

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT ("Agreement") is made as of December____,2012, by and between **Woodside Racquet Club Management, Inc.**, a Kansas corporation ("Borrower") and **Great Western Bank**, a South Dakota corporation, 10610 Shawnee Mission Parkway, Shawnee, Kansas 66203 ("Lender").

WHEREAS, Borrower has requested Lender to extend to Borrower a loan in the principal amount of up to **Two Million Thirty Five Thousand Dollars (\$2,035,000.00)** evidenced by a Promissory Note in the amount of \$2,035,000.00 ("Note") and Lender is willing to make such loan to Borrower upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Borrower and Lender do hereby agree as follows:

1. DEFINITIONS

All terms used herein without definition which are defined by the Kansas Uniform Commercial Code shall have the meanings assigned to them by the Kansas Uniform Commercial Code, as in effect on the date hereof, unless and to the extent varied by this Agreement. All accounting terms used herein without definition shall have the meanings assigned to them as determined by generally accepted accounting principles. Whenever the phrase "satisfactory to Lender" is used in this Agreement, such phrase shall mean "satisfactory to Lender in its sole discretion." The use of any gender or the neuter herein shall also refer to the other gender or the neuter and the use of the plural shall also refer to the singular, and vice versa. In addition to the terms defined elsewhere in this Agreement, unless the context otherwise requires, when used herein, the following terms shall have the following meanings:

1.1 "Agreement" means this Loan and Security Agreement and all amendments, modifications and supplements hereto.

1.2 "Banking Day" shall mean Monday through Friday, excluding any federal or state holiday or other day that banks in the State of Kansas are closed.

1.3 "Bankruptcy Code" means the United States Bankruptcy Code, as amended from time to time.

1.4 "Business Premises" shall mean Borrower's chief executive office located at 2000 West 47th Place, Westwood, Kansas 66205.

1.5 "Certified" shall mean that the information, statement, schedule, report or other document required to be "Certified" shall contain a representation of a duly authorized officer of Borrower that such information, statement, schedule, report or other document is true and complete.

1.6 "City" shall mean the City of Westwood, Kansas. The City is the owner of fee title to the real property constituting the Premises. The City is the landlord under a Lease dated May 1, 1981, as extended and amended ("Lease") with Westwood Foundation ("Sublandlord").

1.7 "Closing" shall mean the date on which this Agreement is executed.

1.8 "Collateral" shall include "All Assets" of Borrower, including without limitation, Accounts, Accounts Receivable, Inventory, Equipment, Furniture, Fixtures, Machinery, and General Intangibles as more fully described on **Exhibit A** attached hereto and made a part hereof.

1.9 "Event of Default" shall mean any of the events described in **Section 8** hereof.

1.10 "GAAP" shall mean generally accepted accounting principles in the United States of America in effect from time to time.

1.11 "Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

(a) "Guarantor(s)" shall mean individually or collectively Blair C. Tanner, Blair C. Tanner Trust dated July 12, 2000, as amended and restated June 26, 2008, and David Wayne Freeland, Trustee of the David Wayne Freeland Sub-trust of the C. Wayne Freeland Revocable Declaration of Trust dated March 16, 1993.

1.12 "Hazardous Materials" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; (c) any substance the presence of which on any property now or hereafter owned, operated or acquired by Borrower is prohibited by any Law similar to those set forth in this definition; and (d) any other substance which by Law requires special handling in its collection, storage, treatment or disposal.

1.13 "Hazardous Materials Contamination" means the contamination (whether presently existing or occurring after the date of this Agreement) by Hazardous Materials on any property owned, operated or controlled by Borrower or for which Borrower has responsibility, including, without limitation, improvements, facilities, soil, ground water, air or other elements on, or of, any property now or hereafter owned, operated or acquired by Borrower, and any other contamination by Hazardous Materials for which Borrower is, or is claimed to be, responsible.

1.14 "Indebtedness" shall include all items which would properly be included in the liability section of a balance sheet or in a footnote to a financial statement in accordance with generally accepted accounting principles, and shall also include all contingent liabilities.

1.15 "Laws" shall mean all ordinances, statutes, rules, regulations, orders, injunctions, writs or decrees of any Governmental Authority or political subdivision or agency thereof, or any court or similar entity established by any thereof.

1.16 "Lien" shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of setoff, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code of any jurisdiction.

1.17 "Loan Documents" shall mean any and all agreements, contracts, promissory notes, security agreements, assignments, subordination agreements, pledge or hypothecation agreements, mortgages, deeds of trust, leases, guaranties, instruments, letters of credit, letter of credit agreements and documents now and hereafter existing between Lender and Borrower, executed and/or delivered pursuant to this Agreement or otherwise or guaranteeing, securing or in any other manner relating to any of the Obligations, including, without limitation, the instruments and documents referred to in Subsection 5.1 hereof together with any other instrument or document executed by Borrower, Lender or any other person in connection with the Loans.

1.18 "Note" shall mean the Promissory Notes of Borrower evidencing the Loan and all renewals, replacements and extensions thereof.

1.19 "Obligations" shall include the full and punctual observance and performance of all present and future duties, covenants and responsibilities due to Lender by Borrower under this Agreement, the Note, the Loan Documents and otherwise, all present and future obligations and liabilities

of Borrower to Lender for the payment of money under this Agreement, the Notes, the Loan Documents and otherwise (extending to all principal amounts, interest, late charges, fees and all other charges and sums, as well as all costs and expenses payable by Borrower under this Agreement, the Notes, the Loan Documents and otherwise), whether direct or indirect, contingent or non-contingent, matured or unmatured, accrued or not accrued, related or unrelated to this Agreement, whether or not now contemplated, whether or not any instrument or agreement relating thereto specifically refers to this Agreement and whether or not of the same character or class as Borrower's obligations under this Agreement or the Notes, including, without limitation, overdrafts in any checking or other account of Borrower at Lender and claims against Borrower acquired by assignment to Lender, whether or not secured under any other document, or agreement or statutory or common law provision, as well as all renewals, refinancing, consolidations, re-castings and extensions of any of the foregoing, the parties acknowledging that the nature of the relationship created hereby contemplates the making of future advances by Lender to Borrower.

1.20 "Obligor" shall mean individually and collectively, Borrower, the Guarantors and each endorser and surety of the Obligations; any person who is primarily or secondarily liable for the repayment of the Obligations, or any portion thereof; and any person who has granted security for the repayment of any of the Obligations.

1.21 "Permitted Liens" shall mean (a) Liens of Lender, and (b) Liens for taxes not delinquent or for taxes being diligently contested in good faith by Borrower by appropriate proceedings, subject to the conditions set forth in Subsection 6.2 hereof.

1.22 "Person" shall include natural persons, corporations, associations, limited liability companies, partnerships, joint ventures, trusts, governments and agencies and departments thereof and every other entity of every kind.

1.23 "Prime Rate" shall mean the floating and fluctuating rate of interest which Lender from time to time announces as and declares to be its prime rate of interest. The Prime Rate may not be the lowest rate of interest charged by Lender for commercial or other types of loans.

1.24 "Property" shall mean the real property and improvements described in the Sublease, Leasehold Mortgage, and Mortgage, and Borrower's interest therein, which is legally described on **Exhibit B** attached hereto and made a part hereof.

1.25 "Sublease" shall mean the Land and Building Sublease Agreement dated _____ (aka Amended Restated and Consolidation of Sub-Lease Agreements by and between Westwood Foundation, Forty-Seventh partners, L.P. and Woodside Racquet Club Management, Inc.) ("Sublease") by and between Westwood Foundation ("Landlord") and Woodside Racquet Club Management, Inc. (dba Woodside Health & Tennis Club "Sub-Tenant"), a Kansas corporation, as evidenced by a Memorandum of Land and Building Sublease Agreement dated _____ and recorded February 4, 2011 as Document No. 20110204-01192 in Book 201102 at Page 001192, which assigns that certain unrecorded Sub-Sublease Agreement dated June 1, 1981, between Forty-Seventh Partners, L.P., and C. Wayne Freeland First Marital Trust dba Woodside Ltd., a landlord, and Woodside Racquet Club Management, Inc., a Kansas Corporation, as sub-sub Tenant, amended January 1, 1993 and December 15, 1999, as evidence by a Memorandum of Third Amendment of Sub-Sublease recorded May 10, 2006 in Book 200605 at Page 004389.

1.26 "Subsidiary" shall include any corporation or unincorporated business entity at least a majority of the outstanding Voting Stock or interests of which is owned, now or in the future, by Borrower and/or by one or more Subsidiaries.

1.27 "Voting Stock" shall mean the shares of any class of capital stock of a corporation or the membership interests of a limited liability company, having ordinary voting power to

elect the directors, managers, officers or trustees thereof, including such shares or interests that shall or might have voting power by reason of the occurrence of one or more conditions or contingencies.

2. THE LOAN

2.1 **Loan Advances.** Subject to the terms and conditions hereinafter set forth, Lender agrees to loan to Borrower and Borrower agrees to borrow from Lender the principal sum of up to **Two Million Thirty Five Thousand and No/100ths Dollars (\$2,035,000.00)** (the "Loan"). The Note shall provide funds necessary to complete renovations of the pool on the Property. Borrower's obligation to repay the Loan with interest shall be evidenced by, and the Loan shall be repaid with interest in accordance with, the Note

2.2 **Business Loan.** The loan is a "business loan" within the meaning of Section 16-207(f) Kansas Statutes Annotated and for the purpose of providing working capital needs of Borrower to accommodate growth and expansion. Borrower hereby represents and warrants to Lender that Borrower is borrowing the money on Borrower's own behalf, and not as nominee, designee, or agent for another, nor is Borrower acting for another in so borrowing the Loan.

2.3 **Construction Loan.** The Note represents a construction loan and the disbursement of funds shall be subject to the terms and conditions described in the Construction Loan Agreement.

2.4 **Lien Priority.** The Leasehold Mortgage filed in connection with this Loan is intended to be a second and junior lien, subject only to the prior lien in favor of Lender. The Mortgage filed in connection with this Loan on the fee title property is intended to be a first and prior lien in favor of Lender.

3. SECURITY

3.1 **Security Interest.** As security for the payment and performance of all of the Obligations, whether or not any instrument or agreement relating to any Obligation specifically refers to this Agreement or the security interest created hereunder, Borrower hereby conveys, assigns, pledges and grants to Lender a continuing security interest in the Collateral. Lender's security interest shall continually exist until (a) all Obligations have been paid in full and (b) there exists no commitment by Lender which could give rise to any of the Obligations.

3.2 **Covenants and Representations Concerning Collateral.** With respect to all of the Collateral, Borrower covenants, warrants and represents that:

(a) No financing statement covering any of the Collateral is on file in any public office or land or financing records except for financing statements in favor of Lender and Borrower is the legal and beneficial owner of all of the Collateral, free and clear of all Liens, except for Permitted Liens.

(b) The security interest granted Lender hereunder shall constitute a first priority Lien upon the Collateral. Borrower will not, and Lender does not authorize Borrower to, except in the ordinary course of business, transfer, discount, sell, grant or assign any interest in the Collateral nor, without Lender's prior written consent, permit any other Lien to be created or remain thereon except for Permitted Liens.

(c) Borrower will maintain the Collateral in good order and condition, ordinary wear and tear expected, and will use, operate and maintain the Collateral in compliance with all laws, regulations and ordinances and in compliance with all applicable insurance requirements and regulations. Borrower will promptly notify Lender in writing of any litigation involving or affecting the Collateral which Borrower knows or has reason to believe is pending or threatened. Borrower will promptly pay when due all taxes and all transportation, storage, warehousing and other such charges and

fees affecting or arising out of or relating to the Collateral and shall defend the Collateral, at Borrower's expense, against all claims and demands of any persons claiming any interest in the Collateral adverse to Borrower or Lender.

(d) At all reasonable times Lender and upon prior reasonable notice, and its agents and designees may enter the Business Premises and any other premises of Borrower and inspect the Collateral and all books and records of Borrower (in whatever form), and Borrower shall pay the costs of one (1) such inspection per calendar year and for any additional inspection after Lender declares an Event of Default.

(e) Borrower will maintain comprehensive casualty insurance on the Collateral against such risks, in such amounts, with such loss deductible amounts and with such companies as may be satisfactory to Lender, and each such policy shall contain a clause or endorsement satisfactory to Lender naming Lender as loss payee and a clause or endorsement satisfactory to Lender that such policy may not be cancelled or altered and Lender may not be removed as loss payee without at least 30 days prior written notice to Lender. In all events, the amounts of such insurance coverage shall conform to prudent business practices and shall be in such minimum amounts that Borrower will not be deemed a co-insurer under applicable insurance laws, regulations, policies or practices. Borrower hereby assigns to Lender and grants to Lender a security interest in any and all proceeds of such policies that relate solely to the Collateral and authorizes and empowers Lender to adjust or compromise any loss under such policies and to collect and receive all such proceeds. Borrower hereby authorizes and directs each insurance company to pay all such proceeds that related solely to the Collateral directly and solely to Lender and not to Borrower and Lender jointly. Borrower authorizes and empowers Lender to execute and endorse in Borrower's name all proofs of loss, drafts, checks and any other documents or instruments necessary to accomplish such collection, and any persons making payments to Lender under the terms of this paragraph are hereby relieved absolutely from any obligation or responsibility to see to the application of any sums so paid. After deduction from any such proceeds of all costs and expenses (including reasonable attorneys' fees) incurred by Lender in the collection and handling of such proceeds, the net proceeds shall be applied as follows. If no Event of Default shall have occurred and be continuing, such net proceeds may be applied, at Borrower's option, either toward replacing or restoring the Collateral, in a manner and on terms reasonably satisfactory to Lender, or as a credit against such of the Obligations, whether matured or unmatured, as Lender shall determine in Lender's sole discretion. In the event that Borrower may and does elect to replace or restore as aforesaid, then such net proceeds shall be deposited in a segregated account of Borrower at Lender and subject to the sole order of Lender and shall be disbursed therefrom by Lender in such manner and at such times as Lender deems appropriate to complete such replacement or restoration; provided, however, that if an Event of Default shall occur at any time before or after replacement or restoration has commenced, then thereupon Lender shall have the option to apply all remaining net proceeds either toward replacing or restoring the Collateral, in a manner and on terms reasonably satisfactory to Lender, or as a credit against such of the Obligations, whether matured or unmatured, as Lender shall determine in Lender's sole discretion. If an Event of Default shall occur prior to such deposit of the net proceeds, then Lender may, in its sole discretion, apply such net proceeds either toward replacing or restoring the Collateral, in a manner and on terms reasonably satisfactory to Lender, or as a credit against such of the Obligations, whether matured or unmatured, as Lender shall determine in Lender's sole discretion.

(f) All books and records pertaining to the Collateral are located at the Business Premises and Borrower will not change the location of such books and records without the prior written consent of Lender, which consent shall not be unreasonably withheld. Borrower shall make notations, satisfactory to Lender, on its books and records disclosing the existence of Lender's security interest in the Collateral.

(g) Borrower shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances, instruments and documents as Lender may reasonably request to vest in and assure to Lender its rights hereunder or in any of the Collateral, including, without limitation, placing legends on Collateral stating that Lender has a security interest therein.

(h) Borrower shall cooperate with Lender to obtain and keep in effect one or more control agreements in deposit account, electronic chattel paper, investment property and letter-of-credit rights Collateral.

(i) Borrower authorizes Lender to file financing statements covering the Collateral containing such legends as Lender shall deem necessary or desirable to protect Lender's interest in the Collateral. Borrower agrees to pay all taxes, fees and costs (including attorneys' fees) paid or incurred by Lender in connection with the preparation, filing or recordation thereof.

(j) Whenever required by Lender, Borrower shall promptly deliver to Lender, with all endorsements and/or assignments required by Lender, all instruments, chattel paper, guaranties and the like received by Borrower constituting, evidencing or relating to any of the Collateral or proceeds of any of the Collateral.

(k) Borrower shall not file any amendments, correction statements or termination statements concerning the Collateral without the prior written consent of Lender.

(l) If any Collateral arises out of a contract with the United States Government or any department, agency or instrumentality thereof, Borrower shall immediately notify Lender thereof and shall execute and deliver to Lender specific assignments, of those contracts and the related United States Government accounts of Borrower and shall do such other things as may be satisfactory to Lender in order that all sums due and to become due to Borrower under such contract shall be duly assigned to Lender in accordance with the Federal Assignment of Claims Act (31 United States Code § 3727; 41 United States Code § 15) as in effect on the date hereof and as hereafter amended and/or any other applicable laws and regulations relating to the assignment of governmental obligations. Payments on United States Government contracts or United States Government accounts which have been specifically assigned to Lender by means of a direct assignment, as provided herein, shall be made directly to Lender, for payment to the Loan. The separate assignment of specific United States Government contracts to Lender, as contemplated herein, shall not be deemed to limit Lender's security interest to the payments under those particular United States Government contracts and the related United States Government accounts, but rather Lender's security interest shall extend to any and all United States Government contracts and the related United States Government accounts and proceeds thereof, now or hereafter owned or acquired by Borrower. During the term of this Agreement, Borrower agrees and covenants not to make any assignment of any of the United States Government contracts to any party other than Lender without Lender's prior written consent.

3.3 Collateral Collections. After an Event of Default shall have occurred, Lender shall have the right at any and all times to enforce Borrower's rights against account debtors and other parties obligated on Collateral, including, but not limited to, the right to: (a) notify and/or require Borrower to notify any or all account debtors and other parties obligated on Collateral to make payments directly to Lender or in care of a post office lock box under the sole control of Lender established at Borrower's expense subject to Lender's customary arrangements and charges therefor, and to take any or all action with respect to Collateral as Lender shall determine in its sole discretion, including, without limitation, the right to demand, collect, sue for and receive any money or property at any time due, payable or receivable on account thereof, compromise and settle with any person liable thereon, and extend the time of payment or otherwise change the terms thereof, without incurring liability or responsibility to Borrower; (b) require Borrower to segregate and hold in trust for Lender and, on the day of Borrower's receipt thereof, transmit to Lender in the exact form received by Borrower (except for such assignments and endorsements as may be required by Lender), all cash, checks, drafts, money orders and other items of payment constituting Collateral or proceeds of Collateral; and/or (c) establish and maintain at Lender a "Repayment Account," which shall be under the exclusive control of and subject to the sole order of Lender and which shall be subject to the imposition of such customary charges as are imposed by Lender from time to time upon such accounts, for the deposit of cash, checks, drafts, money orders and other items of payments constituting Collateral or proceeds of Collateral from which Lender may, in its sole discretion, at any time and from time to time, withdraw all or any part. Lender's collection and enforcement of Collateral against account debtors and other persons obligated thereon shall be deemed

to be commercially reasonable if Lender exercises the care and follows the procedures that Lender generally applies to the collection of obligations owed to Lender. All cash and non-cash proceeds of the Collateral may be applied by Lender upon Lender's actual receipt of cash proceeds against such of the Obligations, matured or unmatured, as Lender shall determine in Lender's sole discretion.

3.4 **Care of Collateral.** Borrower shall have all risk of loss of the Collateral. Lender shall have no liability or duty, either before or after the occurrence of an Event of Default, on account of loss of or damage to, to collect or enforce any of its rights against, the Collateral, to collect any income accruing on the Collateral, or to preserve rights against account debtors or other parties with prior interests in the Collateral. If Lender actually receives any notices requiring action with respect to Collateral in Lender's possession, Lender shall take reasonable steps to forward such notices to Borrower. Borrower is responsible for responding to notices concerning the Collateral, voting the Collateral, and exercising rights and options, calls and conversions of the Collateral. Lender's sole responsibility is to take such action as is reasonably requested by Borrower in writing, however, Lender is not responsible to take any action that, in Lender's sole judgment, would affect the value of the Collateral as security for the Obligations adversely. While Lender is not required to take certain actions, if action is needed, in Lender's sole discretion, to preserve and maintain the Collateral, Borrower authorizes Lender to take such actions, but Lender is not obligated to do so.

3.5 **Authorization and Power-of-Attorney.** Borrower authorizes Lender to request other secured parties of Borrower to provide accountings, confirmations of Collateral and confirmations of statements of account concerning Borrower. Borrower hereby designates and appoints Lender and its designees as attorney-in-fact of Borrower, irrevocably and with power of substitution, with authority to endorse Borrower's name on requests to other secured parties of Borrower for accountings, confirmations of collateral and confirmations of statements of account.

4. **REPRESENTATIONS AND WARRANTIES**

To induce Lender to enter into this Agreement, Borrower represents and warrants to Lender that:

4.1 **State of Incorporation and Legal Name.** Borrower's state of incorporation or formation and exact legal name are set forth in the first paragraph of this Agreement.

4.2 **Good Standing.** Borrower is a corporation duly organized, legally existing and in good standing under the laws of the State of its incorporation, has the power to own its property and to carry on its business and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary.

4.3 **Authority.** Borrower has full power and authority to enter into this Agreement, to make the borrowings hereunder, to execute and deliver all documents and instruments required hereunder and to incur and perform the obligations provided for herein, all of which have been duly authorized by all necessary and proper membership and other action, and no consent or approval of any person, including, without limitation, members of Borrower and any public authority or regulatory body, which has not been obtained is required as a condition to the validity or enforceability hereof or thereof.

4.4 **Binding Agreements.** This Agreement has been duly and properly executed by Borrower, constitutes the valid and legally binding obligation of Borrower and is fully enforceable against Borrower in accordance with its terms, subject only to laws affecting the rights of Lenders generally and application of general principles of equity.

4.5 **No Conflicting Agreements.** The execution, delivery and performance by Borrower of this Agreement and the borrowings hereunder will not (a) violate (i) any provision of law or any order, rule or regulation of any court or agency of government, (ii) any award of any arbitrator, (iii) the Articles of Incorporation or Bylaws or Shareholder's Agreement of Borrower or (iv) any indenture, contract, agreement, mortgage, deed of trust or other instrument to which Borrower is a party or by which

Borrower or any of its property is bound, or (b) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a material default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of any Lien upon any of the property or assets of Borrower except for Liens created in favor of Lender under or pursuant to this Agreement.

4.6 **Litigation.** There are no judgments, injunctions or similar orders or decrees, claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or any property of Borrower, at law or in equity, by or before any court or any federal, State, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could result in any material adverse change in the business, operations, prospects, properties or in the condition, financial or otherwise, of Borrower, and Borrower is not, to Borrower's knowledge, in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court or any federal, State, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could have a material adverse effect on Borrower.

4.7 **Financial Condition.** The financial statements of Borrower heretofore delivered to Lender are true and complete, fairly present in all material respects the financial condition of Borrower as at such dates and the results of its operations for the period then ended and were prepared in accordance with GAAP applied on a consistent basis for prior periods. There is no Indebtedness of Borrower as of the date of such statements which is not reflected therein and no material adverse change in Borrower's financial condition has occurred since the date of such statements.

4.8 **Taxes.** Borrower has paid or caused to be paid all federal, State and local taxes to the extent that such taxes have become due and has filed or caused to be filed all federal, State and local tax returns which are required to be filed by Borrower.

4.9 **Title to Properties.** Borrower has good and marketable title to all of its properties and assets (including the Collateral) and all of the properties and assets of Borrower are free and clear of Liens, except for Permitted Liens.

4.10 **Place of Business.** Borrower's principal place of business and chief executive office is located at the Business Premises and Borrower has such other business locations as disclosed to Lender prior to the date hereof. Borrower will not change the location of the Business Premises or open additional business locations (other than those locations heretofore disclosed to Lender) without Lender's prior written consent, which shall not be unreasonably withheld. The Collateral shall, at all time, be located at the address shown in Section 1.4.

4.11 **Financial Information.** All financial statements, schedules, reports and other information supplied to Lender by or on behalf of Borrower heretofore and hereafter are and will be true and complete in all material respects.

4.12 **Licenses and Permits.** Borrower has duly obtained and now holds all licenses, permits, certifications, approvals and the like required by federal, State and local laws of the jurisdictions in which Borrower conducts its business, and each remains valid and in full force and effect.

4.13 **Certain Indebtedness.** There is no Indebtedness of Borrower owing to any employee, officer, stockholder or director of Borrower other than accrued salaries, commissions and the like.

4.14 **Broker's or Finder's Commissions.** No broker's or finder's fee or commission is or will be payable in connection with this Agreement or the transactions contemplated hereby, and Borrower agrees to save harmless and indemnify Lender from and against any claim, demand, action, suit, proceeding or liability for any such fee or commission, including any costs and expenses (including attorneys' fees) incurred by Lender in connection therewith. The provisions of this Subsection shall

survive the termination of this Agreement and Lender's security interest hereunder and the payment of all other Obligations.

4.15 **Outstanding Indebtedness.** Borrower has no outstanding Indebtedness except as permitted by Subsection 7.1 hereof and there exists no default under the provisions of any instrument evidencing such Indebtedness or under the provisions of any agreement relating thereto.

4.16 **Regulation U.** Borrower does not own or presently intend to acquire any "margin stock" as defined in Regulation U (12 CFR Part 221) of the Board of Governors of the Federal Reserve System. None of the proceeds of any of the Loan hereunder will be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry a margin stock or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U. Neither Borrower nor any agent acting on its behalf has taken or will take any action which might cause this Agreement to violate Regulation U or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Securities Exchange Act of 1934, in each case as in effect now or as the same may hereafter be in effect.

4.17 **Government Contracts.** Borrower is not now, and has not been within the past 3 years, in receipt of any communication from any officer or employee of the United States Government regarding Borrower's actual or possible disqualification, suspension or debarment from contracting with the United States Government. Further, Borrower has no information, in relation to the obtaining, formation, pricing, performance, billing or administration of any one of its contracts with the United States Government of: (a) a violation of law, regulation or contract provision, or any such fact(s) or circumstance(s) reasonably indicating any such violation; (b) a pending or threatened investigation; (c) an existing or threatened adverse audit finding, whether draft or final; (d) an existing or threatened cost disallowance or finding of defective pricing; (e) a pending or threatened claim or action seeking a fine, penalty or damages; (f) a communication regarding, or actual initiation of, payment withholding or suspension, setoff, recoupment or debt collection; or (g) a contract termination or a communication reasonably indicating the potential for such a termination.

4.18 **Presence of Hazardous Materials or Hazardous Materials Contamination.** To the best of Borrower's knowledge and belief, and except as permitted by applicable Laws, no Hazardous Materials are located on any real property owned, operated or controlled by Borrower or for which Borrower is responsible and for which remedial or corrective action would, be required under applicable Laws. To the best of Borrower's knowledge and belief, and except as permitted by applicable Laws, no property owned, operated or controlled by Borrower has ever been used as a manufacturing, storage or dump site for Hazardous Materials.

4.19 **Patents, Trademarks, etc.** Borrower owns, possesses or has the right to use all necessary patents, patent rights, licenses, trademarks, trade names, trade name rights, copyrights and franchises to conduct its business as now conducted, without any known conflict with any patent, patent right, license, trademark, trademark rights, trade name right, trade name, copyright or franchise right of any other person.

4.20 **Perfection and Priority of Collateral.** Lender has or upon proper recording of any financing statement, execution of any control agreement or delivery of Collateral to Lender's possession, will have and will continue to have as security for the Obligations, a valid and perfected Lien on and security interest in all Collateral free of all other Liens, claims and rights of third parties whatsoever except Permitted Liens.

4.21 **Commercial Purpose.** The Loan is not a "consumer transaction" as defined in the Uniform Commercial Code and none of the Collateral was or will be purchased or held primarily for personal, family or household purposes.

4.22 **Survival; Updates of Representations and Warranties.** All representations and warranties contained in or made in connection with this Agreement and the other Loan Documents shall survive the Closing and any advance made hereunder. Lender acknowledges and agrees that any and all representations and warranties contained in or made under or in connection with this Agreement may be amended, changed or otherwise modified by Borrower, with the consent of Lender, at any time and from time to time after the Closing so as to accurately reflect the matters represented and warranted therein; provided, that such amendments, changes and/or modifications are disclosed in writing to and approved by Lender. Lender shall have no obligation to waive any Event of Default due to any present or future inaccuracy of such representation or warranty or to agree to any amendment, change or modification of such representation or warranty.

5. **SPECIAL CONDITIONS AND REQUIREMENTS**

5.1 **Documents.** Prior to any advance of loan funds to Borrower, there shall have been delivered to Lender, appropriately completed and duly executed (when applicable), the following, each in form and substance satisfactory to Lender:

- (a) The \$2,035,000.00 Promissory Note.
- (b) Construction Loan Agreement
- (c) Leasehold Mortgage and Security Agreement encumbering Borrower's sub-leasehold interest under the Sublease, and the Mortgage encumbering Borrower's fee title.
- (d) Leasehold Assignment of Leases and Rents encumbering the Property, and the Assignment encumbering Borrower's fee title.
- (e) UCC-1 Financing Statements.
- (f) Environmental and ADA Indemnity Agreement.
- (g) Borrower's Affidavit.
- (h) Guaranty executed by the Guarantors.
- (i) Landlord's Estoppel, Non-Disturbance and Recognition Agreement also executed by The City of Westwood and Westwood Foundation.
- (j) A certificate of the Secretary of Borrower in form and content acceptable to Lender certifying resolutions authorizing Borrower to enter into the Loan.
- (k) Certificate of Good Standing of Borrower.
- (l) Evidence satisfactory to Lender that all insurance coverage and all insurance clauses or endorsements required pursuant to this Agreement and the Loan Documents are in effect, together with copies of all insurance policies and endorsements.
- (m) A written opinion of counsel to Borrower, dated as of Closing and addressed to Lender and satisfactory to Lender's counsel.

5.2 **No Default.** At Closing and at the time of any subsequent advance under this Agreement, Lender shall be fully satisfied that (a) all of the covenants, conditions, warranties and representations set forth herein and in the Loan Documents have been complied with and are true and

complete on and as of such time with the same effect as though such covenants, conditions, warranties and representations had been made on and as of such time, (b) no Event of Default nor any event which, upon the giving of notice and/or the lapse of time, could constitute an Event of Default shall have occurred, and (c) the documents and matters required to be executed, delivered, opined and/or Certified pursuant to **Subsection 5.1** hereof shall be in full force and effect and/or true and complete, as the case may be.

5.3 **Legal Matters.** At Closing, all legal matters in connection therewith or incidental thereto shall be fully satisfactory to Lender's counsel.

5.4 **Specific Covenants and Requirements.** Borrower agrees that the following financial covenants and requirements are material and critical to Lender in agreeing to make the Loan. Borrower shall strictly comply with each of the following provisions:

(i) As long as the Loan is outstanding and unpaid, upon an Event of Default, Borrower shall not borrow money from, repay any existing debt owed to, or make a distribution, dividend or payment of profit to, without Lender's prior written consent, (a) any principal, owner, manager, or member of any Borrower, (b) any affiliated or related entity of a Borrower or of a principal, owner, manager, or member of any Borrower, (c) any parent or subsidiary entity of Borrower or of a principal, owner, manager, or member of any Borrower (collectively an "Affiliate"). So long as any part of the Loan is outstanding, any present or future indebtedness of Borrower to an Affiliate of Borrower, shall be subordinate and secondary to the Loan. Neither Borrower may incur any indebtedness or increase any existing indebtedness to or with an Affiliate after the date of this Agreement without Lender's prior written consent. Borrower shall cause all Affiliates to execute such standard subordination agreements as Lender may request from time to time to carry out the provisions of this Section. Borrower shall inform Lender of any indebtedness owed to an Affiliate now existing or hereafter acquired. Borrower shall cause all Affiliates to execute such standard subordination agreements as Lender shall request to carry out the provisions of this Section.

(ii) Borrower shall open and maintain Borrower's primary operating accounts with Lender by a date that is no later than fifteen (15) days after the date of this Agreement.

(iii) Borrower shall maintain a Debt Service Coverage Ratio (DSCR) of at least 1.25x measured at each fiscal year end. DSCR is calculated as the sum of Earnings Before Interest, plus Taxes, plus Depreciation, plus Amortization minus Distributions divided by the sum of debt service.

(iv) Borrower shall maintain a "Net Worth" of at least \$350,000 measured at each fiscal year end. Net Worth is calculated by dividing total liabilities by the sum of equity plus any shareholder subordinated notes payable. If this covenant is breached, Borrower would have 30 days after the timely submission of fiscal year-end financial statement to cause its shareholders/principals to inject sufficient capital into Borrower to return Borrower to compliance.

(v) Borrower acknowledges and agrees that it shall not permit, allow or cause any of the following to occur and upon such occurrence shall be in default of this Agreement: (1) The sale of ownership interests in, or of a substantial portion of the assets of, any Borrower, or the sale, surrender or transfer of management control or voting control of or by Blair Tanner; or (2) A change in the management or ownership of Borrower or Guarantor; or (3) A change in the Chief Executive Officer, Chief Financial Officer, or principal management team of Borrower.

6. **AFFIRMATIVE COVENANTS**

Borrower covenants and agrees with Lender that, until (a) all Obligations have been paid in full, (b) there exists no commitment by Lender which could give rise to any Obligations, and (c) all appropriate termination statements have been filed terminating the security interest granted Lender hereunder, Borrower will:

6.1 Financial Statements. Furnish to Lender in writing:

(a) Borrower's annual tax returns due within 30 days after the date of filing, (b) Borrower's annual compiled financial statements due within 120 days of fiscal year end, (c) Borrower's fixed asset listing provided annually within 90 days of fiscal year end, (d) Borrower's quarterly compiled financial statements due within 45 days of quarter end, (e) Borrower's quarterly listing and aging of accounts receivable due within 45 days of quarter end, (f) Annual copies of Borrower's insurance certificates and renewals and any applicable tax receipts at least 10 days prior to expiration or due date, (g) Each Guarantor's annual personal federal income tax return prepared by an accountant, along with any supporting information (e.g. K-1) and any entity tax returns deemed necessary by Lender due within 30 days of the filing date, and (h) Each Guarantor's annual personal financial statement.

6.2 Taxes. Pay and discharge all taxes, assessments and governmental charges upon Borrower, its income and properties, prior to the date on which penalties attach thereto unless and to the extent only that the same are being diligently contested by Borrower in good faith in the normal course of business by appropriate proceedings, provided, however, that: (a) Lender shall have been given reasonable prior written notice of intention to contest; (b) nonpayment of the same will not, in Lender's sole discretion, materially impair any of the Collateral or Lender's rights or remedies with respect thereto or the prospect for full and punctual payment of all of the Obligations; (c) Borrower at all times effectively stays or prevents any official or judicial sale of or action or filing against any of the Collateral by reason of nonpayment of the same; and (d) Borrower establishes reasonable reserves for any liabilities being contested and for expenses arising out of such contest.

6.3 Organizational Existence, Continuation of Business and Compliance with Laws. Maintain its corporate existence in good standing; continue its business operations as now being conducted; and comply with all applicable federal, State and local laws, rules, ordinances, regulations and orders unless and to the extent only that the validity or applicability thereof is being diligently contested by Borrower in good faith by appropriate proceedings, provided, however, that: (a) Lender shall have been given reasonable prior written notice of intention to contest; (b) such noncompliance will not, in Lender's sole discretion, materially impair any of the Collateral or Lender's rights or remedies with respect thereto or the prospect for full and punctual payment of all of the Obligations; (c) Borrower at all times effectively stays or prevents any official or judicial sale of or action or filing against any of the Collateral by reason of such noncompliance; and (d) Borrower establishes reasonable reserves for any liabilities or expenses which may arise out of such noncompliance and contest.

6.4 Civil and Criminal Proceedings. Promptly notify Lender in writing of (a) the filing of any Criminal Referral Form or the threatened or actual commencement of a criminal proceeding or investigation or (b) any action, suit or proceeding at law or in equity by or before any court, governmental agency or instrumentality which could result in any material adverse change in the business, operations, prospects, properties or assets or in the condition, financial or otherwise, of Borrower.

6.5 Extraordinary Loss. Promptly notify Lender in writing of any event causing extraordinary loss or depreciation of the value of Borrower's assets (whether or not insured) and the facts with respect thereto.

6.6 Books and Records. Keep and maintain proper and current books and records in accordance with GAAP and permit access by Lender to, reproduction by Lender of and copying by Lender from, such books and records during normal business hours. All reasonable costs and expenses of such inspections and examinations shall be paid by Borrower.

6.7 Conferences with Officers. Permit Lender to discuss Borrower's affairs, finances and accounts with any officers of Borrower upon reasonable notice and at reasonable times.

6.8 Maintenance of Properties. Maintain all properties and improvements necessary to the conduct of its business in good working order and condition, ordinary wear and tear

excepted, and cause replacements and repairs to be made when necessary for the proper conduct of its business.

6.9 **Patents, Franchises, etc.** Maintain, preserve and protect all licenses, patents, franchises, trademarks and trade names of Borrower or licensed by Borrower which are necessary to the conduct of the business of Borrower as now conducted, free of any conflict with the rights of any other person.

6.10 **Insurance.** Maintain with duly licensed insurers and in amounts satisfactory to Lender such insurance on Borrower's tangible personal property against such risks and with such loss deductible amounts as may be satisfactory to Lender.

6.11 **Evidence of Insurance.** Deliver to Lender from time to time, and periodically if Lender shall so require, evidence satisfactory to Lender that all insurance and endorsements required pursuant to this Agreement and the Loan Documents are in effect.

6.12 **Further Assurances and Corrective Instruments.** Promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, to Lender from time to time such supplements hereto and such financing statements and other instruments and documents as may be reasonably requested by Lender to protect and preserve the Collateral, Lender's security interest therein, perfection of Lender's security interest and/or Lender's rights and remedies hereunder.

6.13 **Financial Information.** Deliver to Lender promptly upon Lender's request, and periodically if Lender shall so require, such written statements, schedules or reports (which shall be Certified if required by Lender) in such form, containing such information and accompanied by such documents as may be satisfactory to Lender from time to time concerning the Collateral, Borrower's financial condition or business operations or any other matter or matters, including, without limitation, copies of federal, State and local tax returns of Borrower, membership forms, licenses, applications, agreements, and membership lists and contracts, and permit Lender, its agents and designees, at reasonable times upon reasonable prior notice to discuss Borrower's financial condition and business operations with Borrower's officers and employees.

6.14 **Notice of Event of Default.** Immediately notify Lender in writing of the occurrence of any Event of Default or any event or existing condition which, with the giving of notice and/or the lapse of time, could constitute an Event of Default or which might materially and adversely affect the financial conditions or operations of Borrower and the facts with respect thereto.

6.15 **ERISA.** (a) At all times maintain each of its employee pension benefit plans, as that term is defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), in conformity with all applicable provisions of ERISA and other federal and State statutes relating to employee benefit plans; (b) at all times make prompt payments of contributions required to meet the minimum funding standards set forth in Sections 302 and 305 of ERISA with respect to each such plan; (c) if requested by Lender, promptly after the filing thereof, furnish to Lender copies of each annual report required to be filed pursuant to Section 103 of ERISA in connection with each such plan for each plan year, including any certified financial statements or actuarial statements required pursuant to said Section 103; (d) notify Lender immediately of any fact, including, without limitation, any "Reportable Event" (as that term is defined in Section 4043(b) of ERISA) arising in connection with any such plan which might constitute grounds for the termination thereof by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer the plan; and (e) furnish to Lender, promptly upon its request therefor such additional information concerning any such plan as Lender may request.

6.16 **Continuance of Business.** Continue to operate the business as set forth in Borrower's loan application to Lender and not to acquire or operate any other business enterprise without Lender's prior consent.

6.17 **Proceeds.** Use of the proceeds of advances hereunder only for the purposes set forth herein and to pay the costs, expenses and fees payable by Borrower under this Agreement and the other Loan Documents.

6.18 **Hazardous Materials: Contamination.** Borrower agrees to, (a) give notice to Lender immediately upon Borrower's acquiring knowledge of the presence of any Hazardous Materials (other than those stored in compliance with applicable Laws and are in Borrower's possession in the ordinary course of business) on any property owned or controlled by Borrower or for which Borrower is responsible or of any Hazardous Materials Contamination with a full description thereof for which remedial or corrective action is required; (b) promptly take action to comply with any Laws requiring the removal, treatment or disposal of Hazardous Materials or Hazardous Materials Contamination and provide Lender with satisfactory evidence of such action, which action must be in all respects sufficient to avoid any penalty, assessment or notice of non-compliance with any required remedial or corrective action on the part of any Governmental Authority; (c) provide Lender, within 30 days after a demand by Lender, with a bond, letter of credit or similar financial assurance evidencing to Lender's reasonable satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of Hazardous Materials described in item (b) or Hazardous Materials Contamination and discharging any Lien which may be established as a result thereof on any property owned or controlled by Borrower or for which Borrower is responsible; and (d) defend, indemnify and hold harmless Lender and its employees, trustees, successors and assigns from any and all claims which may now or in the future (whether before or after the termination of this Agreement) be asserted as a result of the presence of any Hazardous Materials on any property owned or controlled by Borrower for which Borrower is responsible for any Hazardous Materials Contamination.

7. **NEGATIVE COVENANTS**

Borrower covenants and agrees with Lender that, until (a) all Obligations have been paid in full and (b) there exists no commitment by Lender which could give rise to any Obligations, Borrower will not, directly or indirectly, without Lender's prior written consent:

7.1 **Indebtedness.** Create, incur, assume or permit to exist, directly or indirectly, any Indebtedness except: (a) Indebtedness to Lender; (b) trade Indebtedness (which shall not include any borrowing, trade acceptance or notes given in settlement of trade Indebtedness) incurred in the ordinary course of business and not in dispute or more than thirty days past due; (c) existing Indebtedness previously disclosed by Borrower to Lender in writing and set forth in **Schedule 7.1** attached hereto and made a part hereof; and (d) Indebtedness which shall be consented to by Lender in writing in advance, in Lender's sole but reasonable discretion, and if required by Lender, subordinated to the Obligations by a written agreement satisfactory to Lender in form and substance.

7.2 **Liens.** Create, incur, assume or permit to exist, directly or indirectly, any Lien upon any of Borrower's properties or assets, now owned by Borrower, other than Permitted Liens and Liens to Lender.

7.3 **Merger.** Enter into or be a party to any merger, consolidation, reorganization or exchange of stock or assets.

7.4 **Sale of Assets, etc.** Sell, assign, transfer, convey or lease any interest in all or any substantial part of its property except in the ordinary course of Borrower's business as now being conducted; purchase or otherwise acquire all or substantially all of the assets of any other person or persons, or any shares of stock of, or similar interest in, any other person or persons.

7.5 **Fiscal Year.** Change Borrower's fiscal year.

7.6 **Subsidiaries.** Organize or cause to exist any Subsidiaries without Lender's prior written consent, which consent may be conditioned, without limitation, upon the granting by such

Subsidiary of a guarantee of payment of the Note and all other indebtedness of Borrower to Lender. Lender shall have the right at any time and from time to time at its sole discretion to require any existing Subsidiaries to guarantee the Obligations.

7.7 **Change of Name.** Change the name of Borrower.

7.8 **Trade Names.** Use any trade name other than Borrower's true corporate name.

7.9 **ERISA Compliance.** Engage in any "prohibited transaction" (as defined in Section 406 or Section 2003(a) of ERISA and not otherwise exempted under Title I, Part 4 of ERISA), any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, or terminate any pension plan in a manner which could result in the imposition of a Lien on the property of Borrower pursuant to Section 4068 of ERISA.

7.10 **Dividends, Stock Redemptions.** Directly or indirectly declare or pay any dividend on, or make any other distribution with respect to (whether by reduction of capital or otherwise), any shares of its capital stock or make any advances or loans to stockholders other than S Corporation tax distributions.

7.11 **Sale of Stock/Membership Interests.** Sell, convey, transfer, assign, pledge or otherwise encumber any of the stock/membership interests of Borrower to any person.

7.12 **Loans and Guaranties.** Loan or make advances to any other person or guarantee, indorse or otherwise be or become liable or contingently liable in connection with the obligations or Indebtedness of any other person, firm or corporation, directly or indirectly, except:

(i) as an endorser of negotiable instruments for the payment of money deposited to Borrower's bank account for collection in the ordinary course of business;

(ii) trade credit extended in the ordinary course of Borrower's business; or

(iii) advances made in the usual course of business to officers and employees of Borrower for travel and other out-of-pocket expenses incurred by them on behalf of Borrower in connection with such business.

7.13 **Sale Leaseback.** Except for leases existing on the date hereof and previously disclosed to Lender in writing, and renewals or extension thereof, become or be liable as lessee with respect to any lease of any property (real, personal or mixed) which has been or is to be sold or transferred by Borrower to any person or which Borrower intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by Borrower to any person in connection with such lease.

7.14 **Leases.** Default under its Sublease or allow or cause the Sublease to terminate, or become liable as lessee with respect to any lease of any property, real, personal or mixed, except for the Leases in existence on the date hereof and previously disclosed to Lender in writing and renewals and extensions thereof. Borrower shall not permit the Sublease to expire or terminate during the term of this Loan, and Borrower shall take all steps necessary (including the curing of defaults of third parties) to assure that the Lease between the City and Foundation does not expire or terminate during the term of this Loan.

7.15 **Asset Investments.** Make any investments in non-current assets (which shall include fixed assets and capitalized value of leased equipment and leased real property).

7.16 **Funded Debt.** Redeem, call for redemption, purchase or otherwise acquire or retire, directly or indirectly, or make any optional prepayment of principal on, any Funded Debt, or amend, alter or otherwise modify the provisions relating to any Funded Debt, if the affect of such amendment,

alteration or modification would or might be to accelerate such Funded Debt. For the purposes of this Subsection, "Funded Debt" shall include any obligation of Borrower to any person other than Lender payable more than one year from the date of its creation which, under GAAP, is shown on the balance sheet as a liability (excluding reserves for deferred income taxes and other reserves to the extent that such reserves do not constitute an obligation).

7.17 **Loans.** Loan funds to officers, employees, principals, managers, directors or affiliates of Borrower without the prior written consent of Lender.

8. EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an "Event of Default":

8.1 **Failure to Pay.** The failure of Borrower, any Guarantor or other Obligor to pay any of the Obligations as and when due and payable (whether by acceleration, declaration, extension or otherwise), and such failure to pay is not cured within five (5) days of the date payment is due.

8.2 **Covenants and Agreements.** The failure of Borrower, any Guarantor or other Obligor to perform, observe or comply with any of the covenants of this Agreement or any of the Loan Documents (except for a breach under Section 8.1 above and except for any specific cure rights granted herein).

8.3 **Information, Representations and Warranties.** If any representation or warranty made herein or if any information contained in any financial statement, application, schedule, report or any other document given by Borrower, any Guarantor or by any person in connection with the Obligations, with the Collateral, or with any of the Loan Documents is not in all material respects true and accurate or if Borrower, any Guarantor or such other person omitted to state any material fact or any fact necessary to make such information not misleading.

8.4 **Default under Loan Documents.** The occurrence of an Event of Default under any of the Loan Documents (except for a breach under Section 8.1 above and except for any specific cure rights granted herein) or under any other loan obligations owed to Lender.

8.5 **Default on Other Obligations.** The occurrence of any default under any other borrowing if the result of such default would permit the acceleration of the maturity of any note, loan or other agreement between Borrower or any Guarantor and any person other than Lender.

8.6 **Insolvency.** Borrower, any Guarantor or other Obligor shall be or become insolvent (as defined in Section 101 of the United States Bankruptcy Code) or unable to pay their debts as they become due, or admit in writing to such insolvency or to such inability to pay their debts as they become due.

8.7 **Involuntary Bankruptcy.** There shall be filed against Borrower, any Guarantor, or other Obligor an involuntary petition or other pleading seeking the entry of a decree or order for relief under the United States Bankruptcy Code or any similar federal or state insolvency or similar laws ordering: (a) the liquidation of Borrower, any Guarantor or such Obligor or (b) a reorganization of Borrower, any Guarantor or such Obligor or the business and affairs of Borrower, the Guarantor or such Obligor, or (c) the appointment of a receiver, liquidator, assignee, custodian, trustee or similar official for Borrower, any Guarantor or other Obligor of the property of Borrower, the Guarantor or such Obligor and the failure to have such petition or other pleading denied or dismissed within 45 calendar days from the date of filing.

8.8 **Voluntary Bankruptcy.** The commencement by Borrower, any Guarantor or other Obligor of a voluntary case under the federal bankruptcy laws or any federal or state insolvency or similar laws or the consent by Borrower, any Guarantor or other Obligor to the appointment of or taking

possession by a receiver, liquidator, assignee, trustee, custodian or similar official for Borrower, any Guarantor or other Obligor of any of the property of Borrower, any Guarantor or other Obligor or the making by Borrower, any Guarantor or other Obligor of an assignment for the benefit of Lenders, or the failure by Borrower, any Guarantor or other Obligor generally to pay their debts as the debts become due.

8.9 **Judgments, Awards.** The entry of any judgment, order, award or decree against Borrower, any Guarantor or other Obligor and a determination by Lender, in good faith but in its sole discretion, that the same, when aggregated with all other judgments, orders, awards and decrees outstanding against Borrower, any Guarantor or other Obligor, could have a material adverse effect on the prospect for Lender to fully and punctually realize the full benefits conferred on Lender by this Agreement.

8.10 **Injunction.** The injunction or restraint of Borrower, any Guarantor or other Obligor in any manner from conducting its business in whole or in part and a determination by Lender, in good faith but in its sole discretion, that the same could have a material adverse effect on the prospect for Lender to fully and punctually realize the full benefits conferred on Lender by this Agreement.

8.11 **Attachment by Lenders.** Any assets of Borrower, any Guarantor or other Obligor shall be attached, levied upon, seized or repossessed, or come into the possession of a trustee, receiver or other custodian and a determination by Lender, in good faith but in its sole discretion, that the same could have a material adverse effect on the prospect for Lender to fully and punctually realize the full benefits conferred on Lender by this Agreement.

8.12 **Dissolution, Merger, Consolidation, Reorganization.** The voluntary or involuntary dissolution, merger, consolidation, liquidation, winding up or reorganization of Borrower, any Guarantor or other Obligor, or the occurrence of any action preparatory thereto.

8.13 **Prospect of Payment or Performance.** The determination in good faith by Lender that the prospect for payment or performance of any of the Obligations is impaired for any reason other than a violation of Sections 5, 6 and 7 of this Agreement.

8.14 **Death.** Death of Blair Tanner.

8.15 **Control.** The sale of ownership interests in or of the assets of any Borrower, or the sale, surrender or transfer of management control or voting control of either or both Henry Newell or Charles Newell.

8.16 **Insecurity.** Lender deems itself insecure, for any one or more of the following reasons, in its sole and unfettered discretion, with respect to the Borrower: (1) repeated late payments or defaults under this Note or any Loan Document, (2) refusal to timely cooperate with the delivery of information required in the Loan Documents, (3) Blair C. Tanner is no longer the President of Borrower and Borrower fails to appoint a replacement President within ten (10) days that is satisfactory to Lender in Lender's sole discretion, (4) significant increases in borrowed debt, liabilities, or third party obligations which jeopardizes cash flow or reduces the credit risk as determined by Lender, (5) claims made or litigation pursued between Borrowers or "Affiliates" (as defined in the Loan and Security Agreement) for the payment of money or any fraudulent conduct, (6) material and negative changes in the overall financial condition of Borrower or any Guarantors, (7) excessive pay, salaries, or bonuses paid by Borrower or Guarantors to any Affiliates during an Event of Default that remains uncured or during any time in which the financial condition of such entities is materially less than on the date of this Note, (8) defaults on loans owed to third parties which result in a judgment entered against either any Borrower, any Guarantor, or their Affiliates.

8.17 **Trust.** The revocation of any Trust which is a Guarantor.

8.17 **Lease and Sublease Termination.** The Lease or Sublease expire or terminate.

Notwithstanding anything to the contrary contained above, an occurrence of any of the following Events of Default shall not entitle Lender to exercise a remedy unless and until Borrower has failed to cure such default within fifteen (15) days after written notice of such default by Lender: 8.2, 8.3, 8.5, 8.10, and 8.16

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies of Lender. Upon and after the occurrence and continuation of an Event of Default (provided, after the debt has been accelerated the continuation of the default is not necessary and only payment of the debt can cure the Event of Default), Lender may, without notice or demand, exercise in any jurisdiction in which enforcement hereof is sought, the following rights and remedies, in addition to the rights and remedies available to Lender under the Loan Documents, the rights and remedies of a secured party under the Uniform Commercial Code and all other rights and remedies available to Lender under applicable law, all such rights and remedies being cumulative and enforceable alternatively, successively or concurrently provided, however, that in the case of any Event of Default referred to in **Sections 8.6, 8.7 and 8.8** above the unpaid principal balance of the Note, together with all accrued and unpaid interest and all other Obligations then outstanding shall be automatically due and payable by Borrower to Lender without notice, presentment or demand:

(a) Declare the Note, all interest accrued and unpaid thereon and all other Obligations to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand for payment, protest or notice of any kind, all of which are hereby expressly waived.

(b) Institute any proceeding or proceedings to enforce the Obligations and any Liens of Lender.

(c) Take possession of the Collateral, and for that purpose, so far as Borrower may give authority therefor, enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom without any liability for suit, action or other proceeding, BORROWER HEREBY WAIVING ANY AND ALL RIGHTS TO PRIOR NOTICE AND TO JUDICIAL HEARING WITH RESPECT TO REPOSSESSION OF COLLATERAL, and require Borrower, at Borrower's expense, to assemble and deliver the Collateral to such place or places as Lender may designate.

(d) Operate, manage and control the Collateral (including use of the Collateral and any other property or assets of Borrower in order to continue or complete performance of Borrower's obligations under any contracts of Borrower), or permit the Collateral or any portion thereof to remain idle or store the same, and collect all rents and revenues therefrom and sell or otherwise dispose of any or all of the Collateral upon such terms and under such conditions as Lender, in its sole discretion, may determine, and purchase or acquire any of the Collateral at any such sale or other disposition, all to the extent permitted by applicable law.

(e) Enforce Borrower's rights against any account debtors and other obligors.

(f) Cease making advances hereunder and under any other commitments or credit accommodations of Lender to Borrower and stop and retract the making of any advance hereunder or thereunder which may have been requested by Borrower.

(g) Have a receiver appointed to operate Borrower's business without bond.

(h) Notify all account debtors of Borrower's default and require all payments from account debtors to be made directly to Lender.

(i) Enforce all rights and remedies specifically provided in the other Loan Documents, including without limitation, foreclosure of the Leasehold Mortgage.

9.2 **Power of Attorney.** Effective upon the occurrence and continuation of an Event of Default, Borrower hereby designates and appoints Lender and its designees as attorney-in-fact of Borrower, irrevocably and with power of substitution, with authority to endorse Borrower's name on any notes, acceptances, checks, drafts, money orders, instruments or other evidences of payment or proceeds of the Collateral that may come into Lender's possession; to execute proofs of claim and loss; to adjust and compromise any claims under insurance policies; and to perform all other acts necessary and advisable, in Lender's sole discretion, to carry out and enforce this Agreement and the Loan Documents. All acts of said attorney or designee are hereby ratified and approved by Borrower and said attorney or designee shall not be liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law. This power of attorney is coupled with an interest and is irrevocable so long as any of the Obligations remain unpaid or unperformed or there exists any commitment by Lender which could give rise to any Obligations.

9.3 **Notice of Disposition of Collateral.** It is mutually agreed that commercial reasonableness and good faith require Lender to give Borrower no less than 5 days prior written notice of the time and place of any public disposition of Collateral or of the time after which any private disposition or any other intended disposition is to be made. It is mutually agreed that it is commercially reasonable for Lender to disclaim all warranties which arise with respect to the disposition of the Collateral.

9.4 **Costs and Expenses.** Borrower agrees to pay to Lender on demand the amount of all expenses paid or incurred by Lender in consulting with counsel concerning any of its rights hereunder, under the Loan Documents or under applicable law, all expenses, including attorneys' fees and court costs paid or incurred by Lender in exercising or enforcing any of its rights hereunder, under the Loan Documents or under applicable law together with interest on all such expenses paid by Lender at the highest rate and calculated in the manner provided in the Note. The provisions of this Subsection shall survive the termination of this Agreement and Lender's security interest hereunder and the payment of all other Obligations.

10. MISCELLANEOUS

10.1 **Performance for Borrower.** Borrower agrees and hereby authorizes that Lender may, in Lender's sole discretion, but Lender shall not be obligated to, whether or not an Event of Default shall have occurred, advance funds on behalf of Borrower, without prior notice to Borrower, in order to insure Borrower's compliance with any covenant, warranty, representation or agreement of Borrower made in or pursuant to this Agreement or any of the Loan Documents, to continue or complete, or cause to be continued or completed, performance of Borrower's obligations under any contracts of Borrower, to cover overdrafts in any checking or other accounts of Borrower at Lender or to preserve or protect any right or interest of Lender in the Collateral or under or pursuant to this Agreement or any of the Loan Documents, including, without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Collateral or other property or assets of Borrower; provided, however, that the making of any such advance by Lender shall not constitute a waiver by Lender of any Event of Default with respect to which such advance is made nor relieve Borrower of any such Event of Default. Borrower shall pay to Lender upon demand all such advances made by Lender with interest thereon at the highest rate and calculated in the manner provided in the Note. All such advances shall be deemed to be included in the Obligations and secured by the security interest granted Lender hereunder; provided, however, that the provisions of this Subsection shall survive the termination of this Agreement and Lender's security interest hereunder and the payment of all other Obligations.

10.2 **Expenses.** Whether or not any of the transactions contemplated hereby shall be consummated, Borrower agrees to pay to Lender on demand the amount of all reasonable expenses paid or incurred by Lender (including the fees and expenses of its counsel) in connection with the preparation of all written commitments of Lender antedating this Agreement, this Agreement and the Loan Documents

and all documents and instruments referred to herein and all expenses paid or incurred by Lender in connection with the filing or recordation of all financing statements and instruments as may be required by Lender at the time of, or subsequent to, the execution of this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Borrower shall pay Lender \$25.00 for each response to Borrower's request for an accounting or confirmation of a list of Collateral or statement of account exceeding one request per 6-month period. Borrower agrees to save harmless and indemnify Lender from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs or any other expenses incurred by Lender in connection with this Agreement. The provisions of this Subsection shall survive the termination of this Agreement and Lender's security interest hereunder and the payment of all other Obligations.

10.3 Applications of Payments and Collateral. Except as may be otherwise specifically provided in this Agreement, all Collateral and proceeds of Collateral coming into Lender's possession and all payments made by any Obligor may be applied by Lender to any of the Obligations, whether matured or unmatured, as Lender shall determine in its sole but reasonable discretion. Lender may defer the application of non-cash proceeds of Collateral, including, but not limited to, non-cash proceeds collected under Subsection 3.3 hereof, to the Obligations until cash proceeds are actually received by Lender.

10.4 Waivers by Borrower. Borrower hereby waives, to the extent the same may be waived under applicable law: (a) notice of acceptance of this Agreement; (b) all claims, causes of action and rights of Borrower against Lender on account of actions taken or not taken by Lender in the exercise of Lender's rights or remedies hereunder, under the Loan Documents or under applicable law; (c) all claims of Borrower for failure of Lender to comply with any requirement of applicable law relating to enforcement of Lender's rights or remedies hereunder, under the Loan Documents or under applicable law; (d) all rights of redemption of Borrower with respect to the Collateral; (e) in the event Lender seeks to repossess any or all of the Collateral by judicial proceedings, any bond(s) or demand(s) for possession which otherwise may be necessary or required; (f) presentment, demand for payment, protest and notice of non-payment and all exemptions; (g) any and all other notices or demands which by applicable law must be given to or made upon Borrower by Lender; (h) settlement, compromise or release of the obligations of any person primarily or secondarily liable upon any of the Obligations; (i) trial by jury in any action or proceeding of any kind or nature in connection with any of the Obligations, this Agreement or any of the Loan Documents; and (j) substitution, impairment, exchange or release of any Collateral for any of the Obligations. Borrower agrees that Lender may exercise any or all of its rights and/or remedies hereunder, under the Loan Documents and under applicable law without resorting to and without regard to any Collateral or sources of liability with respect to any of the Obligations. Upon satisfaction of Borrower's Obligations and termination of this Agreement and Lender's security interest hereunder and payment of all Obligations, within five (5) business days following Borrower's written request to Lender, Lender shall release control of any security interest in the Collateral perfected by control and Lender shall send Borrower a statement terminating any financing statement filed against the Collateral.

10.5 Waivers by Lender. Neither any failure nor any delay on the part of Lender in exercising any right, power or remedy hereunder, under any of the Loan Documents or under applicable law shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

10.6 Lender's Setoff. Lender shall have the right, in addition to all other rights and remedies available to it, following an Event of Default, to set off against any Obligations due Lender, any debt owing to Borrower by Lender, including, without limitation, any funds in any checking or other account now or hereafter maintained by Borrower at Lender. Borrower hereby confirms Lender's right to banker's lien and setoff, and nothing in this Agreement or any of the Loan Documents shall be deemed a waiver or prohibition of Lender's right of banker's lien and setoff.

10.7 Modifications. No modifications or waiver of any provision of this Agreement or any of the Loan Documents, and no consent by Lender to any departure by Borrower therefrom, shall in

any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon Borrower in any case shall entitle Borrower to any other or further notice or demand in the same, similar or other circumstances.

10.8 **Notices.** Any notice or other communication in connection with this Agreement, if by registered or certified mail, shall be deemed to have been given when received by the party to whom directed, or, if by mail but not registered or certified, when deposited in the mail, postage prepaid, provided that any such notice or communication shall be addressed to a party hereto as provided below (or at such other address as such party shall specify in writing to the other parties hereto):

If to Borrower:	Woodside Racquet Club Management, Inc. 2000 West 47 th Place Westwood, KS 66205
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With a copy to:	Lawrence L. Ferree, III Ferree, Bunn, O'Grady & Rundberg, Chtd 9300 Metcalf Avenue Suite 300 Overland Park, Kansas 66212
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If to Lender:	Great Western Bank 10610 Shawnee Mission Parkway Shawnee, KS 66203
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Notwithstanding anything to the contrary, all notices and demands for payment from Lender actually received in writing by Borrower shall be considered to be effective upon receipt thereof by Borrower regardless of the procedure or method utilized to accomplish such delivery thereof to Borrower.

10.10 **Applicable Law and Consent to Jurisdiction.** The performance and construction of this Agreement and the Loan Documents shall be governed by the internal laws of the State of Kansas. Borrower agrees that any suit, action or proceeding instituted against Borrower with respect to any of the Obligations, the Collateral, this Agreement or any of the Loan Documents may be brought in any court of competent jurisdiction located in the State of Kansas. By its execution hereof, Borrower hereby irrevocably waives any objection and any right of immunity on the ground of venue, the convenience of the forum or the jurisdiction of such courts or from the execution of judgments resulting therefrom. Borrower hereby irrevocably accepts and submits to the jurisdiction of the aforesaid courts in any such suit, action or proceeding.

10.11 **Survival: Successors and Assigns.** All covenants, agreements, representations and warranties made herein and in the Loan Documents shall survive the execution and delivery hereof and thereof, shall survive Closing and shall continue in full force and effect until all Obligations have been paid in full, there exists no commitment by Lender which could give rise to any Obligations and all appropriate termination statements have been filed terminating the security interest granted Lender hereunder. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. In the event that Lender assigns the Note, this Agreement and/or its security interest in the Collateral, Lender shall give written notice to Borrower of any such assignment. All covenants, agreements, representations and warranties by or on behalf of Borrower which are contained in this Agreement and the Loan Documents shall inure to the benefit of Lender, its successors and assigns. Borrower may not assign this Agreement or any of its rights hereunder without the prior written consent of Lender.

10.12 **Severability.** If any term, provision or condition, or any part thereof, of this Agreement or any of the Loan Documents shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and

this Agreement and the Loan Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

10.13 Merger and Integration. This Agreement and the attached Schedules (if any) contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby, and no other agreement, statement or promise made by any party hereto, or by any employee, officer, agent or attorney of any party hereto, which is not contained herein shall be valid or binding.

10.14 WAIVER OF JURY TRIAL. BORROWER HEREBY (a) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND (b) WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH LENDER AND BORROWER MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS AND/OR ANY TRANSACTIONS, OCCURRENCES, COMMUNICATIONS OR UNDERSTANDINGS (OR THE LACK OF ANY OF THE FOREGOING) RELATING IN ANY WAY TO THE BORROWER-LENDER RELATIONSHIP BETWEEN THE PARTIES. IT IS UNDERSTOOD AND AGREED THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS SECURITY AGREEMENT. THIS WAIVER OF JURY TRIAL IS SEPARATELY GIVEN, KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND BORROWER HEREBY AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. LENDER IS HEREBY AUTHORIZED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND BORROWER AND LENDER, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF SUCH WAIVER OF RIGHT TO TRIAL BY JURY. BORROWER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND/OR THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

10.15 Margin Stock. Borrower warrants and represents that Borrower is not engaged principally, or as one of its material activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) and no part of the Loan proceeds will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock. Borrower further warrants and represents that neither Borrower nor any agent acting on its behalf has taken or will take any action which might cause this Agreement or any of the Loan Documents to violate any regulation of the Board of Governors of the Federal Reserve System, including without limitation, Regulations G, L, O, T, U and X, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Kansas State Bank Commissioner, as in effect now or as the same may hereafter be in effect.

10.16 Requirements for Office of Foreign Assets Control ("OFAC").

(a) No portion of the Collateral or Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity.

(b) None of any stockholder, director, officer, general or limited partner, manager, member or management agent of Borrower or any Guarantor is a Prohibited Person, and no Person who owns an equity interest in or has the ability to control any of the foregoing is a Prohibited Person.

(c) To the best of Borrower's knowledge, no owner or employee of Borrower is a Prohibited Person, and no Collateral or Property is owned or Controlled by a Prohibited Person.

(d) None of any stockholder, director, officer, general or limited partner, manager, member or management agent of Borrower or any Guarantor, or, to the best of Borrower's knowledge, any employee, is

engaging in transactions or has dealings with a Prohibited Person or Sanctioned Country in violation of any Requirements of Law or is otherwise in violation of any Requirements of Law relating to Anti-Money Laundering, terrorism, embargoes or sanctions.

(e) Borrower has implemented procedures, and will consistently apply those procedures throughout the term of the Loan, to ensure the foregoing representations and warranties remain true and correct during the term of the Loan.

(f) Each stockholder, director, officer, general or limited partner, manager, member or management agent of Borrower or any Guarantor shall comply with all Requirements of Law relating to Anti-Money Laundering, terrorism, embargoes and sanctions, now or hereafter in effect. Without limiting the foregoing, each stockholder, director, officer, general or limited partner, manager, member or management agent of Borrower or any Guarantor agrees that they will not: (i) permit a Prohibited Person to own an equity interest in or Control the Borrower or any stockholder, director, officer, general or limited partner, manager, member or management agent of Borrower or any Guarantor; (ii) lease space to any tenant who is a Prohibited Person or who is known to the Borrower, after reasonable inquiry, to be owned or Controlled by a Prohibited Person; (iii) lease space to any tenant who is known to the Borrower, after reasonable inquiry, to be engaged in transactions or dealings with a Prohibited Person or a Person owned or Controlled by a Prohibited Person; or (iv) engage in transactions or have dealings with a Prohibited Person or a Person known by the Borrower, after reasonable inquiry, to be owned or Controlled by a Prohibited Person.

(g) Upon the Lender's request from time to time during the term of the Loan, the Borrower shall certify in writing to the Lender that the representations, warranties and obligations under this Section remain true and correct and have not been breached. The Borrower shall notify the Lender immediately in writing if any of such representations, warranties or covenants are no longer true or have been breached or if Borrower has a reasonable basis to believe that they may no longer be true or have been breached. In connection with such an event, Borrower shall comply with all Requirements of Law and directives of Governmental Authorities and, shall provide to the Lender copies of all notices, reports and other communications exchanged with, or received from, Governmental Authorities relating to such an event. The Borrower shall also reimburse the Lender for any expense incurred by the Lender in evaluating the effect of such an event on the Property and in complying with all Requirements of Law applicable to the Borrower or the Lender as the result of the existence of such an event and for any penalties or fines imposed upon the Borrower or Lender as a result thereof.

(h) For purposes of this Section the following terms shall have the meanings as set forth below:

(i) "Anti-Money Laundering Laws" means those laws, regulations and sanctions, state and federal, criminal and civil, that (a) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (b) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (c) require identification and documentation of the parties with whom a Financial Institution conducts business; or (d) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the Patriot Act, the Bank Secrecy Act, the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

(ii) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through ownership of voting securities, beneficial interests, by contract or otherwise. The definition is to be construed to apply equally to variations of the word "Control" including "Controlled," "Controlling" or "Controlled by."

(iii) "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government.

(iv) "OFAC List" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the Office of Foreign Assets Control ("OFAC") pursuant to any Requirements of Law, including, without limitation, embargo, sanctions or other prohibitions of United States law, regulation or Executive Order of the President of the United States. The OFAC List is accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

(v) "Person" means an individual, partnership, limited partnership, limited liability limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

(vi) "Prohibited Person" means any Person identified on the OFAC List or with whom a US citizen or entity organized under the laws of a state in the United States may not engage in transactions or have dealings with by any Requirements of Law, including, without limitation, embargo, sanctions or other prohibitions of United States law, regulation or Executive Order of the President of the United States, including without limitation those countries listed in 15 C.F.R. Parts 738 and 746.

(vii) "Requirements of Law" means (a) the organizational documents of an entity, and (b) any law, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Authority, or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such Person or to which such Person, any of its property or the conduct of its business is subject including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy and subdivision of real property.

(viii) "Sanctioned Country" means any country or government thereof subject to embargoes or sanctions under the Requirements of Law. These currently include, but are not limited to, Cuba, Iran, Iraq, Libya and Rwanda.

10.17 Additional Acts. Borrower agrees to comply with any and all reasonable requirements of Lender hereafter made by Lender from time to time during the period this Agreement is in force and while any indebtedness is owed by Borrower to Lender, and Borrower agrees to make, execute and deliver to Lender any and all further instruments, documents and agreements reasonably required by Lender in connection therewith. Unless waived in writing by Lender, Borrower shall provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in the Loan Documents are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under the Loan Documents. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created under the Loan Documents, to protect and further the validity, priority and enforceability of the Note and Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder; provided, however, that no such further actions, assurances and confirmations shall increase, modify or change Borrower's obligations under the Note or under the Loan Documents.

10.18 Loan Participations. Lender shall have the right to participate with one or more other banks or lending institutions in making the Loan referred to herein, and Lender shall have the right to assign, in whole or in part, its rights and interests in and to this Loan and the Loan Documents to such other participating banks or lending institutions. Said banks or lending institutions so participating shall have all of the rights and interests of Lender according to their respective participations or their

participating agreements with Lender. Upon receipt of notice of the identity and address of each such participant and request of Lender, Borrower shall thereafter immediately supply such participants with the same information and reports communicated to Lender. In connection with any sales or attempted sales of one or more participations in the Loan, Lender shall have the right to provide financial and other information and documents concerning the Borrower, any Guarantor, any affiliate, and the Loan to the prospective participants, and Borrower for itself and the Guarantors and affiliates waives any right to financial privacy concerning any such disclosures. Borrower waives any and all notices of sale of participation interests, all notices of any repurchase of such participation interests and all notices of issuance of notes or securities which are in whole or in part collateralized by this Loan. Borrower waives all rights of offset or counterclaim that it may have now or later against any issuer of notes or securities, or against any purchaser of such a participation interest and unconditionally agrees that such issuer or purchaser may enforce Borrower's obligations under the Loan irrespective of the failure or insolvency of Lender or any holder of any interest in the Loan, and irrespective of any personal claims, counterclaims or defenses that Borrower may have against Lender.

10.19 Lost Note. If the Note is ever mutilated, destroyed, lost or stolen, Borrower will deliver to Lender in substitution therefor a new promissory note(s) containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued but unpaid interest. Borrower shall be furnished with reasonably satisfactory evidence of the mutilation, destruction, loss or theft of the Note, and also such security or indemnity as may be reasonably requested by Borrower; provided, however, that if the Lender is a banking institution, a savings and loan association, a savings bank, a life insurance company, or other financial institution whose loans are regulated by an agency of the United States or the state of its domicile, an unqualified indemnity from the Lender shall be deemed to be satisfactory security and indemnification. Borrower shall, if requested by Lender, fully cooperate and adjust or correct for clerical errors, any or all Loan Documents, if deemed necessary or desirable in the sole discretion of Lender. If any of the Loan Documents misstate or inaccurately reflect the true and correct terms and provisions of the Loan and said misstatement or inaccuracy is due to unilateral mistake on the part of Lender, mutual mistake on the part of the Lender and Borrower or clerical error, then in such event, Borrower shall upon request by Lender and in order to correct such misstatement or inaccuracy, execute such new documents or initial such corrected original documents as Lender may deem necessary to remedy said inaccuracy or mistake. Failure of Borrower to initial or execute such documents as requested shall constitute a default under the Note and the other Loan Documents. Borrower agrees to comply with any such requests by Lender within 30 days from the date of mailing the request. Borrower shall assume all costs including without limitation legal fees and marketing losses for failing to comply with correction requests in this time period.

10.20 Unconditional Obligation. Borrower is and shall be obligated to pay principal, interest and any and all other amounts which become payable hereunder or under the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction and without any reduction for counterclaim or setoff. In the event that at any time any payment received by Lender hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any bankruptcy, insolvency or other debtor relief law, then the obligation to make such payment shall survive any cancellation or satisfaction of this Note or return thereof to Borrower and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

10.21 No Reliance. Borrower acknowledges and agrees that it shall not rely upon any oral discussions, promises, communications of any kind (even if written), or upon any conduct or course of dealing between Borrower and Lender, with respect to any modification, extension or renewal of Borrower's loan obligations. Lender shall not be subject to any oral or written promise to modify, extend or renew the loan obligations unless the terms of such modification, extension or renewal are set forth in a written instrument and signed by Borrower and Lender.

10.22 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

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

Woodside Racquet Club Management, Inc.
a Kansas corporation

By _____
Blair C. Tanner, President

STATE OF KANSAS)
) ss.
COUNTY OF)

On this _____ day of December, 2012, before me appeared Blair C. Tanner, to me personally known, who being by me duly sworn, did say that he is the President of **Woodside Racquet Club Management, Inc.**, a Kansas corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and said Blair C. Tanner acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

Notary Public

My commission expires:

Great Western Bank

By _____
Name _____
Title _____

STATE OF KANSAS)
) ss.
COUNTY OF)

On this _____ day of December, 2012, before me appeared _____, to me personally known, who being by me duly sworn, did say that he is the _____ of **Great Western Bank**, and that the foregoing instrument was signed on behalf of said entity by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

Notary Public
Print Name: _____

My commission expires:

EXHIBIT A

(Description of Collateral)

All Assets of Borrower including, without limitation, the following: equipment, machinery and mechanisms, and the attachments, parts and accessories thereto and software embedded therein, now owned or hereafter acquired or arising, as broadly defined under applicable UCC statutes and laws, including without limitation, the following:

The items of personal property described on Exhibit A-1 attached hereto;

All accounts, contract rights, accounts receivable and rights to receive payment of a monetary obligation, however evidenced, whether or not earned by performance as defined in UCC 9-102, (including health care insurance receivables), third-party claims, executory contract rights, instruments, documents, chattel paper, and general intangibles; all guaranties of the receivables and any standby letters of credit;

All claims for moneys and payments that are due or are to become due and all receipts (whether cash, cash equivalents or otherwise), other cash or non-cash income, rents, profits, revenues, and/or proceeds received by Debtor from any source, including credit card receipts, sales drafts, credits, provisional credits, rights of collections, and any other right to payment with respect to credit cards howsoever evidenced, and license fees;

All of Borrower's rights to goods represented by or securing any of the receivables and all of Borrower's rights as an unpaid vendor, including the right to reclaim the goods under UCC 2-702, the right to stop the goods in transit under UCC 2-705, and the right to replevy the goods under UCC 2-716.

All monies, proceeds, dues, deposits and payments from customers, members, guests and account debtors;

All inventory, including, without limitation embedded software, all of Borrower's rights as a seller of goods under UCC Article 2 and all inventory that may be returned or is repossessed, and all proceeds of sale, raw materials, work-in-process, parts, attachments, extensions, and materials used or consumed in the Borrower's business, and goods consigned to the Borrower for resale;

All books, records, computer records, ledger sheets, files, programs and other computer tapes, discs, materials, customer and supplier lists, invoices, orders and other property at any time evidencing or relating to the Collateral (the "Records");

The name "Woodside Health and Tennis Club" and any similar, affiliated or derivative name, and all intellectual property, service mark, trademark, or copyright in connection therewith; and

Any and all additions, accessions, replacements and substitutions to or for any of the foregoing, any and all proceeds and products of any of the foregoing, and any insurance and the proceeds therefrom in any way relating to the foregoing.

EXHIBIT B

(Description of Sublease and Property)

Borrower's Sub-leasehold Estate in the Land, Improvements and Fixtures in and upon the real property legally described as follows:

Lots 1 and 2, WOODSIDE CLUB COMPLEX, a subdivision in the City of Westwood, Johnson County, Kansas.

Pursuant to the Land and Building Sublease Agreement dated _____ (aka Amended Restated and Consolidation of Sub-Lease Agreements by and between Westwood Foundation, Forty-Seventh partners, L.P. and Woodside Racquet Club Management, Inc.) ("Sublease") by and between Westwood Foundation ("Landlord") and Woodside Racquet Club Management, Inc. (dba Woodside Health & Tennis Club "Sub-Tenant"), a Kansas corporation, as evidenced by a Memorandum of Land and Building Sublease Agreement dated _____ and recorded February 4, 2011 as Document No. 20110204-01192 in Book 201102 at Page 001192, which assigns that certain unrecorded Sub- Sublease Agreement dated June 1, 1981, between Forty- Seventh Partners, L.P., and C. Wayne Freeland First Marital Trust dba Woodside Ltd., a landlord, and Woodside Racquet Club Management, Inc., a Kansas Corporation, as sub-sub Tenant, amended January 1, 1993 and December 15, 1999, as evidence by a Memorandum of Third Amendment of Sub-Sublease recorded May 10, 2006 in Book 200605 at Page 004389.

(Description of Fee Title Property)

PROMISSORY NOTE

\$2,035,000.00

December ____, 2012

FOR VALUE RECEIVED, the undersigned, **WOODSIDE RACQUET CLUB MANAGEMENT, INC.**, a Kansas corporation ("Borrower") promises to pay to the order of **GREAT WESTERN BANK**, a South Dakota corporation ("Lender"), at the office of the Lender at 10610 Shawnee Mission Parkway, Shawnee, Kansas 66203, or at such other place as the Lender may designate to the Borrower in writing from time to time, the principal sum of **TWO MILLION THIRTY FIVE THOUSAND and No/100ths DOLLARS (\$2,035,000.00)** or so much thereof as may hereafter be disbursed hereunder, together with interest outstanding and unpaid, from the date of each advance of principal, at the interest rate which is described below (computed on the basis of a three hundred sixty (360) day year and charged on the actual number of days principal is outstanding).

1. Payments. Such indebtedness shall be payable in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private; such principal and interest to be paid in the following manner, to-wit:

(a) Borrower shall make monthly payments of accrued interest only on the unpaid principal balance on January ____, 2013 and on the ____ day of each succeeding month thereafter through and including May ____, 2013.

(b) All unpaid principal which has been disbursed and accrued interest shall be due and payable on June ____, 2013 ("Maturity Date"), unless sooner paid.

2. Interest Rate. The applicable Interest Rate shall be a variable rate equal to the "Prime Rate" as published in the Money Rates Section of the Wall Street Journal, adjusted daily. If the Wall Street Journal discontinues publishing a Prime Rate, then the holder of this Note shall choose a new index which is based upon comparable information. The holder of this Note agrees to notify Borrower of any adjustment in the rate of interest, but its failure to do so shall not invalidate any such adjustment. Any changes in the Interest Rate shall not exceed the maximum amount permitted by law.

3. Loan Documents and Security. This Note and the indebtedness evidenced hereby are secured by or executed in connection with the following documents ("Loan Documents") executed by Borrower on even date herewith:

- (a) Leasehold Mortgage and Security Agreement encumbering Borrower's subleasehold interest under a Sublease ("Sublease") with Westwood Foundation which pertains to the real property and improvements described therein and more commonly known as **2000 West 47th Place, Westwood, Kansas 66205** and the Mortgage encumbering the fee title Property owned by Borrower located in Kansas City, Wyandotte County, Kansas (collectively the "Property" and the "Mortgage").
- (b) Leasehold Assignment of Leases and Rents encumbering the Property, and the Assignment encumbering the fee title Property owned by Borrower located in Kansas City, Wyandotte County, Kansas (collectively the "Assignment")
- (c) Loan and Security Agreement
- (d) UCC-1 Financing Statements

- (e) Environmental and ADA Indemnity Agreement
- (f) Borrower's Affidavit
- (g) Landlord Estoppel, Non-Disturbance and Recognition Agreement
- (h) Construction Loan Agreement

4. Prepayment. The principal balance of this Note and any interest accrued thereon may be prepaid in whole or in part, as long as Borrower shall provide Lender with prior written notice of intent to prepay no less than thirty (30) days but no more than ninety (90) days prior to prepayment and, if such prepayment is in connection with a refinance by a third party lender, then upon payment of a premium equal to one percent (1%) of the amount outstanding on this Note. Any partial prepayment shall not affect, reduce or delay the full payment of any scheduled monthly payments.

5. Late Charge. If any installment of principal and interest due hereunder, or if any amount due under any other Loan Document (e.g. taxes and insurance) is not paid within ten (10) days after the date such installment or payment is due, Lender may, at its option, collect a "late charge" to cover expense of handling delinquent payments in an amount equal to five percent (5.0%) of the delinquent installment.

6. Application of Payments. All payments from Borrower to Lender shall be applied, in such order and manner as Lender elects in its sole discretion, in reduction of costs, expenses, charges, disbursements and fees payable by Borrower hereunder or under any other Loan Document, in reduction of interest due on unpaid principal or in reduction of principal. Lender may, without notice to Borrower or any other person, accept one or more partial payments of any sums due or past due hereunder from time to time while an uncured Event of Default exists hereunder, after Lender accelerates the indebtedness evidenced hereby and/or after Lender commences enforcement of its remedies under the Loan Documents, without thereby waiving any Event of Default, rescinding any acceleration or waiving, delaying or forbearing in the pursuit of any remedies under the Loan Documents. Lender may endorse and deposit any check or other instrument tendered in connection with such a partial payment without thereby giving effect to or being bound by any language purporting to make acceptance of such instrument an accord and satisfaction of the indebtedness evidenced hereby.

7. Events of Default. Borrower shall be in default upon the occurrence of any of the following ("Events of Default"): (a) Failure by Borrower to make any payment when due hereunder or under any Loan Document; or (b) A default or breach by Borrower under any of the terms of this Note, any Loan Documents, or other loan agreement, security agreement, mortgage, deed of trust, or under any other document or instrument evidencing, guarantying, securing or otherwise relating to this Note or any other obligations Borrower has with Lender; or (c) The making or furnishing of any verbal or written representation, statement or warranty to Lender which is or becomes false or incorrect in any material respect by or on behalf of Borrower; or (d) Failure to obtain or maintain the insurance coverages required by Lender; or (e) The death, insolvency of, the appointment of a receiver by or on behalf of, the assignment for the benefit of creditors by or on behalf of, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law or against Borrower or any Guarantor; provided, however, the death of a Guarantor shall not create an Event of Default in the event (i) the deceased Guarantor's estate assumes the obligations of the deceased Guarantor, and (ii) either there is a principal reduction in an amount satisfactory to Lender, or replacement Guarantor(s) with sufficient net worth, liquidity, and outside income, in Lender's sole discretion, is provided in a manner satisfactory to Lender; or (f) A good faith belief by Lender at any time that Lender is insecure with respect to Borrower, that the prospect of any payment is materially impaired, or that any collateral is materially impaired due to (i) a material adverse change to the condition, title, or vacancy rate of the Property, (ii) a material adverse change to the financial condition of Borrower, (iii) a substantial decrease in the value of the Property for any reason, (iv) Borrower has communicated to Lender or Lender is made aware of Borrower's inability to pay this Note or perform its obligations under the Loan Documents; (v) a

change in the management of Borrower, or (vi) any other commercially reasonable and material fact that causes Lender to reasonably believe the Property is materially impaired or that Borrower cannot fulfill its obligations hereunder; or (g) Failure to pay or provide proof of payment of any tax, assessment, rent, insurance premium, escrow deficiency on or before its due date; or (h) A transfer or encumbrance of a substantial part of Borrower's assets without Lender's prior written consent; or (i) The sale, transfer or conveyance of the general partner's interest in Borrower without Lender's prior written consent, or (j) Borrower is dissolved or fails to maintain its legal existence; or (k) Any trust which is a Borrower (or a principal or owner of Borrower) is revoked or terminated; or (l) Borrower transfers, assigns, leases, mortgages or pledges an interest in the Property without the prior written consent of the Lender; or (m) Borrower is in default under any other loan obligations to Lender, or under any documents or instruments executed in connection therewith; (n) Borrower defaults under the Sublease.

8. Remedies. (a) It is hereby expressly agreed that upon an Event of Default and Borrower's failure to cure a monetary default within five (5) days after the date payment was due, or Borrower fails to cure a non-monetary default within fifteen (15) days after receipt of written notice from Lender, the unpaid principal and any unpaid interest accrued thereon and any other indebtedness due hereunder, shall, at the option of the Lender, at once become due and payable and may be collected forthwith, regardless of the stipulated date of maturity. Further, upon default by Borrower, Lender shall be entitled to exercise any and all rights and remedies allowed by law and equity, or as allowed in any Loan Document, including without limitation, the right to set-off any monies or accounts owed by Lender to Borrower, whether or not due.

(b) Presentment for payment, demand, acceleration, protest and notice of demand, protest and non-payment are hereby waived by the Borrower. Waiver by Lender of any default by Borrower is not a waiver of any subsequent default. Lender shall have the absolute and unconditional right at all times to enforce all agreements of any kind or nature, present or future, between Lender and Borrower in strict accordance with the written terms of such agreements, notwithstanding any conduct, course of dealing or custom between the parties contrary to the specific terms of this Note and all documents concerning or securing this Note. Likewise, the failure to accelerate the debt evidenced hereby by reason of default and the payment of a monthly installment, or the acceptance of a past due installment, shall not be construed as a waiver of the right of Lender to thereafter insist upon strict compliance with the terms of this Note. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. If this Note be signed by more than one individual or entity, all such signatories shall be jointly and severally liable.

(c) Time is of the essence on this Note. If at any time or times Lender shall employ counsel in connection with execution, consummation or enforcement of this Note or any documents concerning or securing this Note, or if Lender is required to take any action in or with respect to any suit or proceeding relating to this Note or any document concerning or securing this Note or executed in connection herewith, or if Lender enforces its rights and remedies hereunder, whether before or after any default, or if Lender collects any of the indebtedness due hereunder, Borrower agrees to pay all costs, expenses, charges, disbursements, and attorney's fees, including any expenses, costs and charges relating thereto, and said amounts shall, to the extent allowed by law, be deemed part of the indebtedness due hereunder.

(d) **NO SETOFF OR COUNTERCLAIM OF ANY KIND CLAIMED BY ANY PERSON LIABLE UNDER THIS NOTE SHALL STAND AS A DEFENSE TO THE JUDICIAL ENFORCEMENT OF THIS NOTE AGAINST SUCH PERSON, IT BEING HEREBY SPECIFICALLY AGREED AND STIPULATED THAT ANY SUCH SETOFF OR COUNTERCLAIM SHALL BE MAINTAINED BY SEPARATE SUIT.**

9. Default Rate. Upon the occurrence of any Event of Default by Borrower hereunder, the interest rate charged hereunder shall increase to three percent (3.0%) per annum above and in addition to the rate of interest then in effect ("Default Rate"), upon notice to Borrower or any other person. Collection of additional interest as a result of any increase of the interest rate charges hereunder to the Default Rate is for the purpose of reasonably compensating Lender for its additional costs and expenses (including but not limited to increased general overhead, disproportionate concentration of management resources on problem loans,

and increased regulatory costs and costs of funds), all of which are difficult to establish precisely. Lender and Borrower agree that Lender's collection of any such additional interest is not a fine or penalty but is reasonable compensation to Lender for increased costs and expenses that Lender will incur as in the event of default hereunder. If any interest, costs, expenses, charges, disbursements and fees due hereunder or under any other Loan Document are not paid when due, all such sums shall become principal and shall bear interest at the Default Rate. Collection of interest at the Default Rate shall not limit or impair any rights and remedies of Lender hereunder or under the Loan Documents. If the interest rate charges hereunder increases to the Default Rate, then the monthly installments of principal and interest due hereunder shall be adjusted to an amount necessary to fully amortize, pay and satisfy the unpaid principal balance due as of the date the Default Rate becomes effective over a period equal to the then remaining term of this Note. The holder of this Note agrees to notify Borrower of such adjusted installments, but its failure to do so shall not invalidate any such adjustment.

10. Governing Law; Jurisdiction. This Note is intended to constitute a contract under and shall be governed by the laws of the State of Kansas. Any litigation arising hereunder or relating to the indebtedness or any extensions made to the Borrower by Lender, or any obligation of Borrower to Lender relating thereto, shall be subject to the jurisdiction of any state or federal courts located in the State of Kansas as Lender may designate, and in the absence of such designation the sites for jurisdiction and venue shall be in any state court located in the County of Johnson or federal district court and division in which the aforesaid county is located, except to the extent Lender files an action in Johnson County, Kansas to foreclose on the Property. Any of the foregoing courts shall have personal jurisdiction over the Borrower and jurisdiction over matters arising under or out of the indebtedness evidenced by this Note. If the Borrower is not then present in Kansas, Lender may obtain service of process on the Borrower pursuant to any rule or statute governing service of process outside the State of Kansas. The Borrower waives any and all rights to contest said jurisdiction and venue and waives any right to commence any action against Lender in any jurisdiction except the aforesaid county.

11. **WAIVER OF JURY TRIAL. BORROWER AND LENDER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS NOTE, THE COLLATERAL SECURING THE NOTE, ANY DOCUMENTS CONCERNING OR SECURING THIS NOTE OR THE RELATIONSHIP BETWEEN BORROWER AND LENDER.**

12. Disclosures. **ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT, INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THIS NOTE. TO PROTECT BORROWER AND LENDER FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS REACHED BY THE PARTIES COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BORROWER AND LENDER, EXCEPT AS MAY BE LATER AGREED IN WRITING TO MODIFY IT.**

13. Miscellaneous. Should any provision or term hereof be or become in violation of any law, rule or regulation, whether local, state or federal, such provision shall be deemed automatically amended to conform, to the extent possible without total waiver of such provision, to such law, and all other provisions hereof shall remain in full force and effect. As used herein, the terms "Borrower" and "Lender" shall be deemed to include their respective heirs, successors, legal representatives and assigns, whether voluntary by action of the parties or involuntary by operation of law. This Note is freely transferable and assignable by Lender, provided that such transfer is made in compliance with all applicable federal and state securities laws. Any reference to Lender herein shall be deemed to refer to any subsequent transferee of this Note at such time such subsequent transferee holds this Note. This Note may not be assigned or delegated by Borrower, whether by voluntary assignment or transfer, operation of law, or otherwise. In the event of typographical error, or inadvertent mistake in transcribing any word, amount or provision, or in the event this Note or any Loan Document does not reflect Lender's intent or the agreed upon terms, or if Lender makes an error in calculating payments herein, Borrower agrees to execute any and all documents, amendments,

modifications or corrective documents as Lender requires in order for the loan documents to properly reflect the terms of the loan.

14. Bankruptcy. To the extent that any payment or payments to Lender and/or any payment or proceeds of any collateral received by Lender in reduction of the indebtedness evidenced hereby are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, to Borrower as a debtor in possession, or to a receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then the portion of the indebtedness evidenced hereby intended to have been satisfied by such payment or proceeds shall be revived and shall continue in full force and effect as if such payment or proceeds had never been received by Lender.

15. Guaranty. As a material inducement to Lender making this loan to Borrower, the follow guarantors (individually and collectively the "Guarantors") have each executed a Guaranty ("Guaranty") on even date herewith: Blair C. Tanner, Blair C. Tanner Trust dated July 12, 2000, as amended and restated June 26, 2008, and David Wayne Freeland, Trustee of the David Wayne Freeland Sub-trust of the C. Wayne Freeland Revocable Declaration of Trust dated March 16, 1993.

16. Waiver and Covenants. Borrower waives all defenses in connection with repayment of this Note other than the defense of payment. Borrower waives any claim or defense based on lack of consideration. Borrower further waives any claim that it does not have authority to borrow the loan funds for the purposes described herein. Borrower acknowledges that it remains responsible and liable to Lender for the use or misuse of the loan proceeds by any person or entity and Borrower indemnifies, and holds Lender harmless for, from and against, all acts and omissions of the acts and omissions of its principals, members, contractors, agents, employees and representatives arising out of the use of the loan proceeds. Borrower and all others who now or may at any time become liable for all or any part of the obligations evidenced hereby, expressly agree hereby to be jointly and severally bound, and jointly and severally: (i) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (ii) except as expressly provided in the Loan Documents, waive any and all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (iii) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (iv) agree that the liability of the Borrower and each Guarantor, endorser or obligor shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by the Lender to any of them with respect hereto; (v) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by the Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (vi) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such makers, endorsers, guarantors or other obligors, or security shall not affect the liability of the Borrower, any Guarantor and all others now liable for all or any part of the obligations evidenced hereby. This provision is a material inducement for the Lender making the Loan to the Borrower.

17. Expenses and Indemnification. Borrower shall pay all costs and expenses incurred by the Lender in connection with the preparation of this Note and the Loan Documents, including, without limitation, reasonable attorneys' fees. Borrower shall pay any and all stamp and other taxes, UCC search fees, filing fees and other costs and expenses in connection with the execution and delivery of this Note and the other instruments and documents to be delivered hereunder, and agrees to save the Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such costs and expenses. Borrower hereby authorizes Lender to charge any account of the Borrower with Lender for all sums due under this section. Borrower also agrees to defend (with counsel satisfactory to the Lender), protect, indemnify and hold harmless the Lender, any parent corporation, affiliated corporation or subsidiary of the Lender, and each of their respective officers, directors, employees, attorneys and agents (each an "Indemnified Party") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and

distributions of any kind or nature (including, without limitation, the disbursements and the reasonable fees of counsel for each Indemnified Party thereto, which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including, without limitation, securities, environmental laws and commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Note or any of the Loan Documents, or any act, event or transaction related or attendant thereto, the preparation, execution and delivery of this Note and the Loan Documents, the making or issuance and management of the Loan, the use or intended use of the proceeds of this Note and the enforcement of the Lender's rights and remedies under this Note, the Loan Documents any other instruments and documents delivered hereunder, or under any other agreement between Borrower and Lender; provided, however, that Borrower shall not have any obligations hereunder to any Indemnified Party with respect to matters caused by or resulting from the willful misconduct, negligence, or gross negligence of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and failing prompt payment, together with interest thereon at the Default Rate from the date incurred by each Indemnified Party until paid by the Borrower, shall be added to the obligations of the Borrower evidenced by this Note and secured by the collateral securing this Note. The provisions of this section shall survive the satisfaction and payment of this Note.

18. Construction Loan Disbursements. This is a "draw" Note and is subject that certain Construction Loan Agreement described herein. Prior to any advance of loan funds hereunder, the following conditions must be fully and completely satisfied in Lender's sole opinion: (a) Borrower has fully complied with and there is no default under this Note, any Loan Documents, or under any other obligations owed to Lender; (b) No default or event which might mature into a default has occurred or continues to the date of the advance under this Note or any other document evidencing, securing or executed in connection with this Note; (c) No litigation or proceeding is pending against the Borrower which might result in any adverse change in the Borrower's business or financial condition or which will adversely affect the Property; (d) Since the date of the execution of this Note and to the date of the advance there has been no material adverse change in the financial condition of the Borrower from that shown by the financial information delivered to Lender; (e) Borrower is validly existing under the laws of the State of Kansas, and is not in violation of any law, ordinance, or regulation of any governmental authority as to its business, property, or assets; (f) The value of the collateral which secures this Note is sufficient, in Lender's sole opinion, to adequately secure the debt; and (g) All conditions precedent to advancing funds under the Construction Loan Agreement have been satisfied in Lender's sole discretion.

20. Other Actions by Borrower. Borrower agrees to comply with any and all reasonable requirements of Lender hereafter made by Lender from time to time during the period any indebtedness is owed by Borrower to Lender, and Borrower agrees to make, execute and deliver to Lender any and all further instruments, documents and agreements reasonably required by Lender in connection therewith. Unless waived in writing by Lender, Borrower shall provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in the Loan Documents are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under the Loan Documents.

21. Prior Loans. Borrower acknowledges and agrees that an Event of Default under this Note shall be an Event of Default under all prior loans owed by Borrower to Lender, including, without limitation, the Borrower is in default under that certain \$200,000 Line of Credit Promissory Note dated February 1, 2011, the \$1,750,000 Promissory Note dated February 1, 2011, and the Business Credit Card Agreement dated July 6, 2010 ("Prior Loans"). A default under the Prior Loans shall be an Event of Default hereunder.

THIS AGREEMENT IS A FINAL EXPRESSION OF THE AGREEMENT BETWEEN THE PARTIES AND SUCH WRITTEN AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR ORAL AGREEMENT OR OF A CONTEMPORANEOUS ORAL AGREEMENT BETWEEN THE PARTIES.

NO UNWRITTEN ORAL CREDIT AGREEMENT BETWEEN THE PARTIES EXISTS.

THERE ARE NO NON-STANDARD TERMS TO BE ADDED TO THIS AGREEMENT.

Borrower's Initials: _____

Lender's Initials: _____

IN WITNESS WHEREOF, the Borrower has executed this Note the date first above written.

WOODSIDE RACQUET CLUB MANAGEMENT, INC.
a Kansas corporation

By _____
Blair C. Tanner, President

STATE OF KANSAS)
) ss.
COUNTY OF)

On this _____ day of December, 2012, before me appeared Blair C. Tanner, to me personally known, who being by me duly sworn, did say that he is the President of **Woodside Racquet Club Management, Inc.**, a Kansas corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and said Blair C. Tanner acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

Notary Public

My commission expires:

TRUSTEE'S CERTIFICATE

The undersigned Trustee certifies, represents, warrants, and covenants with Great Western Bank, a South Dakota corporation ("Lender") that the following statements are true and correct in order to induce Lender to make loans and advance credit in the total original principal amount of up to **\$2,035,000.00** ("Loan") to **Woodside Racquet Club Management, Inc.**, a Kansas corporation ("Borrower"), and to be guaranteed by the "Trust" described herein:

1. Trustee is the only current trustee with authority to act on behalf of the **Blair C. Tanner Trust** dated July 12, 2000, as amended and restated on June 26, 2008 ("Trust").
2. The Trust document attached hereto ("Amended and Restated Trust Agreement") is in full force and effect. There is no oral or written understanding by and between the Trustee, Settlor or any beneficiaries that changes, amends or contradicts the terms of the trust document attached hereto.
3. The Trust Agreement provides the Trustee with full power and authority to guaranty the Loan to Borrower, and Trustee may execute the Guaranty, and other documents, in connection with such guaranty.
4. The SSN/EIN for the Trust is 626-48-8011.
5. The Trustee has no present intention of revoking or terminating the Trust.
6. There are no other signatures, approvals or consents necessary or required for the Trust to guaranty the Loan from Lender to Borrower.

Trustee understands that Lender shall rely upon the truth and accuracy of each and every statement made herein in order to make the loan described above to Borrower.

Blair C. Tanner, Trustee of the Blair C. Trust
Dated July 12, 2000, as amended and restate
June 26, 2008

Dated: December ____, 2012

WOODSIDE RACQUET CLUB MANAGEMENT, INC.
("Company")

CERTIFICATE

The undersigned hereby certifies to Great Western Bank, a South Dakota corporation ("Bank") that:

- (a) The attached Articles of Incorporation, Bylaws and Amendment to Bylaws are true and correct copies of the originals.
- (b) The Articles of Incorporation and Bylaws, as amended, are in full force and effect.
- (c) The only shareholders of the Company are: David W. Freeland Family Trust and the Blair C. Tanner Trust.
- (d) The Officers of the Company are: Blair C. Tanner (President and Treasurer), David W. Freeland (Secretary), and Chris Bell (Vice President).
- (e) The Sole Director is: Blair C. Tanner.
- (f) Blair C. Tanner, as the President of the Company, has the authority to execute all documents on behalf of the Company in connection with the **\$2,035,000.00** loans and credit from the Bank.
- (g) The federal tax identification number of the Company is **48-0841795**.

Blair C. Tanner, President and Sole Director

Date: December ____, 2012

TRUSTEE'S CERTIFICATE

The undersigned Trustee certifies, represents, warrants, and covenants with Great Western Bank, a South Dakota corporation ("Lender") that the following statements are true and correct in order to induce Lender to make loans and advance credit in the total original principal amount of up to **\$2,035,000.00** ("Loan") to **Woodside Racquet Club Management, Inc.**, a Kansas corporation ("Borrower"), and to be guaranteed by the "Trust" described herein:

1. Trustee is the only current trustee with authority to act on behalf of the **David Wayne Freeland Sub-Trust of the C. Wayne Freeland Revocable Declaration of Trust** dated March 16, 1993 ("Trust").
2. The Trust document attached hereto ("Trust Agreement") is in full force and effect and has not been modified, amended, revoked, terminated or altered. There is no oral or written understanding by and between the Trustee, Settlor or any beneficiaries that changes, amends or contradicts the terms of the trust document attached hereto.
3. The Trust Agreement provides the Trustee with full power and authority to guaranty the Loan to Borrower, and Trustee may execute the Guaranty, and other documents, in connection with such guaranty.
4. The SSN/EIN for the Trust is 48-6359573.
5. The Trustee has no present intention of revoking or terminating the Trust.
6. There are no other signatures, approvals or consents necessary or required for the Trust to guaranty the Loan from Lender to Borrower.

Trustee understands that Lender shall rely upon the truth and accuracy of each and every statement made herein in order to make the loan described above to Borrower.

Wayne Freeland, Trustee of the David Wayne Freeland Revocable Declaration of Trust dated March 16, 1993

Dated: December ____, 2012