

shall pay all costs of such restoring, repairing, replacing or rebuilding not covered by insurance proceeds.

#### SECTION 10. DISBURSEMENT OF INSURANCE PROCEEDS.

Subject to Section 10 of the First Mortgage, insurance proceeds shall be deposited with the Trustee or another depository acceptable to the Surety (the "Depository") and invested in Eligible Investments (as defined in the Indenture). If no Default shall then exist hereunder, the Developer, with the consent of the Surety, may elect to prepay the Indebtedness Hereby Secured in whole from the proceeds of insurance. If the Second Secured Note is not prepaid in whole, the proceeds of insurance shall be held and applied to the restoration, repairing, replacement or rebuilding of the Project as hereinafter in this Section 10 provided. Insurance proceeds which are to be applied for restoration, repairing, replacement or rebuilding of the Premises shall be disbursed from time to time under the terms of a construction escrow agreement acceptable to the Developer, the Depository and the Surety upon the Surety being furnished with (i) evidence reasonably satisfactory to it of the estimated cost of the restoration, repair, replacement and rebuilding, (ii) funds (or assurances reasonably satisfactory to the Surety that such funds are available) sufficient in addition to the proceeds of insurance, to complete and fully pay for the restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as the Surety may reasonably require and approve. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed 95% of the value of the work performed from time to time, as such value shall be determined by the Surety in its sole and exclusive judgment; and at all times the undisbursed balance of such proceeds remaining in the hands of the Depository, together with funds deposited or irrevocably committed to the satisfaction of the Surety by or on behalf of the Developer to pay the cost of such repair, restoration, replacement or rebuilding, shall be sufficient in the reasonable judgment of the Surety to pay the entire unpaid cost of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. So long as no Default shall then exist hereunder, any surplus which may remain out of insurance proceeds held by the Depository after payment of such costs of restoration, repair, replacement or rebuilding shall either be applied to the prepayment of the Second Secured Note or paid to the Developer, as the Developer shall direct. If a Default shall then exist hereunder the proceeds of insurance shall be applied in accordance with the provisions of Section 21 hereof. The balance, if any, shall be paid to the Developer provided no Default shall exist hereunder. So long as no Default shall then exist hereunder, any proceeds of insurance or other funds held by the Depository pending disbursement may be invested at the written direction of the Developer in Eligible Investments acceptable to the Surety and all investment earnings shall be deemed to be a part of the insurance proceeds to be deposited with and held by the Depository and disbursed in accordance with the foregoing provisions.

#### SECTION 11. CONDEMNATION AND EMINENT DOMAIN.

Any and all awards (the "Awards") heretofore or hereafter made or to be made to the then owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises (including any award from the United States government at any time after the allowance

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