to purchase or acquire any of the Interests;

(vii) agreements materially limiting or restricting the ability of any Acquired Company or any Affiliated Property Owner to enter into or engage in any geographic area or line of business other than as provided in any Leases or reciprocal easement agreements or similar agreements affecting the Properties; and

(viii) agreements that will not be terminated on or before the Closing, or that cannot be terminated within thirty (30) days of the Closing, between any Acquired Company and any Partner or any Partner's Affiliates (other than an Acquired Company or an Affiliated Property Owner) that commit any one or more of the Acquired Companies or Affiliated Property Owners to pay, in the aggregate, more than $40,000 per year.

(ix) agreements entered into since March 31, 2002 pursuant to which any Acquired Company incurred an obligation to pay any amounts in respect of indemnification obligations, purchase price adjustment or otherwise in connection with (A) any acquisition or disposition of assets, (B) merger, consolidation or other business combination, or (C) series or group of related transactions or events of a type specified in (A) or (B).

(b) True and complete copies of the contracts and agreements disclosed pursuant to Section 3.12 hereof have been made available to the Buyer. Except as set forth on Schedule 3.12 (i) each contract and agreement disclosed pursuant to Section 3.12 hereof is valid and binding in all material respects on the Acquired Company or Affiliated Property Owner party thereto and, to the Company's Knowledge, on the other party or other parties thereto, and is in full force and effect in accordance with its respective terms, (ii) upon consummation of the transactions

contemplated by this Agreement and assuming that all consents, approvals, authorizations and other actions set forth on Schedule 3.6 have been obtained and all filings and notifications set forth on Schedule 3.6 have been made, each such contract and agreement shall continue in full force and effect in all material respects in accordance with its respective terms without penalty, acceleration of payment or other adverse consequence (including any diminution of management or other control rights with respect to the Acquired Companies or the Affiliated Property Owners, subject to "key person" provisions in agreements relating to Properties listed on Schedule 3.12), (iii) none of the Acquired Companies or Affiliated Property Owners, as applicable, is in material breach of, or material default under, any such contract or agreement, and no event exists that, but for the giving of notice or passage of time, would result in such a breach or default by the Acquired Company or Affiliated Property Owner party thereto, and (iv) to the Company's Knowledge, no other party to any such contract or agreement is in material breach thereof or material default thereunder, and no event exists that, but for the giving of notice or passage or time, would result in such a breach or default by the other party thereto.

Section 3.13 ***Intellectual Property.*** Except as set forth on Schedule 3.13, each Acquired Company and Affiliated Property Owner owns or has the right to use all trademarks, trade names, product names, domain names, service marks, logos, patents, patent applications, trade secrets, copyrights and other intellectual property rights (including domestic and foreign registrations and applications therefore) (collectively, the "***Intellectual Property Rights***"), as are used in connection with the business of such Acquired Company or Affiliated Property Owner, as applicable, except where the failure to own or have the right to use such Intellectual Property Rights would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.13, to the Company's Knowledge, use of the Intellectual Property Rights by the Acquired Companies and Affiliated Property Owners (a) does not infringe any rights of any third party, and (b) none of the Acquired Companies or Affiliated Property Owners has received any written notice from any Person claiming that the rights of any Acquired Company or Affiliated Property Owner in or to the Intellectual Property Rights conflict with or infringe on the rights of any other Person.

Section 3.14 ***Environmental Matters.*** Except as set forth on Schedule 3.14 or disclosed in the Environmental Reports (as hereinafter defined), to the Company's Knowledge, (a) the Acquired Companies and the Affiliated Property Owners are in compliance in all material respects with all applicable Environmental Laws (as hereinafter defined), (b) there are no material Environmental Liabilities and Costs (as hereinafter defined) of the Acquired Companies, (c) there are no material Environmental Conditions (as hereinafter defined) on or related to the Properties, (d) the Company has not received any written notice during the two (2) year period prior to the date of this Agreement from any governmental agency or other third party alleging any material violation of, or noncompliance with, any Environmental Law, or requiring the removal, clean-up or remediation of any Environmental Condition, whether or not on any of the Properties, which such matter has not been resolved as of the date of this Agreement, and (e) the Company has not received written notice during the two (2) year period prior to the date of this Agreement that they are subject to any enforcement or investigatory action by any governmental agency regarding an Environmental Condition with respect to any Property, which such matter has not been resolved as of the date of this Agreement. As used herein, the terms "toxic" or "hazardous" wastes, substances or materials shall include, without limitation, all those so designated in and in any way regulated by any current Environmental Laws. The Acquired Companies have previously made available to the Buyer in the Review Room (as hereinafter defined) copies of the following written materials in their possession or control: copies of the most recent environmental audits, site assessments and documentation regarding off-site disposal of hazardous materials (collectively, the "***Environmental Reports***").

For purposes of this Agreement, the following definitions shall apply:

"***Environmental Laws***" shall mean all applicable federal, state and local statutes or laws, judgments, orders, regulations, licenses, permits, rules and ordinances relating to pollution or protection of health, safety or the environment, including, but not limited to the Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq*.), Resources Conservation and Recovery Act (42 U.S.C. §6901 *et seq*.), Safe Drinking Water Act (42 U.S.C. §3000(f) *et seq*.), Toxic Substances Control Act (15 U.S.C. §2601 *et seq*.), Clean Air Act (42 U.S.C. §7401 *et seq*.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq*.), and other similar state and local statutes.

"***Environmental Condition***" shall mean the introduction into the environment of any contaminant, pollutant, hazardous or toxic waste, substance or material (whether or not upon the Properties) at levels or in amounts in excess of applicable legal or regulatory permits, limits or standards, as a result of which the Acquired Companies or Affiliated Property Owners, with respect to this Section 3.14, (1) has or may become liable to any Person or Governmental Authority, (2) is in violation of any Environmental Law, or (3) by reason of which any of the properties or other assets of any of the Acquired Companies or Affiliated Property Owners, with respect to this Section 3.14, may suffer or be subject to any lien.

"***Environmental Liabilities and Costs***" shall mean all liabilities, obligations, responsibilities, obligations to conduct cleanup, losses, damages, deficiencies, punitive damages, costs and expenses (including, without limitation, all reasonable fees, disbursements and expenses of counsel, expert and consulting fees and costs of any necessary investigations and feasibility studies and responding to government requests for information or documents), fines, penalties, monetary sanctions, known or unknown, absolute or contingent, past, present or future, resulting from any claim or demand, by any Person or Governmental Authority,

whether based in contract, tort, implied or express warranty, strict liability, joint and several liability, criminal or civil statute, under any Environmental Law, or arising from Environmental Conditions, as a result of past or present ownership, leasing or operation of any properties, owned, leased or operated by the Acquired Companies or the Affiliated Property Owners with respect to Section 3.14.

Section 3.15 ***Compliance with Laws; Permits.***

(a) Except as set forth on Schedule 3.15, the Company has not received written notice and the Company otherwise has no knowledge that any of the Acquired Companies, Affiliated Property Owners or the Properties is in material violation of any applicable federal, state, local or foreign judgment, order, decree, or any material statute, law, ordinance, rule, regulation, code and any judicial or administrative interpretation thereof, or any other government or rule of law ("***Law***") or order of any Governmental Authority applicable to any of the Acquired Companies, the Affiliated Property Owners or the Properties. To the Company's Knowledge, the Acquired Companies and the Affiliated Property Owners have obtained all material licenses, permits and other authorizations and have taken all actions required by applicable Law in order to conduct their business as now or as previously conducted and, to the Company's Knowledge, there is no pending threat of modification or cancellation of the same.

(b) To the Company's Knowledge, all material agreements, easements or other rights necessary to permit the lawful use and operation of the buildings and improvements on any Property (other than parcels ground leased to third parties, as to which the Company makes no representation or warranty pursuant to this Section 3.15(b) or to permit the lawful use and operation of all driveways, roads and other means of egress and ingress to and from any Property have been obtained and are in full force and effect. Except as set forth on Schedule 3.15, all material work to be completed, payments to be made and financial undertakings required to be taken by any of the Acquired Companies or Affiliated Property Owners prior to the date hereof and the Closing pursuant to any contract entered into with a Governmental Authority in

connection with a site approval, zoning reclassification or other similar action relating to a Property (other than parcels ground leased to third parties, as to which the Company makes no representation or warranty pursuant to this Section 3.15(b) have been paid or undertaken.

(c) To the Company's Knowledge, none of the Acquired Companies or Affiliated Property Owners, nor any of their respective directors, officers, agents or employees has used any corporate or other funds for unlawful contributions, payments, gifts or entertainment or made any unlawful expenditures relating to any political activity to government officials or others. To the Company's Knowledge, none of the Acquired Companies or Affiliated Property Owners nor any of their respective directors, officers, agents or employees have accepted or received any unlawful contributions, payments, gifts or expenditures. No Acquired Company or Affiliated Property Owner has been charged with or committed, or to the Company's Knowledge, been under investigation with respect to, any violation of the Foreign Corrupt Practices Act.

Section 3.16 ***Insurance***. Schedule 3.16 sets forth a true and correct summary of the insurance policies held by, or for the benefit of, the Acquired Companies and the Affiliated Property Owners including the underwriter of such policies and the amount of coverage thereunder. The Acquired Companies or the Affiliated Property Owners have paid, or caused to be paid, all premiums due under such policies and are not in default with respect to any monetary obligations under such policies in any material respect. To the Company's Knowledge, each of the Acquired Companies and the Affiliated Property Owners maintains insurance with financially responsible insurers in such amounts and covering such risks as are in accordance with normal industry practice for companies engaged in businesses similar to those of the Acquired Companies (taking into account the cost and availability of such insurance), except where the failure to maintain such insurance would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.16, the Company has not received any written notice of cancellation or termination with respect to any existing material insurance policy that is held by, or for the benefit of, any of the Acquired Companies or the Affiliated Property Owners or that relates to any Property.

Section 3.17 ***Brokers.*** No broker, investment banker, financial advisor or other Person, other than Eastdil Realty Company, L.L.C., the fees and expenses of which will be paid by the Company at or prior to Closing, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transactions and other transactions contemplated by this Agreement based on any contacts made by the Company or any Affiliate or agent of the Company.

Section 3.18 ***Disclaimer; Company's Knowledge; Disclosure; Material Adverse Effect.***

(a) The Company does not make, and has not made, any representations or warranties relating to the Acquired Companies, the Affiliated Property Owners, the Properties, or the operations or businesses of the Acquired Companies, the Affiliated Property Owners or the businesses or operations conducted on, at or with respect to the Properties, or otherwise in connection with the transactions contemplated hereby, other than those expressly made by the Company in this Agreement or in the other agreements and instruments delivered pursuant hereto in order to consummate the Transactions. Other than as expressly set forth in any Transaction Document, the Company hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of any Property, including, without limitation, the water, soil and geology or any other matter affecting the stability or integrity of such Property, and the suitability thereof and of any Property for any and all activities and uses that the Buyer may elect to conduct thereon, and the existence of any hazardous materials thereon, (ii) the compliance of any Property with any law, rule, regulation or ordinance to which the Property or the owner thereof is or may be subject, (iii) the condition of title to the Property or the nature and extent of any right of way, lease, license, reservation or contract, (iv) the profitability or losses or expenses relating to any Property and the businesses

conducted in connection therewith, (v) the value of any Property, (vi) the existence, quality, nature or adequacy of any utility servicing any Property, (vii) the physical condition of any Property, (viii) whether any Lease will be in force or effect as to any tenant on the Closing Date or that any tenant thereunder will have performed all of its obligations thereunder through the Closing Date, and (ix) the legal or tax consequences of any Transaction Document or the Transactions and other transactions contemplated hereby and thereby. Without limiting the generality of the foregoing, except only as expressly set forth in those representations and warranties made in Sections 3.1 through 3.17 hereof, the Company has not made, and shall not be deemed to have made, any representations or warranties in any presentation of the businesses of the Acquired Companies or the Affiliated Property Owners (including without limitation any management presentation or property or facility tour) in connection with the Transactions and other transactions contemplated hereby or by any other Transaction Document, and no statement made in any such presentation (including without limitation any management presentation or property or facility tour) shall be deemed a representation or warranty hereunder or otherwise. It is understood that any cost

estimates, projections or other predictions, any data, any financial information, document, reports, sales brochure or other literature, maps or sketches, financial information or statements, or presentations (including without limitation any management presentation or property or facility tour), or any memoranda or offering materials including, without limitation, those certain Confidential Offering Memorandum dated March 2002 or April 2002 and any materials or information contained therein and any amendments or supplements thereto (the "***Confidential Memorandum***"), are not and shall not be deemed to be or to include representations or warranties of the Acquired Companies, except only as expressly set forth in those representations and warranties made in Sections 3.1 through 3.17 hereof, and the Buyer acknowledges that it has not relied and is not relying on any such estimates, projections, predictions, data, financial information, memoranda, offering materials or presentations (including, without limitation, any management presentation or property or facility tour), including, without limitation, the Confidential Memorandum. No Person has been authorized by the Acquired Companies to make any representation or warranty relating to the Acquired Companies, the Affiliated Property Owners, the Properties, the businesses of the Acquired Companies or the Affiliated Property Owners, or the businesses or operations conducted on, at or with respect to the Properties, or otherwise in connection with the transactions contemplated hereby and, if made, such representation or warranty must not be relied upon as having been authorized by the Acquired Companies.

(b) Prior to the Closing Date, the Buyer will have had the opportunity to make all inspections and investigations, including a review of the materials located on the Company's Internet web site (the "***Review Room***") and the physical inspection contemplated in Section 2.8, concerning the Acquired Companies, the Affiliated Property Owners and the Properties which the Buyer deems necessary or desirable to protect its interest (and the interests of the other Buyer Parties) in acquiring the Acquired Companies and their respective assets.

(c) Whenever a representation or warranty made by the Company in any Transaction Document refers to the knowledge of the Company, or to the "***Company's Knowledge***," the accuracy of such representation shall be based solely on the actual knowledge of Robert L. Ward, the President and Chief Executive Officer of the Company, Robert G. Mayhall, the Chief Financial Officer of the Company, Gilbert W. Chester, Executive Vice President of the Company, John F. Rasor, Executive Vice President of the Company, and Robert B. Williams, Executive Vice President of the Company (each a "***Company Knowledge Party***"), and shall not be construed to refer to the knowledge of any other officer, agent, partner, member, manager or employee of the Company or of any Affiliate of the Company or to impose or have imposed upon any Company Knowledge Party any duty to investigate the matters to which such knowledge, or the absence thereof, pertains including, without limitation, the contents of any files, documents or materials made available to or otherwise disclosed to the Buyer or the contents of files maintained by any

Company Knowledge Party. Whenever a representation provides that the Company has not received notice of a fact or event or words of similar import, the accuracy of such representation shall be based solely on the actual receipt by a Company Knowledge Party of such notice or on the receipt of such notice by another employee of the Company or an Affiliate of the Company where a Company Knowledge Party has actual knowledge that such notice has been received by such other employee of the Company or an Affiliate of the Company

(d) Notwithstanding anything to the contrary contained in this Agreement or in any of the schedules to the Original Agreement prepared by the Company and delivered on the Signing Date, as amended, respectively, by the supplemental schedules prepared by the Company, delivered on the date hereof and attached hereto (such Schedules, as so amended, the "***Company Disclosure Schedules***"), any information disclosed on one Schedule shall be deemed to be disclosed on another Schedule provided that specific cross-references are made to such other Schedule. Certain information set forth on the Company Disclosure Schedules is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by the Company in this Agreement (or any other Transaction Document) or that it is material, nor shall such information be deemed to establish a standard of materiality, nor shall it be deemed an admission of any liability of, or concession as to any defense available to, the Company. The Company has prepared the Company Disclosure Schedules in good faith and without regard to any applicable "Material Adverse Effect" or other "materiality" qualifier; *provided*, *however*, that notwithstanding such standard of preparation, nothing contained herein shall limit or otherwise qualify the standard of the representations and warranties contained in Sections 3.1 through 3.17 hereof for the purposes of determining the existence of a breach of any such representation or warranty.

(e) "***Material Adverse Effect***" shall mean any change or effect that is (individually or in the aggregate with any other changes therein or effects thereon that would be specifically addressed by a representation or warranty contained in this Agreement but for a "Material Adverse Effect" exception or qualification) materially adverse to the business, operations, assets, liabilities, financial condition or results of operations of the Acquired Companies, taken as a whole (provided that any such change, effect, event, occurrence or state of facts that is cured prior to the Closing at the expense of such affected party shall not be considered a Material Adverse Effect), other than any such changes or effects resulting primarily from any of the following: (i) general changes in the economy or financial markets of the United States or any other region outside of the United States (other than those that would have a materially disproportionate effect, relative to other industry participants, on the Acquired Companies and the Affiliated Property Owner taken as a whole), (ii) changes in general (national, regional or local) economic, regulatory or political conditions or changes in the retail industry or retail real estate properties generally (other than those that would have a materially disproportionate effect, relative to other industry participants, on the Acquired Companies and the Affiliated Property Owners taken as a whole), (iii) changes in Law or GAAP, or (iv) this Agreement or any other Transaction Document or the Transactions or other transactions contemplated hereby, or any announcement or indication thereof, or any actions taken by the Buyer hereunder or in contemplation hereof, or any actions that the Company was required to take, hereunder, or any direct contact of the Buyer or any of its representatives with any of the tenants, joint venture partners, customers or suppliers, or potential tenants, joint venture partners, customers or suppliers, of the Acquired Companies, or any of the Acquired Companies Employees (including any departure of any such employee).

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE BUYER

As a material inducement to the Acquired Companies and each Partner to enter into the Transaction Documents to which he, she or it is party and to consummate the Transactions to which he, she or it is party, the Buyer represents and warrants to the Company as follows:

Section 4.1 ***Organization of the Buyer***. Each of the Buyer and Macerich Galahad is a duly organized, validly existing limited partnership and in good standing under the laws of the State of Delaware and has all the requisite partnership power and authority to enter into this Agreement and the other Transaction Documents, to carry out its obligations hereunder and thereunder and to consummate the Transactions and the other transactions contemplated hereby. Each of Macerich TWC LLC and Macerich WRLP LLC is a duly organized, validly existing limited liability company and in good standing under the laws of the State of Delaware and has all the requisite company power and authority to enter into this Agreement, and the other Transaction Documents, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby. Each of Macerich, Macerich TWC II Corp. and Macerich WRLP Corp. is a duly incorporated, validly existing corporation and in good standing under the laws of the jurisdiction of its incorporation and has all the requisite, corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is party, to carry out its obligations hereunder and thereunder and to consummate the Transactions and other transactions contemplated hereby and thereby. Each Buyer Party is qualified to do business in each jurisdiction in which the nature of its business requires it to be so qualified except to the extent the failure to so qualify would not, either individually or in the aggregate, have a material adverse effect on the ability of such Buyer Party to perform its obligations under this Agreement. Schedule 4.1 sets forth the class, series and, or type of each partnership interest in the Buyer and the total number of each class, series or type of interest outstanding as of the most recent available date.

Section 4.2 ***Authority***. Each Buyer Party has full authority, right, power and capacity to enter into each Transaction Document to which it is party and each agreement, document and instrument to be executed and delivered by or on behalf of such Buyer Party, as applicable, pursuant to or as contemplated by the Transaction Documents (or any of them) and to carry out the Transactions and the other transactions contemplated hereby and thereby to which it is party. The execution, delivery and performance by each Buyer Party of this Agreement, the other Transaction Documents and each such other agreement, document and instrument to which it is party have been duly authorized by all necessary action of such Buyer Party, as applicable, and no other action on the part of such Buyer Party is required in connection therewith. This Agreement and each agreement, document and instrument to be executed and delivered by the Buyer Parties pursuant to or as contemplated by the Transaction Documents (or any of them) constitute, or when executed and delivered will constitute, valid and binding obligations of each applicable Buyer Party, enforceable in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and subject to the rules of law governing (and all limitations on) specific performance, injunctive relief and other equitable remedies. Except as provided in Schedule 4.2, and except as may result from any facts or circumstances relating solely to the Acquired Companies and Affiliated Property Owners, and assuming that all consents, approvals, authorizations and other actions set forth in Section 4.3 have been obtained and all filings and notifications set forth on Schedule 4.3 have been made, the execution, delivery and performance by each Buyer Party of the other Transaction Documents and each such agreement, document and instrument to which it is party:

(a) do not and will not violate the terms of any organizational documents of such Buyer Party, as applicable;

(b) do not and will not violate any laws of the United States, or any state or other jurisdiction applicable to such Buyer Party or require such Buyer Party to obtain any approval, consent or waiver of, or make any filing with, any Person (governmental or otherwise) that has not been obtained or made, except for such violations as would not reasonably be expected to have a material adverse effect on the ability such Buyer Party to perform its obligations under this Agreement; and

(c) do not and will not result in a material breach of, constitute a material default under, accelerate any material obligation under or give rise to a material right of termination of any indenture or loan or credit agreement or any other agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award to which such Buyer Party is a party or by which the property of such Buyer Party is bound or affected, or result in the creation or imposition of any material mortgage, pledge, lien, security interest or other charge or encumbrance on any of the assets or properties of such Buyer Party.

Section 4.3 ***Consents and Approvals***.

(a) To the Buyer's Knowledge, except as set forth on Schedule 4.3, the execution, delivery and performance of each Transaction Document to which such Buyer Party is a party by any Buyer Party will not, as of the Closing Date, require any consent, approval, authorization or other action by, or filing with or notification to, any Governmental Authority, except (i) the notification requirements of the HSR Act, if applicable, (ii) where the failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not (A) delay or prevent the consummation of the Transactions or other transactions contemplated hereby (B) have a material adverse effect on the ability of any Buyer Party to perform its obligations under any Transaction Document, and (iii) as may be necessary as a result of any facts or circumstances relating solely to the Acquired Companies and Affiliated Property Owners.

(b) To the Buyer's Knowledge, except as set forth on Schedule 4.3, the execution, delivery and performance of any Transaction Document by any Buyer Party will not, as of the Closing Date, require any third-party consents, approvals, authorizations or actions, except (i) where the failure to obtain such consents, approvals, authorizations or actions would not (A) delay or prevent the consummation of the transactions contemplated by this Agreement or (B) have a material adverse effect on the ability of any Buyer Party to perform its obligations under any Transaction Document and (ii) as may be necessary as a result of any facts or circumstances relating solely to the Company.

Section 4.4 ***Litigation.*** Except as set forth on Schedule 4.4 and except for routine litigation arising in the ordinary course of business of a Buyer Party, or to the Buyer's Knowledge that is adequately covered by insurance, there is no action, suit or proceeding, claim, arbitration or investigation pending against any Buyer Party or, to the Buyer's Knowledge, threatened, which, if adversely determined, (a) would delay or prevent the consummation of the Transactions, or (b) would be reasonably expected to have a material adverse effect on the ability of any Buyer Party to perform its obligations under any Transaction Document.

Section 4.5 ***Financing.*** The Buyer will have available to it at the Closing, all funds necessary to consummate the Transactions and other transactions contemplated by this Agreement. The Buyer has heretofore furnished the Company with sufficient evidence, including true and complete copies of balance sheets of the Buyer and/or a financing commitment from the Buyer's third party financing sources as are attached hereto as Schedule 4.5, of its financial ability to consummate the transactions contemplated by this Agreement. The Buyer acknowledges and agrees that the Buyer's performance of its obligations under the Transaction Documents (or any of them) is not in any way contingent upon

the availability of financing to the Buyer, including the closing of the financing under any financing commitment obtained by the Buyer.

Section 4.6 ***Brokers.*** No broker, investment banker, financial advisor or other Person, other than Deutsche Bank Securities Inc., the fees and expenses of which will be paid by the Buyer, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transactions or other transactions contemplated by this Agreement based on any contacts made by the Buyer or any Affiliate or agent of the Buyer.

Section 4.7 ***ERISA Compliance***.

(a) None of the Buyer Parties, nor any of the "affiliates" of any of them (within the meaning of Part V(c) of Prohibited Transaction Class Exemption ("***PTCE***") 84-14, granted pursuant to Section 408(a) of ERISA) has, or during the immediately preceding year has exercised, the authority to appoint or terminate AEW Capital Management, L.P. ("***AEW***") as manager of any of the assets of any of the "Applicable Plans" identified below, or to negotiate the terms of any management agreement with AEW (including renewals or modifications thereof) on behalf of any such Applicable Plan. None of the Buyer Parties is "related" to AEW within the meaning of Parts I(d) and V(h) of PTCE 84-14. For purposes of this Section 4.7, the "Applicable Plans" are the plans that participate in either the Telephone Real Estate Equity Trust or the Harbor Capital Group Trust for Defined Benefit Plans.

Section 4.8 ***Buyer's Knowledge; Disclosure***.

(a) Whenever a representation or warranty made by the Buyer in any Transaction Document refers to the knowledge of the Buyer, or to the "***Buyer's Knowledge***," the accuracy of such representation shall be based solely on the actual knowledge of the following officers of Macerich: Arthur M. Coppola, President and Chief Executive Officer, Edward C. Coppola, Executive Vice President, Thomas E. O'Hern, Chief Financial Officer, Treasurer and Executive Vice President, and Richard A. Bayer, General Counsel, Secretary and Executive Vice President (each a "***Buyer Knowledge Party***") and shall not be construed to refer to the knowledge of any other officer, agent, partner or employee of the Buyer or of any Affiliate of the Buyer or to impose or have imposed upon any Buyer Knowledge Party any duty to investigate the matters to which such knowledge, or the absence thereof, pertains including, without limitation, the contents of any files, documents or materials made available to or otherwise disclosed to the Company or the contents of files maintained by any Buyer Knowledge Party. Whenever a representation provides that the Buyer has not received notice of a fact or event or words of similar import, the accuracy of such representation shall be based solely on the actual receipt by a Buyer Knowledge Party of such notice or on the receipt of such notice by another employee of the Buyer or an Affiliate of the Buyer where a Buyer Knowledge Party has actual knowledge that such notice has been received by such other employee of the Buyer or an Affiliate of the Buyer.

(b) Notwithstanding anything to the contrary contained in this Agreement or in any of the schedules to the Original Agreement prepared by the Buyer and delivered on the Signing Date, as amended, respectively, by the supplemental schedules prepared by the Company, delivered on the date hereof and attached hereto (such Schedules, as so amended, the "***Buyer Disclosure Schedules***"), any information disclosed on one Schedule shall be deemed to be disclosed on another Schedule provided that specific cross-references are made to such other Schedule. Certain information set forth in the Schedules is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by the Buyer in this Agreement or that it is material, nor shall such information be deemed to establish a standard of materiality, nor shall it be deemed an admission of any liability of, or concession as to any defense available to, the Buyer. The Buyer has prepared the Buyer Disclosure Schedules in good faith and without regard to any applicable "materiality" qualifier; *provided*, *however*, that notwithstanding such standard of preparation, nothing contained herein shall limit or otherwise qualify the standard of the representations and warranties contained in Sections 4.1 through 4.7 hereof for the purposes of determining the existence of a breach of any such representation or warranty.

Section 4.9 ***Certain Tax Matters***. Each of Macerich Galahad, Macerich TWC II LLC and Macerich WRLP LLC has qualified either as a "partnership" or a "disregarded entity" (within the meaning of

Section 301.7701-3 of the federal regulations under the Code), and each of Macerich TWC II Corp. and Macerich WRLP Corp. has qualified as a "Qualified REIT Subsidiary" (within the meaning of Section 856(i) of the Code) for federal income Tax purposes at all times during its existence.

ARTICLE V
CERTAIN COVENANTS AND AGREEMENTS OF THE BUYER AND THE COMPANY

Section 5.1 ***Conduct of Business Prior to Closing.***

(a) The Company covenants and agrees that, between the Signing Date and the Closing Date, it shall use commercially reasonable efforts to cause the Acquired Companies and the Affiliated Property Owners to operate in the ordinary course of business, consistent with past practice and substantially consistent with the Company's annual budget and business plan for 2002 (the "***Budget***"), which are attached as Schedule 5.1(a) hereto, except as otherwise provided in the Transaction Documents (or any of them).

(b) In furtherance and not in limitation of the foregoing, the Company covenants and agrees that, except as described in Schedule 5.1(b), the Acquired Companies will not, and the Company will use commercially reasonable efforts to cause the Affiliated Property Owners to not, from the Signing Date to the Closing, except as provided in any Transaction Document or with the consent of the Buyer, which consent shall not be unreasonably withheld, take any of the following actions:

(i) Make any purchase, sale or disposition (or trigger any contractual rights with respect to the purchase, sale or disposition) of any property or interest therein (other than easements and similar grants in the ordinary course of business), with a purchase price in excess of $200,000 individually or $2,000,000 in the aggregate, except as provided in the Budget and provided that all proceeds remain in one of the Acquired Companies or Affiliated Property Owners, as the case may be, and are not distributed pursuant to Section 2.5, (other than the proceeds of transactions described in Schedule 5.1(b), which will be distributed pursuant to Section 2.5) or mortgage, pledge, subject to a voluntary lien or otherwise voluntarily encumber (except for statutory mechanics', carriers', suppliers' workmen's or repairmen's liens) any of the Properties or other material assets, except for any such Encumbrance which, by its terms, will be terminated or otherwise be extinguished at or prior to the Closing;

(ii) Incur any material contingent liability as a guarantor or otherwise with respect to the obligations of others, or incur any other material contingent or fixed obligations or liabilities, other than in the ordinary course of business and draws on existing commitment facilities;

(iii) Make any change or incur any obligation to make a change to the Company's certificate of limited partnership, the Limited Partnership Agreement or in the rights and obligations of any outstanding Interests or to the partnership agreement, operating agreement or other organizational documents governing any other Acquired Company or any Affiliated Property Owner;

(iv) Make any change in the compensation payable or to become payable to any of the Acquired Companies Employees, agents or independent contractors who receive total annual compensation of $100,000 or more, other than as contemplated in the Budget or otherwise in the ordinary course of business consistent with past practice or in accordance with the existing terms of contracts entered into prior to the Signing Date;

(v) Amend, modify or terminate any contract or agreement disclosed pursuant to Section 3.12(a) hereof except in the ordinary course of business consistent with past practice or as otherwise contemplated by this Agreement;

(vi) Change in any material respect, any accounting principles, policies or practices used by it relating to the Acquired Companies, except for (A) the write-off (if any) of goodwill, and (B) any change required by reason of a concurrent change in GAAP and notice of which is given in writing by the Company to the Buyer;

(vii) Merge or consolidate with or agree to merge or consolidate with, nor purchase or agree to purchase all or substantially all of the assets of, or otherwise acquire, any other party, or cause a dissolution or terminate the existence of any Acquired Company or Affiliated Property Owner;

(viii) Authorize for issuance, issue, sell or deliver any additional equity of any Acquired Company or any Affiliated Property Owner or any securities or obligations convertible into equity of any Acquired Company or any Affiliated Property Owner or issue or grant any option, warrant or other right to purchase any equity of any Acquired Company or any interest of an Acquired Company in any Affiliated Property Owner, or make any capital call (other than the capital call referenced in Section 3.3 hereof) with respect to any Affiliated Property Owner, unless obligated to do so and excluding the issuance of Class C Interests contemplated under Section 5.9(d) hereof;

(ix) Assign, transfer, convey or grant an Encumbrance on any equity held by any of the Acquired Companies in any other Acquired Company or any Affiliated Property Owner;

(x) Modify, amend or alter any existing credit facilities in a manner materially adverse to the Company, or increase the amount that can be borrowed under any construction loan, the obligations with respect to which will remain with any Acquired Company or Affiliated Property Owner after the Closing Date. (For the avoidance of doubt, the lender consent amendments to the credit facilities listed on Schedule 5.1(b)(x), true and correct copies of each of which amendments have been provided to the Buyer, are expressly permitted hereunder);

(xi) Cause a material default by an Acquired Company or Affiliated Property Owner under any existing material agreement or contract of such Acquired Company or Affiliated Property Owner;

(xii) Execute or otherwise enter into any construction or development agreement requiring a payment in excess of $200,000 except as otherwise provided in the Budget;

(xiii) Take any affirmative action, or affirmatively fail to take any action, necessary to maintain in all material respects all material permits, licenses and authorizations required by applicable Law for the operation of the Acquired Companies, the Affiliated Property Owners and the Properties as currently operated;

(xiv) Enter into or modify in any material respect any Lease demising more than 10,000 square feet or any reciprocal easement agreement or similar agreement affecting a Property;

(xv) Agree to any imposition of any Encumbrance on any of the Interests;

(xvi) Take any action that would cause any present employees of any of the Acquired Companies to become unavailable (other than in the ordinary course of business) or that would materially and adversely affect the goodwill of any suppliers or customers of the Acquired Companies or Affiliated Property Owners;

(xvii) Make any new elections with respect to Taxes or change any current elections with respect to Taxes that affect any of the Acquired Companies or Affiliated Property Owners, other than taxable REIT subsidiary elections made concurrently with the Closing, at the direction of the Buyer;

(xviii) Settle any litigation or claim involving an uninsured liability in excess of $250,000 (other than the Specified Litigation);

(xix) Enter into any agreement or understanding that would prohibit, restrict or interfere with the transactions contemplated in this Agreement or the other Transaction Documents;

(xx) Fail to maintain in full force and effect all insurance coverage listed on Schedule 3.16, except where such failure is caused by default or failure of the insurers;

(xxi) Use the proceeds of any construction loan for any purpose other than the construction of the applicable Property under development, or for tenant allowances for such Property, as provided in the Budget;

(xxii) Agree or make any commitment to take any of the actions prohibited by this Section 5.1; and

(xxiii) Take any affirmative action, or affirmatively fail to take any action, that could result in any Acquired Company or Affiliated Property Owner currently classified as a "partnership" or "disregarded entity" (within the meaning of Section 301.7701-3 of the federal regulations under the Code) for federal income Tax purposes becoming taxable as a corporation or as a publicly traded partnership taxable as a corporation for federal income Tax purposes.

(c) The Buyer covenants and agrees that, between the date hereof and the Closing Date, each of Macerich Galahad, Macerich TWC II LLC and Macerich WRLP LLC will not take any affirmative action, or affirmatively fail to take any action, that could result in any such entity currently classified either as a "partnership" or a "disregarded entity" (within the meaning of Section 301.7701-3 of the federal regulations under the Code), and each of Macerich TWC II Corp. and Macerich WRLP Corp. will not take any affirmative action or affirmatively fail to take any action, that could result in any such entity currently classified as a "Qualified REIT Subsidiary" (within the meaning of Section 856(i) of the Code) for federal income Tax purposes becoming taxable as a corporation for federal income Tax purposes.

Section 5.2 ***Access to Information.***

(a) From the Signing Date until the Closing Date, upon reasonable advance notice, the Company shall, and shall cause each Subsidiary and each of their respective Representatives (as hereinafter defined) to, (i) afford the Representatives of the Buyer reasonable access, during normal business hours, to the books and records of the Acquired Companies and to those Representatives of the Acquired Companies who have material, relevant knowledge pertaining to the Properties or the Acquired Companies or the Affiliated Property Owners including, without limitation, access to enter upon and perform the physical and environmental inspections on the Properties contemplated by Section 2.8 hereof, (ii) provide any addition financial statements that may be required by the Buyer or its Affiliates to comply with the reporting requirements of the SEC under Regulations S-K and S-X, and cause its independent public accountants to cooperate in providing an opinion with respect to the Financial Statements and any additional audited financial statements the Buyer may require for such purposes, and (iii) furnish to the Representatives of the Buyer such additional financial and operating data (which data shall include, subject to clause (D) of the proviso below, monthly financial statements prepared in accordance with GAAP on the same basis as the Financial Statements and such other financial and operating data as is provided to the Company's management on a monthly basis) and such other information regarding the Acquired Companies as the Buyer may from time to time reasonably request; *provided, however*, that (A) such investigation shall not unreasonably interfere with any of the businesses or operations of the Acquired Companies or the Affiliated Property Owners, (B) the Buyer Parties shall not, prior to the Closing Date, have any contact whatsoever with respect to the Acquired

Companies or the Affiliated Property Owners or with respect to the transactions contemplated by this Agreement with any partner, lender, ground lessor, tenant (included ground lessees), vendor or supplier of the Acquired Companies, except in consultation with the Company and then only with the express prior approval of the Company, which shall not be unreasonably withheld, (C) all requests by the Buyer for access or information pursuant to this Section 5.2(a) shall be submitted or directed exclusively to an individual or individuals to be designated by the Company, and (D) the Company shall not be required to deliver periodic financial information other than consistent with past practice, which, in the case of any Property, consists of monthly financial statements and, in the case of any Affiliated Property Owner, consists of quarterly financial statements. The Buyer Parties shall not be permitted to conduct any invasive tests on any Property without the Company's prior written consent, which shall not be unreasonably withheld. The Buyer Parties (other than Macerich) agree to indemnify the Acquired Companies and the Affiliated Property Owners from and against any and all Losses suffered by the Acquired Companies and the Affiliated Property Owners as a result of any physical or environmental damage or injury to persons caused by any Buyer Party during the conduct of the investigations and inspections contemplated hereby (it being understood that such indemnity shall not apply to discovery by any Buyer Party of any existing matters if the discovery thereof imposes liability on the Company or any other indemnified party).

(b) In order to facilitate the resolution of any claims made by or against or incurred by the Partners after the Closing in respect of their ownership of the Acquired Companies or for any other reasonable purpose, for a period of seven (7) years following the Closing, the Buyer shall, and shall cause the other Buyer Parties and the Acquired Companies and the Affiliated Property Owners to, (i) retain the books and records of the Buyer, the other Buyer Parties and the Acquired Companies or the Affiliated Property Owners, as the case may be, and their operations for periods prior to the Closing and which shall not otherwise have been retained by the Partners and (ii) upon reasonable notice, afford the Representatives of any Partner reasonable access (including the right to make photocopies, at the expense of such Partner), during normal business hours, following reasonable notice thereof, to such books and records.

Section 5.3 ***Confidentiality.*** Subject to the requirements of applicable Law and the requirements of any securities exchange on which a party's securities may be listed, and except as may be disclosed in a press release consented to in writing by both parties in accordance with Section 5.6, from the Signing Date until the Closing, the parties hereto will, and will instruct each of their respective Affiliates, associates, partners, employees, directors, officers, agents, counsel, auditors, investment bankers, representatives and advisors (the "***Representatives***") to, (a) hold in strict confidence all such information as is confidential or proprietary, (b) use such information only in connection with the consummation of the Transactions and, (c) if this Agreement is terminated in accordance with its terms, will deliver promptly to the party initially providing such confidential information (or destroy and certify to such other party the destruction of) all copies of such information (and any copies, compilations or extracts thereof or based thereon) then in their possession or under their control. Each party hereto agrees that money damages would not be a sufficient remedy for any breach of this Section 5.3 by the other party hereto or any of its Representatives, and that, in addition to all other remedies, such non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and each such party further agrees to waive and to use its best efforts to cause its Representatives to waive, any requirement for the securing or posting of any bond in connection with any such remedy. Each party agrees to be responsible for any breach of this Section 5.3 by any of its Representatives. Nothing contained in this Section 5.3 shall affect, modify or otherwise limit the respective agreements and other obligations of the Buyer, on the one hand, and the Company, on the other, contained in that certain Confidentiality Agreement dated as of March 4, 2002 or any other agreement of a party with respect to the confidentiality of information relating to the Acquired

Companies or the Properties (collectively, the "***Confidentiality Agreement***"), which Confidentiality Agreement shall remain in full force and effect.

Section 5.4 ***Regulatory and Other Authorizations; Consents***.

(a) The Company shall use its reasonable best efforts to obtain (or cause the Acquired Companies or Affiliated Property Owners, as applicable, to obtain) the authorizations, consents, orders and approvals listed on Schedule 3.6, and the Buyer shall cooperate fully with the Company in promptly seeking to obtain all such authorizations, consents, orders and approvals.

(b) The Buyer shall use its commercially reasonable efforts to assist the Company in obtaining the consents of third parties listed in Schedule 3.6, including (i) providing to such third parties such financial statements and other financial information as such third parties may reasonably request, and (ii) executing agreements to effect the assumption of such agreements on or before the Closing Date effective from and after the Closing Date.

Section 5.5 ***Further Action.*** Each of the parties hereto shall use its respective reasonable best efforts to take or cause to be taken all appropriate action, do or cause to be done all things necessary, proper or advisable, and execute and deliver such documents and other papers, as may be required to carry out the provisions of each Transaction Document and consummate and make effective the Transactions and the other transactions contemplated by the Transaction Documents.

Section 5.6 ***Press Releases.*** The parties hereto will, and will cause each of their Affiliates to, maintain the Transaction Documents confidential and will not, and will cause each of their Affiliates not to, issue or cause the publication of any press release or other public announcement with respect to any Transaction Document, the Transactions or the other transactions contemplated hereby without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld; *provided*, *however*, that nothing herein will prohibit the Company or the Buyer from issuing or causing publication of any such press release or public announcement to the extent that such party reasonably determines, after consultation with outside legal counsel, such action to be required by Law or the rules of any applicable self-regulatory organization, in which event such party will use its reasonable best efforts to allow the other party reasonable time to comment on such release or announcement in advance of its issuance.

Section 5.7 ***No Solicitation***.

(a) Unless and until this Agreement shall have been terminated in accordance with its terms, the Company agrees and covenants that the Company shall not, and shall direct and use its reasonable best efforts to cause its Representatives not to, directly or indirectly, initiate, solicit or encourage any inquiries or the making or implementation of any proposal or offer, or negotiate or enter into any agreement (or provide any information that would facilitate any such proposal or offer) with respect to a merger, acquisition or similar transaction involving the purchase of the Acquired Companies or the Acquired Companies interests in Affiliated Property Owners, all or substantially all of the Properties or all or substantially all of the Interests, or any other transaction that would prevent, frustrate or make impossible the consummation of the transactions contemplated by this Agreement. Upon receiving any such proposal or offer, or any request for information, the Company shall promptly notify the Buyer.

(b) From the Signing Date until the earlier of the Closing or one year from the date of this Agreement, the Buyer shall not, and use its reasonable best efforts to ensure that its Representatives do not, directly or indirectly, (i) solicit for employment or employ any officer, employee or consultant of any of the Acquired Companies or the Affiliated Property Owners, (ii) encourage, induce or attempt to induce any officer, employee or consultant of any of the Acquired Companies or the Affiliated Property Owners to terminate his or her employment or consulting relationship with any of the Acquired Companies or Affiliated Property Owners, as

applicable, (iii) interfere with the business or operations of any of the Acquired Companies or Affiliated Property Owners, or (iv) take or fail to take any actions that would reasonably be expected to adversely affect the Acquired Companies' or Affiliated Property Owners' business, tenants or joint venture partners relationships with its tenants or joint venture partners or goodwill.

Section 5.8 ***Tax Returns***.

(a) Subject to Section 5.8(b) hereof, the Buyer shall timely and properly prepare and file, or cause to be prepared and filed, on or before the due date or any extension thereof all Tax Returns required to be filed by the Company with respect to taxable periods ending on or before the Closing Date. The parties agree that the Cash Awards payable to the employees pursuant to Section 5.9(d) hereof shall be a compensation deduction by the Company with respect to the period ending on the Closing Date as specified in the instructions with respect to such payments delivered by the Company or the Partners pursuant to Section 5.9(d) hereof. Any Taxes due by the Acquired Companies shown on such returns attributable to periods ending on or before the Closing Date, to the extent that sufficient cash to pay such liability has not been retained by the Company pursuant to an accrued tax liability, shall be subject to Section 7.2. The income of the Acquired Companies will be apportioned to the period up to and including the Closing Date and the period after the Closing Date by closing the books of the Acquired Companies as of the end of the Closing Date.

(b) Treasury Form 1065 for the Company and each of its Subsidiaries for calendar year 2002, or any portion of such year up to the Closing Date, shall be prepared by the Buyer substantially in accordance with past methods and practices of the Company and its Subsidiaries by no later than thirty (30) days prior to the due date for such return (including any extension of such due date). A draft of such return shall be submitted to each of the Partners holding Class A Interests and a representative of the Partners holding Class B Interests for review and comment, which comments must be submitted to the Buyer no later than ten (10) days prior to the due date for such return (including any extension of such due date). The Buyer shall take into consideration any comments received in finalizing such returns but shall not be bound to adopt any such comments. After the Closing, the Partners shall, and shall cause their respective Affiliates to, cooperate fully with the Buyer in connection with any tax investigation or audit relating to the Acquired Companies. Any information obtained pursuant to this Section 5.8 or pursuant to any other Section hereof providing for the sharing of information or the review of any Tax Return or other schedule relating to taxes shall be subject to Section 5.3 hereof.

(c) The Buyer and the Company shall agree, on or prior to the Closing Date, on the allocation of the total consideration being paid by the Buyer (including the assumption of liabilities) among all of the Properties and other assets of the Acquired Companies and Affiliated Property Owners.

Section 5.9 ***Employee Matters.***

(a) *Employees*.

(i) The Buyer shall ensure that all persons who were employed by the Acquired Companies immediately preceding the Closing Date, including those on vacation, leave of absence or disability (the "***Acquired Companies Employees***"), will remain employed in a comparable position on and immediately after the Closing Date for such period of time as determined by the Buyer, at not less than the same base rate of pay and bonus opportunity.

(ii) To the extent permissible under applicable law and to the extent that service is relevant for purposes of eligibility and vesting under any employee benefit plan, program or arrangement established or maintained by the Buyer (other than benefit accrual under any defined benefit pension plan) following the Closing Date for the benefit of Acquired

Companies Employees, at such time as any employee benefit plan, program or arrangement is made available to Acquired Companies Employees, such plan, program or arrangement shall credit such employees for service on or prior to the Closing Date that was recognized by the Acquired Companies for purposes of employee benefit plans, programs or arrangements (including vacation policies) maintained by any of them. In addition, with respect to any welfare benefit plan (as defined in Section 3(1) of ERISA) established or maintained by the Buyer following the Closing Date for the benefit of Acquired Companies Employees, the Buyer shall use reasonable best efforts to request its insurer to waive any pre-existing condition exclusions and provide that any covered expenses incurred during the 2002 plan year on or before the Closing Date by an Acquired Company Employee or by a covered dependent shall be taken into account for purposes of satisfying applicable deductible coinsurance and maximum out-of-pocket provisions after the Closing Date.

(iii) The Buyer agrees that either the Buyer or the Acquired Companies will make COBRA continuation coverage available to individuals who are COBRA qualified beneficiaries under the Benefit Plans immediately prior to the Closing Date.

(b) *Employee Benefits*. Following the Closing Date, the Buyer shall provide the Acquired Companies Employees with benefits that are no less favorable, in the aggregate, to the benefits provided under the Benefit Plans as in effect immediately prior to the Closing Date, except to the extent described in (c) below.

(c) *Other Employee Benefits*. From and after the Closing Date, the Buyer shall and will cause the Acquired Companies to honor in accordance with their terms (i) all of the Employment Agreements, including without limitation all obligations to make severance payments provided in such employment agreements; and (ii) all of the severance agreements or arrangements between any of the Acquired Companies and the Acquired Companies Employees in effect as of the date hereof and listed on Schedule 3.12; and the Buyer will not, and will not cause any of the Acquired Companies to, challenge the validity of any obligation of any of the Acquired Companies under any such severance agreements or arrangements and employment agreements. The Buyer and the Acquired Companies acknowledge and agree that the Company Sale constitutes a "Change in Control" as defined in the Employment Agreements, the Westcor Realty Limited Partnership 1998 Management Incentive Compensation Plan, as amended (the "***1998 Incentive Plan***") and the Westcor Realty Limited Partnership 1998 Phantom Equity Participation Plan (the "***1998 Equity Plan***").

(d) *Management Plans*.

(i) *Awards*. With respect to the 1998 Plans, the parties acknowledge and agree that, as a result of the consummation of the Transactions, all Awards will be fully earned, subject to the following sentence. At or prior to the Closing, the Company or Westcor Partners, L.L.C. shall make adequate provision (including, without limitation, appropriately funding the Holdback Escrow pursuant to Section 2.5(b)) for the payment of each Award (other than such portion of any Awards under the 1998 Equity Plan converted into Class C Interests in the Class C Interests Grant as contemplated in the following clause (d)(ii), if any) (such Awards, the "***Cash Awards***") to each Participant (other than any Equity Consenting Participant to the extent of the conversion of his or her Award into Class C Interests in the Class C Interests Grant, if any) such that payment of the Cash Awards shall occur as soon as practicable following the Closing and a verification of financial results. Payment for all Cash Awards shall be funded through an escrow account established by the Partners (the "***Holdback Escrow***"), and the Partners agree that, as between the Partners and the Buyer, the Partners shall be liable for such payment. The Buyer agrees to grant (or cause the applicable Buyer Party to grant) the Partners and their Representatives reasonable access following the Closing (upon

reasonable notice) to the books and records of the Company relating to pre-Closing periods solely for the purpose of conducting the verification of financial results necessary prior to payment of the Awards. Solely as a matter of administrative convenience, the Buyer agrees that, upon the receipt of notice from the Indemnification Representative, the payment of all or a portion of the Cash Awards (as specified in such notice) shall be processed through the Buyer's payroll as compensation payments following the Closing, and the Partners shall severally (pro rata in accordance with their Interests), and not jointly, indemnify the Buyer Parties for any Losses that the Buyer incurs with respect to the payment or non-payment of, or any claim related to, any Cash Award. The Buyer Parties' right to indemnification pursuant to this Section 5.9 shall not be subject to any time limitation, Threshold Amount or Maximum Amount provided in Article VII, and the Buyer Parties shall not be obligated to seek payment from the Indemnification Escrow Amount, or be limited by the funds remaining in the Indemnification Escrow Amount for the avoidance of doubt, the provisions of Section 7.2(c)-(g) and the final sentence of Section 7.2(h) shall be applicable to claims under this Section 5.9. The Indemnification Representative shall provide to the escrow agent responsible for the Holdback Escrow, which shall then provide to the Buyer, information as to the amount of the Award payable to each Participant, including the amount of all required tax withholdings, and Buyer's sole responsibility is to process such payments pursuant to the instructions.

(ii) *Grants*. Prior to the Closing and following delivery of a Consent and Indemnification Agreement executed by the Equity Consenting Participants, the Company may, in its discretion, grant to each Equity Consenting Participant the number of Class C Interests set forth on Exhibit A to the Consent and Indemnification Agreement with respect to such Equity Consenting Participant (each such grant, a "***Class C Interests Grant***"). The Partners hereby agree, and TWC and the Company hereby acknowledge, that the TWC II Purchase Price shall be reduced to the Adjusted TWC II Purchase Price, as set forth in Section 2.1(d) hereof, in consideration for the assumption by the Buyer of its obligations with respect to the Class C Interests. For the avoidance of doubt, the Company shall have no obligation to make the Class C Interest Grant.

(e) *Indemnity*. Anything in this Agreement to the contrary notwithstanding, the Buyer hereby agrees to indemnify the Partners and their respective Affiliates against and hold the Partners and their respective Affiliates harmless from any and all Losses arising out of or otherwise in respect of (i) any claim made or arising after the Closing by any Acquired Companies Employee against the Partners or any of their respective Affiliates for any severance or termination benefits pursuant to the provisions of the severance arrangements and employment agreements disclosed on Schedule 3.12, (ii) any action taken after the Closing by the Buyer with respect to any plan (including any Benefit Plan), (iii) any claim for payments or benefits by Acquired Companies Employees or their beneficiaries under any Benefit Plan arising after the Closing, and (iv) any failure of the Buyer to discharge its obligations under this Article V (but excluding (A) the Partners' several obligations to fund and pay the Cash Awards in accordance with Section 5.9(d)(i) hereof, and to indemnify the Buyer Parties for any claims with respect to such Cash Awards, and (B) any claim by any Equity Consenting Participant with respect to the conversion of all or any portion of an Award into Class C Interests, or the issuance of Class C Interests).

(f) *No Third Party Beneficiaries*. No provision contained in this Agreement shall create any third party beneficiary rights in any employee or former employee (including any beneficiary or dependent thereof) of any Acquired Company in respect of continued employment (or resumed employment) for any specified period of any nature or kind whatsoever.

Section 5.10 ***Conveyance Taxes; Costs.*** The Buyer shall be liable for and shall hold the Company and the Partners harmless against any transfer, value added, excise, stamp, recording, registration and any similar Taxes that become payable in connection with the transactions contemplated hereby. Notwithstanding the foregoing, the Partners severally (pro rata in accordance with their Interests), and not jointly, shall be liable for and hold the Buyer Parties harmless against certain city, county, municipal or local conveyance Taxes (the ***"Municipal Taxes"***) to the extent such Municipal Taxes are actually incurred; provided that the Buyer Parties (a) shall timely prepare, or cause to be prepared, any Tax Returns with respect to such Municipal Taxes (or any transaction giving rise or purportedly giving rise to such Municipal Taxes) required to be filed by applicable Law, in each case, in form and substance reasonably satisfactory to the Company and the Indemnification Representative, on behalf of the Partners, and otherwise cooperate in good faith with the Company and the Indemnification Representative, as the case may be, in such preparation of such Tax Returns, (b) shall timely file, or cause to be filed, such Tax Returns with the appropriate Governmental Authorities, and (c) shall otherwise cooperate in good faith with the Company and the Indemnification Representative in the preparation and filing of such Tax Returns; provided further that (1) the Buyer Parties shall promptly notify the Indemnification Representative of any notice of a proposed assessment or claim in an administrative, judicial or other proceeding that, if determined adversely to the taxpayer, would be grounds for indemnification under this sentence, and (2) the Indemnification Representative (on behalf of the Partners), at its option, shall have the right to defend any administrative, judicial or other proceeding in such manner as it may deem appropriate with respect to such claimed Municipal Taxes. The Buyer Parties' right to indemnification pursuant to this Section 5.10 shall not be subject to any time limitation, Threshold Amount or Maximum Amount provided in Article VII, and the Buyer Parties shall not be obligated to seek payment from the Indemnification Escrow Amount, or be limited by the funds remaining in the Indemnification Escrow Amount. For the avoidance of doubt, the provisions of Sections 7.2(c)-(g) and the final sentence of 7.2(h) shall be applicable to claims under this Section 5.10. The inclusion of this Section 5.10 is not an admission by any party hereto that any Acquired Company, Affiliated Property Owner, Property or any party hereto, or any Transaction, is subject to any Municipal Tax or to any other Tax liability related thereto.

Section 5.11 ***Existing Partnership Indemnification Rights***. Subject to applicable Law and the rules of any securities exchange on which the Buyer's securities may be listed, the Buyer agrees to honor and to continue in full force and effect all rights to exculpation and indemnification existing in favor of, and all limitations on the personal liability of, the general partner, the limited partners and the members of the "management committee" (as such term is used in the Limited Partnership Agreement) of the Company and each of their respective Representatives as of the Closing (the "***Indemnified Persons***") provided for in the Limited Partnership Agreement as in effect as of the date hereof, including without limitation the provisions of Sections 8.4 and 8.5 of the Limited Partnership Agreement, with respect to matters occurring prior to and through the Closing, and specifically including the transactions contemplated hereby, for a period of six (6) years from the Closing; *provided, however*, that all rights to indemnification in respect of any claims (each, a "***Claim***") asserted or made within such period shall continue until the disposition of such Claim. Following the Closing, the Buyer shall not, and shall not permit the Company to, amend or modify the certificate of limited partnership or limited partnership agreement of the Company if the effect of such amendment or modification would be to lessen or otherwise adversely affect the exculpation or indemnification rights of such Indemnified Persons or limitation of liability of such Indemnified Persons as provided therein. In the event that the Company transfers all or substantially all of its properties and assets to any Person or Persons in one or a series of transactions (whether by merger, sale of equity interests, sale of assets or other legal structure), then and in each such case, proper provision shall be made so that the transferee of such properties or assets shall assume the obligations of the Company under this Section 5.11**.** This Section 5.11 is intended to benefit each of the Indemnified Persons and their respective heirs, successors, assigns and personal representatives, each whom shall be entitled to enforce the provisions hereof and,

notwithstanding anything in this Agreement to the contrary, each of whom shall be deemed and is expressly made third party beneficiaries under and with respect to this Agreement.

Section 5.12 ***Notice of Certain Facts.*** From the Signing Date until the Closing, each party shall promptly notify and inform the other of any material variance or incorrect statement in the representations and warranties contained in Article III of this Agreement or Article VI of the Sale and Contribution Agreement discovered by such party or its Representatives, and shall use commercially reasonable efforts to remedy the same. Upon reasonable notice to the other party, either party may supplement its Schedules to this Agreement from time to time prior to the Closing with respect to any matter that, if existing or occurring at or prior to the Closing Date, would have been required to be set forth on such party's schedules or that is necessary to complete or correct any information contained in any representation or warranty made by such party, provided that any such supplement shall not serve to cure any breach of or inaccuracy in a representation or warranty previously made by the disclosing party, and shall not be deemed or construed as a waiver of the non-disclosing party's rights with respect to any such breach or inaccuracy.

Section 5.13 ***Resolution of Certain Litigation.*** The Partners shall severally (pro rata in accordance with their Interests), and not jointly, indemnify the Buyer Parties against Losses incurred by the Buyer Parties following the Closing that are related to and arise out of that certain litigation matter referenced in Item A.1. on Schedule 3.7 (the "***Specified Litigation***"). The Buyer Parties' right to indemnification pursuant to this Section 5.13 shall not be subject to any time limitation, Threshold Amount or Maximum Amount provided in Article VII, and the Buyer Parties shall not be obligated to seek payment from the Indemnification Escrow Amount, or be limited by the funds remaining in the Indemnification Escrow Amount. For the avoidance of doubt, the provisions of Sections 7.2(c)-(g) and the final sentence of Section 7.2(h) shall be applicable to claims for indemnity under this Section 5.13. Notwithstanding the foregoing, this Section 5.13 (and the

Partners' obligations hereunder) shall terminate and be of no further force and effect in the event that the Company, at any time, settles the Specified Litigation without ongoing obligations of or restrictions on any Acquired Company or Affiliated Property Owner or the Specified Litigation is dismissed with prejudice by, or the subject of a final non-appealable order of, a court of competent jurisdiction. The inclusion of this Section 5.13 is not an admission by any party hereto that any Acquired Company, Affiliated Property Owner, Property or any party hereto, is subject to any liability to any third party whatsoever with respect to the Specified Litigation.

ARTICLE VI
CONDITIONS TO CLOSING

Section 6.1 ***Conditions to the Obligations of Each Party.*** The respective obligations of each party to consummate the Transactions and the other transactions contemplated under the Transaction Documents shall be subject to the satisfaction or waiver (in writing), at or prior to the Closing, of each of the following conditions, any or all of which may be waived, in whole or in part by the parties hereto (but only to the extent that such matter is a precondition to the obligations of such waiving party), to the extent permitted by applicable law:

(a) *Governmental Approval*. The Buyer Parties and the Company shall have timely obtained from each Governmental Authority all approvals, waivers and consents listed on Schedule 6.1 hereto (the "***Required Approvals***"); and

(b) *No Order.* No Governmental Authority or court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) that is in effect and has the effect of making the transactions contemplated by this Agreement for the Closing illegal or otherwise restraining or prohibiting consummation of such transactions, or that would reasonably be expected to have a Material Adverse Effect. In the event an injunction or other order shall have been issued, each party agrees to use its reasonable best efforts to have such injunction or other order lifted.

(c) *General Partnership Interest Restructuring*. The transactions contemplated under Section 7.1(b) of the Sale and Contribution Agreement and Section 4.1(b) of the TWC II Sale Agreement shall have been consummated in accordance with the terms thereof and of the Limited Partnership Agreement and the TWC Limited Partnership Agreement, respectively.

Section 6.2 ***Conditions to Obligations of the Company, TWC, TWC II and the Partners.*** The obligations of the Company and each Partner to consummate the Transactions shall be subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

(a) *Representations and Warranties*. Each of the representations and warranties of the Buyer Parties contained in any Transaction Document that are qualified as to materiality shall be true and correct in all respects and all other representations and warranties of the Buyer Parties contained in any Transaction Document shall be true and correct in all material respects, in each case on and as of the Closing Date, with the same effect as though made on and as of the Closing Date, except to the extent such representations and warranties are specifically made as of a particular date or as of the date of the applicable Transaction Document (in which case such representations and warranties shall be true and correct as of such date), in all cases without giving effect to any supplement to the Buyer Disclosure Schedules; and the Company shall have received a certificate dated as of the Closing Date executed by a duly authorized officer of each Buyer Party certifying to such effect, although such certificate shall give full effect to any supplement to the Buyer Disclosure Schedules;

(b) *Covenants*. All covenants contained in any Transaction Document to be performed or complied with any Buyer Party on or before the Closing shall have been performed or complied with in all material respects, and the Company shall have received a certificate dated as of the Closing Date executed by duly authorized officer of each Buyer Party certifying to such effect, although such certificate shall give full effect to any supplement to the Buyer Disclosure Schedules;

(c) *Consents*. The Buyer and other Buyer Parties, as applicable, shall have received those material consents to the transactions contemplated hereby listed on Schedule 6.2 hereto;

(d) *Legal Opinion*. The Company shall have received from counsel to the Buyer Parties an opinion substantially in the form of Exhibit D attached hereto addressed to the Company, TWC, TWC II and the Partners and dated as of the Closing Date.

(e) *Secretary's and General Partner's Certificates*. The Company shall have received a certificate from each of the secretary (or general partner or managing member, as applicable) of each Buyer Party, dated as of the Closing Date, certifying as to such entity's respective organization documents, the incumbency of its respective officers or other signatories and the resolutions adopted by (or similar authorizing action taken), with respect to such Buyer Party, the board of directors and stockholders, if applicable, (or similar bodies, respectively).

(f) *Indemnification Escrow Agreement*. The Buyer shall have entered into the Indemnification Escrow Agreement.

(g) *Deposits*. The Buyer and the Company shall have delivered joint written instructions to the Escrow Agent directing it to deliver the Signing Deposit into the Adjustment Escrow Amount

and the Inspection Deposit into the Indemnification Escrow Amount and the Escrow Agent shall have complied with such instructions.

(h) *Pre-Closing Distribution*. The Pre-Closing Cash Distributions shall have occurred in accordance with Section 2.5 hereof.

(i) *Assignment of TWC II Partnership Interests*. The applicable Buyer Parties shall have executed and delivered the assignment and assumption of partnership interests contemplated under Sections 3.2(a) and 3.2(b) of the TWC II Sale Agreement.

(j) *Assignment of Interests*. The applicable Buyer Parties shall have executed and delivered the assignment and assumption with respect to each Partner's Interest contemplated under Section 6.2(a) of the Sale and Contribution Agreement.

(k) *Registration Rights Agreement*. The Buyer shall have entered into the registration rights agreement contemplated under Section 6.2(f) of the Sale and Contribution Agreement.

(l) *Preferred Units; Preferred Stock*. The Buyer Partnership Agreement Amendment shall have been duly adopted and shall be in full force and effect, and Macerich shall have filed with the State Department of Assessments and Taxation of the State of Maryland the articles supplementary contemplated under Section 6.2(g) of the Sale and Contribution Agreement (and the Buyer shall have delivered a certificate to such effect).

(m) *Tax Matters Agreement*. The Buyer shall have entered into the tax matters agreement contemplated under Section 6.2(e) of the Sale and Contribution Agreement.

Section 6.3 ***Conditions to Obligations of the Buyer Parties.*** The obligations of the Buyer Parties to consummate the Transactions shall be subject to the satisfaction or waiver by the applicable Buyer Party, at or prior to the Closing, of each of the following conditions:

(a) *Representations and Warranties*. Each of the representations and warranties of the Company and the Partners contained in any Transaction Document that are qualified as to materiality shall be true and correct in all respects and all other representations and warranties of the Company and the Partners contained in any Transaction Document shall be true and correct in all material respects, in each case on and as of the Closing Date, with the same effect as though made on and as of the Closing Date, except to the extent such representations and warranties are specifically made as of a particular date or as of the date of the applicable Transaction Document (in which case such representations and warranties shall be true and correct as of such date), in all cases without giving effect to any supplement to the Company Disclosure Schedules; and the Buyer shall have received a certificate dated as of the Closing Date executed by the general partner of the Company certifying to such effect, although such certificate shall give full effect to any supplement to the Company Disclosure Schedules.

(b) *Covenants*. All covenants contained in the Transaction Documents to be performed or complied with by the Company and the Partners on or before the Closing shall have been performed or complied with in all material respects, and the Buyer shall have received a certificate dated as of the Closing Date executed by the general partner of the Company certifying to such effect, although such certificate shall give full effect to any supplement to the Company Disclosure Schedules.

(c) *Consents*. The Company shall have received those material consents to the transactions contemplated hereby listed on Schedule 6.3 hereto (such consents, collectively, the "***Company Consents***").

(d) *Legal Opinion*. The Buyer Parties shall have received from counsel to the Company an opinion substantially in the form of Exhibit E attached hereto addressed to the Buyer Parties dated

as of the Closing Date; *provided*, *however*, that if the opinions set forth in such Exhibit E with respect to any Partner (a "***Partner Opinion***") cannot be so delivered at such time as all other conditions to Closing have been satisfied (or, if applicable, are capable of being satisfied) or waived, the Buyer Parties shall nevertheless be obligated to consummate the Transactions as provided herein and in the other Transaction Documents except that, notwithstanding Sections 2.2 and 3.3 of the Sale and Contribution Agreement, the Partner with respect to whom or to which such Partner Opinion could not be so delivered shall not be entitled to receive, and the Buyer Parties (and any of them) shall have no obligation to deliver, such Partner's Per Interest Price or such Partner's Preferred Units Amount, if any, until (and then, in such case, promptly, but not later than one (1) Business Day following) the date the Buyer receives such Partner Opinion.

(e) *Secretary's Certificate*. The Buyer shall have received in sufficient copies for the Buyer Parties a certificate from the secretary of each of the Company, TWC, TWC II and Eastrich dated as of the Closing Date, certifying as to such Person's organization documents, the incumbency of its officers or other signatories and the resolutions adopted by the management committee of the Company or, in the case of Eastrich, by its board of directors.

(f) *Indemnification Escrow Agreement*. The Indemnification Representative, on behalf of the Partners, shall have entered into the Indemnification Escrow Agreement.

(g) *Deposits*. The Buyer and the Company shall have delivered joint written instructions to the Escrow Agent directing it to deliver the Signing Deposit into the Adjustment Escrow Amount and the Inspection Deposit into the Indemnification Escrow Amount and the Escrow Agent shall have complied with such instructions.

(h) *No MAE*. No event or occurrence shall have occurred that individually or in the aggregate shall have had or would reasonably be expected to have a Material Adverse Effect.

(i) *Funding of Awards*. After giving effect to any transfer to the Holdback Escrow pursuant to Section 2.5(b) hereof, funds sufficient to pay all Cash Awards under the 1998 Plans shall be in escrow and available for disbursement to participants of each such plan in accordance with Section 5.9 hereof.

(j) *Termination of Contracts with Interested Persons*. The Company and the Partners shall have terminated, without further liability or obligation to any Acquired Company, the contracts and agreements with Affiliates listed on Schedule 6.3(j) hereto.

(k) *Funding Escrows*. Each of the Escrow Amounts shall have been funded as set forth in Section 2.5(b).

(l) *Assignment of TWC II Partnership Interests*. The Company shall have executed and delivered the assignment and assumption of the limited partnership and interests in TWC II contemplated under Section 3.2(a) of the TWC II Sale Agreement, and TWC shall have executed and delivered the assignment and assumption of the general partnership interest in TWC II contemplated under Section 3.2(b) of the TWC II Sale Agreement.

(m) *Assignment of Interests*. Each of the Partners shall have executed and delivered the assignment and assumption with respect to such Partner's Interest contemplated under Section 6.2(a) of the Sale and Contribution Agreement, and each Investing Partner shall have executed and delivered such Investing Partner's Election Form and an "accredited investor" questionnaire, in each case duly completed and executed by such Investing Partner.

(n) *Registration Rights Agreement*. Each Investing Partner shall have entered the registration rights agreement contemplated under Section 6.2(f) of the Sale and Contribution Agreement.

(o) *Tax Matters Agreement*. The Buyer and each Investing Partner shall have entered into the tax matters agreement contemplated under Section 6.2(e) of the Sale and Contribution Agreement.

(p) *FIRPTA Compliance/Power of Attorney*. The Buyer shall have received from each Partner (i) a certificate (executed in duplicate) in the form requested by the Buyer to comply with Section 1445 of the Code, and (ii) a copy of any power of attorney pursuant to which any Transaction Document has been executed.

(q) *Class C Interest Grants.* If the Company makes the Class C Interests Grant as contemplated under Section 5.9(d)(ii), the Company shall have made such Class C Interests Grant in accordance with the Limited Partnership Agreement and the Consent and Indemnification Agreement, which shall have been duly executed and delivered by each Equity Consenting Participant prior to the consummation of any such Class C Interests Grant.

ARTICLE VII
INDEMNIFICATION

Section 7.1 ***Survival***.

(a) Subject to the limitations and other provisions of this Agreement, and the other Transaction Documents, the representations and warranties of the parties hereto contained in this Agreement or any other Transaction Document (including, without limitation, of each Partner contained in the Sale and Contribution Agreement) shall survive the Closing and shall remain in full force and effect, until the close of business on the date that is one year from the Closing Date. There shall be no limitation as to time for any claims (i) based on fraud or intentional misrepresentation, or (ii) with respect to Sections 2.6(c), 5.9(d), 5.10 and 5.13 hereof.

(b) Subject to the limitations and other provisions of this Agreement and the other Transaction Documents, each covenant and agreement of the parties hereto contained herein shall survive the Closing and shall remain in full force and effect until (i) the close of business on the date that is one year from the Closing Date, or (ii) if specified herein, until the end of the applicable period specified elsewhere in this Agreement or another Transaction Document, as the case may be, with respect to such covenant or agreement.

Section 7.2 ***Indemnification by the Partners***.

(a) The Partners agree, subject to the other terms and conditions of this Agreement, and the other Transaction Documents, to severally (pro rata in accordance with their Interests), but not jointly**,** indemnify the Buyer and its Affiliates, officers, directors, employees, agents, successors and assigns (each a "***Buyer Indemnified Party***") against and hold them harmless from all Losses arising out of (i) the breach of, or inaccuracy in, any representation or warranty of the Company, TWC, TWC II or the Partners contained in this Agreement, in any other Transaction Document, or in any certificate, instrument or other document or agreement delivered by or on behalf of the Company or the Partners to the Buyer pursuant to Section 6.3 of this Agreement, (ii) any breach of or failure to perform any covenant or agreement of the Company or the Partners contained herein, in any other Transaction Document or in any such certificate, instrument, document or agreement and (iii) any indemnity obligations of any Acquired Company or Affiliated Property Owner contained in any Company Consent. Notwithstanding anything to the contrary contained in this Article VII, but subject to the last sentence of this Section 7.2, no claim may be asserted nor any action commenced against the Partners for breach of any representation, warranty or covenant by the Company or the Partners contained herein or in any other Transaction Document, unless written notice of such claim or action (a "***Claim Notice***") is received by the Indemnification Representative on or prior to the date on which the representation, warranty or covenant on which such claim or action is based ceases to survive in accordance with Section 7.1 (the "***Indemnification***

Cut-Off Date"), and such claim or action arose on or prior to the Indemnification Cut-Off Date, in which case such representation, warranty or covenant, and the Buyer Indemnified Party's right to indemnification hereunder will survive as to such claim until such claim has been finally resolved in accordance with the terms of this Article VII. Such Claim Notice shall contain (A) a description and the amount (the "***Claimed Amount***") of any Losses incurred or reasonably expected to be incurred by the Buyer Indemnified Party, (B) a statement that the Buyer Indemnified Party is entitled to indemnification under this Article VII for such Losses and a reasonable explanation of the basis therefor and (C) a demand for payment in the amount of such Losses. The Buyer Indemnified Party must also deliver a copy of such Claim Notice to the Escrow Agent simultaneously with delivery of the Claim Notice to the Indemnification Representative. The Partners shall severally (pro rata in accordance with their Interests), and not jointly, indemnify the Buyer Indemnified Parties pursuant to this Section 7.2 notwithstanding any investigation made at any time or on behalf of any party hereto; provided that the Partners shall not be obligated to indemnify the Buyer with respect to a breach of, or inaccuracy in, a representation or warranty to the extent that a Buyer Knowledge Party had actual knowledge of the existence of such breach or inaccuracy on or before the Closing Date.

(b) The indemnification obligations of the Partners pursuant to Section 7.2 shall not be effective until the aggregate dollar amount of all Losses that would otherwise be indemnifiable pursuant to Section 7.2 exceeds Five Million Dollars ($5,000,000) (the "***Threshold Amount***") and then the Partners shall be liable for Losses from the first dollar, without regard to the Threshold Amount; provided that the Threshold Amount shall not apply to any claim arising under Section 2.6(c), 5.9(d), 5.10 or 5.13 hereof. The indemnification obligations of the Partners pursuant to Section 7.2 shall be effective only until the aggregate dollar amount paid in respect of the Losses indemnified against under Section 7.2 equals Twenty Million Dollars ($20,000,000) (the "***Maximum Amount***") for all Losses; provided that the Maximum Amount shall not apply to any Losses based on any claim of fraud or intentional misrepresentation, or arising under Section 2.6(c), 5.9(d), 5.10 or 5.13 hereof.

For purposes of this Section 7.2(b), in computing such individual or aggregate amounts of claims, the amount of any insurance proceeds and any indemnity, contribution or other similar payment actually received by the Buyer Indemnified Parties from any third party with respect thereto shall be deducted from each such claim. A Buyer Indemnified Party shall exhaust all of its remedies against applicable insurers, indemnitors or contributors prior to seeking indemnification hereunder. The amount of Losses otherwise recoverable under this Section 7.2 shall be adjusted to the extent to which any federal, state, local or foreign tax liabilities or benefits are realized by the Buyer Indemnified Parties primarily by reason of any Loss or indemnity payment hereunder.

(c) A Buyer Indemnified Party shall give the Person or Persons designated as the representative or representatives of the Partners with respect to post-closing matters under Article II and this Article VII hereof (the "***Indemnification Representative***") written notice of any claim, assertion, event or proceeding by or in respect of a third party as to which such Buyer Indemnified Party may request indemnification hereunder or as to which the Threshold Amount may be applied as soon as is practicable and in any event within thirty (30) days of the time that such Buyer Indemnified Party learns of such claim, assertion, event or proceeding and such notice shall describe in reasonable detail (to the extent known by the Buyer Indemnified Party) the facts constituting the basis for such suit or proceeding and the amount of the claimed damages; *provided*, *however*, that any delay in notifying the Indemnification Representative shall not affect rights to indemnification hereunder except to the extent that the Partners are materially prejudiced by such failure or incur additional costs or liability as a result. The Indemnification Representative shall have the right to direct, through counsel of its own choosing, the defense or settlement of any such claim or proceeding at the expense of the Partners. If the Indemnification Representative

elects to cause the Partners to assume the defense of any such claim or proceeding, the Indemnification Representative shall keep the Buyer Indemnified Party advised as to the status of such suit or proceeding and defense thereof and shall consider in good faith recommendations made by the Buyer Indemnified Party with respect thereto. The Buyer Indemnified Party may participate in such defense, but in such case the expenses of the Buyer Indemnified Party shall be paid by the Buyer Indemnified Party. The Buyer Indemnified Party shall provide the Indemnification Representative with access to its records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise cooperate with and assist the Indemnification Representative in the defense or settlement thereof. If the Indemnification Representative elects to direct the defense of any such claim or proceeding, the Buyer Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability unless the Indemnification Representative consents in writing to such payment or unless the Indemnification Representative, subject to the last sentence of this Section 7.2(c), withdraws from the defense of such asserted liability or unless a final judgment from which no appeal may be taken by or on behalf of the Partners is entered against the Buyer Indemnified Party for such liability. If the Indemnification Representative fails to defend or if, after commencing or undertaking any such defense, the Indemnification Representative fails to prosecute or withdraws from such defense, the Buyer Indemnified Party shall have the right to undertake the defense or settlement thereof, at the Partner's expense. If the Buyer Indemnified Party assumes the defense of any such claim or proceeding pursuant to this Section 7.2(c) and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego any appeal with respect thereto, then the Buyer Indemnified Party shall give the Indemnification Representative prompt written notice thereof, and the Indemnification Representative shall have the right to participate in the settlement or assume or reassume the defense of such claim or proceeding. Notwithstanding the foregoing, the Partners shall not be bound by any determination of a proceeding so defended or any compromise or settlement effected without the consent of the Indemnification Representative (which consent may not be unreasonably withheld or delayed).

(d) Within twenty (20) Business Days after delivery of a Claim Notice by a Buyer Indemnified Party, the Indemnification Representative shall deliver to the Buyer Indemnified Party a written response (the "***Response***") in which the Indemnification Representative shall: (i) agree that the Buyer Indemnified Party is entitled to receive all of the Claimed Amount (in which case, the Indemnification Representative and the Buyer Indemnified Party shall deliver to the Escrow Agent, within three (3) Business Days following the delivery of the Response, a written notice executed by both parties instructing the Escrow Agent to distribute to the Buyer an amount of cash out of the Indemnification Escrow Amount, to the extent available, equal to the Claimed Amount), (ii) agree that the Buyer Indemnified Party is entitled to receive part, but not all, of the Claimed Amount (the "***Agreed Amount***") (in which case, the Indemnification Representative and the Buyer Indemnified Party shall deliver to the Escrow Agent, within three (3) Business Days following the delivery of the Response, a written notice executed by both parties instructing the Escrow Agent to distribute to the Buyer an amount of cash out of the Indemnification Escrow Amount, to the extent available, equal to the Agreed Amount) or (iii) dispute that the Buyer Indemnified Party is entitled to receive any of the Claimed Amount. If, in the Response, the Indemnification Representative disputes its liability for all or part of the Claimed Amount, the Indemnification Representative and the Buyer Indemnified Party shall follow the procedures set forth below for the resolution of such dispute (a "***Dispute***").

During the fifteen (15) day period following the delivery of a Response that reflects a Dispute, the Indemnification Representative and the Buyer Indemnified Party shall use good faith efforts to resolve the Dispute. If the Buyer Indemnified Party and the Indemnification Representative should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and furnished to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such

memorandum as joint instructions and shall distribute the amount of cash specified in such memorandum out of the Indemnification Escrow Amount in accordance with the terms thereof.

(e) The Indemnification Representative shall have full power and authority on behalf of the Partners to take any and all actions on behalf of, execute any and all instruments on behalf of, and execute or waive any and all rights of, the Partners under this Article VII or with respect to each Partner's interest in the Indemnification Escrow Amount. The Indemnification Representative shall initially be, and each Partner does hereby appoint, a committee comprised of Robert G. Gifford and Russ Lyon, Jr. (with Alison Husid and Robert L. Ward also authorized to act in Mr. Gifford's and Mr. Lyon's place, respectively) to act and represent such Partner as its Indemnification Representative as provided herein and in the other Transaction Documents. Such committee may be changed by the holders of a majority in interest of the Interests from time to time upon not less than ten (10) days' prior written notice to the Buyer. The Indemnification Representative may resign upon thirty (30) days' notice to the parties to this Agreement. No bond shall be required of the Indemnification Representative, and the Indemnification Representative, and shall receive no compensation for his services. Notices or communications to or from the Indemnification Representative shall constitute notice to or from the Partners. The Indemnification Representative shall be given reasonable access to information about the Buyer and the reasonable assistance of the Buyer's officers and employees for purposes of performing its

duties and exercising its rights hereunder, provided that the Indemnification Representative shall treat confidentially and not disclose any nonpublic information from or about the Buyer to anyone (except on a need to know basis to individuals who agree to treat such information confidentially or in connection with any legal proceeding). Notwithstanding anything in this Agreement to the contrary, the Indemnification Representative shall incur no liability with respect to any action taken or suffered by him in connection with the execution of his duties hereunder, except for liability resulting from his own gross negligence or willful misconduct.

(f) The Buyer hereby acknowledges and agrees that, from and after the Closing, its sole and exclusive remedy with respect to any and all claims relating to the Transaction Documents, the Transactions and any other transaction contemplated by this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VII and its sole and exclusive source for the satisfaction of such obligations shall be the Indemnification Escrow Amount, except for any claims based on fraud or intentional misrepresentation or arising under Section 2.6(c), 5.9(d), 5.10 or 5.13 hereof.

(g) The Partners shall have no liability under any provision of any Transaction Document for any consequential, exemplary or punitive damages or any multiple of damages or diminution in value**.** The Buyer shall take all commercially reasonable steps to mitigate Losses for which indemnification may be claimed pursuant to this Section 7.2 upon and after becoming aware of any event that would reasonably be expected to give rise to any such Losses.

(h) The Buyer hereby acknowledges and agrees that the Partners are not jointly liable under this Section 7.2 and that each Partner is liable only for damages, in the aggregate, up to, but not exceeding, the percentage of the Indemnification Escrow Amount to which such Partner would be entitled if the entire Indemnification Escrow Amount were distributed to the Partners, and such Indemnification Escrow Amount shall serve as the sole and exclusive remedy for satisfaction of such Partner's obligations pursuant to this Article VII, subject to Section 7.2(f) hereof. There shall be no right of contribution between and among the Partners with respect to their indemnification obligations under this Article VII, except as expressly agreed in writing among the Partners (or any of them).

Any liability for indemnification under this Section 7.2 shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability constituting a breach of more than one representation, warranty, covenant or agreement.

Section 7.3 ***Indemnification by the Buyer***.

(a) The Buyer agrees, subject to the other terms and conditions of this Agreement and the other Transaction Documents to indemnify the Partners and their respective Affiliates, officers, directors, employees, agents, successors and assigns (each a "***Partners Indemnified Party***") against and hold them harmless from all Losses arising out of (i) the breach of, or inaccuracy in, any representation or warranty of any Buyer Party contained in this Agreement, any other Transaction Document, or in any certificate, instrument or other document or agreement delivered by or on behalf of any Buyer Party to the Company or any Partner pursuant to Section 6.2 of this Agreement or under any other Transaction Document, and (ii) any breach of or failure to perform any covenant or agreement of any Buyer Party contained herein, in any other Transaction Document, or in any such certificate, instrument, document or agreement delivered by or on behalf of any Buyer Party pursuant to this Agreement. Anything in Section 7.1 to the contrary notwithstanding, no claim may be asserted nor may any action be commenced against the Buyer for breach of any representation, warranty or covenant contained herein, unless a Claim Notice is received by the Buyer on or prior to the Indemnification Cut-Off Date relating to the representation, warranty or covenant on which such claim or action is based and such claim or action arose on or prior to such Indemnification Cut-Off Date, in which case such representation, warranty or covenant will survive as to such claim until such claim has been finally resolved. Such Claim Notice shall contain (A) a description and the Claimed Amount of any Losses incurred or reasonably expected to be incurred by the Partners Indemnified Party, (B) a statement that the Partners Indemnified Party is entitled to indemnification under this Article VII for such Losses and a reasonable explanation of the basis therefor and (C) a demand for payment in the amount of such Losses. The Buyer shall be obligated to indemnify the Partners Indemnified Parties pursuant to this Section 7.3(a) notwithstanding any investigation made at any time or on behalf of any party hereto; provided that the Buyer shall not be obligated to indemnify the Partners with respect to a breach of, or inaccuracy in, a representation or warranty to the extent that a Company Knowledge Party had actual knowledge of the existence of such breach or inaccuracy on or before the Closing Date.

(b) The indemnification obligations of the Buyer pursuant to Section 7.3(a) shall not be effective until the aggregate dollar amount of all Losses that would otherwise be indemnifiable pursuant to Section 7.3(a) exceeds the Threshold Amount, and then only to the extent such aggregate amount exceeds the Threshold Amount. The indemnification obligations of the Buyer pursuant to Section 7.3(a) shall be effective only until the aggregate dollar amount paid in respect of the Losses indemnified against under Section 7.3(a) equals the Maximum Amount for all Losses; provided that the Maximum Amount shall not apply to any Losses based on any claim of fraud or intentional misrepresentation. For purposes of this Section 7.3(b), in computing such individual or aggregate amounts of claims, the amount of any insurance proceeds and any indemnity, contribution or other similar payment actually recovered by the Partners Indemnified Parties from any third party with respect thereto shall be deducted from each such claim. The amount of Losses otherwise recoverable under this Section 7.3 shall be adjusted to the extent any federal, state, local or foreign tax liabilities or benefits are realized by the Partners Indemnified Parties primarily by reason of any Loss or indemnity payment hereunder.

(c) A Partners Indemnified Party shall give the Buyer written notice of any claim, assertion, event or proceeding by or in respect of a third party as to which such Partners Indemnified Party may request indemnification hereunder or as to which the Threshold Amount may be applied as soon as is practicable and in any event within thirty (30) days of the time that such Partners

Indemnified Party learns of such claim, assertion, event or proceeding and such notice shall describe in reasonable detail (to the extent known by the Partners Indemnified Party) the facts constituting the basis for such suit or proceeding and the amount of the claimed damages; *provided*, *however*, that any delay in notifying the Buyer shall not affect rights to indemnification hereunder except to the extent that the Buyer is materially prejudiced by such failure or incurs additional costs or liability as a result. The Buyer shall have the right to direct, through counsel of its own choosing, the defense or settlement of any such claim or proceeding at its own expense. If the Buyer elects to assume the defense of any such claim or proceeding, the Buyer shall keep the Partners Indemnified Party advised as to the status of such suit or proceeding and defense thereof and shall consider in good faith

recommendations made by the Partners Indemnified Party with respect thereto. The Partners Indemnified Party may participate in such defense, but in such case the expenses of the Partners Indemnified Party shall be paid by the Partners Indemnified Party. The Partners Indemnified Party shall provide the Buyer with access to its records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise cooperate with and assist the Buyer in the defense or settlement thereof. If the Buyer elects to direct the defense of any such claim or proceeding, the Partners Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability, unless the Buyer consents in writing to such payment or unless the Buyer, subject to the last sentence of this Section 7.3(c), withdraws from the defense of such asserted liability, or unless a final judgment from which no appeal may be taken by or on behalf of the Buyer is entered against the Partners Indemnified Party for such liability. If the Buyer fails to defend or if, after commencing or undertaking any such defense, the Buyer fails to prosecute or withdraws from such defense, the Partners Indemnified Party shall have the right to undertake the defense or settlement thereof, at the Buyer's expense. If the Partners Indemnified Party assumes the defense of any such claim or proceeding pursuant to this Section 7.3(c) and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego appeal with respect thereto, then such Partners Indemnified Party shall give the Buyer prompt written notice thereof and the Buyer shall have the right to participate in the settlement or assume or reassume the defense of such claim or proceeding. Notwithstanding the foregoing, the Buyer shall not be bound by any determination of a proceeding so defended or any compromise or settlement effected without its consent (which consent may not be unreasonably withheld or delayed).

(d) Within twenty (20) Business Days after delivery of a Claim Notice by a Partners Indemnified Party, the Buyer shall deliver to the Indemnification Representative a Response in which the Buyer shall: (i) agree that the Partners Indemnified Party is entitled to receive all of the Claimed Amount (in which case, the Buyer shall, within three (3) Business Days following the delivery of the Response, distribute to the Partners Indemnified Party an amount of cash equal to the Claimed Amount), (ii) agree that the Partners Indemnified Party is entitled to receive the Agreed Amount (in which case, the Buyer shall, within three (3) Business Days following the delivery of the Response, distribute to the Partners Indemnified Party an amount of cash equal to the Agreed Amount) or (iii) dispute that the Partners Indemnified Party is entitled to receive any of the Claimed Amount. If, in the Response, the Buyer disputes its liability for all or part of the Claimed Amount, the Buyer and the Partners Indemnified Party shall follow the procedures set forth below for the resolution of such Dispute.

During the fifteen (15) day period following the delivery of a Response that reflects a Dispute, the Buyer and the Partners Indemnified Party shall use good faith efforts to resolve the Dispute. If the Partners Indemnified Party and the Buyer should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and the Buyer shall, within three (3) Business Days, distribute the amount of cash specified in such memorandum in accordance with the terms thereof.

(e) From and after the Closing, the Partners' sole and exclusive remedy with respect to any and all claims relating to this Agreement shall be pursuant to the indemnification provisions set forth in this Article VII, except for any claims based on fraud or intentional misrepresentation.

(f) The Buyer shall have no liability under any provision of this Agreement for any consequential, exemplary or punitive damages or any multiple of damages or diminution in value. The Partners shall take all reasonable steps to mitigate Losses for which indemnification may be claimed pursuant to this Agreement upon and after becoming aware of any event that could reasonably be expected to give rise to any such Losses.

Any liability for indemnification under this Section 7.3 shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability constituting a breach of more than one representation, warranty, covenant or agreement.

ARTICLE VIII
TERMINATION, AMENDMENT AND WAIVER

Section 8.1 ***Termination.*** This Agreement may be terminated:

(a) at any time prior to the Closing, by the mutual written consent of the Company and the Buyer;

(b) by the Company, if the Closing shall not have occurred on or prior to October 31, 2002; *provided*, *however*, that none of the Company, TWC, TWC II or any Partner is then in breach of any representation, warranty or covenant or other agreement contained herein that would cause the Company, TWC, TWC II or any Partner to be unable to satisfy the conditions to the Buyer Parties' performance set forth in Section 6.3 hereof;

(c) by the Buyer, if the Closing shall not have occurred on or prior to October 31, 2002; *provided*, *however*, that no Buyer Party is then in breach of any representation, warranty, covenant or other agreement contained herein that would cause any Buyer Party to be unable to satisfy the conditions to the Company's performance set forth in Section 6.2 hereof;

(d) by the Company (provided that none of the Company, TWC, TWC II or any Partner is then in breach of any representation, warranty, covenant or other agreement contained herein that would cause the Company, TWC, TWC II or any Partner to be unable to satisfy the conditions to the Buyer Parties' performance set forth in Section 6.3 hereof), upon written notice to the Buyer, upon a material breach of any representation, warranty or covenant of any Buyer Party as the case may be, contained in any Transaction Document, provided that such breach is not capable of being cured within thirty (30) days after the giving of notice thereof by the Company to the Buyer, as the case may be;

(e) by the Buyer (provided that no Buyer Party is then in breach of any representation, warranty, covenant or other agreement contained herein that would cause any Buyer Party to be unable to satisfy the conditions to the Company's performance set forth in Section 6.2 hereof), upon written notice to the Company, upon a material breach of any representation, warranty or covenant of any of the Company, TWC, TWC II or any Partner contained in any Transaction Document, provided that such breach is not capable of being cured within thirty (30) days after the giving of notice thereof by the Buyer to the Company; or

(f) by the Buyer upon delivery of the Termination Notice in accordance with Section 2.8 hereof.

Section 8.2 ***Effect of Termination***.

(a) In the event of termination of this Agreement as provided in Section 8.1 hereof, this Agreement, the TWC II Sale Agreement and the Sale and Contribution Agreement shall forthwith become void and there shall be no liability on the part of any party hereto or thereto to any other party hereto or thereto, as applicable, with respect to the matters contained herein or therein, as applicable, except that (i) the Company shall be entitled to receive the Signing Deposit from the Escrow Agent and (ii) as set forth in Sections 3.17, 4.6 and 5.3 hereof, and Articles VII and VIII hereof, *provided*, *however*, that nothing herein shall relieve either party from liability for any willful breach hereof, except as provided in Section 8.2(b) hereof.

(b) Upon termination of this Agreement by the Company pursuant to Section 8.1(b) or 8.1(d), (i) except as expressly provided in the Escrow Agreements, there shall be no liability hereunder or under any other Transaction Document on the part of any party hereto or thereto, as the case may be, except as set forth in Sections 3.17, 4.6 and 5.3 hereof, and Article VIII hereof, and (ii) the Company shall deliver a copy of its written termination notice to the Escrow Agent and the Escrow Agent shall deliver the Physical Inspection Deposit and any income actually earned on the Physical Inspection Deposit to the Company in accordance with the Deposit Escrow Agreement. Notwithstanding anything to the contrary contained herein or in the Deposit Escrow Agreement or any other Transaction Document, the parties hereto hereby acknowledge and agree that the release of the Signing Deposit pursuant to Section 8.2(a) and the Physical Inspection Deposit pursuant to this Section 8.2(b) is intended to be, and shall be construed as, liquidated damages for a breach, and shall serve as the sole and exclusive remedy at law or in equity for the Company and the Partners, except for any obligations of the Buyer Parties (or any of them) to indemnify the Company pursuant to the final sentence of Section 5.2(a) hereof. The parties have agreed that, other than for any indemnification of the Company by the Buyer Parties under such Section 5.2(a), the Company's actual damages in the event of a termination of this Agreement, the TWC II Sale Agreement and the Sale and Contribution Agreement would be extremely difficult or impracticable to determine. After negotiation, the parties have agreed that, considering all of the circumstances existing on the date of this Agreement, the amount of the Deposits is a reasonable estimate of the damages that the Company and the Partners would incur in the event of a termination of this Agreement and the other Transaction Documents, other than for any Loss for which the Buyer Parties has expressly agreed to indemnify the Company pursuant to the final sentence of Section 5.2(a) hereof.

(c) Upon termination by the parties pursuant to Section 8.1(a), or upon termination of the Buyer pursuant to Section 8.1(c), 8.1(e) or 8.1(f), the Buyer shall deliver a copy of a termination notice to the Escrow Agent and the Escrow Agent shall deliver the Physical Inspection Deposit and any income actually earned on the Deposits to the Buyer. Notwithstanding anything to the contrary contained herein or in the Deposit Escrow Agreement, the parties hereby acknowledges and agree that the release of the Physical Inspection Deposit pursuant to this Section 8.2(c) is not intended to be, and shall not be construed as, liquidated damages for a breach, and that such remedy is cumulative and shall not prevent the assertion by the Buyer of any other rights or the seeking of any other remedies against the Company for such breach.

(d) Upon termination of this Agreement (and, automatically thereupon, the TWC II Sale Agreement and the Sale and Contribution Agreement) for any reason, the party terminating Agreement shall deliver a copy of such termination notice to the Escrow Agent and the Escrow Agent shall deliver the Signing Deposit.

Section 8.3 ***Waiver.*** At any time prior to the Closing, the Buyer Parties, on the one hand, and the Company and its Affiliates, on the other hand, may (a) extend the time for the performance of any of the obligations or other acts of the other party or parties hereto, (b) waive any inaccuracies in the

representations and warranties of the other party or parties contained herein or in any document delivered by such other party pursuant hereto or (c) waive compliance with any of the agreements of such other party or conditions to its own obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Waiver of any term or condition of this Agreement by a party shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition by such party, or a waiver of any other term or condition of this Agreement by such party. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any such rights.

ARTICLE IX
GENERAL PROVISIONS

Section 9.1 ***Notices.*** Except as otherwise specifically provided herein, all notices, requests, claims, demands and other communications under this Agreement will be in writing and will be deemed given upon delivery if delivered personally or one Business Day after it is sent by overnight courier (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as specified by like notice):

If to the Company, TWC or TWC II:
Westcor Realty Limited Partnership
11411 North Tatum Boulevard
Phoenix, AZ 85028
Attention: Robert G. Mayhall

With a copy to:

AEW Capital Management, L.P.
World Trade Center East
Two Seaport Lane
Boston, MA 02210-2021
Attention: Jay Finnegan
Robert Gifford

Goodwin Procter LLP
Exchange Place
Boston, MA 02109
Attention: Laura C. Hodges Taylor, P.C.
Christopher B. Barker, P.C.

If to any Partner, at such Partner's address set forth on Exhibit A hereto;

If to any Buyer Party:
Richard A. Bayer, Esq.
The Macerich Company
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401

With a copy to:

Frederick B. McLane, Esq.
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles California 90071
If to the Indemnification Representative:

Management Committee
c/o AEW Capital Management, L.P.
World Trade Center East
Two Seaport Lane
Boston, MA 02210-2021
Attention: Jay Finnegan
Robert Gifford

Goodwin Procter LLP
Exchange Place
Boston, MA 02109
Attention: Laura C. Hodges Taylor, P.C.
Christopher B. Barker, P.C.

With a copy to:
Westcor Realty Limited Partnership
11411 North Tatum Boulevard
Phoenix, AZ 85028
Attention: Robert Ward

Any party may give any notice, request, demand, claim or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the party for whom it is intended. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

Section 9.2 ***Interpretation.*** When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference will be to an Article or Section of, or a Schedule or Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms used herein with initial capital letters have the meanings ascribed to them herein and all terms defined in this Agreement will have such defined meanings when used in any certificate, agreement or other document made or delivered pursuant hereto unless otherwise defined or referenced therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 9.3 ***Counterparts.*** This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 9.4 ***Entire Agreement; No Third-Party Beneficiaries; Severability.*** This Agreement, together with the other Transaction Documents (including the documents and instruments referred to herein and therein), constitutes the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. Except as set forth in Sections 5.9(d) and 5.11 hereof, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties hereto any legal or equitable right, remedy or claim under or with respect to this Agreement or any other Transaction Document or any provision hereof or thereof. If any term, condition or other provision of this Agreement is found to be invalid, illegal or incapable of being enforced by virtue of any rule of law, public policy or court determination, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

Section 9.5 ***Amendment.*** This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf of, the parties hereto or (b) by a waiver in accordance with Section 8.3; provided, however, that this Agreement shall be automatically amended by, and to the extent of, each joinder agreement delivered by any Partner, which joinder agreements shall be executed and delivered concurrently herewith in the form of the Joinder

Agreement, a copy of which is attached as Exhibit G hereto; provided, however, that any party executing the Joinder Agreement under a power of attorney may subsequently execute such Joinder Agreement as a direct signatory thereto and such re-execution shall be effective as of the date of the Joinder Agreement.

Section 9.6 ***Governing Law.*** This Agreement will be governed by, and construed in accordance with, the internal laws of the State of Delaware regardless of the laws that might otherwise govern under applicable principles of conflict of laws.

Section 9.7 ***Consent to Jurisdiction.*** Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the State of Delaware and of the United States District Court for the District of Delaware (the "***Delaware Courts***") for any litigation arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives an objection to the laying of venue of any such litigation in the Delaware Courts and agrees not to plead or claim in any Delaware Court that such litigation brought therein has been brought in an inconvenient forum. Each of the parties hereto agrees, (a) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process, and (b) that service of process may also be made on such party by prepaid certified mail with a proof of mailing receipt validated by the United States Postal Service constituting evidence of valid service. Service made pursuant to (a) or (b) above shall have the same legal force and effect as if served upon such party personally within the State of Delaware.

Section 9.8 ***Assignment.*** Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, in whole or in part, by any of the parties hereto without the prior written consent of the other party; provided that, following the Closing, any Class A Partner or Eastrich may assign its rights (but not its obligations) hereunder to any Affiliate thereof. Any assignment in violation of the preceding sentence will be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns. Any permitted assignee of any party hereto will be deemed to have joined this Agreement upon acceptance of such assignment.

Section 9.9 ***Expenses.*** Except as otherwise specified in this Agreement, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants,

incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; *provided*, *however*, that, in the event a filing or filings pursuant to the HSR Act is required, any filing fee or fees due in connection therewith shall be shared equally by the Company on the one hand and the Buyer on the other hand.

Section 9.10 ***Execution by Officer of the Company.*** This Agreement is executed on behalf of the Company by an officer of the general partner of the Company, acting in his or her capacity as such officer, and not individually. Each Buyer Party and each person dealing with the Company, or claiming any rights or interests herein or hereunder, agrees to look solely to the assets of the Company for satisfaction of any obligations of the Company prior to the Closing, and they further agree that no advisor, manager, employee, officer, director or agent of the Company (in their capacity as such), shall have any personal liability hereunder or otherwise.

Section 9.11 ***Execution by Attorney-in-Fact of the Partners***. This Agreement is executed on behalf of each Partner other than Eastrich by an individual representing such Partner, acting in his or her capacity as such representative, and not individually (any such person in such capacity, the "***Attorney***"). The Buyer, the Company and each other person dealing with the Attorney, or claiming any rights or interests herein or hereunder, agrees to look solely to the Partners for satisfaction of any obligations of the Attorney in accordance with the provisions of the Partners Agreement dated as of May 30, 2002 among the Partners, and each such Person further agrees that the Attorney (or any Attorney) shall have no personal liability hereunder or otherwise.

Section 9.12 ***Waiver of Jury Trial***. TO THE EXTENT PERMITTED BY LAW, THE COMPANY, THE BUYER, MACERICH GALAHAD, TWC, TWC II, MACERICH WRLP LLC, MACERICH WRLP CORP., MACERICH TWC II LLC, MACERICH TWC II CORP., AND EACH PARTNER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the Company, the Buyer and the Partners have caused this Agreement to be signed as of the date first written above.

THE COMPANY, TWC and TWC II:

WESTCOR REALTY LIMITED PARTNERSHIP

By: Eastrich No. 128 Corp.,
its General Partner

By: _____

Name:
Title:

THE WESTCOR COMPANY
LIMITED PARTNERSHIP

By: Westcor Realty Limited Partnership,
its General Partner

By: By: Eastrich No. 128 Corp.,

its General Partner

By: _____

Name:
Title:

THE WESTCOR COMPANY II
LIMITED PARTNERSHIP

By: Westcor Realty Limited Partnership,
its General Partner

By: Eastrich No. 128 Corp.,
its General Partner

By: _____

Name:
Title:

THE BUYER PARTIES:

THE MACERICH PARTNERSHIP, L.P.

By: The Macerich Company,
its General Partner

By: _____

Name:
Title:

MACERICH GALAHAD LP

By: Macerich Galahad GP Corp.,
its General Partner

By: _____

Name:
Title:

MACERICH TWC II LLC

By: _____

its sole Member

By: _____

Name:
Title:

MACERICH TWC II CORP.

By: _____

Name:
Title:

MACERICH WRLP LLC

By: _____

its sole Member

By: _____

Name:
Title:

MACERICH WRLP CORP.

By: _____

Name:
Title:

THE PARTNERS:

EASTRICH NO. 128 CORP.

By: _____

Name:
Title:

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Exhibit 2.2

EXECUTION COPY

PURCHASE AND SALE AND CONTRIBUTION AGREEMENT

THIS PURCHASE AND SALE AND CONTRIBUTION AGREEMENT (this "***Agreement***") is dated as of June 29, 2002, by and among WESTCOR REALTY LIMITED PARTNERSHIP, a Delaware limited partnership (the "***Company***"), THE MACERICH PARTNERSHIP, L.P., a Delaware limited partnership (the "***Buyer***"), MACERICH GALAHAD LP, a Delaware limited partnership ("***Macerich Galahad***"), MACERICH WRLP LLC, a Delaware limited liability company ("***Macerich LLC***"), MACERICH WRLP CORP., a Delaware corporation ("***Macerich GP***"; and, together with Macerich Galahad and Macerich LLC the "***Purchasers***"), EASTRICH NO. 128 CORP., a Massachusetts corporation and the general partner of the Company ("***Eastrich***"), and, each of the individuals, partnerships, trusts, limited liability companies and other entities listed on Exhibit A hereto (each, a "***Limited Partner***", and together with Eastrich, collectively, the "***Partners***").

WHEREAS, the Company, the Buyer and Macerich Galahad entered into the Agreement and Plan of Merger, dated as of May 30, 2002 (the "***Original Agreement***"), pursuant to which, *inter alia*, Macerich Galahad, a subsidiary of the Buyer, would merge with and into the Company and the Company would become a subsidiary of the Buyer;

WHEREAS, as set forth in Section 2.11 of the Original Agreement, the Company, the Buyer and Macerich Galahad contemplated restructuring the transactions contemplated under the Original Agreement in a mutually agreeable manner, as set forth in such Section 2.11 and the Terms of Proposed Alternative Transaction Structure appended to the Original Agreement as Exhibit G thereto;

WHEREAS, the Buyer, the Company and Macerich Galahad desire to modify the structure of the transactions contemplated under the Original Agreement to effect an alternative structure contemplated by Section 2.11 of and Exhibit G to the Original Agreement;

WHEREAS, the Buyer, the Company and Macerich Galahad have amended and restated the Original Agreement in its entirety as the Master Agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time in accordance with its terms, the "***Master Agreement***"), with Eastrich and the other Partners;

WHEREAS, concurrently herewith certain Affiliates of the Buyer and the Purchasers, the Company and certain of its Affiliates are entering into the Partnership Interest Purchase and Sale Agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time in accordance with its terms, the "***TWC II Sale Agreement***");

WHEREAS, this Agreement and the consummation of the Transactions (as hereinafter defined) have been approved by the board of directors of The Macerich Company ("***Macerich***"), the general partner of the Buyer, Macerich Galahad GP Corp., the general partner of Macerich Galahad, and Macerich GP;

WHEREAS, this Agreement and the consummation of the Transactions have been approved by all necessary parties in accordance with the Limited Partnership Agreement of the Company dated as of July 28, 1994, as amended (the "***Limited Partnership Agreement***"); and

WHEREAS, concurrently herewith, the Partners have executed and delivered the Amended and Restated Partners Joinder Agreement, dated as of the date hereof (the "***Joinder Agreement***"), pursuant to which, inter alia, each Partner joins and agrees to be bound by this Agreement and the Master Agreement with the same force and effect as if a signatory hereto and thereto, subject only to the terms of such Amended and Restated Partners Joinder Agreement.

NOW THEREFORE, in consideration of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 ***Certain Defined Terms***. As used in this Agreement, the following defined terms shall have the following meanings (such meanings to be equally applicable to the singular and plural forms of the terms defined):

"***Buyer Partnership Agreement Amendment***" shall mean the amendment to the Amended and Restated Limited Partnership Agreement of The Macerich Partnership, L.P. dated as of March 16, 1994, as amended (the "***Buyer Partnership Agreement***") in substantially the form of Exhibit B hereto.

"***Class A Partner***" shall mean each Partner designated as a "Class A Partner" on Exhibit A hereto.

"***Class B Partner***" shall mean each Partner designated as a "Class B Partner" on Exhibit A hereto.

"***Preferred Units***" shall mean the Series D Preferred Units in the Buyer, which Series D Preferred Units have the terms set forth in the Buyer Partnership Agreement Amendment.

"***SEC***" shall mean the Securities and Exchange Commission.

Section 1.2 ***Additional Defined Terms***. As used in this Agreement, the following defined terms shall have the meanings ascribed thereto, respectively, in the Section of this Agreement referenced with respect to each such defined term (such meanings to be equally applicable to the singular and plural forms of the terms defined):

"Aggregate Price"	Section 2.1
"Agreement"	Preamble
"Attorney'	Section 9.12
"Buyer SEC Documents"	Section 6.2
"Buyer"	Preamble
"Buyer SEC Documents"	Section 6.2
"Company"	Preamble
"Delaware Courts"	Section 9.8
"Eastrich"	Preamble
"Election Deadline"	Section 3.2
"Election Form"	Section 3.2
"Exchange Act"	Section 6.2
"Foreign Owner"	Section 5.1
"Investing Partner"	Section 3.2
"Investment Election"	Section 3.2
"Joinder Agreement"	Preamble
"Limited Partnership Agreement"	Preamble
"Macerich Financial Statements"	Section 6.2
"Macerich Galahad"	Preamble
"Macerich SEC Documents"	Section 6.2
"Master Agreement"	Preamble
"Original Agreement"	Preamble
"Partners"	Preamble
"Per Interest Price"	Section 2.1
"Preferred Units Amount"	Section 3.1

"Preferred Units Certificates"	Section 3.3
"Regulations"	Section 5.1
"REIT"	Section 6.2
"Securities Act"	Section 3.2
"Tax Election"	Section 5.1

Section 1.3 ***Certain Definitions Incorporated by Reference***. As used in this Agreement, capitalized terms used herein and not defined herein have the meanings ascribed to such capitalized terms, respectively, in the Master Agreement with the same force and effect as if such definitions and references were set forth in full herein. The definitions incorporated by reference herein include, without limitation, the definitions of the following terms: "Affiliate", "Aggregate Additional Amount", "Buyer's Knowledge", "Closing", "Closing Date", "Code", "Indemnification Escrow Amount", "Indemnification Representative", "Interest", "Per Interest Additional Payments", "Pre-Closing Cash Distributions", "Tax", "Tax Returns", "Threshold Amount", "Transactions", "Transaction Documents", "TWC II Distribution" and "TWC II Sale".

ARTICLE II
PURCHASE AND SALE

Section 2.1 ***Assignment and Assumption of Partnership Interests***.

(a) Upon and subject to the terms and conditions hereinafter set forth, each Class A Partner and Eastrich shall sell and assign, and Macerich Galahad shall purchase and assume, all of the right, title and interest of such Partner in and to each such Partner's Interest (other than, in the case of Eastrich, the portion of Interest consisting of a general partner interest) in exchange for cash in an amount equal to such Class A Partner's Per Interest Price.

(b) Upon and subject to the terms and conditions hereinafter set forth, each Class B Partner (other than the Investing Partners, if any) shall sell and assign, and Macerich LLC shall purchase and assume, all of the right, title and interest of such Class B Partner in and to each such Class B Partner's Interest in exchange for cash in an amount equal to such Class B Partner's Per Interest Price.

(c) Upon and subject to the terms and conditions hereinafter set forth, Eastrich shall sell and assign, and Macerich GP shall purchase and assume, all of the right, title and interest of Eastrich in and to Eastrich's Interest consisting of its general partner interest in exchange for Eastrich's Per Interest Price.

For the purposes of this Agreement, the ***"Per Interest Price"*** shall mean, with respect to any Partner, the amount equal to (x) Two Hundred Eighty-Four Million Four Hundred Twenty-Two Thousand Dollars ($284,422,000) (such aggregate price, the "***Aggregate Price***") multiplied by (y) such Partner's Interest.

Section 2.2 ***Delivery of Per Interest Price in Cash***. The Buyer and the Purchasers shall deliver to each Partner other than the Investing Partners, if any, such Partner's Per Interest Price (and aggregate Per Interest Price, in the case of Eastrich) in cash at the Closing as provided in Section 7.2(b) hereof and Section 2.4 of the Master Agreement.

Section 2.3 ***Withdrawal; Admission of Partners***. Upon the assignment and assumption of the Interests in accordance with Section 2.1(a) above, as of the Closing (a) immediately following the admission of the Purchasers as partners in the Company, each Partner shall withdraw, and be deemed to have withdrawn, as a partner of the Company, whereupon each Partner will have no further Interest (or other interest) in the Company, and shall be deemed to have withdrawn any representatives to the management committee of the Company, provided, however, that the Partners shall not withdraw Robert L. Ward as a Class B representative to the management committee if Macerich LLC or the Buyer so requests, (b) Macerich GP shall be admitted, and be deemed to be admitted, as the general

partner of the Company immediately preceding the withdrawal of Eastrich as general partner of the Company, and (c) each of Macerich Galahad and Macerich LLC shall be admitted, and be deemed to be admitted, as a Class A limited partner and a Class B limited partner, respectively, as of the Closing and immediately preceding the withdrawal of the Partners. For the avoidance of doubt, this provision shall be deemed to be (x) the consent by the Class A Partners to the withdrawal of the Class B Partners contemplated under Section 9.5 of the Limited Partnership Agreement and (y) the written agreement of all of the partners of the Company for the continuation of the business of the Company and the appointment of Macerich GP as the general partner of the Company concurrent with the withdrawal of Eastrich as general partner, each as contemplated under Section 10.1(c) of the Limited Partnership Agreement.

Section 2.4 ***Transaction Sequence; Master Agreement***. Notwithstanding any provision set forth herein to the contrary, the parties hereto hereby agree that the transactions contemplated hereunder shall occur, and shall be deemed to have occurred, for all purposes as set forth in, and shall otherwise be subject to the terms and conditions of, the Master Agreement, including, without limitation, Article II thereof.

ARTICLE III
ELECTIVE CONTRIBUTION

Section 3.1 ***Contribution and Assignment and Assumption***. Upon and subject to the terms and conditions set forth in the Master Agreement (including, without limitation, Section 2.1 and 6.3(d) thereof) and in this Agreement, each Investing Partner shall contribute and assign, and the Buyer shall assume, all of the right, title and interest of each such Investing Partner in and to such Investing Partner's Interest in exchange for that number of Preferred Units (the "***Preferred Units Amount***") equal to (x) such Partner's Per Interest Price, divided by (y) $36.55.

Section 3.2 ***Investment Election***.

(a) Each Class B Partner who or that is an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the Securities Act of 1933, as amended, (the "***Securities Act***") may elect (each such election, an "***Investment Election***", and each such Class B Partner so electing, an "***Investing Partner***"), on the terms and subject to the conditions set forth in this Section 3.2, to contribute such Investing Partner's Interest to the Buyer or Macerich LLC in exchange for Preferred Units in lieu of selling such Interests to the Buyer or Macerich LLC for cash pursuant to Article II hereof.

(b) Each such Class B Partner shall make his, her or its Investment Election by submitting an election form in substantially the form of Exhibit C hereto (each, an "***Election Form***") and therein specifying whether such Partner desires to contribute all (but not less than all) of his, her or its Interests to the Buyer in exchange for Preferred Units. For the avoidance of doubt, if the Buyer does not receive an Election Form duly completed and executed as provided in Section 3.2 (c) below by the Election Deadline, from a Class B Partner, then such Class B Partner will be deemed to have elected to sell his, her or its Interest for cash pursuant to Article II hereof.

(c) An Investment Election shall have been validly made only if the Buyer shall have received by 12:00 p.m. (Arizona time) on a date (the "***Election Deadline***") to be mutually agreed by the Company and the Buyer (which date shall not be later than the fifth Business Day following the date on which the Company mails or otherwise transmits the Election Forms to the Class B Limited Partners), an Election Form properly completed and executed by the relevant Class B Partner. Any Class B Partner who has made an Investment Election may at any time prior to the Election Deadline change such Partner's election by submitting a revised Election Form, properly completed and executed that is received by the Buyer prior to the Election Deadline. Any Class B Partner may at any time prior to the Election Deadline revoke his, her or its election.

(d) The Buyer shall not issue fractional Preferred Units. In lieu of the issuance of any fractional Preferred Unit, the Buyer shall round any fractional amount to the nearest whole number of Preferred Units.

Section 3.3 ***Delivery of Preferred Units***. The Buyer shall deliver to each Investing Partner the certificates evidencing such Class B Partner's Preferred Units Amount (the "***Preferred Units Certificates***") at the Closing as provided in Section 6.2(d) hereof and Section 2.4 of the Master Agreement.

ARTICLE IV
ADDITIONAL AGREEMENTS

Section 4.1 ***Tax Characterization***.

(a) The Company, the Partners, the Buyer and the Purchasers agree to treat the transactions contemplated by this Agreement, for federal income Tax purposes, as a taxable sale or, in the case of the Investing Partners, as a tax-free contribution by the Investing Partners of their Interests to the Buyer (governed by Section 721 of the Code), and will file all Tax Returns consistent with such treatment to the extent permitted by law.

(b) No Partner is a "foreign person" within the meaning of Section 1445 of the Code. In addition, no Partner (nor a holder of an interest in such Partner) will become, directly or indirectly, a Foreign Owner (as hereinafter defined) in the Buyer as a result of the transactions contemplated by this Agreement. A "***Foreign Owner***", as used herein, shall mean a foreign person or a person that is directly or indirectly owned, in whole or in part, by a foreign person as determined in accordance with Section 897(h)(4) of the Code and the Treasury Regulations promulgated thereunder (the "***Regulations***").

Section 4.2 ***Agreements of the Partners***.

(a) Each of the Class A Partners hereby waives all of such Partner's rights with respect to the Transactions, if any, under (i) the First Refusal Agreement by and among the Class A Partners and the other parties thereto dated as of July 20, 1983 and (ii) the First Refusal Agreement by and among Telephone Real Estate Equity Trust, Retirement Plans of Atlantic Richfield Company and certain of its subsidiaries, International Paper Company Pension Plans, Batus Master Trust, Capital Cities Communications Master Trust, Digital Equipment Corporation Pension Trust, Owens Illinois Master Retirement Trust, Aeneas Venture Corporation and Aldrich, Eastman & Waltch, Inc. dated as of July 1, 1987.

(b) Pursuant to Section 9.3 of the Limited Partnership Agreement, the Class A Partners and Eastrich hereby consent to the transfer of by each Class B Partner of his, her or its Interest to the Buyer and the admission of the Buyer as a substitute limited partner of the Company in accordance with

the terms and conditions of this Agreement.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER AND THE SELLERS

Section 5.1 ***Representations and Warranties of the Partners***. As a material inducement to the Buyer and the Purchasers to enter into this Agreement and to consummate the Transactions, each Partner severally, and not jointly, represents and warrants solely with respect to himself, herself or itself, to the Buyer and the Purchasers as follows:

(a) ***Interests.*** Such Partner is and will be as of the Closing Date the record and beneficial owner of the Interests set forth opposite such Seller's name on Exhibit A, except, in the case of Eastrich, which will convert on the Closing Date, immediately prior to assigning its Interest (or any

portion thereof) as contemplated hereby, its one-percent (1%) general partnership interest into a one-tenth of one percent (0.1%) general partnership interest and a nine-tenths of one percent (0.9%) limited partnership interest. Such Interests are free and clear of any and all Encumbrances (except for federal and state securities law restrictions of general applicability and certain transfer restrictions in the Limited Partnership Agreement). Such Partner's assignment of his, her or its Interests as contemplated by this Agreement is in compliance with the transfer restrictions in the Limited Partnership Agreement.

(b) ***Authority.*** Such Partner has full authority, right, power and capability to enter into this Agreement and each agreement, document and instrument to be executed and delivered by or on behalf of such Partner pursuant to or as contemplated by this Agreement and to carry out the transactions contemplated hereby and thereby. Without limitation of the foregoing, to the extent that such Partner holds any Interests that are or may be deemed to be community property, such Partner has obtained from his or her spouse, if any, all consents and approvals necessary for such Partner to legally and validly consummate the transactions contemplated by this Agreement. This Agreement and each agreement, document and instrument to be executed and delivered by such Partner pursuant to or as contemplated by this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of such Partner enforceable in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and subject to the rules of law governing (and all limitations on) specific performance, injunctive relief and other equitable remedies.

(c) ***Accredited Investor.*** Each Investing Partner is, and at Closing will be, an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the Securities Act.

Section 5.2 ***Representations and Warranties of the Buyer***. As a material inducement to the Company and each Partner to enter into this Agreement and to consummate the Transactions, the Buyer represents and warrants to the Company and each Partner as follows:

(a) *SEC Documents*. Macerich has filed with the SEC each statement, report, registration statement and definitive proxy statement required to be filed with the SEC by Macerich since January 1, 2000 (collectively, the "***Macerich SEC Documents***"). The Macerich SEC Documents constitute all of the documents required to be filed by Macerich under Section 13 or subsections (a) or (c) of Section 14 of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***") with the SEC through the date of this Agreement. All documents required to be filed as exhibits to the Macerich SEC Documents have been so filed, and all material contracts so filed as exhibits are in full force and effect, except those which have expired in accordance with their terms, and neither Macerich nor any subsidiary of Macerich is in default thereunder where such a default would reasonably be expected to have a material adverse effect on the business, operations, assets, liabilities, financial condition or result of operations of Macerich and its subsidiaries, taken as a whole. As of their respective filing dates, (i) the Macerich SEC Documents complied in all material respects with the requirements of the Exchange Act, and the Securities Act and the rules and regulations thereunder and (ii) none of the Macerich SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, except to the extent corrected by a subsequently filed Macerich SEC Document which was filed prior to the date hereof.

(b) *Financial Information.* The financial statements of Macerich, including the notes thereto, included in the Macerich SEC Documents (the "***Macerich Financial Statements***") were complete and correct in all material respects as of their respective dates, complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of

the SEC with respect thereto as of their respective dates, and were prepared in accordance with GAAP applied on a basis consistent throughout the periods indicated and consistent with each other (except as may be indicated in the notes thereto or, in the case of unaudited statements included in quarterly reports on Form 10-Q, as permitted by Form 10-Q and Regulation S-X of the SEC). The Macerich Financial Statements fairly present in all material respects the consolidated financial condition, results of operations and cash flows of Macerich and its subsidiaries at the dates and during the periods indicated therein (subject, in the case of unaudited statements, to normal, recurring year-end adjustments) and are consistent with the books and records of Macerich and its subsidiaries.

(c) Macerich (i) has elected to be taxed as a real estate investment trust ("***REIT***") and such election has not been terminated or revoked, (ii) has qualified for taxation as a REIT for the year ended December 31, 2001 and expects to qualify for its current taxable year, and (iii) operates, and intends to continue to operate, in a manner so as to qualify as a REIT. Each subsidiary of Macerich which is a partnership or limited liability company or files Tax Returns as a partnership for Federal income tax purposes has since its acquisition by Macerich been classified for Federal income tax purposes as a "partnership" or "disregarded" entity and not as an association taxable as a corporation, or a "publicly traded partnership" within the meaning of Section 7704(b) of the Code that is treated as a corporation for Federal income tax purposes under Section 7704(a) of the Code.

ARTICLE VI
CLOSING

Section 6.1 ***Closing***. The closing of the transactions contemplated in this Agreement shall be held at the Closing on the Closing Date.

Section 6.2 ***Actions at Closing***. Subject to the terms and conditions set forth in this Agreement and the Master Agreement, including, without limitation, Section 6.3(d), at the Closing:

(a) each Partner, on the one hand, and Macerich GP (solely with respect to the general partnership interest conveyed by Eastrich) and Macerich Galahad and Macerich LLC (with respect to the limited partnership interests conveyed by the Partners), on the other hand, shall execute and deliver an assignment and assumption in the form of Exhibit E-1, E-2 or E-3 hereto, as applicable, with respect to each such Partner's Interest;

(b) the Buyer shall deliver to each Partner (other than Investing Partners, if any) by wire transfer of immediately available funds, pursuant to the wiring instructions for such Partner delivered to the Buyer within two (2) Business Days prior to the Closing, the Per Interest Cash Price payable (and aggregate Per Interest Cash Price payable in the case of Eastrich), if any, for such Partner's Interests pursuant to Article II hereof;

(c) each Investing Partner shall deliver to the Buyer such Investing Partner's Election Form and "accredited investor" questionnaire, in each case duly executed by such Investing Partner;

(d) the Buyer shall issue and promptly deliver to each Investing Partner the Preferred Units Certificates evidencing such Investing Partner's Preferred Units Amount;

(e) each Investing Partner and the Buyer shall execute and deliver a tax matters agreement in the form of Exhibit D hereto;

(f) the Buyer and each Investing Partner shall execute and deliver a registration rights agreement in substantially the form of Exhibit F hereto; and

(g) the Buyer Partnership Agreement Amendment shall have been duly adopted and shall be in full force and effect and Macerich shall have filed with the State Department of Assessments

and Taxation of the State of Maryland articles supplementary in the form of Exhibit G hereto (and the Buyer shall have delivered a certificate to such effect).

Section 6.3 ***Time of the Essence***. The parties hereto acknowledge and agree that, subject only to the express adjournment rights contained herein and the provisions of Section 2.4 above, time is of the essence in consummating the transactions contemplated hereunder and delivering the cash and Preferred Units constituting the Aggregate Price.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 ***Conditions to the Obligations of Each Party***. The respective obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver (in writing), at or prior to the Closing, of each of the following conditions, any or all of which may be waived, in whole or in part by the parties hereto (but only to the extent that such matter is a precondition to the obligations of such waiving party), to the extent permitted by applicable law:

(a) *Master Agreement Conditions to Closing*. Each of the conditions to the Closing set forth in Section 6.1, 6.2 and 6.3 of the Master Agreement (other than the consummation of the sale and contributions contemplated hereunder) shall have occurred, been duly performed or satisfied, or waived by the party entitled to such performance or satisfaction, as applicable.

(b) *Conversion of Eastrich Interest*. The Company, Eastrich and the other Partners shall have duly amended the Limited Partnership Agreement in order to convert, and shall have converted, Eastrich's interest constituting on the date hereof a one percent (1%) general partnership interest into a one-tenth percent (0.1%) general partnership interest and a nine-tenths of one percent (0.9%) limited partnership interest, in each case, in the Company.

(c) *Other Transactions*. Each of the TWC II Distribution, the Pre-Closing Cash Distributions and the TWC II Sale shall have been consummated in accordance with the provisions of the Master Agreement and each other Transaction Document applicable to such Transactions.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.1 ***Notices***. Except as otherwise specifically provided herein, all notices, requests, claims, demands and other communications under this Agreement will be in writing and will be deemed given upon delivery if delivered as set forth and to the addresses of the parties as set forth, and otherwise as provided, in the Master Agreement.

Section 8.2 ***Interpretation***. The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 8.3 ***Counterparts***. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 8.4 ***Entire Agreement; No Third-Party Beneficiaries; Severability***. This Agreement is one of the Transaction Documents referred to in the Master Agreement, and, together with such other Transaction Documents, this Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties hereto any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. If any term, condition or other provision of this Agreement is found to be invalid, illegal or incapable of being enforced by virtue of any rule of law, public policy or court determination, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

Section 8.5 ***Amendment; Waiver***.

(a) Subject to the provisions of the Master Agreement (including, without limitation, Section 2.1 hereof), this Agreement may not be amended or modified except (i) by an instrument in writing signed by, or on behalf of, the Company, the Purchasers, the Buyer, and each Partner directly, materially and adversely affected by such amendment or modification, or (ii) by a waiver in accordance with the following Section 8.5(b); provided, however, that this Agreement shall be automatically amended by, and to the extent of, each joinder agreement delivered by any Partner, which joinder agreement shall be in the form of the Joinder Agreement, a copy of which is attached hereto as Exhibit H, which is being executed and delivered concurrently herewith; provided, however, that any party executing the Joinder Agreement under a power of attorney may subsequently execute such Joinder Agreement as a direct signatory thereto and such re-execution shall be effective as of the date of the Joinder Agreement.

(b) At any time prior to the Closing, the Buyer and the Purchasers, on the one hand, and the Company and the Partners, on the other hand, may (i) extend the time for the performance of any of the obligations or other acts of the other party or parties hereto, (ii) waive any inaccuracies in the representations and warranties of the other party or parties contained herein or in any document delivered by such other party pursuant hereto or (iii) waive compliance with any of the agreements of such other party or conditions to its own obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Waiver of any term or condition of this Agreement by a party shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition by such party, or a waiver of any other term or condition of this Agreement by such party. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any such rights.

Section 8.6 ***Termination***. This Agreement shall terminate automatically and without any further action by or on behalf of any party hereto upon and as of the termination of the Master Agreement pursuant to Section 8.1 thereof. In the event of termination of this Agreement, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto to any other party hereto with respect to the matters contained herein, except and as provided in the Master Agreement.

Section 8.7 ***Governing Law***. This Agreement will be governed by, and construed in accordance with, the internal laws of the State of Delaware regardless of the laws that might otherwise govern under applicable principles of conflict of laws.

Section 8.8 ***Consent to Jurisdiction***. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the State of Delaware and of the United States District Court for the District of Delaware (the "***Delaware Courts***") for any litigation arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives an objection to the laying of venue of any such litigation in the Delaware Courts and agrees not to plead or claim in any Delaware Court that

such litigation brought therein has been brought in an inconvenient forum. Each of the parties hereto agrees, (a) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process, and (b) that service of process may also be made on such party by prepaid certified mail with a proof of mailing receipt validated by the United States Postal Service constituting evidence of valid service. Service made pursuant to (a) or (b) above shall have the same legal force and effect as if served upon such party personally within the State of Delaware.

Section 8.9 ***Assignment***. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, in whole or in part by any of the parties hereto without the prior written consent of the other party, provided that, after the Closing, any Class A Partner may assign its rights (but not its obligations) to any Affiliate thereof. Any assignment in violation of the preceding sentence will be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

Section 8.10 ***Expenses***. Except as otherwise specified in this Agreement or other Transaction Documents, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 8.11 ***Execution by Officer of the Company***. This Agreement is executed on behalf of the Company by an officer of the general partner of the Company, acting in his or her capacity as such officer, and not individually. The Buyer, the Purchasers and each other Person dealing with the Company, or claiming any rights or interests herein or hereunder, agrees to look solely to the assets of the Company for satisfaction of any obligations of the Company prior to the Closing and each such Person further agrees that no advisor, manager, employee, officer, director or agent of the Company (acting in such capacity), shall have any personal liability hereunder or otherwise.

Section 8.12 ***Execution by Attorney-in-Fact of the Partners***. This Agreement (or the Joinder Agreement joining certain Partners hereto) may be executed on behalf of certain Partners by an individual representing such Partner, acting in such individual's capacity as such representative pursuant to a previously-granted power of attorney, and not individually (any such person in such capacity, the "***Attorney***"). The Buyer, the Purchasers, the Company and each person dealing with the Attorney, or claiming any rights or interests herein or hereunder, agrees to look solely to the respective Partners for satisfaction of any obligations of the Attorney, and each such Person further agrees that no Attorney shall have any personal liability hereunder or otherwise.

Section 8.13 ***Waiver of Jury Trial***. TO THE EXTENT PERMITTED BY LAW, THE COMPANY, THE BUYER, MACERICH GALAHAD, MACERICH LLC, MACERICH GP AND EACH PARTNER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 8.14 ***Name Change of Macerich Galahad***. The parties hereto acknowledge that immediately after the Closing, Macerich Galahad will change its name to Macerich WRLP II LP, and all references herein to Macerich Galahad will mean and include Macerich WRLP II LP after the effective date of such name change.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date first written above.

THE COMPANY:

WESTCOR REALTY LIMITED PARTNERSHIP

By: Eastrich No. 128 Corp.,
its General Partner

By: _____

Name:
Title:

THE BUYER PARTIES:

THE MACERICH PARTNERSHIP, L.P.

By: The Macerich Company,
its General Partner

By: _____

Name:
Title:

MACERICH GALAHAD LP

By: Macerich Galahad GP Corp.,
its General Partner

By: _____

Name:
Title:

MACERICH WRLP LLC

By: The Macerich Partnership, L.P.,
its Sole Member

By: The Macerich Company,
its General Partner

By: _____

Name:
Title:

MACERICH WRLP CORP.

By: _____

Name:
Title:

EASTRICH:

EASTRICH NO. 128 CORP.

By: _____

Name:
Title:

Exhibit A
to the Purchase and Sale and Contribution Agreement

Schedule of Limited Partners of the Company

Class A Partners

Name	Interest

Class B Partners

Name	Interest

Exhibit B
to the Purchase and Sale and Contribution Agreement

Form of Buyer Partnership Agreement Amendment

Exhibit C
to the Purchase and Sale and Contribution Agreement

Form of Election Form

Exhibit D
to the Purchase and Sale and Contribution Agreement

Form of Tax Matters Agreement

Exhibit E-1
to the Purchase and Sale and Contribution Agreement

Form of Assignment and Assumption of General Partnership Interest

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Exhibit E-2
to the Purchase and Sale and Contribution Agreement

Form of Assignment and Assumption of Class A Limited Partnership Interest

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Exhibit E-3
to the Purchase and Sale and Contribution Agreement

Form of Assignment and Assumption of Class B Limited Partnership Interest

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Exhibit F
to the Purchase and Sale and Contribution Agreement

Form of Registration Rights Agreement

Exhibit G
to the Purchase and Sale and Contribution Agreement

Form of Articles Supplementary of Macerich

G-1

Exhibit H
to the Purchase and Sale and Contribution Agreement

Joinder Agreement

H-1

QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 2.3

EXECUTION COPY

PARTNERSHIP INTEREST PURCHASE AND SALE AGREEMENT

THIS PARTNERSHIP INTEREST PURCHASE AND SALE AGREEMENT (this "***Agreement***") is dated as of June 29, 2002, by and among WESTCOR REALTY LIMITED PARTNERSHIP, a Delaware limited partnership (the "***Company***"), THE WESTCOR COMPANY LIMITED PARTNERSHIP, an Arizona limited partnership ("***TWC***"), as sellers, THE MACERICH PARTNERSHIP, L.P., a Delaware limited partnership (the "***Buyer***"), MACERICH TWC II LLC, a Delaware limited liability company ("***Macerich LLC***"), and MACERICH TWC II CORP., a Delaware corporation ("***Macerich GP***", and, together with Macerich LLC, the "***Purchasers***") and THE WESTCOR COMPANY II LIMITED PARTNERSHIP, an Arizona limited partnership ("***TWC II***").

WHEREAS, the Company, the Buyer and Macerich Galahad LP, a Delaware limited partnership and a subsidiary of the Buyer ("***Macerich Galahad***") entered into the Agreement and Plan of Merger, dated as of May 30, 2002 (the "***Original Agreement***"), pursuant to which, inter alia, Macerich Galahad would merge with and into the Company and the Company would become a subsidiary of the Buyer;

WHEREAS, as set forth in Section 2.11 of the Original Agreement, the Company, the Buyer and Macerich Galahad contemplated restructuring the transactions contemplated under the Original Agreement in a mutually agreeable manner, as set forth in such Section 2.11 and the Terms of Proposed Alternative Transaction Structure appended to the Original Agreement as Exhibit G thereto;

WHEREAS, the Buyer, the Company and Macerich Galahad desire to modify the structure of the transactions contemplated under the Original Agreement to effect an alternative structure contemplated by Section 2.11 of and Exhibit G to the Original Agreement;

WHEREAS, the Buyer, the Company and Macerich Galahad have amended and restated the Original Agreement in its entirety as the Master Agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time in accordance with its terms, the "***Master Agreement***"), with Eastrich No. 128 Corp., a Massachusetts corporation and the general partner of the Company, and the limited partners in the Company (together with Eastrich, collectively, the "***Partners***");

WHEREAS, concurrently herewith certain Affiliates of the Buyer and the Purchasers, the Partners and the Company are entering in the Purchase and Sale and Contribution Agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time in accordance with its terms, the "***Sale and Contribution Agreement***");

WHEREAS, this Agreement and the consummation of the Transactions (as hereinafter defined) have been approved by the board of directors of The Macerich Company, the general partner of the Buyer, and Macerich GP;

WHEREAS, this Agreement and the consummation of the Transactions have been approved by all necessary parties in accordance with the Limited Partnership Agreement of the Company dated as of July 28, 1994, as amended (the "***Limited Partnership Agreement***"), and the Third Amended and Restated Partnership Agreement of TWC dated as of September 30, 1994 ("***TWC Limited Partnership Agreement***").

NOW THEREFORE, in consideration of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 ***Certain Defined Terms***. As used in this Agreement, the following defined terms shall have the meanings ascribed thereto, respectively, in the Section of this Agreement referenced with respect to each such defined term (such meanings to be equally applicable to the singular and plural forms of the terms defined):

"Agreement"	Preamble
"Buyer"	Preamble
"Company"	Preamble
"Delaware Courts"	Section 5.8
"GP Interests"	Section 2.1
"Limited Partnership Agreement"	Preamble
"Macerich Galahad"	Preamble
"Macerich GP"	Preamble
"Macerich LLC"	Preamble
"Master Agreement"	Preamble
"Original Agreement"	Preamble
"TWC"	Preamble
"TWC II"	Section 2.1
"TWC II Purchase Price"	Section 2.1

Section 1.2 ***Certain Definitions Incorporated by Reference***. As used in this Agreement, capitalized terms used herein and not defined herein have the meanings ascribed to such capitalized terms, respectively, in the Master Agreement with the same force and effect as if such definitions and references were set

forth in full herein. The definitions incorporated by reference herein include, without limitation, the definitions of the following terms: "*Adjusted TWC II Purchase Price*", "*Buyer Parties*", "*Closing*", "*Closing Date*", "*Deposits*", "*Transaction Documents*", "*Transactions*" and "*TWC II Distribution*".

ARTICLE II
PURCHASE AND SALE

Section 2.1 ***Assignment and Assumption of General Partner Interests and Limited Partner Interests***.

(a) Upon and subject to the terms and conditions hereinafter set forth, the Company shall sell and assign, and Macerich GP shall purchase and assume, all of the right, title and interest of the Company in and to its general partnership interests in TWC II (such partnership interests, collectively, the "***GP Interests***") in exchange for one-tenth of one percent (0.1%) of the Adjusted TWC II Purchase Price.

(b) Upon and subject to the terms and conditions hereinafter set forth, each of the Company and TWC shall sell and assign, and Macerich LLC shall purchase and assume, all of the right, title and interest of the Company and TWC in and to all of their respective limited partnership interests in TWC II in exchange for (i) in the case of the Company, ninety-eight and nine-tenths of one percent (98.9%) of the Adjusted TWC II Purchase Price and (ii) in the case of TWC, one percent (1%) of the Adjusted TWC II Purchase Price.

(c) The aggregate purchase price for all of the TWC II Interests shall be Four Hundred Fifty-Seven Million, Five Hundred Seventy-Eight Thousand Dollars ($457,578,000) (the "***TWC II Purchase Price***").

Section 2.2 ***Delivery of TWC II Purchase Price***. The Purchasers shall deliver the TWC II Purchase Price to the Company and TWC at the Closing as provided in Section 2.4 of the Master Agreement.

Section 2.3 ***Withdrawal; Admission of Partners***. Upon the assignment and assumption of the partnership interests in TWC II by TWC and the Company in accordance with Sections 2.1(a) and (b) above, as of the Closing (a) immediately following the admission of Macerich GP and Macerich LLC as partners of TWC II, each of TWC and the Company shall withdraw, and be deemed to have withdrawn, as partners of TWC II, whereupon each such partner will have no further interest in TWC II, (b) Macerich GP shall be admitted, and deemed to be admitted, as the general partner of TWC II in the place and stead of the Company, and (c) Macerich LLC shall be admitted, and deemed to be admitted, as the limited partner of TWC II as of the Closing.

Section 2.4 ***Transaction Sequence; Master Agreement***. Notwithstanding any provision set forth herein to the contrary, the parties hereto hereby agree that the transactions contemplated hereunder shall occur, and shall be deemed to have occurred, for all purposes as set forth in, and shall otherwise be subject to the terms and conditions, of, the Master Agreement, including, without limitation, Articles II and VI thereof.

ARTICLE III
CLOSING

Section 3.1 ***Closing***. The closing of the transactions contemplated in this Agreement shall be held at the Closing on the Closing Date.

Section 3.2 ***Actions at Closing***. Subject to the terms and conditions set forth in this Agreement, at the Closing:

(a) The Company and Macerich GP shall execute and deliver an assignment and assumption in the form of Exhibit A hereto;

(b) Each of the Company and Macerich LLC and TWC and Macerich LLC shall execute and deliver an assignment and assumption in the form of Exhibit B hereto; and

(c) The Purchasers shall deliver the Adjusted TWC II Purchase Price to the Company and TWC as follows: (i) cash, by wire transfer of immediately available funds, in an amount equal to one percent (1%) of the Adjusted TWC II Purchase Price to TWC; (ii) cash, by wire transfer of immediately available funds, in an amount equal to ninety-nine percent (99%) of the Adjusted TWC II Purchase Price less the amount of the Deposits to the Company; and (iii) the Deposits to the Company by the Escrow Agent in the manner contemplated in Section 2.4(h) of the Master Agreement.

Section 3.3 ***Time of the Essence***. The parties hereto acknowledge and agree that, subject to the express adjournment rights contained herein and the provisions of Section 2.4 above, time is of the essence in consummating the transactions contemplated hereunder and the delivery of the TWC II Purchase Price.

ARTICLE IV
CONDITIONS TO CLOSING

Section 4.1 ***Conditions to the Obligations of Each Party***. The respective obligations of each party to consummate the transactions contemplated under this Agreement shall be subject to the satisfaction or waiver (in writing), at or prior to the Closing, of each of the following conditions, any or all of which

may be waived, in whole or in part by the parties hereto (but only to the extent that such matter is a precondition to the obligations of such waiving party), to the extent permitted by applicable law:

(a) Master Agreement Conditions to Closing. Each of the conditions to the Closing set forth in Section 6.1, 6.2 and 6.3 of the Master Agreement shall have occurred, been duly performed or satisfied, or waived by the party entitled to such performance or satisfaction, as applicable.

(b) Conversion of Company's Interest. The Company, TWC and TWC II shall have duly amended the Second Amended and Restated Partnership Agreement of TWC II dated as of September 30, 1994 in order to convert, and shall have converted, the Company's interest constituting on the date hereof a ninety-nine percent (99%) general partnership interest in TWC II into a one-tenth of one percent (0.1%) general partnership interest and a ninety-eight and nine-tenths of one percent (98.9%) limited partnership interest, in each case, in TWC II.

(c) Other Transactions. The TWC II Distribution shall have been consummated in accordance with the provisions of the Master Agreement.

ARTICLE V
GENERAL PROVISIONS

Section 5.1 ***Notices***. Except as otherwise specifically provided herein, all notices, requests, claims, demands and other communications under this Agreement will be in writing and will be deemed given upon delivery if delivered as set forth and to the addresses of the parties as set forth, and otherwise as provided, in the Master Agreement.

Section 5.2 ***Interpretation***. The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 5.3 ***Counterparts***. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 5.4 ***Entire Agreement; No Third-Party Beneficiaries; Severability***. This Agreement is one of the Transaction Documents referred to in the Master Agreement, and, together with such other Transaction Documents, this Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties hereto any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. If any term, condition or other provision of this Agreement is found to be invalid, illegal or incapable of being enforced by virtue of any rule of law, public policy or court determination, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

Section 5.5 ***Amendment; Waiver***. This Agreement may not be amended or modified except (i) by an instrument in writing signed by, or on behalf of, each of the parties hereto, or (ii) by a waiver in accordance with this Section 5.5. At any time prior to the Closing, the Buyer Parties parties hereto, on

the one hand, and the Acquired Companies parties hereto, on the other hand, may (i) extend the time for the performance of any of the obligations or other acts of the other party or parties hereto, (ii) waive any inaccuracies in the representations and warranties of the other party or parties contained herein or in any document delivered by such other party or parties pursuant hereto or (iii) waive compliance with any of the agreements of such other party or parties or conditions to its own obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Waiver of any term or condition of this Agreement by a party or parties shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition by such party, or a waiver of any other term or condition of this Agreement by such party. The failure of any party or parties to assert any of its or their rights hereunder shall not constitute a waiver of any such rights.

Section 5.6 ***Termination***. This Agreement shall terminate automatically and without any further action by or on behalf of any party hereto upon and as of the termination of the Master Agreement pursuant to Section 8.1 thereof. In the event of termination of this Agreement, this Agreement shall forthwith become void, and there shall be no liability on the part of any party hereto to any other party hereto with respect to the matters contained herein, except and as provided in the Master Agreement.

Section 5.7 ***Governing Law***. This Agreement will be governed by, and construed in accordance with, the internal laws of the State of Delaware regardless of the laws that might otherwise govern under applicable principles of conflict of laws.

Section 5.8 ***Consent to Jurisdiction***. Each party to this Agreement hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the State of Delaware and of the United States District Court for the District of Delaware (the "***Delaware Courts***") for any litigation arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives an objection to the laying of venue of any such litigation in the Delaware Courts and agrees not to plead or claim in any Delaware Court that such litigation brought therein has been brought in an inconvenient forum. Each of the parties hereto agrees, (a) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and (b) that service of process may also be made on such party by prepaid certified mail with a proof of mailing receipt validated by the United States Postal Service constituting evidence of valid service. Service made pursuant to (a) or (b) above shall have the same legal force and effect as if served upon such party personally within the State of Delaware.

Section 5.9 ***Assignment***. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, in whole or in part by any of the parties hereto without the prior written consent of the other party. Any assignment in violation of the preceding sentence will be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

Section 5.10 ***Expenses***. Except as otherwise specified in this Agreement or other Transaction Document, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 5.11 ***Execution by Officer of the Company***. This Agreement is executed on behalf of the Company by an officer of the general partner of the Company, acting in his or her capacity as such officer, and not individually. The Buyer, the Purchasers and each other Person dealing with the Company, or claiming any rights or interests herein or hereunder, agrees to look solely to the assets of the Company for satisfaction of any obligations of the Company prior to the Closing, and they further

agree that no advisor, manager, employee, officer, director or agent of the Company (in their capacity as such), shall have any personal liability hereunder or otherwise.

Section 5.12 ***Waiver of Jury Trial***. TO THE EXTENT PERMITTED BY LAW, THE COMPANY, TWC, TWC II, THE BUYER, MACERICH LLC, AND MACERICH GP HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

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IN WITNESS WHEREOF, the Company, TWC, the Buyer, Macerich LLC, Macerich GP and TWC II have caused this Agreement to be signed as of the date first written above.

WESTCOR REALTY LIMITED PARTNERSHIP

By: Eastrich No. 128 Corp.,
its General Partner

By: _____
Name:
Title:

THE WESTCOR COMPANY, L.P.

By: Westcor Realty Limited Partnership
its General Partner

By: _____
Name:
Title:

THE WESTCOR COMPANY II, L.P.

By: Westcor Realty Limited Partnership,
its General Partner

By: _____
Name:
Title:

THE MACERICH PARTNERSHIP, L.P.

By: The Macerich Company,
its General Partner

By: _____
Name:
Title:

MACERICH TWC II LLC

By: The Macerich Partnership, L.P.,
its Sole Member

By: The Macerich Company,
its General Partner

By: _____

Name:
Title:

MACERICH TWC II CORP.

By: _____

Name:
Title:

Exhibit A
to the Partnership Interest Purchase and Sale Agreement

Form of Assignment and Assumption of General Partnership Interests

A-1

Exhibit B
to the Partnership Interest Purchase and Sale Agreement

Form of Assignment and Assumption Agreement of Limited Partnership Interests

B-1

QuickLinks

Exhibit 3.1

THE MACERICH COMPANY

Articles Supplementary
Classifying and Designating a Series of
Preferred Stock as Series D Cumulative Convertible
Preferred Stock and
Fixing Distribution and Other Preferences
And Rights of Such Series

The Macerich Company, a Maryland corporation (the "Corporation"), hereby certifies to the State Department of Assessments and Taxation of Maryland pursuant to section 2-208 of the Corporations and Associations Article of the Annotated Code of Maryland that:

FIRST: Pursuant to authority granted by the Charter of the Corporation (the "Charter"), the Board of Directors on May 29, 2002 adopted a resolution designating and reclassifying 1,961,345 authorized but unissued shares of Preferred Stock, par value $0.01 per share, of the Corporation as Series D Cumulative Convertible Preferred Stock (the "Series D Preferred Stock").

SECOND: The following is a description of the Series D Preferred Stock, including the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption thereof, which, shall become, upon any restatement of the Charter, part of Article Fifth of the Charter with any appropriate changes in enumeration or lettering of any section or subsections thereof:

SERIES D
CUMULATIVE CONVERTIBLE
PREFERRED STOCK

Section 1. *Number of Shares and Designation.* This series of Preferred Stock shall be designated as Series D Cumulative Convertible Preferred Stock and the number of shares which shall constitute such series shall not be more than 1,961,345 shares, par value $0.01 per share, which number shall be automatically decreased (but not below the aggregate number thereof then outstanding and/or which have been reserved for issuance) by the number of shares reacquired by the Corporation in any manner. Any such shares reacquired by the Corporation shall constitute authorized but unissued shares of preferred stock, without designation as to class or series, until classified or reclassified by the Board of Directors.

Section 2. *Definitions.* For purposes of the Series D Preferred Stock, the following terms shall have the meanings indicated:

"Capital Stock" shall mean Common Stock or Preferred Stock. The term "Capital Stock" shall not include convertible debt securities.

"Common Stock" shall mean the common stock, par value $.01 per share, of the Corporation.

"Conversion Price" shall mean the conversion price per share of Common Stock for which the shares of Series D Preferred Stock are convertible, as such Conversion Price may be adjusted pursuant to Section 7. The initial Conversion Price shall be $36.55.

"Current Market Price" of publicly traded Common Stock or any other class of capital stock or other security of the Corporation or any other issuer for any day shall mean the last reported sales price, regular way, on such day, or, if no sale takes place on such day, the average of the reported closing bid and asked prices on such day, regular way, in either case as reported on the New York Stock Exchange ("NYSE") or, if such security is not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such security is listed or

admitted for trading or, if not listed or admitted for trading on any national securities exchange, on the Nasdaq National Market ("NASDAQ") or, if such security is not quoted on NASDAQ, the average of the closing bid and asked prices on such day in the over-the-counter market as reported by the National Association of Securities Dealers, Inc. (the "NASD") or, if bid and asked prices for such security on such day shall not have been reported through the NASD, the average of the bid and asked prices on such day as furnished by any NYSE member firm regularly making a market in such security selected for such purpose by the Board of Directors or, if any class or series of securities is not publicly traded, the fair value of the shares of such class or series as determined reasonably and in good faith by the Board of Directors.

"Dividend Payment Date" shall mean, with respect to any Dividend Period, the payment date for the dividend declared by the Corporation on its shares of Common Stock for such Dividend Period or, if no such payment date is established, the last business day of such Dividend Period.

"Dividend Period" shall mean the quarterly period that is then the dividend period with respect to the Common Stock (or, if no such dividend period is established, the calendar quarter shall be the Dividend Period, provided that the initial dividend period with respect to any share of Series D Preferred Stock shall commence on the date of issuance thereof and end on and include the last day of the then current Dividend Period and the dividend period in which the final liquidation payment is made shall commence on the first day following the immediately preceding Dividend Period and end on the date of such final liquidation payment).

"Fair Market Value" shall mean the average of the daily closing price during the five consecutive Trading Days selected by the Corporation commencing not more than 20 Trading Days before, and ending not later than, the day in question with respect to the issuance or distribution requiring such computation.

"Ownership Limitations" shall mean the restrictions on transferability and ownership described in Article Eighth of the Charter.

"Series A Preferred Stock" shall mean the preferred stock designated as Series A Cumulative Convertible Preferred Stock.

"Series B Preferred Stock" shall mean the preferred stock designated as Series B Cumulative Convertible Preferred Stock.

"Trading Day" shall mean any day on which the securities in question are traded on the NYSE, or if such securities are not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such securities are listed or admitted, or if not listed or admitted for trading on any national securities exchange, on NASDAQ, or if such securities are not quoted on NASDAQ, in the securities market in which the securities are traded.

Capitalized terms used herein without definition shall have the meanings set forth in the Charter.

Section 3. *Rank.*

The Series D Preferred Stock, with respect to payment of dividends and amounts upon voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, shall be deemed to rank:

(a) senior to all classes or series of Common Stock and to all Capital Stock of the Corporation the terms of which provide that such Capital Stock shall rank junior to the Series D Preferred Stock;

(b) on a parity with the Series A Preferred Stock, the Series B Preferred Stock and each other series of preferred stock issued by the Corporation which does not provide by its express terms that it ranks senior or junior in right of payment to the Series D Preferred Stock with respect to payment of dividends or amounts upon liquidation, dissolution or winding-up "Parity Preferred Stock"); and

(c) junior to any class or series of Capital Stock issued by the Corporation in accordance with Section 4(b) that ranks senior to the Series D Preferred Stock.

Section 4. *Voting.*

(a) Holders of shares of the Series D Preferred Stock shall not have any voting rights, except as described below in this Section 4.

(b) So long as any shares of Series D Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least a majority of the shares of Series D Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class or voting as a single class with any other series of preferred stock which has the right to vote with the Series D Preferred Stock on such matter), (i) authorize, create or issue, or increase the authorized or issued amount of, any class or series of shares of Capital Stock ranking senior to the Series D Preferred Stock with respect to the payment of dividends or the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the Corporation or reclassify any authorized shares of Capital Stock of the Corporation into such Capital Stock, or create, authorize or issue any obligation or security convertible or exchangeable into or evidencing the right to purchase any such Capital Stock; or (ii) amend, alter or repeal the provisions of the Charter or these Articles Supplementary, whether by merger or consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series D Preferred Stock or the holders thereof. Notwithstanding anything to the contrary contained herein, none of the following shall be deemed to materially and adversely affect any right, preference, privilege or voting power or otherwise require the vote or consent of the holders of shares of Series D Preferred Stock: (W) the occurrence of any Event so long as either (1) the Corporation is the surviving entity and the Series D Preferred Stock remains outstanding with the terms thereof materially unchanged or (2) interests in an entity having substantially the same rights and terms as the Series D Preferred Stock are substituted for the Series D Preferred Stock, (X) any increase in the amount of the authorized Capital Stock; (Y) the creation or issuance of any other series of Capital Stock or any increase in the amount of authorized or issued Series D Preferred Stock or any other series of Preferred Stock, in each case ranking on a parity with or junior to the Series D Preferred Stock with respect to payment of dividends and the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, and (Z) the dissolution, liquidation and/or winding up of the Corporation.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series D Preferred Stock shall have been converted into shares of Common Stock as herein provided.

(c) For purposes of the foregoing provisions of this Section 4, each share of Series D Preferred Stock shall have one (1) vote per share, except that when any other series of preferred stock shall have the right to vote with the Series D Preferred Stock as a single class on any matter, then the Series D Preferred Stock and such other series shall have with respect to such matters one (1) vote per $36.55 of stated liquidation preference (or less pursuant to Section 6(a)). Except as set forth herein, the shares of Series D Preferred Stock shall not have any voting rights or powers and the consent of the holders thereof shall not be required for the taking of any corporate action.

Section 5. *Dividends.*

(a) With respect to each Dividend Period and subject to the rights of the holders of shares of Preferred Stock ranking senior to or on parity with the Series D Preferred Stock, the holders of shares of Series D Preferred Stock shall be entitled to receive, when, as and if authorized by the Board of Directors, out of assets of the Corporation legally available for the payment of dividends, quarterly cumulative cash dividends in an amount per share of Series D Preferred Stock equal to the greater of

(i) $0.6725 and (ii) the amount of the regular quarterly cash dividends for such Dividend Period upon the number of shares of Common Stock (or portion thereof) into which such Series D Preferred Stock is then convertible in accordance with Section 7 hereof. Notwithstanding anything to the contrary contained herein, the amount of dividends described under either clause (i) or (ii) of this paragraph for the initial Dividend Period, or any other period shorter than a full Dividend

Period, shall be prorated and computed on the basis of a 365/366 day year and the actual number of days in such period. The dividends on the Series D Preferred Stock for each Dividend Period shall, if and to the extent authorized by the Board, be payable in arrears (without interest or other amount) on the Dividend Payment Date with respect thereto, and, if not paid on such date, shall accumulate, whether or not there are funds legally available for the payment thereof and whether or not such dividends are declared or authorized. The record date for dividends to the holders of shares of Series D Preferred Stock for any Dividend Period shall be the same as the record date for the dividends to the holders of shares of Common Stock for such Dividend Period (or, if no such record is set for the Common Stock, the fifteenth day of the calendar month in which the applicable Dividend Payment Date falls if prior to such Dividend Payment Date, otherwise the fifteenth day of the immediately preceding calendar month). Accrued and unpaid dividends for any past Dividend Periods may be declared and paid at any time, without reference to any Dividend Payment Date, to holders of record on such date, not exceeding 60 days preceding the payment date thereof, as may be fixed by the Board. Any dividend payment made on the shares of Series D Preferred Stock shall first be credited against the earliest accumulated but unpaid dividend due with respect to such shares which remains payable. No interest, or sum of money in lieu of interest, shall be owing or payable in respect of any dividend payment or payments on the Series D Preferred Stock, whether or not in arrears.

(b) No dividend on the Series D Preferred Stock shall be authorized by the Board or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof, or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law. Notwithstanding the foregoing, dividends on the Series D Preferred Stock shall accumulate whether or not any of the foregoing restrictions exist.

(c) Except as provided in Section 5(d) hereof, so long as any shares of Series D Preferred Stock are outstanding, (i) no dividends (other than in Common Stock or other Capital Stock of the Corporation ranking junior to the Series D Preferred Stock as to payment of dividends and amounts upon liquidation, dissolution or winding-up of the Corporation) shall be declared or paid or set apart for payment upon the Common Stock or any other class or series of Capital Stock of the Corporation ranking, as to payment of dividends or amounts distributable upon liquidation, dissolution or winding-up of the Corporation, on a parity with or junior to the Series D Preferred Stock, for any period and (ii) no Common Stock or other Capital Stock of the Corporation ranking junior to or on a parity with the Series D Preferred Stock as to payment of dividends or amounts upon liquidation, dissolution or winding-up of the Corporation, shall be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such Capital Stock) by the Corporation (except by conversion into or exchange for other Capital Stock of the Corporation ranking junior to the Series D Preferred Stock as to payment of dividends and amounts upon liquidation, dissolution or winding-up of the Corporation or by redemptions for the purpose of maintaining the Corporation's qualification as a real estate investment trust ("REIT") for U.S. federal income tax purposes) unless, in the case of either clause (i) or (ii), full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Series D Preferred Stock for all Dividend Periods ending on or prior to the dividend payment date for the Common Stock or such other class or series of Capital Stock or the date of such redemption, purchase or other acquisition.

(d) When dividends are not paid in full (or a sum sufficient for such full payment is not set apart for such payment) upon the Series D Preferred Stock and any other Capital Stock ranking on a parity as to payment of dividends with the Series D Preferred Stock, all dividends declared upon the Series D Preferred Stock and any other Capital Stock ranking on a parity as to payment of dividends with the Series D Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series D Preferred Stock and such other Capital Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series D Preferred Stock and such other Capital Stock (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such Capital Stock does not have a cumulative dividend) bear to each other.

(e) The holders of the shares of Series D Preferred Stock shall not be entitled to any dividends, whether payable in cash, property or Capital Stock, in excess of full cumulative dividends as described in Section 5(a) above.

(f) In determining whether a distribution by dividend, redemption or other acquisition of Capital Stock or otherwise is permitted under Maryland law, no effect shall be given to amounts, to the extent such amounts would be needed, if the Corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights on dissolution are superior to those receiving the distribution.

Section 6. *Liquidation Preference.*

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, before any payment or distribution of the assets of the Corporation (whether capital or surplus) shall be made to or set apart for the holders of Common Stock or any other Capital Stock ranking junior to the Series D Preferred Stock as to the distribution of assets upon the liquidation, dissolution or winding-up of the Corporation, the holders of shares of the Series D Preferred Stock shall, with respect to each such share, be entitled to receive, out of the assets of the Corporation available for distribution to stockholders after payment or provision for payment of all debts and other liabilities of the Corporation and subject to the prior preferences or the rights of any series of stock ranking senior to the Series D Preferred Stock upon liquidation, dissolution or winding up of the Corporation, an amount equal to $36.55, plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution. If, upon any such voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of Series D Preferred Stock, are insufficient to pay in full the preferential amount aforesaid on the shares of Series D Preferred Stock and liquidating payments on any other shares of any class or series of Capital Stock ranking, as to payment of dividends and amounts upon the liquidation, dissolution or winding-up of the Corporation, on a parity with the Series D Preferred Stock, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Series D Preferred Stock and any such other parity stock ratably in accordance with the respective amounts that would be payable on such shares of Series D Preferred Stock and such other stock if all amounts payable thereon were paid in full. For the purposes of this Section 6, none of (i) a consolidation, merger or other business combination of the Corporation with one or more corporations, real estate investment trusts or other entities, (ii) a statutory share exchange by the Corporation or (iii) a sale, lease or conveyance of all or substantially all of the Corporation's assets, properties or business shall be deemed to be a liquidation, dissolution or winding-up of the Corporation.

(b) After payment of the full amount of liquidating distributions to which they are entitled, the holders of shares of Series D Preferred Stock shall have no right or claim to any of the remaining assets of the Corporation.

Section 7. *Conversion.* Holders of shares of Series D Preferred Stock shall have the right to convert all or a portion of such shares into shares of Common Stock, as follows:

(a) Subject to and upon compliance with the provisions of this Section 7, a holder of shares of Series D Preferred Stock shall have the right, at such holder's option, at any time, to convert any whole number of shares of Series D Preferred Stock into shares of Common Stock. Each share of Series D Preferred Stock shall be convertible into the number of shares of Common Stock determined by dividing (i) $36.55 plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the end of the last Dividend Period ending prior to the conversion by (ii) the Conversion Price as in effect as of the date of the conversion, subject to adjustment as described in Section 7(c) hereof. No fractional shares or scrip representing fractions of shares of Common Stock will be issued upon any conversion of shares of Series D Preferred Stock. Instead of any fractional interest in a share of Common Stock that would otherwise be deliverable upon the conversion of a share or shares of Series D Preferred Stock, the Corporation shall pay to the holder of such share or shares an amount in cash based upon the Current Market Price of the Common Stock on the Trading Day immediately preceding the date of conversion. If more than one share shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series D Preferred Stock so surrendered.

(b) To exercise the conversion right, the holder of each share of Preferred Stock to be converted shall surrender the certificate representing such share, duly endorsed or assigned to the Corporation or in blank, at the principal office of the Corporation accompanied by a written notice to the Corporation (the "Conversion Notice") indicating that the holder thereof elects to convert such share of Series D Preferred Stock. Unless the shares issuable on conversion are to be issued in the same name as the name in which such share of Series D Preferred Stock is registered, each share of Series D Preferred Stock surrendered for conversion shall be accompanied by instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the holder or such holder's duly authorized attorney and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Corporation demonstrating that such taxes have been paid).

As promptly as practicable after the surrender of certificates for shares of Series D Preferred Stock and delivery of the Conversion Notice as aforesaid, the Corporation shall issue and shall deliver at such office to such holder, or on the holder's written order, a certificate or certificates for the number of shares of Common Stock issuable upon the conversion of such shares of Series D Preferred Stock in accordance with the provisions of this Section 7. In addition, the Corporation shall issue and deliver to such holder a certificate or certificates representing any shares of Series D Preferred Stock that were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but that were not converted.

A holder of shares of Series D Preferred Stock at the close of business on the record date for any Dividend Period shall be entitled to receive the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the conversion of such shares of Series D Preferred Stock following such record date and prior to such Dividend Payment Date and shall have no right to receive any dividend for such Dividend Period in respect of the shares of Common Stock into which such shares of Series D Preferred Stock were converted. However, Series D Preferred Stock surrendered for conversion during the period between the close of business on any dividend payment record date and the opening of business on the corresponding Dividend Payment Date must be accompanied by payment of an amount equal to the dividend payable on such shares on such Dividend Payment Date. A holder of shares of Series D Preferred Stock on a Dividend Payment Date who was also the holder of such shares on the record date for the corresponding Dividend Period and who (or whose transferee) tenders any such shares for conversion into Common Shares on the corresponding Dividend Payment Date will receive the dividend payable by the Corporation on such Series D Preferred Stock

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on such date, and the converting holder need not include payment of the amount of such dividend upon surrender of Series D Preferred Stock for conversion. Except as provided herein, the Corporation shall make no payment or allowance for unpaid dividends, whether or not in arrears, on converted shares of Series D Preferred Stock or for dividends on the shares of Common Stock that are issued upon such conversion.

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the certificates for shares of Series D Preferred Stock shall have been surrendered and the Conversion Notice is received by the Corporation as aforesaid (and, if applicable, payment of an amount equal to the dividend payable on such shares shall have been received by the Corporation as described above), and the person or persons in whose name or names any shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of such shares at such time on such date, and such conversion shall be at the Conversion Price in effect at such time and on such date unless the transfer books of the Corporation shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the close of business on the next succeeding day on which such transfer books are open, but such conversion shall be at the Conversion Price in effect on the date on which such shares have been surrendered and such notice received by the Corporation.

(c) The Conversion Price shall be adjusted from time to time as follows:

(i) If the Corporation shall, after the date on which any shares of Series D Preferred Stock are first issued (the "Issue Date"), (A) pay or make a dividend to holders of its Common Stock in Common Stock, (B) subdivide its outstanding Common Stock into a greater number of shares of Common Stock, (C) combine its outstanding Common Stock into a smaller number of shares of Common Stock, or (D) issue any shares of stock by reclassification of its Common Stock, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of holders entitled to receive such dividend or at the opening of business on the day next following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any share of Series D Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock that such holder would have owned or have been entitled to receive after the happening of any of the events described above had such share of Series D Preferred Stock been converted immediately prior to the record date in the case of a dividend or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subsection (i) shall become effective immediately after the opening of business on the day next following the record date (except as provided in subsection (f) below) in the case of a dividend and shall become effective immediately after the opening of business on the day next following the effective date in the case of a subdivision, combination or reclassification.

(ii) No adjustment in the Conversion Price shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such price; provided, however, that any adjustments that by reason of this subsection (ii) are not required to be made shall be carried forward and taken into account in any subsequent adjustment until made; and provided, further, that any adjustment shall be required and made in accordance with the provisions of this Section 7 (other than this subsection (ii)) not later than such time as may be required in order to preserve the tax-free nature of a dividend to the holders of shares of Common Stock. Notwithstanding any other provisions of this Section 7, the Corporation shall not be required to make

any adjustment to the Conversion Price for the issuance of (A) any Common Stock pursuant to any plan providing for the reinvestment of dividends or interest payable on securities of the Corporation and the investment of additional optional amounts in Common Stock under such plan or (B) any options, rights or Common Stock pursuant to any stock option, stock purchase or any stock-based compensation plan maintained by the Corporation in the ordinary course of business. All

calculations under this Section 7 shall be made to the nearest cent (with $.005 being rounded upward) or to the nearest one-tenth of a share (with .05 of a share being rounded upward), as the case may be. Anything in this subsection (c) to the contrary notwithstanding, the Corporation shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this subsection (c), as it in its discretion shall determine to be advisable in order that any Capital Stock dividend, subdivision of Capital Stock, reclassification or combination of Capital Stock, distribution of rights, options or warrants to purchase Capital Stock or securities, or a distribution consisting of other assets (other than cash distributions) hereafter made by the Corporation to its holders of Capital Stock shall not be taxable, or if that is not possible, to diminish any income taxes that are otherwise payable because of such event.

(d) If the Corporation shall be a party to any transaction (including, without limitation, a merger, consolidation, statutory share exchange, self tender offer for all or substantially all of the shares of Common Stock, sale of all or substantially all of the Corporation's assets or recapitalization of the Common Stock and excluding any transaction as to which subsection (c)(i) of this Section 7 applies) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which shares of Common Stock shall be converted into the right to receive shares, stock, securities or other property (including cash or any combination thereof), each share of Series D Preferred Stock which is not converted into the right to receive shares, stock, securities or other property in connection with such Transaction shall thereafter be convertible into the kind and amount of shares, stock, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which one share of Series D Preferred Stock was convertible immediately prior to such Transaction, assuming such holder of Common Stock is not a Person with which the Corporation consolidated or into which the Corporation merged or which merged into the Corporation or to which such sale or transfer was made, as the case may be (a "Constituent Person"), or an affiliate of a Constituent Person. The Corporation shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this subsection (d), and it shall not consent or agree to the occurrence of any Transaction until the Corporation has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the shares of Series D Preferred Stock that will contain provisions enabling the holders of shares of Series D Preferred Stock that remain outstanding after such Transaction to convert into the consideration received by holders of shares of Common Stock at the Conversion Price in effect immediately prior to such Transaction (with the holder having the option to elect the type of consideration if a choice is offered in the Transaction). The provisions of this subsection (d) shall similarly apply to successive Transactions.

(e) If:

(i) the Corporation shall declare a dividend on the shares of Common Stock (other than a cash dividend) or there shall be a reclassification, subdivision or combination of Common Stock; or

(ii) the Corporation shall authorize the granting to the holders of the shares of Common Stock of rights, options or warrants to subscribe for or purchase any Capital Stock of any class or any other rights, options or warrants; or

(iii) there shall be any reclassification of the shares of Common Stock or any consolidation or merger to which the Corporation is a party and for which approval of any stockholders of the Corporation is required, or a statutory share exchange involving the conversion or exchange of shares of Common Stock into securities or other property, or a self tender offer by the Corporation for all or substantially all of the shares of Common Stock, or the sale or transfer of all or substantially all of the assets of the Corporation as an entirety; or

(iv) there shall occur the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation;

then the Corporation shall cause to be mailed to the holders of the shares of Series D Preferred Stock at their addresses as shown on the records of the Corporation, as promptly as possible a notice stating (A) the record date to be fixed for the purpose of such distribution of rights, options or warrants, or, if a record date is not to be fixed, the date as of which the holders of shares of Common Stock of record to be entitled to such distribution of rights, options or warrants are to be determined or (B) the date on which such reclassification, subdivision, combination, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up is expected to become effective, and the date as of which it is expected that holders of shares of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property, if any, deliverable upon such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this Section 7.

(v) Whenever the Conversion Price is adjusted as herein provided, the Corporation shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each share of Series D Preferred Stock at such holder's last address as shown on the records of the Corporation.

(f) In any case in which subsection (c) of this Section 7 provides that an adjustment shall become effective on the date next following the record date for an event, the Corporation may defer until the occurrence of such event (A) issuing to the holder of any share of Series D Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such conversion before giving effect to such adjustment, and (B) paying to such holder any amount of cash in lieu of any fractions pursuant to subsection (a) of this Section 7.

(g) There shall be no adjustment of the Conversion Price in case of the issuance of any shares of stock of the Corporation in a reorganization, acquisition or similar transaction except as specifically set forth in this Section 7. If any action or transaction would require adjustment of the Conversion Price pursuant to more

than one subsection of this Section 7, only one adjustment shall be made, and such adjustment shall be the amount of adjustment that has the highest absolute value.

(h) If the Corporation shall take any action affecting the shares of Common Stock, other than action described in this Section 7, that in the opinion of the Board of Directors would materially and adversely affect the conversion rights of the holders of the shares of Series D Preferred Stock, the Conversion Price for the shares of Series D Preferred Stock may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Directors, in its sole discretion, determines to be equitable in the circumstances.

(i) The Corporation covenants that shares of Common Stock issued upon conversion of the shares of Series D Preferred Stock shall be validly issued, fully paid and nonassessable. The Corporation shall use its reasonable efforts to comply with all federal and state securities laws and regulations thereunder in connection with the issuance of any securities that the Corporation shall be obligated to deliver upon conversion of the Series D Preferred Stock. The certificates representing such securities shall bear such legends restricting transfer thereof in the absence of registration under applicable securities laws or an exemption therefrom as the Corporation may in good faith deem appropriate.

(j) The Corporation will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock or other securities or property on conversion of the shares of Series D Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer

involved in the issue or delivery of shares of Common Stock or other securities or property in a name other than that of the holder of the Series D Preferred Stock to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Corporation the amount of any such tax or established, to the reasonable satisfaction of the Corporation, that such tax has been paid.

(k) Notwithstanding anything to the contrary contained in this Section 7, conversion of Series D Preferred Stock pursuant to this Section 7 shall be permitted only to the extent that such conversion would not result in a violation of the Ownership Limit (as defined in the Charter), after taking into account any waiver of such limitation granted to any holder of Series D Preferred Stock.

Section 8. *Record Holders.* The Corporation and the Transfer Agent may deem and treat the record holder of any Series D Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor the Transfer Agent shall be affected by any notice to the contrary.

Section 9. *Ownership Restrictions.* The Series D Preferred Stock shall be subject to the restrictions and limitations set forth in Article Eighth of the Charter.

Section 10. *Sinking Fund.* The Series D Preferred Stock shall not be entitled to the benefit of any retirement or sinking fund.

Section 11. *Legends.* In addition to the legend required by Section (a)(13) of Article Eighth of the Charter and any legend required by Maryland law, any certificate representing Series D Preferred Stock and any certificate representing common stock or other securities into which the Series D Preferred Stock may be converted shall bear the following legend, unless and until the shares represented by such certificates have been registered:

> "THIS SECURITY AND ANY COMMON STOCK ISSUED ON CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD, OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM:

THIRD: The Series D Preferred Stock have been reclassified and designated by the Board of Directors under the authority contained in Article Fifth of the Charter.

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

IN WITNESS WHEREOF, the Corporation has caused these Articles Supplementary to be duly executed by its Executive Vice President, General Counsel and Secretary and attested to by its Vice President and Assistant Secretary this day of July, 2002.

THE MACERICH COMPANY

By

Name: Richard A. Bayer
Its: Executive Vice President, General Counsel and Secretary

ATTEST:

By:

Name: Madonna Shannon
Its: Vice President and Assistant Secretary

QuickLinks

Exhibit 10.1

NINTH AMENDMENT TO THE
AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT OF
THE MACERICH PARTNERSHIP, L.P.

THIS NINTH AMENDMENT (the **"Amendment"**) TO THE AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT DATED AS OF MARCH 16, 1994, AMENDED AS OF AUGUST 14, 1995, FURTHER AMENDED AS OF JUNE 27, 1997, FURTHER AMENDED AS OF NOVEMBER 16, 1997, FURTHER AMENDED AS OF FEBRUARY 25, 1998, FURTHER AMENDED AS OF FEBRUARY 26, 1998, FURTHER AMENDED AS OF JUNE 17, 1998, FURTHER AMENDED AS OF DECEMBER 23, 1998, AND FURTHER AMENDED AS OF NOVEMBER 9, 2000 (the **"Agreement"**) OF THE MACERICH PARTNERSHIP, L.P. (the **"Partnership"**) is dated effective as of July 26, 2002.

RECITALS

WHEREAS, the Partnership has agreed to issue to the Class B limited partners of Westcor Realty Limited Partnership ("WRLP") listed on Exhibit A to this Amendment 1,961,345 Series D Preferred Units of the Partnership (the "Series D Preferred Units") having the terms and subject to the conditions set forth in the Master Agreement by and among WRLP, the Partnership, Macerich Galahad LP, The Westcor Company Limited Partnership, The Westcor Company II Limited Partnership, Macerich TWC II LLC, Macerich TWC II Corp., Macerich WRLP LLC, Macerich WRLP Corp., Eastrich No. 128 Corp. and certain individuals dated as of June 29, 2002 (the "Master Agreement")

WHEREAS; the Series D Preferred Units shall have the terms set forth in Exhibit B to this Amendment;

WHEREAS, *Section 3.3 (a)(i)*of the Agreement authorizes the General Partner to cause the Partnership to issue additional interests in the Partnership in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers and duties, including rights, powers and duties senior to those of the Limited Partners, all as shall be determined by the General Partner in its sole and absolute discretion and without the approval of any of the Limited Partners;

WHEREAS, *Section 12.1(b)(iii)* of the Agreement provides that the General Partner has the power, without the consent of the Limited Partners of the Partnership, to amend the Agreement as may be required to facilitate or implement setting forth the designations, rights, powers, duties, and preferences of the holders of any additional interests in the Partnership issued pursuant to *Section 3.3*;

WHEREAS, the General Partner has made the determination pursuant to *Section 12.1(b)(iii)* of the Agreement that consent of the Limited Partners of the Partnership is not required with respect to the matters set forth in this Amendment; and

WHEREAS, all things necessary to make this Amendment a valid agreement of the Partnership have been done;

NOW, THEREFORE, pursuant to the authority granted to the General Partner under the Agreement, the Agreement is hereby amended as follows:

1. Amendments:

(a) Section 2.2 of the Agreement is hereby amended by inserting the following new Section 2.2(e) to read as follows:

(e) **Series D Preferred Units**. In exchange for the contribution of limited partnership interests in WRLP, the Partnership hereby issues to each new Limited Partner identified on Exhibit A to this Amendment the number of Series D Preferred Units set forth opposite such new Limited Partner's name. Each new Limited Partner is hereby admitted as a Limited

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Partner in respect of such Series D Preferred Units, and each such new Limited Partner agrees to be bound by the provisions of this Agreement, as amended from time to time. Without limitation of the foregoing, each such new Limited Partner is deemed to have made all of the representations, warranties, acknowledgements, waivers and agreements set forth in Sections 10.6, 11.1 and 13.11 of the Agreement. The Capital Contribution made by each such new Limited Partner shall be deemed to be $36.55 per Series D Preferred Unit. Series D Preferred Units shall have the rights, powers and duties set forth in Exhibit B to the Ninth Amendment to this Agreement.

(b) Section 4.1 of the Agreement is hereby amended to read as follows:

4.1 **Distribution of Net Cash Flow.** The General Partner shall cause the Partnership to distribute all or a portion of Net Cash Flow to the Partners from time to time as determined by the General Partner, but in any event not less frequently than quarterly, in such amounts as the General Partner shall determine. Notwithstanding the foregoing, the General Partner shall use its reasonable efforts to cause the Partnership to distribute sufficient amounts to enable the General Partner to pay shareholder dividends that will (a) satisfy the requirements for qualifying as a REIT under the Code and Regulations (**"REIT Requirements"**), and (b) avoid any federal income or excise tax liability of the General Partner. All amounts withheld pursuant to the Code or a provision of any state or local tax law with respect to any allocation, payment or distribution to the General Partner or any Limited Partner shall be treated as amounts distributed to such Partner. Upon the receipt by the General Partner of each Exercise Notice or Series D Exercise Notice pursuant to which one or more Redemption Partners or Series D Redemption Partners exercise Redemption Rights in accordance with the provisions of *Article IX* and the Redemption Rights Exhibit or the Series D Redemption Rights Exhibit, the General Partner shall, unless the General Partner has elected to issue only Shares to such Redemption Partners in respect of the Purchase Price of the Offered Interests or Series D Preferred Shares to such Series D Redemption Partners in respect of the Series D Purchase Price of the Series D Offered Interests, cause the Partnership to distribute to the Partners, *pro rata* in accordance with their respective Percentage Interests as of the date of delivery of such Exercise Notice or Series D Exercise Notice, all (or such lesser portion as the General Partner shall reasonably determine to be prudent under the circumstances) of Net Cash Flow, which distribution shall be made prior to the closing of the redemption or purchase and sale of the Offered Interests or Series D Offered Interests specified in such Exercise Notice or Series D Exercise Notice. Subject to any restrictions or limitations imposed by any provisions of any agreement with respect to indebtedness, including the Credit and Guaranty Agreement and those agreements with respect to the Convertible Subordinated Debentures (the "Debt Instruments") or Section 17-607 of the Act, distributions shall be made in accordance with the following order of priority:

(a) First, semi-annual distributions to the General Partner with respect to the Preferred Units in an amount equal to the cumulative and unpaid Preferred Return on such Preferred Units in such a way as to allow the General Partner to pay interest and any additional amounts on the Convertible Subordinated Debentures payable to the holders thereof;

(b) Second, to the General Partner, with respect to the Series A Preferred Units and Series B Preferred Units, and to the holders of the Series D Preferred Units, *pro rata*, in an amount equal to the cumulative and unpaid Series A Preferred Return on such Series A Preferred Units, the cumulative and unpaid Series B Preferred Return on such Series B Preferred Units and the cumulative and unpaid Series D Preferred Return on such Series D Preferred Units in such a way as to allow the General Partner to pay cumulative preferential dividends and any additional amounts required on the Series A Preferred Shares, the Series B Preferred Shares, the Series D Preferred Units and any outstanding Series D Preferred Shares, respectively, payable to the holders thereof; and

(c) Next, to the Partners holding Common Units, *pro rata* in accordance with such Partners' then Percentage Interests.

(c) Subsections (a), (b) and (c) of Section 9.1 of the Agreement are hereby amended to read as follows:

(a) The Partnership does hereby grant to each Redemption Partner and each Redemption Partner does hereby accept the rights ("Redemption Rights"), but without obligation to the Redemption Partner, to require the Partnership to redeem from time to time part or all of its Partnership Interest for the Purchase Price set forth in the Redemption Rights Exhibit or, in the case of Series D Preferred Units, for the Series D Purchase Price set forth in the Series D Redemption Rights Exhibit

(b) Notwithstanding the provisions of *Section 9.1(a)*, the General Partner may, in its sole and absolute discretion, assume directly the obligation with respect to and satisfy the Redemption Partner's exercise of a Redemption Right by paying to the Redemption Partner, at the General Partner's election, either the Cash Purchase price or the Share Purchase Price or the Series D Cash Purchase Price or the Series D Share Purchase Price, as applicable; provided, however, that notwithstanding the foregoing the General Partner may not elect to pay the Share Purchase price or the Series D Share Purchase Price in respect of a Redemption Right to the extent that the issuance of Shares or Series D Preferred Shares would cause a violation of the REIT Requirements. If the General Partner assumes such obligations with respect to an exercise of a Redemption Right, then the Partnership shall have no obligation to pay any amount to the Redemption Partner with respect to such Redemption Partner's exercise of the Redemption Right, and any Partnership Units redeemed shall be owned by the General Partner for all purposes.

(c) Such Redemption Rights shall be exercisable, in whole or in part, at any time or from time to time, on the terms and subject to the conditions and restrictions contained in the Redemption Rights Exhibit or the Series D Redemption Rights Exhibit, as applicable, upon delivery to the General Partner of an Exercise Notice in the form of *Schedule 1* attached to the Redemption Rights Exhibit or a Series D Exercise Notice in the form of Schedule 1 attached to the Series D Redemption Rights Exhibit, which notice shall specify the portion of the Redemption Partner's Partnership Interest to be redeemed. Once delivered, any such Exercise Notice or Series D Exercise Notice shall be irrevocable, subject to payment of the applicable Purchase Price or Series D Purchase Price in respect of such Partnership Interest in accordance with the terms hereof.

(d) Section 10.3 of the Agreement is hereby amended to read as follows:

10.3 **Timing Requirements; Deemed Liquidation**. In the event that the Partnership is "liquidated" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, any and all distributions to the Partners pursuant to *Section 10.2(c)* hereof shall be made no later than the later to occur of (i) the last day of the taxable year of the Partnership in which such liquidation occurs or (ii) ninety (90) days after the date of liquidation. Subject to the foregoing, a reasonable time shall be allowed for the orderly winding up of the business and affairs of the Partnership and the liquidation of its assets in order to minimize any losses otherwise attendant upon such winding up. Notwithstanding any other provision of this *Article X* to the contrary, if the Partnership is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g)(3), but no dissolution event described in *subsections (a) through (e)* of *Section 10.1* has occurred, the Partnership Assets shall not be liquidated, the Partnership's liabilities shall not be paid or discharged, and the Partnership's affairs shall not be wound up. Instead, the new partnership deemed to have been created for federal income tax purposes shall be governed by the terms of this Agreement.

(e) The definition of the term "Partnership Interest" contained in the Glossary of Defined Terms of the Agreement is hereby amended to read as follows:

"**Partnership Interest**" shall mean an ownership interest of a Partner in the Partnership from time to time, including, as applicable, such Partner's Preferred Units, Series A Preferred Units, Series B Preferred Units, Series D Preferred Units and Percentage Interest and such Partner's Capital Account, and any and all other benefits to which the holder of such Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms of this Agreement.

(f) The definition of the term "Partnership Unit" contained in the Glossary of Defined Terms of the Agreement is hereby amended to read as follows:

"**Partnership Unit**" shall mean a Common Unit, Preferred Unit, Series A Preferred Unit, Series B Preferred Unit or Series D Preferred Unit and shall constitute a fractional, undivided share of the Partnership Interests corresponding to that particular class of Units.

(g) The definition of the term "Common Unit" contained in the Glossary of Defined Terms of the Agreement is hereby amended to read as follows:

"**Common Unit**" shall mean Partnership Interests other than Preferred Units, Series A Preferred Units, Series B Preferred Units and Series D Preferred Units.

(h) The definition of the term "Project" contained in the Glossary of Defined Terms of the Agreement is hereby amended to read as follows:

"**Project**" shall mean any shopping center or other real estate project or property, including construction and improvement activities undertaken with respect thereto, land held for investment or development and off-site improvements, on-site improvements, structures, buildings and/or related parking and other facilities.

(i) The Glossary of Defined Terms of the Agreement is hereby amended to include the following definitions:

"Master Agreement" shall mean the Master Agreement by and among WRLP, the Partnership, Macerich Galahad LP, The Westcor Company Limited Partnership, The Westcor Company II Limited Partnership, Macerich TWC II LLC, Macerich TWC II Corp., Macerich WRLP LLC, Macerich WRLP Corp., Eastrich No. 128 Corp. and certain individuals dated as of June 29, 2002.

"Series D Cash Purchase Price" is defined in the Series D Redemption Rights Exhibit.

"Series D Exercise Notice" is defined in the Series D Redemption Rights Exhibit.

"**Series D Offered Interests"** is defined in the Series D Redemption Rights Exhibit.

"**Series D Preferred Return**" is defined in Exhibit B to the Ninth Amendment to this Agreement.

"**Series D Preferred Shares**" shall mean shares of Series D Cumulative Convertible Preferred Stock, $.01 par value per share, of the General Partner, the terms of which are set forth in the Series D Preferred Shares Articles Supplementary.

"**Series D Preferred Shares Articles Supplementary**" shall mean the Series D Cumulative Convertible Preferred Stock Articles Supplementary, dated as of July 25, 2002, which fixes the distribution and other preferences and rights of the Series D Preferred Shares.

"**Series D Preferred Units**" shall mean the Partnership Units issued pursuant to *Section 2.2(e)* of this Agreement, the terms of which are set forth in Exhibit B to the Ninth Amendment to this Agreement.

"**Series D Purchase Price**" is defined in the Series D Redemption Rights Exhibit.

"Series D Redemption Rights Exhibit" shall mean Exhibit C to the Ninth Amendment to this Agreement.

"Series D Share Purchase Price" is defined in the Series D Redemption Rights Exhibit.

"Series D Redemption Partner" means a Limited Partner other than the Company holding Series D Preferred Units.

"**WRLP**" is defined in the Ninth Amendment to this Agreement.

(j) Section 1.1 of Exhibit A to the Agreement (Allocations Exhibit) is hereby amended to add at the end thereof the following new sentence: "Solely for purposes of the allocations described in Sections 2.1 and 2.2, a separate sub-capital account ("**Sub-Capital Account**") shall be established for each Partner in respect of each class of Partnership Units held by such Partner, to which shall be credited or debited only those items of income, gain, loss, deduction, capital contributions and distributions allocated or made to or by such Partner with respect to such class of Partnership Units, other than income or deductions allocated pursuant to Paragraphs 3.1, 3.2, 3.4 and 3.5 below or distributions that cause or increase such Partner's share of Minimum Gain or Partner Nonrecourse Debt Minimum Gain."

(k) Section 1.2 of Exhibit A to the Agreement (Allocations Exhibit) is hereby amended to read as follows:

1.2 **Transferees**. Generally, a transferee (including any assignee) of a Partnership Interest shall succeed to a pro rata portion of the Capital Account of the transferor; provided, however, that, if the transfer causes a termination of the Partnership under Section 708(b)(1)(B) of the Code, the Partnership's properties and liabilities shall be deemed, solely for federal income tax purposes, to have been contributed to a newly formed partnership in exchange for an interest therein, followed immediately thereafter by a distribution of interests in the new partnership to the holders of Partnership Units (including such transferee) in proportion to their Partnership Units in liquidation of the terminated Partnership. In such event, the Gross Asset Values of the Partnership properties shall be adjusted immediately prior to such deemed contribution pursuant to Section 1.3(b) of this Allocations Exhibit. The Capital Accounts of such new partnership shall be maintained in accordance with the principles of this Allocations Exhibit.

(l) Sections 2.1 and 2.2 of Exhibit A to the Agreement (Allocations Exhibit) are hereby amended to read as follows:

2.1 **Net Income**. After giving effect to the special allocations set forth in Article 3 of this Allocations Exhibit, Net Income for any fiscal year or other applicable period shall be allocated in the following order and priority:

(a) First, to the Partners, until the cumulative Net Income allocated pursuant to this subparagraph 2.1(a) for the current and all prior periods equals the cumulative Net Loss allocated pursuant to subparagraphs 2.2(d) and (e) hereof for all prior periods, which allocation shall be made among such Partners in the reverse order that such Net Loss was allocated to them (and, in the event of a shift of a Partner's interest in the Partnership, to the Partners in a manner that most equitably reflects the successors in interest of such Partners);

(b) Second, to the General Partner in respect of its Preferred Units, until the cumulative Net Income allocated pursuant to this subparagraph 2.1(b) for the current and all prior periods equals the cumulative Net Loss allocated in respect of such Preferred Units pursuant to Subparagraph 2.2(c) hereof for all prior periods;

(c) Third, to the General Partner in respect of its Preferred Units, until the cumulative Net Income allocated pursuant to this subparagraph 2.1(c) for the current and all prior periods equals the cumulative Preferred Return on the Preferred Units;

(d) Fourth, to the General Partner in respect of its Series A Preferred Units and Series B Preferred Units, and the holders of the Series D Preferred Units, pro rata to such units, until the cumulative Net Income allocated pursuant to this subparagraph 2.1(d) for the current and all prior periods equals the cumulative Net Loss allocated pursuant to Subparagraph 2.2(b) hereof for all prior periods;

(e) Fifth, to the General Partner in respect of its Series A Preferred Units and Series B Preferred Units, and to the holders of the Series D Preferred Units, pro rata to such units, until the cumulative Net Income allocated pursuant to this subparagraph 2.1(e) equals the cumulative Series A Preferred Return on the Series A Preferred Units, the cumulative Series B Preferred Return on the Series B Preferred Units and the cumulative Series D Preferred Return on the Series D Preferred Units, respectively; and

(f) Thereafter, the balance of the Net Income, if any, shall be allocated to the Partners holding Common Units in accordance with their respective Percentage Interests.

2.2 **Net Loss**. After giving effect to the special allocations set forth in Article 3 of this Allocations Exhibit, Net Loss of the Partnership for each fiscal year or other applicable period shall be allocated as follows:

(a) To the Partners holding Common Units in accordance with their respective Percentage Interests until the Sub-Capital Accounts attributable to such Common Units are all reduced to zero (determined after all capital contributions, distributions, and special allocations under Article III of this Allocations Exhibit allocable to the Partner for the Fiscal Year have been reflected in the Partner's Sub-Capital Account);

(b) Second, to the General Partner in respect of its Series A Preferred Units and Series B Preferred Units, and to the holders of the Series D Preferred Units in respect to their Series D Preferred Units, pro rata to such units, until their Sub-Capital Accounts attributable to such units are reduced to zero;

(c) Third, to the General Partner in respect of its Preferred Units, until its Sub-Capital Account attributable to such Preferred Units is reduced to zero;

(d) Thereafter, to the Partners holding Common Units in accordance with their respective Percentage Interests; and

(e) Notwithstanding preceding provisions of this Section 2.2, to the extent any Net Losses allocated to a Partner under this Section 2.2 would cause such Partner (hereinafter, a "**Restricted Partner**") to have an Adjusted Capital Account Deficit at the end of the fiscal year to which such Losses related, such Losses shall not be allocated to such Restricted Partners and instead shall be allocated to the other Partner(s) (herein, the "**Permitted Partners**") pro rata in accordance with their relative Percentage Interests.

2. *Lock-up Period.* Each new Limited Partner executing this Amendment agrees not to exercise any Redemption Rights with respect to Series D Preferred Units or Common Units under *Article IX* of the Agreement prior to July 26, 2003 (the "Lock-up Period"); provided that, after the death of any such Limited Partner, the fiduciary or other authorized representative of such Limited Partner's estate shall be entitled to deliver an Exercise Notice or Series D Exercise Notice to the General Partner during the Lock-up Period with respect to the Redemption Rights of such deceased Limited Partner; provided further that, upon any such exercise during the Lock-up Period, the General Partner may elect, in its sole and absolute discretion, not to permit any other such Limited Partner to exercise its

rights under Paragraph 3(a) of the Redemption Rights Exhibit or under Paragraph 3(a) of the Series D Redemption Rights Exhibit to join in the giving of such Exercise Notice or Series D Exercise Notice.

3. *Defined Terms and Recitals*. As used in this Amendment, capitalized terms used and defined in this Amendment shall have the meaning assigned to them in this Amendment, and capitalized terms used in this Amendment but not defined herein, shall have the meaning assigned to them in the Agreement.

4. *Ratification and Confirmation*. Except to the extent specifically amended by this Amendment, the terms and provisions of the Agreement, as previously amended, are hereby ratified and confirmed.

IN WITNESS WHEREOF, the undersigned has executed this Amendment effective as of the date first above mentioned.

GENERAL PARTNER:

THE MACERICH COMPANY

By: _____

Richard A. Bayer
General Counsel and Secretary

***NEW LIMITED PARTNERS*:**

EXHIBIT A

New Limited Partners

Name and Address	Number of Series D Preferred Units

EXHIBIT B

Terms of Series D Preferred Units

1. *Definitions*. Unless otherwise indicated, capitalized terms shall have the meanings set forth in the Agreement. As used herein, the following terms, shall have the meanings set forth below, unless the context otherwise requires:

"Distribution Payment Date" shall mean, with respect to any Distribution Period, the payment date for the distribution declared by the General Partner on its shares of Common Stock for such Distribution Period or, if no such distribution payment date is established, the last business day of such Distribution Period.

"Distribution Period" shall mean the quarterly period that is then the dividend period with respect to the Common Stock or, if no such dividend period is established, the calendar quarter shall be the Dividend Period; provided that (a) the initial distribution period shall commence on July 26, 2002 and end on and include September 30, 2002 and (b) the distribution period in which the final liquidation payment is made pursuant to Section 10.2 of the Agreement shall commence on the first day following the immediately preceding Distribution Period and end on the date of such final liquidation payment.

2. *Designation and Number; Etc.* The Series D Preferred Units have been established and shall have such rights, preferences, limitations and qualifications as are described herein (in addition to the rights, preferences, limitations and qualifications contained in the Agreement to the extent applicable). The authorized number of Series D Preferred Units shall be 1,961,345. Notwithstanding anything to the contrary contained herein, in the event of a conflict between the provisions of this Exhibit B and any other provision of the Agreement, the provisions of this Exhibit B shall control. For purposes of this Amendment, the rights of the Series D Preferred Units shall be construed to include their rights under the Series D Redemption Rights Exhibit.

3. *Rank*. The Series D Preferred Units shall, with respect to the payment of distributions and the distribution of amounts upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, rank as follows:

(a) senior to all classes or series of Common Units and to all Partnership Units the terms of which provide that such Partnership Units shall rank junior to such Series D Preferred Units;

(b) on a parity with the Series A Preferred Units and the Series B Preferred Units and each other series of preferred Partnership Units hereafter issued by the Partnership which does not provide by its express terms that it ranks junior in right of payment to the Series D Preferred Units with respect to payment of distributions or amounts upon liquidation, dissolution or winding-up; and

(c) junior to the Preferred Units and to any class or series of preferred Partnership Units issued by the Partnership that ranks senior to the Series D Preferred Units in accordance with Section 4 of this Exhibit B.

4. *Voting*.

(a) Holders of Series D Preferred Units shall not have any voting rights, except as provided by the Agreement or applicable law or as described below in this Section 4.

(b) So long as any Series D Preferred Units remain outstanding, the Partnership shall not, without the affirmative vote or consent of the holders of at least a majority of the Series D Preferred Units outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize, create, issue or increase the authorized or issued amount of, any class or series of partnership interests in the Partnership ranking prior to the Series D Preferred Units with respect to the payment of distributions or the distribution of assets upon voluntary or

involuntary liquidation, dissolution or winding-up of the Partnership or reclassify any Common Units into such partnership interests, or create, authorize or issue any obligation or security convertible or exchangeable into or evidencing the right to purchase any such partnership interests; or (ii) amend, alter or repeal the provisions of the Agreement, whether by merger or consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series D Preferred Units or the holders thereof. Notwithstanding anything to the contrary contained herein, none of the following shall be deemed to materially and adversely affect any such right, preference, privilege or voting power or otherwise require the vote or consent of the holders of the Series D Preferred Units: (A) the occurrence of any Event so long as either (1) the Partnership is the surviving entity, such entity is the principal direct subsidiary of a publicly traded REIT whose common equity is traded on the New York Stock Exchange and the Series D Preferred Units remain outstanding with the terms thereof materially unchanged or (2) interests in an entity having substantially the same rights and terms as the Series D Preferred Units are substituted for the Series D Preferred Units and such entity is the principal direct subsidiary of a publicly traded REIT whose common equity is traded on the New York

Stock Exchange, (B) any increase in the amount of the authorized preferred Partnership Units or the creation or issuance of any other series or class of preferred Partnership Units or any increase in the amount of any other series of preferred Partnership Units, in each case ranking on a parity with or junior to the Series D Preferred Units with respect to payment of distributions and the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership and (C) the dissolution, liquidation and/or winding up of the Partnership.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series D Preferred Units shall have been converted or redeemed.

For purposes of the foregoing provisions of this Section 4, each Series D Preferred Unit shall have one (1) vote. Except as otherwise required by applicable law or as set forth in the Agreement or herein, the Series D Preferred Units shall not have any voting rights or powers and the consent of the holders thereof shall not be required for the taking of any action.

5. *Distributions*.

(a) With respect to each Distribution Period and subject to the rights of the holders of preferred Partnership Units ranking senior to or on parity with the Series D Preferred Units, the holders of Series D Preferred Units shall be entitled to receive, when, as and if declared by the General Partner, out of assets of the Partnership legally available for the payment of distributions, quarterly cumulative cash distributions (the "Series D Preferred Return") in an amount per Series D Preferred Unit equal to the greater of (i) $0.6725 and (ii) the amount of the regular quarterly cash distribution for such Distribution Period upon the number of Common Units (or portion thereof) into which such Series D Preferred Unit is then convertible in accordance with Section 7 of this Exhibit B. Notwithstanding anything to the contrary contained herein, the amount of distributions described under either clause (i) or (ii) of this paragraph for the initial Distribution Period, or any other period shorter than a full Distribution Period, shall be prorated and computed on the basis of a 365/366 day year and the actual number of days in such period. The distributions upon the Series D Preferred Units for each Distribution Period shall, if and to the extent declared or authorized by the General Partner on behalf of the Partnership, be paid in arrears (without interest or other amount) on the Distribution Payment Date with respect thereto, and, if not paid on such date, shall accumulate, whether or not there are funds legally available for the payment thereof and whether or not such distributions are declared or authorized. The record date for distributions upon the Series D Preferred Units for any Distribution Period shall be the same as the record date for the distributions upon the Common Units for such Distribution Period (or, if no such record is set for the Common Units, the fifteenth day of the calendar month in which the applicable Distribution Payment Date falls). Accumulated and unpaid distributions for any past Distribution Periods may be declared and paid at any time, without reference

to any Distribution Payment Date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the General Partner. Any distribution payment made upon the Series D Preferred Units shall first be credited against the earliest accumulated but unpaid distributions due with, respect to such Units which remains payable. No interest, or sum of money in lieu of interest, shall be owing or payable in respect of any distribution payment or payments on the Series D Preferred Units, whether or not in arrears.

(b) No distribution on the Series D Preferred Units shall be declared by the General Partner or paid or set apart for payment by the Partnership at such time as the terms and provisions of any agreement of the Partnership, including any Debt Instrument, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof, or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law. Notwithstanding the foregoing, distributions on the Series D Preferred Units shall accumulate whether or not any of the foregoing restrictions exist.

(c) Except as provided in Section 5(d) of this Exhibit B, so long as any Series D Preferred Units are outstanding, (i) no distributions (other than in Common Units or other Partnership Units ranking junior to the Series D Preferred Units as to payment of distributions and amounts upon liquidation, dissolution or winding-up of the Partnership) shall be declared or paid or set apart for payment upon the Common Units or any other class or series of Partnership Units ranking, as to payment of distributions or amounts distributable upon liquidation, dissolution or winding-up of the Partnership, on a parity with or junior to the Series D Preferred Units, for any period and (ii) no Common Units or other Partnership Units ranking junior to or on a parity with the Series D Preferred Units as to payment of distributions or amounts upon liquidation, dissolution or winding-up of the Partnership, shall be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such Units) by the Partnership (except by conversion into or exchange for other Units ranking junior to the Series D Preferred Units as to payment of distributions and amounts upon liquidation, dissolution or winding-up of the Partnership or by redemptions pursuant to Article IX of the Agreement) unless, in the case of either clause (i) or (ii), full cumulative distributions have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Series D Preferred Units for all Distribution Periods ending on or prior to the distribution payment date for the Common Units or such other class or series of Unit or the date of such redemption, purchase or other acquisition.

(d) When distributions are not paid in full (or a sum sufficient for such full payment is not set apart for such payment) upon the Series D Preferred Units and any other Partnership Units ranking on a parity as to payment of distributions with the Series D Preferred Units, all distributions declared upon the Series D Preferred Units and any other Partnership Units ranking on a parity as to payment of distributions with the Series D Preferred Units shall be declared pro rata so that the amount of distributions declared per Series D Preferred Unit and such other Partnership Units shall in all cases bear to each other the same ratio that accrued distributions per Series D Preferred Unit and such other Partnership Units (which shall not include any accumulation in respect of unpaid distributions for prior distribution periods if such Partnership Units do not have cumulative distributions) bear to each other.

(e) Holders of Series D Preferred Units shall not be entitled to any distributions, whether payable in cash, property or Units, in excess of the cumulative distributions described in Section 5(a) above.

(f) Distributions with respect to the Series D Preferred Units are intended to qualify as permitted distributions of cash that are not treated as a disguised sale within the meaning of Treasury Regulation Sec.1.707-4 and the provisions of this Exhibit B shall be construed and applied consistently with such Treasury Regulations.

6. *Liquidation Preference*.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, it is the intent of the Partners that before any payment or distribution of the assets of the Partnership (whether capital or surplus) shall be made to or set apart for the holders of Common Units or any other Partnership Units ranking junior to the Series D Preferred Units as to the distribution of assets upon the liquidation, dissolution or winding-up of the Partnership, the holders of the Series D Preferred Units shall, with respect to each Series D Preferred Unit, be entitled to receive, according to their positive Capital Account balances, out of the assets of the Partnership available for distribution to Partners after payment or provision for payment of all debts and other liabilities of the Partnership, an amount equal to $36.55, plus an amount equal to all distributions (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution. If, upon any such voluntary or involuntary liquidation, dissolution or winding up of the Partnership, the assets of the Partnership, or proceeds thereof, distributable among the holders of the Series D Preferred Units are insufficient to pay in full the preferential amount aforesaid on the Series D Preferred Units and liquidating payments on any other Partnership Units ranking, as to payment of distributions and amounts upon the liquidation, dissolution or winding-up of the Partnership, on a parity with the Series D Preferred Units, then it is the intent of the Partners that such assets, or the proceeds thereof, shall be distributed among the holders of Series D Preferred Units and any such other Partnership Units ratably in accordance with the respective amounts that would be payable on such Series D Preferred Units and such other Partnership Units if all amounts payable thereon were paid in full. The General Partner shall apply the provisions of this Agreement, in accordance with the regulations under Code Section 704(b), to achieve the intent of the Partners expressed in this paragraph to the maximum extent practicable. For the purposes of this Section 6, none of (i) a consolidation, merger or other business combination of the Partnership with or into another entity, (ii) a merger of another entity with or into the Partnership or (iii) a sale, lease or conveyance of all or substantially all of the Partnership's assets, properties or business shall be deemed to be a liquidation, dissolution or winding-up of the Partnership.

(b) Written notice of such liquidation, dissolution or winding-up of the Partnership, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series D Preferred Units at the respective addresses of such holders as the same shall appear on the records of the Partnership.

(c) After payment of the full amount of liquidating distributions to which they are entitled as provided in Section 6(a) of this Exhibit B, the holders of Series D Preferred Units shall have no right or claim to any of the remaining assets of the Partnership.

7. *Conversion*. Holders of Series D Preferred Units shall have the right to convert all or a portion of such Partnership Units into Common Units, as follows:

(a) A holder of Series D Preferred Units shall have the right, at such holder's option, at any time, to convert any whole number of Series D Preferred Units, in whole or in part, into Common Units. Each Series D Preferred Unit shall be convertible into one Common Unit subject to adjustment as described in Section 7(c) hereof (the "Conversion Ratio"). No fractional Common Units will be issued upon any conversion of Series D Preferred Units. Instead, the number of Common Units to be issued upon each conversion shall be rounded to the nearest whole number of Common Units.

(b) To exercise the conversion right, the holder of each Series D Preferred Unit to be converted shall execute and deliver to the General Partner, at the principal office of the Partnership**,** a written notice (the "Conversion Notice") indicating that the holder thereof elects to convert such Series D Preferred Unit. Unless the Common Units issuable on conversion are to be issued in the same name as the name in which such Series D Preferred Unit is registered, each Series D Preferred Unit

surrendered for conversion shall be accompanied by instruments of transfer, in form reasonably satisfactory to the Partnership, duly executed by the holder or such holder's duly authorized attorney and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Partnership demonstrating that such taxes have been paid).

As promptly as practicable after delivery of the Conversion Notice as aforesaid, the General Partner shall reflect the conversion and the issuance of Common Units issuable upon the conversion of such Series D Preferred Units on the books and records of the Partnership in accordance with the provisions of this Section 7. In addition, the Partnership shall deliver to the holder at its address as reflected on the records of the Partnership, a copy of such amendment.

A holder of Series D Preferred Units at the close of business on the record date for any Distribution Period shall be entitled to receive the distribution payable on such Partnership Units on the corresponding Distribution Payment Date notwithstanding the conversion of such Series D Preferred Units following such record date and prior to such Distribution Payment Date and shall have no right to receive any distribution for such Distribution Period in respect of the Common Units into which such Series D Preferred Units were converted. Except as provided herein, the Partnership shall make no payment or allowance for unpaid distributions, whether or not in arrears, on converted Series D Preferred Units or for distributions on the Common Units that are issued upon such conversion.

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the Conversion Notice is received by the Partnership as aforesaid, and the person or persons in whose name or names any Common Units shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of such Partnership Units at such time on such date, and such conversion shall be at the Conversion Ratio in effect at such time and on such date unless the transfer books of the Partnership shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the close of business on the next succeeding day on which such transfer books are open, but such conversion shall be at the Conversion Ratio in effect on the date on which such Partnership Units have been surrendered and such notice received by the Partnership.

(c) If the Partnership shall, after the date on which the Series D Preferred Units are first issued (the "Issue Date"), (i) pay or make a distribution to holders of its Partnership Units in Common Units, (ii) subdivide its outstanding Common Units into a greater number of Partnership Units or distribute Common Units to the holders thereof, (iii) combine its outstanding Common Units into a smaller number of Partnership Units or (iv) issue any Partnership Units by reclassification of its Common Units, the Conversion Ratio in effect at the opening of business on the day following the date fixed for the determination of holders entitled to receive such distribution or at the opening of business on the day next following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series D Preferred Unit thereafter surrendered for conversion shall be entitled to receive the number of Common Units or other Partnership Units or securities that such holder would have owned or have been entitled to receive after the happening of any of the events described above had such Series D Preferred Unit been converted immediately prior to the record date in the case of a distribution or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subsection (c) shall become effective immediately after the opening of business on the day next following the record date (except as provided in subsection (g) below) in the case of a distribution and shall become effective immediately after the opening of business on the day next following the effective date in the case of a subdivision, combination or reclassification.

(d) If the Partnership shall be a party to any transaction (including, without limitation, a merger, consolidation, self tender offer, for all or substantially all of the Common Units, sale of all or

substantially all of the Partnership's assets or recapitalization of the Common Units and excluding any transaction as to which subsection (c) of this Section 7 applies) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Units shall be converted into the right to receive other partnership interests, shares, stock, securities or other property (including cash or any combination thereof), each Series D Preferred Unit which is not converted into the right to receive other partnership interests, shares, stock, securities or other property in connection with such Transaction shall thereafter be convertible into the kind and amount of shares, stock, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a holder of that number of Common Units into which one Series D Preferred Unit was convertible immediately prior to such Transaction, assuming such holder of Common Units is not a Person with which the Partnership consolidated or into which the Partnership merged or which merged into the Partnership or to which such sale or transfer was made, as the case may be (a "Constituent Person"), or an affiliate of a Constituent Person. The Partnership shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this subsection (d), and it shall not consent or agree to the occurrence of any Transaction until the Partnership has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series D Preferred Units that will contain provisions enabling the holders of Series D Preferred Units that remain outstanding after such Transaction to convert into the consideration received by holders of Common Units at the Conversion Ratio in effect immediately prior to such Transaction (with the holder having the option to elect the type of consideration if a choice was offered in the Transaction). The provisions of this subsection (d) shall similarly apply to successive Transactions.

(e) If:

(i) the Partnership shall declare a distribution on the Common Units (other than a cash distribution) or there shall be a reclassification, subdivision or combination of Common Units; or

(ii) the Partnership shall authorize the granting to the holders of the Common Units of rights, options or warrants to subscribe for or purchase any Partnership Units of any class or any other rights, options or warrants; or

(iii) there shall be any reclassification of the Common Units or any consolidation or merger to which the Partnership is a party and for which approval of any partners of the Partnership is required, involving the conversion or exchange of Common Units into securities or other property, or a self tender offer by the Partnership for all or substantially all of the Common Units, or the sale or transfer of all or substantially all of the assets of the Partnership as an entirety; or

(iv) there shall occur the voluntary or involuntary liquidation, dissolution or winding-up of the Partnership,

then the Partnership shall cause to be mailed to the holders of the Series D Preferred Units at their addresses as shown on the records of the Partnership as promptly as possible a notice stating (A) the date on which a record is to be taken for the purpose of such distribution of rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Units of record to be entitled to such distribution of rights, options or warrants are to be determined. or (B) the date on which such reclassification, subdivision, combination, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up is expected to become effective, and the date as of which it is expected that holders of Common Units of record shall be entitled to exchange their Common Units for securities or other property, if any, deliverable upon such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this Section 7.

(f) Whenever the Conversion Ratio is adjusted as herein provided, the Partnership shall prepare a notice of such adjustment of the Conversion Ratio setting forth the adjusted Conversion Ratio and the date such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Ratio to the holder of each Series D Preferred Unit at such holder's last address as shown on the records of the Partnership.

(g) In any case in which subsection (c) of this Section 7 provides that an adjustment shall become effective on the date next following the record date for an event, the Partnership may defer until the occurrence of such event issuing to the holder of any Series D Preferred Unit converted after such record date and before the occurrence of such event the additional Common Units issuable upon such conversion by reason of the adjustment required by such event over and above the Common Units issuable upon such conversion before giving effect to such adjustment.

(h) For purposes of this Section 7, the number of Common Units at any time outstanding shall not include any Common Units then owned or held by or for the account of the Partnership. The Partnership shall not make any distribution on Common Units held in the treasury of the Partnership.

(i) If any action or transaction would require adjustment of the Conversion Ratio pursuant to more than one subsection of this Section 7, only one adjustment shall be made, and such adjustment shall be the amount of adjustment that has the highest absolute value.

(j) If the Partnership shall take any action affecting the Common Units, other than actions described in this Section 7, that in the reasonable judgment of the General Partner would materially and adversely affect the conversion rights of the holders of the Series D Preferred Units, the Conversion Ratio for the Series D Preferred Units may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the General Partner determines to be equitable in the circumstances.

(k) The Partnership covenants that Common Units issued upon conversion of the Series D Preferred Units shall be validly issued, fully paid and nonassessable and the holder thereof shall be entitled to rights of a holder of Common Units specified in the Agreement. Prior to the delivery of any securities that the Partnership shall be obligated to deliver upon conversion of the Series D Preferred Units, the Partnership shall endeavor to comply with all federal and state laws and regulations thereunder requiring the registration of such securities, with, or any approval of or consent to the delivery thereof, by any governmental authority; provided that, if the holder of the Series D Preferred Units to be converted does not provide evidence satisfactory to the General Partner that it is an "accredited investor" as defined in Rule 501 under the Securities Act of 1933, as amended, the Partnership may in its sole discretion, instead of issuing Common

Units, pay to such holder an amount with respect to each such Series D Preferred Unit equal to the Cash Purchase Price that would be payable if the Common Units otherwise issuable with respect to each such Series D Preferred Unit were redeemed for cash on such date of delivery. .

(1) The Partnership will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of Common Units or other securities or property on conversion of the Series D Preferred Units pursuant hereto; provided, however, that the Partnership shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of Common Units or other securities or property in a name other than that of the holder of the Series D Preferred Units to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Partnership the amount of any such tax or established, to the reasonable satisfaction of the Partnership, that such tax has been paid.

EXHIBIT C

Series D Redemption Rights Exhibit

The Redemption Rights granted by the Partnership to the holders of Series D Preferred Units pursuant to *Section 9.1* of the Agreement or otherwise shall be subject to the following terms and conditions:

1. **Definitions.** Unless otherwise indicated, capitalized terms shall have the meanings set forth in the Agreement. The following terms and phrases shall, for purposes of this Exhibit C and the Agreement, have the meanings set forth below:

"**Anti-dilution Provisions**" shall mean the provisions set forth in *Paragraph 10* of this Exhibit C.

"**Conversion Factor**" shall mean 100%, provided that such factor shall be adjusted in accordance with the Anti-dilution Provisions.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, or any successor statute.

"**Exercising Partner**" shall have the meaning set forth in *Paragraph 2* of this Exhibit.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, or any successor statute.

"Series D Cash Purchase Price" shall mean for each Series D Preferred Unit an amount of cash equal to $36.55 plus any accrued and unpaid distributions with respect to such Series D Preferred Unit

"Series D Election Notice" shall mean the written notice to be given by the General Partner to the Exercising Partners in response to the receipt by the General Partner of a Series D Exercise Notice from such Exercising Partners, the form of which Series D Election Notice is attached hereto as *Schedule 2*.

"Series D Exercise Notice" shall mean a written notice delivered by an Exercising Partner pursuant to *Paragraph 2* of this Exhibit C, the form of which Series D Exercise Notice is attached hereto as *Schedule 1*.

"Series D Offered Interests" shall mean the Partnership Units of an Exercising Partner identified in an Series D Exercise Notice.

"Series D Purchase Price" shall mean the Series D Cash Purchase Price or the Series D Share Purchase Price, or a combination thereof.

"Series D Share Purchase Price" shall mean, with respect to the exercise of any Redemption Rights with respect to Series D Preferred Units pursuant to a Series D Exercise Notice, a number of Series D Preferred Shares of the General Partner equal to the product of (i) the number of Series D Preferred Units being redeemed multiplied by (ii) the Conversion Factor; *provided*, *however*, that in the event the General Partner issues to all holders of Series D Preferred Shares rights, options, warrants or convertible or exchangeable securities entitling the shareholders to subscribe for or purchase Series D Preferred Shares, or any other securities or property (collectively, **"Rights"**) then the Series D Share Purchase Price shall also include such Rights that a holder of that number of Series D Preferred Shares as calculated above would be entitled to receive.

2. **Delivery of Series D Exercise Notices.** Any Redemption Partner may, subject to the limitations set forth herein, deliver to the General Partner written notice pursuant to which such Redemption Partner (an "**Exercising Partner**") elects to exercise all or a portion of its Redemption Rights with respect to Series D Preferred Units.

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3. **Limitations on Delivery of Series D Exercise Notices.** The ability of Redemption Partners to exercise Redemption Rights with respect to Series D Preferred Units shall be restricted as follows:

(a) No more than three (3) Series D Exercise Notices may be delivered to the General Partner during each calendar year period; provided, however, that all Redemption Partners holding Series D Preferred Units shall be notified by the General Partner within five (5) Business Days after the General Partner receives a Series D Exercise Notice, and each such Redemption Partner shall be entitled to elect to join in such Series D Exercise Notice by giving its own Series D Exercise Notice to the General Partner within five (5) Business Days after such notice is received from the General Partner;

(b) No Series D Exercise Notice may be delivered to the General Partner prior to July 26, 2003 (the "Lock-up Period");

(c) Notwithstanding the foregoing provisions of this Paragraph 3 to the contrary, after the death of any Redemption Partner holding Series D Preferred Units, the fiduciary or other duly authorized representative of such Redemption Partner's estate shall be entitled to deliver a Series D Exercise Notice to the General Partner with respect to the Redemption Rights of such deceased Partner with respect to Series D Preferred Units; provided, however, upon any such exercise occurring during the Lock-up Period, the General Partner may elect, in its sole and absolute discretion, not to permit the other

Redemption Partners holding Series D Preferred Units to exercise their respective rights under Paragraph 3(a) to join in the giving of such Series D Exercise Notice.

(d) The minimum Series D Offered Interest that may be reflected in a Series D Exercise Notice, or under any notice given by a Redemption Partner electing to join in the giving of a Series D Exercise Notice pursuant to Paragraph 3(a), shall be comprised of two thousand (2000) or more Series D Preferred Units or, if such Redemption Partner holds less than two thousand (2000) Series D Preferred Units at such time, all of the Series D Preferred Units held by such Redemption Partner.

4. **Limitation on Exercise of Redemption Rights**. Redemption Rights may be exercised in whole or in part at any time and from time to time, subject to the limitations contained herein, and provided that the General Partner may not elect to pay the Series D Share Purchase Price if it would cause a violation of the ownership limitations in the General Partner's Organizational Documents or cause the General Partner to no longer be in compliance with the REIT Requirements.

5. **Closing, Delivery of Series D Election Notice**. The General Partner shall, within thirty (30) days after the earlier to occur of (i) the receipt by the General Partner of a Series D Exercise Notice from all of the Redemption Partners holding Series D Preferred Units, and (ii) the expiration of the second five (5) Business Day period referred to in Paragraph 3(a) hereof, deliver to the Exercising Partners a Series D Election Notice, which Series D Election Notice shall specify whether the Partnership or the General Partner will satisfy the obligation to pay the Series D Purchase Price, shall set forth the computation of the Series D Purchase Price and shall specify the form of the Purchase Price (which shall be in accordance with and subject to Section 9.1 of the Agreement) to be paid by the General Partner or the Partnership to each Exercising Partner and the date, time and location for completion of the purchase and sale of the Series D Offered Interests, which date shall, in no event be more than (i) ten (10) days after delivery by the General Partner of the Series D Election Notice for Series D Offered Interests with respect to which the General Partner has elected to pay the Series D Share Purchase Price or (ii) sixty (60) days after the initial date of receipt by the General Partner of the Series D Exercise Notice for Series D Offered Interests with respect to which the Partnership must pay, or the General Partner has elected to pay, the Series D Cash Purchase Price; provided, however, that such sixty (60) day period may be extended for up to an additional one hundred eighty (180) day period to the extent required for the General Partner to cause additional Shares to be issued to

provide financing to be used to acquire the Series D Offered Interests. If the General Partner fails to deliver any Series D Election Notice within such thirty (30) day period, it shall be deemed to have given a Series D Election Notice on the last day of such period specifying that the Partnership will redeem the applicable Series D Offered Interests for the Series D Cash Purchase Price, at the Partnership's principal office, at 10 a.m. local time on the sixtieth (60th) day thereafter. Notwithstanding the foregoing, the General Partner and the Partnership agree to use their best efforts to cause the closing of the acquisition of Series D Offered Interests hereunder to occur as quickly as possible.

6. **Closing Deliveries**. At the closing of the redemption or purchase and sale of Series D Offered Interests, payment of the Series D Purchase Price and/or delivery of the Series D Preferred Shares shall be accompanied by proper instruments of transfer and assignment and by the delivery of (i) representations and warranties of (A) the Exercising Partner with respect to its due authority to transfer all of the right, title and interest in and to such Series D Offered Interests to the General Partner and with respect to the status of such Series D Offered Interests being free and clear of all Liens, and (B) the General Partner with respect to its due authority for acquiring such Series D Offered Interests, and (ii) to the extent that any Series D Preferred Shares are issued to the Exercising Partner, (A) an opinion of counsel for the General Partner, reasonably satisfactory to such Exercising Partner, to the effect that such Series D Preferred Shares have been duly authorized, are validly issued, fully-paid and nonassessable, and (B) a certificate or certificates evidencing the Series D Preferred Shares to be issued and registered in the name of such Exercising Partner or its designee. With respect to the exercise of a Redemption Right for which the Partnership or the General Partner has elected to pay the Series D Cash Purchase Price, the Purchase Price shall be paid by cashier's check or wire transfer of immediately available funds, in each case as the General Partner is directed in writing by a duly authorized officer or agent of the recipient.

7. **Term of Redemption Rights**. The Redemption Rights shall continue in full force and effect for the term of the Partnership.

8. **Covenants of the General Partner.** The General Partner covenants and agrees as follows:

(a) The General Partner shall at all times reserve for issuance and keep available, free from preemptive rights, out of its authorized but unissued Series D Preferred Shares, such number of Series D Preferred Shares as may be necessary to enable the General Partner to issue Series D Preferred Shares in full satisfaction of all Redemption Rights which are from time to time outstanding (assuming no limits with respect to the ownership of such Series D Preferred Shares applied under the General Partner's Organization Documents or the REIT Requirements, and that the General Partner elected to pay the Series D Share Purchase Price with respect to all Redemption Rights relating to Series D Preferred Units).

(b) The Redemption Partners shall receive in a timely manner all reports filed by the General Partner with the SEC and all other communications transmitted from time to time by the General Partner to its shareholders generally.

(c) The General Partner shall ensure that all Series D Preferred Shares which are issued in respect of the Series D Purchase Price will upon issue be fully paid and non-assessable and the General Partner will pay all taxes (except to the extent provided in Paragraph 9 of this Exhibit C), charges and Liens with respect to the issue thereof; provided, however, that the General Partner shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of Series D Preferred Shares in respect of the Series D Purchase Price in a name other than that of the Exercising Partner, and no such issue or delivery shall be made unless the Person requesting such issue has paid to the General Partner the amount of any such tax, or has established to the satisfaction of the General Partner that such tax has been paid.

9. **Redemption Partners' Covenants**. Each Redemption Partner covenants and agrees with the General Partner that all Series D Offered Interests tendered to the General Partner in accordance with the exercise of Redemption Rights herein provided shall be delivered to the General Partner free and clear of all Liens and should any Liens exist or arise with respect to such Series D Offered Interests, the General Partner shall be under no obligation to acquire the same unless the Series D Cash Purchase Price will be sufficient to cause such existing Lien to be discharged in full upon application of all or a part of such consideration and the

General Partner is expressly authorized to apply such portion of the Series D Purchase Price as may be necessary to satisfy any indebtedness in full and to discharge such Lien in full. Each Redemption Partner further agrees that, in the event any state or local property transfer tax is payable as a result of the transfer of its Series D Offered Interests to the General Partner (or its designee), such Redemption Partner shall assume and pay such transfer tax.

10. **Anti-dilution Provisions**. The Conversion Factor shall be subject to adjustment from time to time as hereinafter provided and shall be expressed as a percentage, calculated to the nearest one-thousandth of one percent (.001%). If the General Partner (i) declares or pays a dividend on its outstanding Series D Preferred Shares in Series D Preferred Shares, or makes a distribution to all holders of its outstanding Series D Preferred Shares in Series D Preferred Shares, (ii) subdivides its outstanding Series D Preferred Shares, or (iii) combines its outstanding Series D Preferred Shares into a smaller number of Series D Preferred Shares, then the Conversion Factor shall be adjusted by multiplying the Conversion Factor by a fraction, the numerator of which shall be the number of Series D Preferred Shares issued and outstanding on the record date for such dividend, distribution, subdivision or combination (assuming for the purposes of such calculation that such dividend, distribution, subdivision or combination has occurred as of such time), and the denominator of which shall be the actual number of Series D Preferred Shares (assuming for the purposes of such calculation that such dividend, distribution, subdivision or combination has not yet occurred as of such time) issued and outstanding on the record date for such dividend, distribution, subdivision or combination. Any such adjustment to the Conversion Factor shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event. For the purposes of the calculations to be made under this Paragraph 10, the number of Series D Preferred Shares at any time outstanding shall not include Series D Preferred Shares held in the treasury of the General Partner, but shall include Series D Preferred Shares issuable in respect of scrip certificates issued in lieu of fractions of Series D Preferred Shares. The General Partner shall not pay any dividend or make any distribution on Series D Preferred Shares held in the treasury of the General Partner.

11. **Fractions of Shares**. No fractional Series D Preferred Shares shall be issued in respect of any Series D Share Purchase Price. Instead, the General Partner shall pay, on the closing date of the acquisition of the applicable Series D Preferred Offered Interest, a cash adjustment in respect of any fraction of a Series D Preferred Share that would otherwise be issuable in respect of such Series D Share Purchase Price. Such cash adjustment shall be in an amount equal to the same fraction multiplied by $36.55.

12. **Requests for Computation of Conversion Factor**. Each Redemption Partner shall be entitled to request, from time to time, that the General Partner compute the Conversion Factor then in effect by delivering written notice to the General Partner requesting such computation, provided, however, that no Redemption Partner may request such computation more than once during any calendar year. Upon its receipt of any such request, the General Partner shall compute the Conversion Factor as the same may have been theretofore adjusted in accordance with this Exhibit C, and shall prepare and promptly deliver to the requesting party a certificate signed by the chief financial officer or treasurer of the General Partner stating, to the best of such person's knowledge, the Conversion Factor and the date as of which the same was calculated, and showing in reasonable detail the facts pursuant to which the Conversion Factor had been theretofore adjusted.

13. **Provisions in Case of Consolidation, Merger or Sale of Assets**. In the event of any consolidation of the General Partner with, or merger of the General Partner into, any other Person, any merger or consolidation of another Person into the General Partner (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding Series D Preferred Shares of the General Partner), or the Transfer of the General Partner's Partnership Interest (a "General Partner Reorganization"), in each case to the extent the same does not constitute a violation of the Agreement or is otherwise consented to by the Redemption Partners, the Person formed by such consolidation or resulting from such merger or which acquires such Partnership Interest and other assets of the General Partner, as the case may be (the "Surviving General Partner"), shall have the right and the duty to amend this Exhibit C as set forth below in this Paragraph 13. The Surviving General Partner shall in good faith arrive at a new method for the calculation of the Series D Purchase Price for a Series D Preferred Unit after any such General Partner Reorganization so as to approximate the existing method for such calculation as closely as reasonably possible. Such calculation shall take into account, among other things, the kind and amount of securities, cash and other property that was receivable upon such General Partner Reorganization by a holder of a number of Series D Preferred Shares and Rights in exchange for which one Series D Preferred Unit could have been acquired by the General Partner immediately prior to the consummation of such General Partner Reorganization. Such amendment to this Exhibit C shall provide for adjustments to such method of calculation which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Exhibit C with respect to the Conversion Factor. The above provisions of this Paragraph 13 shall similarly apply to successive General Partner Reorganizations permitted or consented to hereunder.

SCHEDULE 1 TO SERIES D REDEMPTION RIGHTS EXHIBIT
Series D Exercise Notice

To: [GENERAL PARTNER AT ITS THEN CURRENT ADDRESS]

Reference is made to that certain Amended and Restated Limited Partnership Agreement of The Macerich Partnership, L.P. dated , 1994, [as amended by] (the "**Partnership Agreement**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Partnership Agreement. Pursuant to Article IX of the Partnership Agreement and Paragraph 2 of the Series D Redemption Rights Exhibit to the Partnership Agreement, the undersigned, being a limited partner of the Partnership (an "Exercising Partner"), hereby elects to exercise its Redemption Rights as to a portion or portions of its Partnership Interest, all as specified opposite its name below:

Dated:

Exercising Partner	Series D Offered Interest Units
	Series D Preferred

Exercising Partner:

_____

_____

(Signature)

SCHEDULE 2 TO SERIES D REDEMPTION RIGHTS EXHIBIT

Series D Election Notice

To: [EXERCISING PARTNER AT THEN-CURRENT ADDRESS]

Reference is made to that certain Amended and Restated Limited Partnership Agreement of The Macerich Partnership, L.P. (the "Partnership Agreement"), pursuant to which the undersigned and the other parties thereto formed a Delaware limited partnership known as The Macerich Partnership, L.P. (the "Partnership"). All capitalized terms used but not defined herein shall have the meanings set forth in the Partnership Agreement. Pursuant to Paragraph 5 of the Series D Redemption Rights Exhibit, the undersigned, being the general partner of the Partnership, hereby notifies you as an Exercising Partner that (a) the Series D Purchase Price for the Series D Offered Interests as to which your Redemption Rights are being exercised is $, (b) [the Partnerships will redeem Series D Preferred Units of such Series D Offered Interests and pay the Series D Purchase Price with respect thereto.] [and/or] [the General Partner will acquire Series D Preferred Units of such Series Offered Interests and pay the Series D Purchase Price with respect thereto.] (c) $ of the Series D Purchase Price is payable in cash and the balance thereof is payable by issuance of Series D Preferred Shares; and (d) the closing of the redemption or purchase and sale of the Series D Offered Interests as to which the Redemption Rights are being exercised shall take place at the offices of at a.m., local time, on , .

Dated:

THE MACERICH COMPANY,
a Maryland corporation

By: _____

Its: _____

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Exhibit 10.2

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT, dated as of July 26, 2002 (this "*Agreement*"), by and among The Macerich Partnership, L.P., a Delaware limited partnership (the "*Partnership*"),The Macerich Company, a Maryland corporation (the "*Company*"), and the parties whose names are set forth under the caption "*Investors*" on the signature pages hereof (the "*Investors*").

WHEREAS, pursuant to that certain Master Agreement by and among Westcor Realty Limited Partnership ("*WRLP*"), the Partnership, Macerich Galahad LP, The Westcor Company Limited Partnership, The Westcor Company II Limited Partnership, Macerich TWC II LLC, Macerich TWC II Corp., Macerich WRLP LLC ("*Macerich WRLP LLC*"), Macerich WRLP Corp. ("*Macerich WRLP Corp.*"), Eastrich No. 128 Corp. ("*Eastrich*"), and certain individuals (the "*Partners*") dated as of June 29, 2002, and that certain Purchase and Sale and Contribution Agreement by and among WRLP, the Partnership, Macerich WRLP LLC, Macerich WRLP Corp., Eastrich and the Partners dated as of June 29, 2002 (collectively, the "*Master Agreements*") the Partnership has agreed to issue 1,961,345 Series D Preferred Units of the Partnership (the "*Series D Preferred Units*") to the Investors; and

WHEREAS, the Series D Preferred Units (i) may be converted into Common Units of the Partnership ("*Common Units*") which may in turn be redeemed, under certain circumstances, for shares of the Company's Common Stock, par value $.01 per share (the "*Common Shares*"), and (ii) may be redeemed, under certain circumstances, for shares of the Company's Series D Cumulative Convertible Preferred Stock, par value $.01 per share (the "*Preferred Shares*"), which are in turn convertible into Common Shares; and

WHEREAS, in connection with the Master Agreements, the Company has agreed to register under the Securities Act of 1933, as amended (the "*Securities Act*", which term includes the rules and regulations thereunder, all as the same shall be in effect at the relevant time) (i) any Common Shares issuable upon redemption of Common Units issuable to Investors, (ii) any Preferred Shares issuable upon redemption of Series D Preferred Units issuable to Investors and (iii) any Common Shares issuable upon conversion of such Preferred Shares (collectively, the "*Registrable Shares*"); and

WHEREAS, the parties hereto desire to enter into this Agreement to evidence the foregoing agreement of the Company and the mutual covenants of the parties relating thereto.

NOW, THEREFORE, in consideration of the foregoing and the covenants of the parties set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, subject to the terms and conditions set forth herein, the parties hereby agree as follows:

Section 1. *Certain Definitions.* In this Agreement the following terms shall have the following respective meanings:

"*Commission*" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"*Common Shares*" shall have the meaning ascribed to in the recitals to this Agreement.

"*Common Units*" shall have the meaning ascribed to it in the recitals to this Agreement.

"*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the relevant time.

"*Filing Date*" shall have the meaning ascribed to it in Section 2(a) of this Agreement.

"*Holders*" shall mean (i) the Investors, (ii) each Person holding Series D Preferred Units or Common Units that have been transferred or assigned by an Investor or another Holder, which transfer or assignment is properly completed in accordance with the terms of the Partnership Agreement and Section 8 of this Agreement and (iii) each Person holding Registrable Shares as a result of a transfer or assignment to that Person of Registrable Shares other than pursuant to an effective Registration

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Statement or Rule 144, which transfer or assignment is properly completed in accordance with the Company's Articles of Incorporation, as amended from time to time, and Section 8 of this Agreement.

"*Indemnified Party*" shall have the meaning ascribed to it in Section 5(c) of this Agreement.

"*Indemnifying Party*" shall have the meaning ascribed to it in Section 5(c) of this Agreement.

"*Issuance Registration Statement*" shall have the meaning ascribed to it in Section 2(a) of this Agreement.

"*Partnership Agreement*" shall mean the Amended and Restated Limited Partnership Agreement of the Partnership dated as of March 16, 1994, as amended from time to time.

"*Person*" shall mean an individual, corporation, partnership, limited liability company, estate, trust, association, private foundation, joint stock company or other entity.

"*Preferred Shares*" shall have the meaning ascribed to it in the recitals to this Agreement.

The terms "*Register*," "*Registered*" and "*Registration*" refer to a registration effected by preparing and filing a Registration Statement in compliance with the Securities Act providing for the issuance to, or the sale by, the Holders of Registrable Shares in accordance with the method or methods of distribution described in such Registration Statement, and the declaration or ordering of the effectiveness of such Registration Statement by the Commission.

"*Registrable Shares*" shall have the meaning ascribed to it in the recitals to this Agreement.

"*Registration Expenses*" shall mean all out-of-pocket expenses (excluding Selling Expenses) incurred by the Company in connection with any attempted or completed registration pursuant to Sections 2 and 3 hereof, including, without limitation, the following: (a) all registration, filing and listing fees; (b) fees and expenses of compliance with federal and state securities or real estate syndication laws (including, without limitation, reasonable fees and disbursements of counsel in connection with state securities and real estate syndication qualifications of the Registrable Shares under the laws of such jurisdictions as the Holders may reasonably designate); (c) printing (including, without limitation, expenses of printing or engraving certificates for the Registrable Shares in a form eligible for deposit with The Depository Trust Company and otherwise meeting the requirements of any securities exchange on which they are listed and of printing registration statements and prospectuses), messenger, telephone, shipping and delivery expenses; (d) fees and disbursements of counsel for the Company; (e) fees and disbursements of all independent public accountants of the Company; (f) Securities Act liability insurance if the Company so desires; (g) fees and expenses of other Persons reasonably necessary in connection with the registration, including any experts, retained by the Company; (h) fees and expenses incurred in connection with the listing of the Registrable Shares on each securities exchange on which securities of the same class or series are then listed; and (i) fees and expenses associated with any filing with the National Association of Securities Dealers, Inc. required to be made in connection with the Registration Statement.

"*Registration Statement*" shall mean either an Issuance Registration Statement or a Shelf Registration Statement.

"*Rule 144*" shall mean Rule 144 promulgated by the Commission under the Securities Act, or any successor rule or regulation.

"*Securities Act*" shall have the meaning ascribed to it in the recitals to this Agreement.

"*Selling Expenses*" shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to any sale of Registrable Shares.

"*Series D Preferred Units*" shall have the meaning ascribed to it in the recitals to this Agreement.

"*Shelf Registration Statement*" shall have the meaning ascribed to it in Section 2(b) of this Agreement.

"*Suspension Right*" shall have the meaning ascribed to it in Section 2(c) of this Agreement.

Section 2. *Registration.*

(a) Subject to the provisions of Section 2(b) below, the Company will file with the Commission a registration statement on Form S-3 (the "*Issuance Registration Statement*") under Rule 415 under the Securities Act relating to the issuance to the Investors of (i) Common Shares upon redemption of Common Units or conversion of Preferred Shares and (ii) the issuance of Preferred Shares upon redemption of Series D Preferred Units, such filing to be made on or within five business days after July 11, 2003 (the "*Filing Date*"); provided, however, that, notwithstanding the foregoing, the Filing Date may be such other date as may be required under applicable provisions of the Securities Act or by the Commission pursuant to its interpretations of the Securities Act, the Exchange Act and other applicable federal securities laws. The Company shall use its reasonable best efforts to cause the Issuance Registration Statement to be declared effective by the Commission for all Registrable Shares covered thereby as soon as practicable thereafter. In the event the Company is unable to cause such Issuance Registration Statement to be declared effective by the Commission within ninety (90) days following the Filing Date, then the rights of the Holders set forth in Section 2(b) below shall apply to the Registrable Shares. Notwithstanding the availability of rights under Section 2(b), the Company shall continue to use its reasonable best efforts to cause the Issuance Registration Statement to be declared effective by the Commission until such time as the Company shall have filed and had declared effective a Shelf Registration Statement in accordance with Section 2(b). If the Issuance Registration Statement is declared effective by the Commission, the Company agrees to use its reasonable best efforts to keep such Issuance Registration Statement continuously effective until all Holders have tendered for redemption their outstanding Series D Preferred Units and any Common Units issued upon conversion of Series D Preferred Units.

(b) In the event that Form S-3 is unavailable at the Filing Date as a form for an Issuance Registration Statement, or Form S-3 becomes unavailable as a form for an Issuance Registration Statement following the Filing Date, or the Company is unable, for any reason, to cause an Issuance Registration Statement to be declared effective by the Commission within ninety (90) days following the Filing Date, then within ten (10) days after the occurrence of any such event, the Company shall file a registration statement on Form S-3 or another appropriate form (a "*Shelf Registration Statement*") under Rule 415 under the Securities Act relating to the resale of all Registrable Shares. The Company agrees to use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective by the Commission and to keep such Shelf Registration Statement effective until the date that is the earliest of (i) two (2) years following the date on which the last Holder tendered for redemption Series D Preferred Units or any Common Units issued upon conversion of Series D Preferred Units, (b) the date on which all Registrable Shares have been disposed of by Holders, and (c) the date on which it is no longer necessary to keep the Shelf Registration Statement effective because the Registrable Shares may be freely sold without limitation on volume or manner of sale pursuant to Rule 144. After the Company has filed the Shelf Registration Statement, any obligation of the Company to file an Issuance Registration Statement pursuant to Section 2(a) above shall be suspended for so long as the Shelf Registration Statement remains effective.

(c) Notwithstanding the foregoing, the Company shall have the right (the "*Suspension Right*") to defer any such filing (or suspend sales under any filed Registration Statement or defer the updating of any filed Registration Statement and suspend sales thereunder) for a period of not more than 105 days during any one-year period ending on December 31, if the Company shall

furnish to the Holders a certificate signed by an executive officer or any director of the Company stating that, in the good faith judgment of the Company, it would be detrimental to the Company and its stockholders to file such Registration Statement or amendment thereto at such time (or continue sales under a filed Registration Statement) and therefore the Company has elected to defer the filing of such Registration Statement (or suspend sales under a filed Registration Statement).

Section 3. *Registration Procedures.*

(a) The Company shall promptly notify the Holders of the occurrence of any of the following events:

(i) when any Registration Statement relating to the Registrable Shares or post-effective amendment thereto filed with the Commission has become effective;

(ii) the issuance by the Commission of any stop order suspending the effectiveness of any Registration Statement;

(iii) the suspension of sales under an effective Registration Statement by the Company in accordance with Section 2(c) above;

(iv) the Company's receipt of any notification of the suspension of the qualification of any Registrable Shares covered by a Registration Statement for sale in any jurisdiction; or

(v) the existence of any event, fact or circumstance that results in a Registration Statement or prospectus relating to Registrable Shares or any document incorporated therein by reference containing an untrue statement of material fact or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading during the distribution of securities.

The Company agrees to use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of any such Registration Statement or any state qualification as promptly as possible. The Holders agree that upon receipt of any notice from the Company of the occurrence of any event of the type described in Section 3(a)(ii), (iii), (iv) or (v) to immediately discontinue any disposition of Registrable Shares pursuant to any Registration Statement until the receipt of written notice from the Company that such disposition may be made.

(b) The Company shall provide to the Holders, at no cost to the Holders, a copy of the Registration Statement and any amendment thereto used to effect the Registration of the Registrable Shares, each prospectus contained in such Registration Statement or post-effective amendment and any amendment or supplement thereto and such other documents as the Holders may reasonably request in order to facilitate the disposition of the Registrable Shares covered by such Registration Statement. The Company consents to the use of each such prospectus and any supplement thereto by the Holders in connection with the offering and sale of the Registrable Shares covered by such Registration Statement or any amendment thereto. The Company shall also file a sufficient number of copies of the prospectus and any post-effective amendment or supplement thereto with the New York Stock Exchange, Inc. (or, if the Common Shares are no longer listed thereon, with such other securities exchange or market on which the Common Shares are then listed) so as to enable the Holders to have the benefits of the prospectus delivery provisions of Rule 153 under the Securities Act.

(c) The Company agrees to use its reasonable best efforts to cause the Registrable Shares covered by a Registration Statement to be registered with or approved by such state securities authorities as may be necessary to enable the Holders to consummate the disposition of such shares pursuant to the plan of distribution set forth in the Registration Statement; provided, however, that the Company shall not be obligated to take any action to effect any such

Registration, qualification or compliance pursuant to this Section 3 in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such Registration, qualification or compliance unless the Company is already subject to service in such jurisdiction.

(d) Subject to the Company's Suspension Right, if any event, fact or circumstance requiring an amendment to a Registration Statement relating to the Registrable Shares or supplement to a prospectus relating to the Registrable Shares shall exist, immediately upon becoming aware thereof the Company agrees to notify the Holders and prepare and furnish to the Holders a post-effective amendment to the Registration Statement or supplement to the prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Shares, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(e) The Company agrees to use its reasonable best efforts (including the payment of any listing fees) to obtain the listing of all Registrable Shares covered by the Registration Statement on each securities exchange on which securities of the same class or series are then listed.

(f) The Company agrees to use its reasonable best efforts to comply with the Securities Act and the Exchange Act in connection with the offer and sale of Registrable Shares pursuant to a Registration Statement, and, as soon as reasonably practicable following the end of any fiscal year during which a Registration Statement effecting a Registration of the Registrable Shares shall have been effective, to make available to its security holders an earnings statement satisfying the provisions of Section 11(a) of the Securities Act.

(g) The Company agrees to cooperate with the selling Holders to facilitate the timely preparation and delivery of certificates representing Registrable Shares to be sold pursuant to a Registration Statement and not bearing any Securities Act legend; and enable certificates for such Registrable Shares to be issued for such numbers of shares and registered in such names as the Holders may reasonably request at least two business days prior to any sale of Registrable Shares.

Section 4. *Expenses of Registration.* The Company shall pay all Registration Expenses incurred in connection with the registration, qualification or compliance pursuant to Sections 2 and 3 hereof. All Selling Expenses incurred in connection with the sale of Registrable Shares by any of the Holders shall be borne by the Holder selling such Registrable Shares. Each Holder shall pay the expenses of its own counsel.

Section 5. *Indemnification and Contribution.*

(a) The Company will (i) indemnify each Holder, each Holder's officers and directors, and each Person controlling such Holder within the meaning of Section 15 of the Securities Act, against all expenses, claims, losses, damages and liabilities (including reasonable legal expenses), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any Registration Statement or prospectus relating to the Registrable Shares, or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be

stated therein or necessary to make the statements therein not misleading, and (ii) reimburse each Holder for all reasonable legal or other expenses incurred in connection with investigating or defending any such action or claim as such expenses are incurred, *provided, however,* that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or omission or alleged untrue statement or omission, made in reliance upon and in conformity with information furnished in writing to the Company by such Holder for inclusion therein; and *provided further*, that the Company shall not be liable with respect to any preliminary prospectus or

preliminary prospectus supplement to the extent that any such expenses, claims, losses, damages and liabilities result from the fact that Registrable Shares were sold to a Person as to whom it shall be established that there was not sent or given at or prior to the written confirmation of such sale a copy of the prospectus as then amended or supplemented under circumstances where such delivery is required under the Securities Act, if the Company shall have previously furnished copies thereof to such Indemnified Party in sufficient quantities to enable such Indemnified Party to satisfy such obligations and the expense, claim, loss, damage or liability of such Indemnified Party results from an untrue statement or omission of a material fact contained in the preliminary prospectus or the preliminary prospectus supplement which was corrected in the prospectus.

(b) Each Holder selling shares pursuant to a Registration Statement and any agents of each Holder that facilitate the distribution of Registrable Shares will (i) indemnify the Company, each of its directors and each of its officers who signs the Registration Statement, and each Person who controls the Company within the meaning of Section 15 of the Securities Act, against all expenses, claims, losses, damages and liabilities (including reasonable legal fees and expenses) arising out of or based on (A) any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement or prospectus, or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement or prospectus, in reliance upon and in conformity with information furnished in writing to the Company by such Holder for inclusion therein, or (B) any failure by such Holder to deliver a prospectus where such delivery is required under the Securities Act, the Company shall have furnished copies of such prospectus to such Holder in sufficient quantities to permit such Holder to satisfy such obligations and such prospectus corrected an untrue statement or omission of a material fact contained in a preliminary prospectus, and (ii) reimburse the Company for all reasonable legal or other expenses incurred in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) Each party entitled to indemnification under this Section 5 (the "*Indemnified Party*") shall give notice to the party required to provide indemnification (the "*Indemnifying Party*") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, but the omission to so notify the Indemnifying Party shall not relieve it from any liability which it may have to the Indemnified Party pursuant to the provisions of this Section 5 except to the extent of the actual damages suffered by such delay in notification. The Indemnifying Party shall assume the defense of such action, including the employment of counsel to be chosen by the Indemnifying Party to be reasonably satisfactory to the Indemnified Party, and payment of expenses. The Indemnified Party shall have the right to employ its own counsel in any such case, but the legal fees and expenses of such counsel shall be at the expense of the Indemnified Party, unless the employment of such counsel shall have been authorized in writing by the Indemnifying Party in connection with the defense of such action, or the Indemnifying Party shall not have employed counsel to take charge of the defense of such action or the Indemnified Party shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Party), in any of which events such fees and expenses shall be borne by the Indemnifying Party. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

(d) If the indemnification provided for in this Section 5 is unavailable to a party that would have been an Indemnified Party under this Section 5 in respect of any expenses, claims, losses, damages and liabilities referred to herein, then each party that would have been an Indemnifying Party hereunder shall, in lieu of indemnifying such Indemnified Party, contribute to the amount paid or payable by such Indemnified Party as a result of such expenses, claims, losses, damages and liabilities in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and such Indemnified Party on the other in connection with the statement or omission which resulted in such expenses, claims, losses, damages and liabilities, as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Party or such Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and each Holder agree that it would not be just and equitable if contribution pursuant to this Section were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 5(d).

(e) No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(f) In no event shall any Holder be liable for any expenses, claims, losses, damages or liabilities pursuant to this Section 5 in excess of the net proceeds to such Holder of any Registrable Shares sold by such Holder.

Section 6. *Information to be Furnished by Holders.* Each Holder shall furnish to the Company such information as the Company may reasonably request and as shall be required in connection with any Registration Statement and related proceedings referred to in Section 2 hereof. If any Holder fails to provide the Company with such information within 10 business days of receipt of the Company's request, the Company's obligations under Section 2 hereof with respect to such Holder or the Registrable Shares owned by such Holder, shall be suspended until such Holder provides such information.

Section 7. *Black-Out Period.* The Holders agree, if requested by the Company, or the underwriters or financial advisors in an offering of the Company's securities pursuant to a registration statement filed with the Commission (a "*Registered Offering*"), not to effect any public sale or distribution of any Registrable Shares, including a sale pursuant to Rule 144, during the 15-day period prior to, and during the 90-day period beginning on, the date of pricing of each such Registered Offering.

Section 8. *Transfer of Registration Rights.* The rights and obligations of a Holder under this Agreement may be transferred or otherwise assigned to: (i) a transferee or assignee of Series D Preferred Units or Common Units issued upon conversion of Series D Preferred Units provided that (A) such Series D Preferred Units or Common Units represent all of such Holder's Series D Preferred Units and/or Common Units issued upon conversion of Series D Preferred Units, (B) such Series D Preferred Units or Common Units are transferred in accordance with the terms of the Partnership Agreement, (C) such transferee or assignee becomes a party to this Agreement or agrees in writing to be subject to the terms hereof to the same extent as if such transferee or assignee were an original party hereunder and (D) the Company is given written notice by such Holder of such transfer or assignment stating the name and address of such transferee or assignee and identifying the securities with regard to which such rights and obligations are being transferred or assigned; or (ii) a transferee or assignee of Preferred Shares or Common Shares issued upon redemption of Common Units or conversion of Preferred Shares that have not been issued pursuant to an Issuance Registration

Statement, provided that (E) such Preferred Shares or Common Shares represent all of such Holder's Preferred Shares and/or Common Shares issued upon redemption of Common Units or conversion of Preferred Shares, (F) such Preferred Shares or Common Shares are transferred in accordance with the Company's Articles of Incorporation, as amended from time to time, (G) such transferee or assignee becomes a party to this Agreement or agrees in writing to be subject to the terms hereof to the same extent as if such transferee or assignee were an original party hereunder, and (H) the Company is given written notice by such Holder of such transfer or assignment stating the name and address of such transferee or assignee and identifying the securities with regard to which such rights and obligations are being transferred or assigned.

Section 9. *Miscellaneous.*

(a) *Governing Law.* This Agreement shall be governed in all respects by the laws of the State of Delaware.

(b) *Entire Agreement.* This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof.

(c) *Amendment.* No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Company and the Holders of at least a majority of the outstanding Series D Preferred Units and Common Units issued upon redemption of Series D Preferred Units (voting as a single class with each such Unit entitled to one vote).

(d) *Notices, etc.* Each notice, demand, request, request for approval, consent, approval, disapproval, designation or other communication (each of the foregoing being referred to herein as a notice) required or desired to be given or made under this Agreement shall be in writing (except as otherwise provided in this Agreement), and shall be effective and deemed to have been received (i) when delivered in person, (ii) when sent by fax with receipt acknowledged, (iii) five (5) days after having been mailed by certified or registered United States mail, postage prepaid, return receipt requested, or (iv) the next business day after having been sent by a nationally recognized overnight mail or courier service, receipt requested. Notices shall be addressed as follows: (a) if to an Investor, at such Investor's address or fax number set forth below its signature hereon, or at such other address or fax number as such Investor shall have furnished to the Company in writing, or (b) if to any assignee or transferee of an Investor, at such address or fax number as such assignee or transferee shall have furnished the Company in writing, or (c) if to the Company, at the address of its principal executive offices and addressed to the attention of the President, or at such other address or fax number as the Company shall have furnished to the Holders. Any notice or other communication required to be given hereunder to a Holder in connection with a registration may instead be given to a designated representative of such Holder.

(e) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which may be executed by fewer than all of the parties hereto (*provided* that each party executes one or more counterparts), each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

(f) *Severability.* In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

(g) *Section Titles.* Section titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

(h) *Successors and Assigns.* This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

(i) *Remedies.* The Company and the Investors acknowledge that there would be no adequate remedy at law if any party fails to perform any of its obligations hereunder, and accordingly agree that the Company and each Holder, in addition to any other remedy to which it may be entitled at law or in equity, shall be entitled to compel specific performance of the obligations of another party under this Agreement in accordance with the terms and conditions of this Agreement in any court of the United States or any State thereof having jurisdiction.

(j) *Attorneys' Fees.* If the Company or any Holder brings an action to enforce its rights under this Agreement, the prevailing party in the action shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with such action, including any appeal of such action.

[signature page follows]

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

THE MACERICH PARTNERSHIP, L.P.

By: THE MACERICH COMPANY, General Partner

By: _____

Richard A. Bayer
Executive Vice President, General Counsel and Secretary

THE MACERICH COMPANY

By: _____

Richard A. Bayer
Executive Vice President, General Counsel and Secretary

INVESTORS

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Exhibit 10.3

List of Omitted Registration Rights Agreements

1. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Russ Lyon.
2. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Lynch Limited Partnership.
3. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Auther Family Trust.
4. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Roy A. Brown.
5. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and L.M. Warner.
6. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Gilbert W. Chester.
7. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and John F. Rasor.
8. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Robert L. Ward.
9. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Dayton W. Adams.
10. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Westcor Limited Partnership.
11. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Lyon Children's Trust.
12. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Juszczak Family Trust.
13. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Frederick O. Cox.
14. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Scott B. Lyon.
15. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and David M. Beckham.
16. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Robert B. Williams.
17. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and William P. Whiteside.
18. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Darrell E. Beach.
19. Registration Rights Agreement dated July 26, 2002 among The Macerich Partnership, L.P., The Macerich Company and Frederick W. Collings.

QuickLinks

Exhibit 10.3
List of Omitted Registration Rights Agreements