

07-01-93P03:44 RCVD

K-42865

Prepared by: Fulbright & Jaworski L.L.P. 2200 Ross Avenue, Suite 2800 Dallas, Texas 75201 Attn: Keith W. McGlamery	Recording requested by and when recorded, mail or return to: Stewart Title Guaranty Co. Attn: Ms. Jodie Tanner 2200 W. Loop South Suite 510 Houston, Texas 77027	TLAC Loan No. (122)700079 Edgemont Multistate CF TLAC Loan No. (122)205842 Edgemont Multistate Edgemont Realty Partners, Ltd. Store No. <u>OR 1421</u>
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ATTENTION COUNTY RECORDER: THIS INSTRUMENT COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE BORROWER (DEBTOR) AND LENDER (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT.

SECOND MODIFICATION AND RATIFICATION AGREEMENT  
AND MEMORANDUM OF ASSIGNMENT OF LEASES AND RENTS

This Second Modification and Ratification Agreement and Memorandum of Assignment of Leases and Rents (this "Agreement") is executed this 14 day of June, 1993, effective however, as of October 1, 1992 (the "Effective Date"), by and between EDMONT REALTY PARTNERS, LTD. ("Borrower"), a Texas limited partnership, whose address is 2911 Turtle Creek Blvd., Suite 500, Dallas, Texas 75219, and THE TRAVELERS LIFE AND ANNUITY COMPANY ("Lender"), a Connecticut corporation, having an address at 14001 North Dallas Parkway, Suite 800, Dallas, Texas 75240.

WHEREAS, pursuant to a loan agreement (the "Original Loan Agreement") dated October 24, 1985, by and between The Travelers Insurance Company ("TIC"), a Connecticut corporation, and Borrower, TIC made a loan to Borrower in the original principal sum of Thirty Million and No/100 Dollars (\$30,000,000.00), which loan (the "Loan") is evidenced by that certain First Mortgage Note dated October 24, 1985, in the original principal sum of Thirty Million and No/100 Dollars (\$30,000,000.00) executed by Borrower and payable to the order of TIC (said note, as same has been and hereafter may be amended, modified or extended, being herein called the "Note"), which Note has previously been assigned to Lender; and

WHEREAS, the Note was initially secured, in part, by certain mortgages (or deeds of trust, trust deeds, real and chattel mortgages, indentures or other documents having the effect of a mortgage) executed contemporaneously with the Note and Original Loan Agreement by Borrower for the benefit of TIC covering approximately one hundred thirty-two (132) properties in nineteen different states, which documents were modified by the Modification and Ratification Agreements executed by Borrower and Lender to be effective June 1, 1990 (said mortgages, deeds of trust, trust deeds, real and chattel mortgages, indentures or other documents having the effect of a mortgage, as same have been and

hereafter may be amended, modified or extended, herein collectively called the "Deeds of Trust", which Deeds of Trust have previously been assigned to Lender; and

WHEREAS, the Note is further secured, in part, by an Amended and Restated Assignment of Leases and Rents, executed to be effective June 1, 1990, by Borrower for the benefit of Lender (said Amended and Restated Assignments of Leases and Rents, as same has been and hereafter may be amended, modified or extended being herein called the "Restated Assignment"; and the Restated Assignment has been ratified and amended by the Second Modification (as defined below); and

WHEREAS, the Restated Assignment is a restatement of that certain Assignment of Leases and Rents executed by Borrower to be effective as of October 24, 1985, as modified by that certain Modification of Assignment of Leases and Rents executed by Borrower and Lender to be effective as of even date therewith (the "Original Assignment"; and

WHEREAS, simultaneously with the execution of the Original Assignment, approximately 132 Memorandums of Assignment of Leases and Rents were executed by Borrower, which were recorded, and simultaneously with the execution of the Restated Assignment, Borrower and Lender executed Modification and Ratification Agreements, which were recorded (the foregoing described Memorandums of Assignment of Leases and Rents and Modification and Ratification Agreements as same have been and may hereafter be amended and restated, are referred to herein collectively as the "Memorandums") (if and only if Annex "1" hereto describes an Amendment and Restatement of Assignment of Leases and Rents executed by Borrower and Lender simultaneously with the execution of the Restated Assignment and recorded, then the defined term "Memorandums" shall include the same); and

WHEREAS, the Restated Assignment, the Original Assignment and the Memorandums are collectively referred to herein as the "Lease Assignments"; and

WHEREAS, said Lease Assignments originally covered, in part, five leaseback leases (collectively the "Leaseback Leases") which were executed as of April 25, 1985, by and between Borrower, as landlord, and Circle K Convenience Stores, Inc., Circle K General, Inc., Monterre Properties, Inc., Utotem, Inc., and Utotem Markets of Arizona, Inc., respectively, as tenants (the foregoing entities herein collectively called the "Circle K Affiliates" and individually a "Circle K Affiliate"; and

WHEREAS, the Leaseback Leases were amended by the five Agreement and Amendment to Leaseback Lease documents (the "Agreements and Amendments to Leaseback Leases") executed to be effective as of June 1, 1990 by and between Borrower and the applicable Circle K Affiliate, and were further amended, restated and consolidated by the Amended and Restated Leaseback Lease (the "Amended and Restated Leaseback Lease") executed as of April 1, 1993, by and between Borrower and the Circle K Affiliates; and

WHEREAS, certain of the Deeds of Trust and the Lease Assignments cover certain real property (the "Real Property") described on Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, the Real Property and all tangible and intangible personal property and fixtures located thereon or associated therewith and which is covered by the Deeds of Trust and/or the Lease Assignments is herein called the "Property". The Property is described in more detail in the Property Documents, and all such detailed descriptions are incorporated herein by reference; and

WHEREAS, the Deeds of Trust and the Lease Assignments which cover the Property are more particularly described on Annex "1" attached hereto and incorporated herein by reference (which Deeds of Trust, Lease Assignments, and this Agreement, as same may be now or hereafter modified or amended, are herein collectively called the "Property Documents"; and

WHEREAS, payment and performance of the Circle K Affiliates' obligations under the Leaseback Leases were guaranteed by the five Guaranty Agreements (the "Original Guaranties") executed by The Circle K Corporation ("Circle K") for the benefit of Borrower, which Original Guaranties were amended by the five Amended and Restated Guaranty Agreements executed by Circle K for the benefit of Borrower

and dated to be effective June 1, 1990, and were further restated and amended by that certain Second Amended and Restated Guaranty Agreement dated as of April 1, 1993 executed by Circle K for the benefit of Borrower (the foregoing Original Guaranties, as amended, modified and restated are referred to herein collectively as the "Guaranties"); and

WHEREAS, as further security for the Note, the Guaranties were assigned to TIC by Borrower pursuant to that certain Assignment of Lease Guaranties executed by Borrower as of October 24, 1985 (said Assignment of Lease Guaranties, as amended by the Amended and Restated Assignment of Lease Guaranties executed by Borrower and Lender dated to be effective June 1, 1990, being herein collectively called the "Guaranty Assignment"); and the Guaranty Assignment has been ratified and amended by the Second Modification; and

WHEREAS, pursuant to that certain Assignment of Note, Lien and Assignment of Leases and Rents executed to be effective October 24, 1985, TIC transferred, assigned, granted and conveyed the Note, the Original Loan Agreement, the Deeds of Trust, the Lease Assignments, the Guaranty Assignment and all other documents or instruments evidencing or securing the Note to Lender; and

WHEREAS, the Note and the Original Loan Agreement and certain other Loan Documents (as defined below) were amended and modified by a Modification Agreement (the "First Modification") executed to be effective June 1, 1990 by and between Borrower and Lender; and

WHEREAS, the Note, the Lease Assignments, the Guaranty Assignments, and certain other Loan Documents have been further modified by that certain Second Amended and Restated Loan Agreement and Modification of Loan Documents executed by Borrower and Lender to be effective October 1, 1992 (the "Second Modification"); and

WHEREAS, the Note, the Original Loan Agreement, the Deeds of Trust, the Lease Assignments, the Guaranties, the Guaranty Assignments, the First Modification, this Agreement, the Second Modification and all other documents evidencing or securing the Loan are referred to herein collectively as the "Loan Documents"; and

WHEREAS, Borrower and Lender now desire to: (a) modify certain terms of the Property Documents to affirm, and carry forward all liens, security interests and assignments of leases on the Property which secure payment of the Note and the performance of the Property Documents; and (b) set forth below certain agreements between Borrower and Lender.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. Second Modification. The Second Modification includes, among other things, the following provisions:

- (a) the maturity of the Note and Loan evidenced thereby has been extended to April 30, 2008;
- (b) the modified and outstanding principal balance of the Note as of the Effective Date is Nine Million Seven Hundred Ninety-Eight Thousand Eight Hundred Nineteen and no/100ths Dollars (\$9,798,819.00);
- (c) "Net Cash Flow" (as defined in the Second Modification) from the Property to the extent stated in the Second Modification, is now required to be paid and delivered to Lender to be applied at Lender's discretion to the Secured Indebtedness (as defined below) and, upon the occurrence of an "Event of Default" (as defined in the Second Modification), all "Cash Flow" (as defined in the Second Modification), reduced by such deductions, if any, as are set forth in the Second Modification, is required to be paid and delivered to Lender to be applied at Lender's discretion to the Secured Indebtedness;

(d) if all of the Secured Indebtedness, other than the portion evidenced by the Guaranty Agreements described on Exhibit "C", is paid in full, then (i) this Agreement and the other Property Documents will remain in full force and effect and secure the payment and performance of such Guaranty Agreements until the Guaranty Agreements are released or the Guaranteed Obligations (as defined therein) have been paid in full, and (ii) the Loan Agreement and all covenants and provisions thereof, including but not limited to the tax and insurance escrow, but excluding the note payment provisions thereof, shall be incorporated into this Agreement as if set forth herein, and shall be in full force and effect, until the Guaranty Agreements are released or the Guaranteed Obligations have been paid in full; and

(e) certain other modifications are more particularly set forth in the Second Modification and documents executed in connection therewith.

This paragraph is intended to provide notice of the Second Modification only and is not intended in any way to limit, expand or affect the terms of the Second Modification.

2. Cross-Default. Any default, whether in payment or performance, under any one of the promissory notes or other documents described on Exhibit "B" or Exhibit "C" attached hereto and made a part hereof, or any default under any deed of trust, mortgage, loan agreement or other document evidencing or securing any such promissory note or other document, shall be a default under the Note, the Original Loan Agreement, the Deeds of Trust, the Lease Assignments, the First Modification, the Second Modification and all of the other Loan Documents.

3. Property Documents.

(a) The Property Documents, and any other document which secures the Note and which covers any part of the Property, are each additionally modified and amended so that each additionally secures the payment and performance of the following obligations, indebtedness and liabilities (collectively, the "Secured Indebtedness"):

(i) The Note, as modified by the First Modification and the Second Modification, which Note is payable and finally matures on April 30, 2008, subject to the terms and conditions of the Note, with interest at the rates and payable as therein provided;

(ii) All indebtedness, obligations and liabilities incurred or arising pursuant to the provisions of the Original Loan Agreement, as amended by the First Modification and the Second Modification, including without limitation, those concerning tax and insurance escrows and those concerning remediation of Hazardous Materials and Hazardous Materials Contamination (as the same are defined in the Second Modification);

(iii) All indebtedness, obligations and liabilities incurred or arising pursuant to the provisions of any of the Property Documents or any of the other Loan Documents, including instruments given before, after or on the date hereof;

(iv) All indebtedness, obligations and liabilities incurred or arising pursuant to the promissory notes, guaranty agreements and other documents which may be described on Exhibit "C" attached hereto and made a part hereof, or pursuant to any deed of trust, mortgage, loan agreement or other document evidencing or securing any such promissory notes, guaranty agreements or other documents.

(b) The Guaranty Agreements (collectively, whether one or more, the "Guaranty Agreements") executed by Borrower and described on Exhibit "C" contain certain provisions governing the creation of a Guaranty Escrow (as defined therein), and requiring, upon the occurrence of certain conditions set forth therein, the payment, as and when received by Borrower, of all Net Cash Flow (as defined therein) from the Property into the Guaranty Escrow, and the payment of the balances of any tax and insurance escrow, and of any environmental escrow then established with respect to the Property, into the Guaranty Escrow. The Guaranty Agreements further provide that if any proceeds derived



from any foreclosure by Lender of all or part of the Property would be payable to Borrower, then such proceeds (the "Excess Proceeds") shall not be paid to Borrower (unless required by applicable laws). Instead, any such Excess Proceeds shall be deposited into the Guaranty Escrow. The Guaranty Escrow is an escrow securing the Guaranty Agreements, and the terms of the Guaranty Escrow and the holding and disposition of funds in the Guaranty Escrow are described in the Guaranty Agreements. The provisions of the Guaranty Agreements, including without limitation those provisions described herein, are incorporated herein as if contained in this document. The liens of the Property Documents shall not be released until payment in full of all Secured Indebtedness and the release of each and every one of the Guaranty Agreements by Lender.

4. Document References Amended. Lender and Borrower agree that all references to:

(a) any of the Property Documents, whether located in the particular Property Document, in another Property Document or elsewhere, are amended to refer to the applicable Property Document as hereby amended;

(b) the Note and the Original Loan Agreement in the Property Documents or in any other document which secures the Note and which covers or relates to any part of the Property, are hereby amended to refer to the Note and the Original Loan Agreement, respectively, as amended as described herein and in the First Modification and the Second Modification; and

(c) the Leaseback Leases or the Agreements and Amendments to Leaseback Leases in the Lease Assignments or the other Property Documents, are hereby amended to refer to the Amended and Restated Leaseback Lease, and the Lease Assignments are hereby deemed to cover the Amended and Restated Leaseback Lease (this subparagraph (c) shall be effective only if the Amended and Restated Leaseback Lease covers any part of the Property as of the date hereof or is amended in the future to cover any part of the Property).

5. Financing Statement. This Agreement constitutes a financing statement under the Uniform Commercial Code records of the county and state where recorded or filed with respect to the personal property which is or may in the future be a part of the Property and constitutes a realty filing and a fixture filing with respect to any fixtures (or goods that are or are to become fixtures) or real property which is or may in the future be a part of the Property. Borrower is the debtor. Lender is the secured party. The addresses of the debtor and secured party are set forth in paragraph 18 below. The owner of the Property is the Borrower.

6. Borrower's Acknowledgements. Borrower ratifies, affirms, reaffirms, acknowledges, confirms and agrees that this Agreement, the Note, the Original Loan Agreement, the First Modification, the Second Modification and the Property Documents, and each and every other document and instrument which evidences or secures payment of the Secured Indebtedness represent the valid and enforceable obligations of Borrower as a party thereto, except as may be limited by the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws and equitable principles now or hereafter in effect, that affect the enforcement of creditors' rights generally. Such obligations are and will be secured by the Property, and are additionally secured by any other property expressly mortgaged or pledged by Borrower, now or in the future. Borrower agrees that except as specifically modified herein or in the First Modification and the Second Modification or the Lease Assignment, all the terms and provisions of the Note, the Original Loan Agreement and the Property Documents and all other documents and instruments executed in connection with the Note are ratified and reaffirmed by Borrower. Borrower further acknowledges that there are no existing claims or defenses, personal or otherwise, or rights of setoff whatsoever with respect to any of the Secured Indebtedness. Borrower further acknowledges and represents that no event has occurred and to the knowledge of Borrower, no condition exists which would constitute a default under the Note, the Original Loan Agreement, the First Modification, the Second Modification, the Property Documents, this Agreement or any other documents securing the Secured Indebtedness, either with or without notice or lapse of time or both, and Borrower is in full compliance in all material respects with all covenants, agreements and obligations of Borrower set forth in the Loan Documents.

7. Ratification of Liens. This Agreement shall not constitute a novation of the Note, the Deeds of Trust or the Lease Assignments. This Agreement modifies or where applicable evidences the modification of the Note, the Original Loan Agreement, the Property Documents and the other Loan Documents, and in no way acts as a release or relinquishment of the liens, security interests and rights (collectively, the "Liens") securing payment of the Note and the other Secured Indebtedness or the priority of the Liens. The Liens are hereby renewed, ratified and confirmed by Borrower in all respects as valid and enforceable first liens on the Property, subject to no liens other than any in favor of Lender, and subject to no other interests except easements and restrictions which (i) were filed of record in the county in which the Property is located, on or before the date of the original filing of the Deed of Trust covering the Property, and (ii) are valid, subsist and affect the property.

8. Full Force and Effect. In addition, all of the rights, powers and equities of Lender under the Property Documents continue in full force and effect, are fully incorporated herein and are ratified and confirmed by Borrower in all respects as valid and enforceable against the Property, except as may be limited by the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws and equitable principles now or hereafter in effect, that affect the enforcement of creditors' rights generally.

9. Exercise of Remedies. In the event that part but not all of the Secured Indebtedness becomes due, whether pursuant to the Original Loan Agreement, the First Modification, the Second Modification, pursuant to the payment provisions of the Note, or pursuant to the power in the Note or other document to cause a part but not all of the Secured Indebtedness to become due upon the occurrence of a default thereunder, or whether pursuant to any guaranty agreement described on Exhibit "C", or whether for any other reason, then to the extent permitted by applicable law, Borrower agrees that Lender, at Lender's election, may, without accelerating or bringing due the balance of the Note or the Secured Indebtedness, exercise any or all of its rights and remedies, including without limitation the remedy of foreclosure and the exercise of all rights under the Deeds of Trust and the Lease Assignment in accordance with the terms thereof and in accordance with the terms of the Note, the Original Loan Agreement, the First Modification, the Second Modification, and the Property Documents. Any proceeds realized from the exercise of such remedy of foreclosure and other remedies with respect to the Property may be applied by Lender to the Secured Indebtedness in the order chosen by Lender. Borrower agrees that any such foreclosure or exercise of any such remedies against the Property shall not operate to reduce or discharge any other portion of the Secured Indebtedness or to limit or prevent any further or other exercise of any remedy of Lender against any party or against any of the Property or other property serving as security for the Secured Indebtedness, and shall not exhaust any other rights, remedies or powers hereunder or under any of the Property Documents, the Original Loan Agreement, the First Modification, the Second Modification, or any other instruments or documents evidencing or securing the Secured Indebtedness. With respect to any foreclosure sale, including without limitation any Uniform Commercial Code sale, hereunder or under any other documents securing the indebtedness secured hereby, nothing contained herein or in any of the Loan Documents shall be deemed to require any mortgagee or secured party or trustee to do, nor shall such mortgagee, secured party or trustee be required to do, any act or give any notice other than as required by applicable law in effect at the time of any such sale.

10. Choice of Law; Jurisdiction and Venue. THIS AGREEMENT AND THE PROPERTY DOCUMENTS HAVE BEEN ACCEPTED, EXECUTED AND DELIVERED AND ARE INTENDED TO BE PERFORMED IN PHOENIX, MARICOPA COUNTY, ARIZONA. THE RIGHTS AND DUTIES OF THE PARTIES AND THE VALIDITY, CONSTRUCTION, ENFORCEMENT, AND INTERPRETATION OF THIS AGREEMENT AND THE PROPERTY DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF SUCH STATE, INCLUDING ARIZONA'S LAW WITH RESPECT TO CHOICE OF LAW, AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN THE STATE OF ARIZONA. JURISDICTION AND VENUE OF ANY LITIGATION RELATED TO THIS TRANSACTION OR SETTLEMENT SHALL BE VESTED IN THE STATE OR FEDERAL COURTS LOCATED IN MARICOPA COUNTY, ARIZONA. NOTWITHSTANDING THE FOREGOING, IF THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED GOVERN THE EXERCISE OF REMEDIES AS TO PROPERTIES LOCATED IN THAT STATE, THE LAWS OF SUCH STATE SHALL APPLY TO THE EXTENT, BUT ONLY TO THE EXTENT, THAT SUCH LAWS ARE REQUIRED FOR THE ENFORCEMENT OF SUCH REMEDIES.

11. Subrogation. This Agreement and all of the Property Documents are in full force and effect so nothing herein contained shall be construed as modifying in any manner any of the Property Documents except as specifically modified hereby. To the extent the proceeds of the Note were utilized in whole or in part to renew or extend any indebtedness or to take up any existing lien against the Property or any portion thereof, Lender is subrogated and shall continue to be subrogated to any and all liens, rights, remedies, powers, privileges, titles and security interests, however remote, owned or claimed by any owner or holder of any such liens or indebtedness, whether or not assigned to Lender and whether or not released by the holder thereof upon payment, and said liens, rights, remedies, powers, privileges, titles and security interests are hereby renewed, extended and carried forward in full force and effect for the benefit of Lender.

12. No Partnership. Nothing in this Agreement is intended, or shall in any way be construed, so as to create any form of partnership or agency relationship between Lender and Borrower, the parties hereby expressly disclaiming any intention of any kind to create any such partnership or agency relationship between themselves. Accordingly, in no event shall Lender be liable for any of the debts, obligations, or liabilities of Borrower, and Lender's only interest shall be Lender's right to receive the interests and rights granted to Lender and assigned under this Agreement, the Note, the Original Loan Agreement, the First Modification, the Second Modification, the Property Documents and any other documents relating to the Secured Indebtedness or given as security for the Note, whether given before, after or on the date hereof.

13. Successors. This Agreement shall be binding upon and inure to the benefit of each of Lender and Borrower upon the execution hereof, and shall be binding upon and inure to the benefit of each of their respective legal representatives, trustees, administrators, receivers, successors and assigns. This paragraph shall not be deemed to grant assignment rights to Borrower which are not permitted in the Loan Documents.

14. Waiver. Borrower, except as otherwise specifically provided in the Second Modification, the Note, this Agreement or the Property Documents, waives grace, demand, presentment and all notices, including notices of default, notice of intent to accelerate, notice of acceleration, protest, and notice of protest, and agrees that waiver of any default will not constitute waiver of any prior or subsequent default.

15. Conflicts. In the event of any inconsistency between this Agreement and the terms of the Original Loan Agreement, the First Modification and the Property Documents or in any other instrument given as security for the payment of the Note, the terms of this Agreement shall control. In the event of any inconsistency between the terms of this Agreement and the terms of the Second Modification, the terms of the Second Modification shall control. Borrower has made certain agreements in this Agreement (concerning cross-default to other notes, mortgaging the Property as security and collateral for other notes and other obligations, and other matters) which may not be recited in the Second Modification or the other Loan Documents. These additional agreements herein shall be binding upon Borrower and shall not be regarded as conflicts with other Loan Documents. Except as specifically modified hereby or by the Second Modification, all of the terms and provisions of the Property Documents shall remain in full force and effect.

16. Severability. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision hereof, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other person or circumstances. Any provision determined unenforceable or invalid (or illegal or unenforceable in its applicability to a person or circumstance) shall be deemed to be replaced with the most substantively similar provision which is valid, enforceable and legal in its application to said person or circumstance.

17. Headings. All headings are provided for reference only and shall not be considered in the interpretation of this Agreement.

18. Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given and deemed received (a) when

presented personally by the party giving such notice to the party receiving such notice; or (b) when hand delivered to the indicated address of the party receiving such notice by a delivery service acting for the party giving such notice or (c) when delivered to the indicated address of the party receiving such notice by overnight, nationally recognized, courier service; or (d) three (3) days after delivery or date of first attempted delivery via United States Postal Service, postage prepaid, registered or certified mail, return receipt requested; or (e) when actually received at the indicated address of the party receiving such notice by telecopy or electronic facsimile; or (f) when actually received by the person indicated for each entity receiving such notice regardless of how delivered. All such notices shall be delivered to the following addresses, or at such other address as Lender or Borrower may from time to time designate by written notice to the others as herein required:

LENDER/SECURED PARTY:

The Travelers Life and Annuity Company  
13 State House Square  
Hartford, Connecticut 05183  
Attention: Mr. David C. Graves  
For Telecopy: 203/277-5314

and with copy to:

The Travelers Life and Annuity Company  
14001 North Dallas Parkway, Suite 800  
Dallas, Texas 75240  
Attention: Mr. George A. Gerhart  
For Telecopy: 214/419-3771

and with copy to:

The Travelers Life and Annuity Company  
14001 North Dallas Parkway, Suite 800  
Dallas, Texas 75240  
Attention: Investment Administration  
For Telecopy: 214/419-3771

and with copy to:

The Travelers Life and Annuity Company  
14001 North Dallas Parkway, Suite 800  
Dallas, Texas 75240  
Attention: Denise C. McWatters, Esq.  
For Telecopy: 214/419-3772

and with copy to:

Fuibright & Jaworski L.L.P.  
2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201  
Attention: Mr. Keith W. McGlamery  
For Telecopy: 214/855-8200

BORROWER/DEBTOR:

Edgemont Realty Partners, Ltd.  
2911 Turtle Creek Blvd., Suite 500  
Dallas, Texas 75219  
Attention: Mr. Keith W. Kennedy  
For Telecopy: 214/559-9797

and with copy to:

Akin, Gump, Strauss, Hauer & Feld  
4100 First City Center  
1700 Pacific Avenue  
Dallas, Texas 75201  
Attention: Carl B. Lee, P.C.  
For Telecopy: 214/922-8043

19. Final Agreement. THIS AGREEMENT, THE LOAN DOCUMENTS, AND THE DOCUMENTS DESCRIBED ON EXHIBIT "C" AND ANNEX "1" ATTACHED HERETO (COLLECTIVELY, THE "WRITTEN LOAN DOCUMENTS") CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO REGARDING THE PROPERTY AND THE SECURED INDEBTEDNESS.

THE WRITTEN LOAN DOCUMENTS, AS DEFINED ABOVE, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

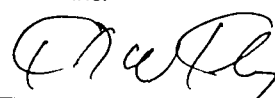
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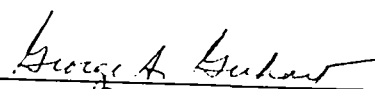
(Original Signature Page)

EXECUTED TO BE EFFECTIVE AS OF THE DATE SET FORTH ABOVE.

EDGEMONT: (Federal Tax ID No. 75-2003305)

EDGEMONT REALTY PARTNERS, LTD.  
a Texas limited partnershipBy: Edgemont Equities, Inc.  
a Texas corporation  
General PartnerBy:   
Name: Keith W. Kennedy  
Title: Vice President

TRAVELERS: (Federal Tax ID No. 06-0904249)

THE TRAVELERS LIFE AND ANNUITY  
COMPANY, a Connecticut corporationBy:   
Name: George A. Gerhart  
Title: Regional Director

ACKNOWLEDGEMENT PAGES TO THE SECOND MODIFICATION  
AND RATIFICATION AGREEMENT (Edgemont Multistate Note)

(Oregon)

STATE OF ARIZONA           §  
   §  
COUNTY OF MARICOPA   §

This instrument was acknowledged before me on the 29 day of June, 1993, by KEITH W. KENNEDY, as Vice President of Edgemont Equities, Inc., a Texas corporation, sole general partner of EDMONT REALTY PARTNERS, LTD., a Texas limited partnership, on behalf of said corporation acting for said partnership.



Wayne D. Whitney  
Notary Public in and for the State of Arizona  
Residing at: Maricopa County, Arizona  
My commission expires: My Commission Expires June 21, 1994

STATE OF ARIZONA           §  
   §  
COUNTY OF MARICOPA   §

This instrument was acknowledged before me on the 29 day of June, 1993, by GEORGE A. GERHART, as Regional Director of THE TRAVELERS LIFE AND ANNUITY COMPANY, a Connecticut corporation, on behalf of said corporation.



Wayne D. Whitney  
Notary Public in and for the State of Arizona  
Residing at: Maricopa County, Arizona  
My commission expires: My Commission Expires June 21, 1994

## ANNEX 1

Trust Deed (the "Trust Deed") dated October 24, 1985 executed by Edgemont Realty Partners, Ltd. ("Edgemont"), a Texas limited partnership to The Travelers Insurance Company, a Connecticut corporation, recorded in Volume M85, Page 17573, Mortgage Records, Klamath County, Oregon, securing payment of the First Mortgage Note (the "Note") of even date therewith in the original principal sum of \$30,000,000.00 executed by Edgemont, bearing interest and payable to the order of The Travelers Insurance Company. Said Note is additionally secured by an Assignment of Leases and Rents (the "Assignment") dated October 24, 1985 executed by Edgemont to The Travelers Insurance Company as evidenced by the Memorandum of Assignment of Leases and Rents executed by Edgemont and recorded in Volume M85, Page 17578, Deed Records of Klamath County, Oregon. Said Trust Deed, Note and Assignment were assigned by The Travelers Insurance Company, as Assignor, to The Travelers Life and Annuity Company, a Connecticut corporation, as Assignee, as evidenced by the Assignment of Note, Lien and Assignment of Leases and Rents effective October 24, 1985 and recorded in Volume M86, Page 6196, Mortgage Records of Klamath County, Oregon.

The Deed of Trust and Assignment pertain to the real property described on the exhibit attached hereto.

The defined terms "Deed of Trust", "Mortgage", "Trust Deed", and "Indenture", as used herein shall have the same meaning and shall be deemed to be interchangeable.

Store No. 1421

## ANNEX 1

The Assignment was modified by that certain Modification of Assignment of Leases and Rents executed to be effective as of October 24, 1985 by and between Edgemont and The Travelers Life and Annuity Company. The Mortgage was modified and the Assignment was further modified by that certain Modification Agreement executed to be effective as of June 1, 1990 by and between Edgemont and The Travelers Life and Annuity Company and the Assignment was amended and restated by that certain Amended and Restated Assignment of Leases and Rents executed to be effective as of June 1, 1990 by and between Edgemont and The Travelers Life and Annuity Company, and which Modification Agreement and Amended and Restated Assignment of Leases and Rents are evidenced by the Modification and Ratification Agreement executed to be effective as of June 1, 1990 by and among Edgemont and The Travelers Life and Annuity Company and recorded in Volume M92, Page 15008 of the county records of Klamath County, Oregon.

Those certain UCC-1 Financing Statements from Edgemont as Debtor to The Travelers Life and Annuity Company as Secured Party filed with the Oregon Secretary of State under document # R12984 and recorded with the Klamath County Clerk's office in Volume M92, Page 15020 of the Mortgage records of Klamath County, Oregon.

AAA03701



Store No. 1421  
Klamath County, Oregon

Prepared 5/17/93

EXHIBIT "A"

DESCRIPTION OF PROPERTY

= The following described real property situate in Klamath County, Oregon:

The N $\frac{1}{4}$  of the N $\frac{1}{4}$  of Tract No. 1, Gienger's Home Tracts, in the County of Klamath, State of Oregon, Together with any portion of the S $\frac{1}{4}$  of the N $\frac{1}{4}$  of said Tract No. 1 which lies Northerly from a straight line extending from the East line of said tract to the West line thereof and which line is located exactly four inches Northerly from the East and West ends of the Northerly line of the cement foundation of the aluminum shop building situated on the S $\frac{1}{4}$  of the N $\frac{1}{4}$  of Tract No. 1, of said Gienger's Home Tracts,

BUT LESS any portion of said N $\frac{1}{4}$  of N $\frac{1}{4}$  of said Tract No. 1, which lies South of the above described straight line lying four inches Northerly of the Northerly line of said cement foundation;

SAVING AND EXCEPTING THEREFROM that portion described in deed recorded June 16, 1964, Volume 353 at page 519, Deed Records of Klamath County, for State Highway.

## EXHIBIT "B"

Page 1 of 2

1. Promissory Note (the "Edgemont California Note") dated October 1, 1992, executed by Edgemont Realty Partners, Ltd., payable to The Travelers Life and Annuity Company in the original principal amount of \$246,153.00 (Loan No. 205838)
2. Promissory Note (the "Edgemont Idaho Note") dated October 1, 1992, executed by Edgemont Realty Partners, Ltd., payable to The Travelers Life and Annuity Company in the original principal amount of \$1,230,765.00 (Loan No. 205839)
3. Promissory Note (the "Edgemont Utah Note") dated October 1, 1992, executed by Edgemont Realty Partners, Ltd., payable to The Travelers Life and Annuity Company in the original principal amount of \$246,153.00 (Loan No. 205840)
4. Promissory Note (the "Edgemont Nevada Note") dated October 1, 1992, executed by Edgemont Realty Partners, Ltd., payable to The Travelers Life and Annuity Company in the original principal amount of \$246,153.00 (Loan No. 205841)
5. Promissory Note (the "Edgemont Multistate Note") dated October 1, 1992, executed by Edgemont Realty Partners, Ltd., payable to The Travelers Life and Annuity Company in the original principal amount of \$14,769,237.00 (Loan No. 205842)
6. First Mortgage Note (the "Edgemont Multistate CF Note") dated October 24, 1985, executed by Edgemont Realty Partners, Ltd., payable to The Travelers Insurance Company, and assigned to The Travelers Life and Annuity Company in the original principal amount of \$30,000,000.00, and modified effective as of October 1, 1992 to the principal amount of \$9,798,819.00 (Loan No. 700079)
7. Promissory Note (the "Edgemont California CF Note") dated October 1, 1992, executed by Edgemont Realty Partners, Ltd., payable to The Travelers Life and Annuity Company in the original principal amount of \$964,811.00 (Loan No. 205843)
8. Promissory Note (the "Edgemont Utah CF Note") dated October 1, 1992, executed by Edgemont Realty Partners, Ltd., payable to The Travelers Life and Annuity Company in the original principal amount of \$555,355.00 (Loan No. 205844)
9. Promissory Note (the "Edgemont Montana CF Note") dated October 1, 1992, executed by Edgemont Realty Partners, Ltd., payable to The Travelers Life and Annuity Company in the original principal amount of \$668,308.00 (Loan No. 205845)

## EXHIBIT "B"

Page 2 of 2

10. Promissory Note (the "MetVan California Note") dated October 1, 1992, executed by MetVan Circle K Associates, payable to The Travelers Life and Annuity Company in the original principal amount of \$738,459.00 (Loan No. 205864)
11. Promissory Note (the "MetVan Idaho Note") dated October 1, 1992, executed by MetVan Circle K Associates, payable to The Travelers Life and Annuity Company in the original principal amount of \$984,612.00 (Loan No. 205865)
12. Promissory Note (the "MetVan Utah Note") dated October 1, 1992, executed by MetVan Circle K Associates, payable to The Travelers Life and Annuity Company in the original principal amount of \$246,153.00 (Loan No. 205866)
13. Promissory Note (the "MetVan Multistate Note") dated October 1, 1992, executed by MetVan Circle K Associates, payable to The Travelers Life and Annuity Company in the original principal amount of \$12,307,699.00 (Loan No. 205867)
14. First Mortgage Note (the "MetVan Multistate CF Note") dated April 29, 1986, executed by MetVan Circle K Associates, payable to The Travelers Life and Annuity Company in the original principal amount of \$33,748,153.00, and modified effective as of October 1, 1992 to the principal amount of \$12,176,851.00 (Loan No. 700085)
15. Promissory Note (the "MetVan California CF Note") dated October 1, 1992, executed by MetVan Circle K Associates, payable to The Travelers Life and Annuity Company in the original principal amount of \$7,545,677.00 (Loan No. 205868)
16. Promissory Note (the "MetVan Utah CF Note") dated October 1, 1992, executed by MetVan Circle K Associates, payable to The Travelers Life and Annuity Company in the original principal amount of \$646,955.00 (Loan No. 205869)
17. Promissory Note (the "Stonehill Multistate Note") dated October 1, 1992, executed by Stonehill Financial, Inc., payable to The Travelers Life and Annuity Company in the original principal amount of \$984,616.00 (Loan No. 205870)
18. First Mortgage Note (the "Stonehill Florida CF Note") dated April 29, 1986, executed by Stonehill Financial, Inc., payable to The Travelers Life and Annuity Company in the original principal amount of \$2,751,847.00, and modified effective as of October 1, 1992 to the principal amount of \$1,893,037.00 (Loan No. 700086)

## EXHIBIT "C"

1. Promissory Note (the "Edgemont Multistate Note") dated October 1, 1992, executed by Edgemont Realty Partners, Ltd. to The Travelers Life and Annuity Company in the original principal amount of \$14,769,237.00 (Loan No. 205842)
2. First Mortgage Note (the "Edgemont Multistate CF Note") dated October 24, 1985, executed by Edgemont Realty Partners, Ltd. to The Travelers Insurance Company, and assigned to The Travelers Life and Annuity Company in the original principal amount of \$30,000,000.00, and modified effective as of October 1, 1992 to the principal amount of \$9,798,819.00 (Loan No. 700079)
3. Guaranty Agreement dated to be effective October 1, 1992, executed by Edgemont Realty Partners, Ltd. with respect to certain indebtedness of MetVan Circle K Associates
4. Guaranty Agreement dated to be effective October 1, 1992, executed by Edgemont Realty Partners, Ltd. with respect to certain indebtedness of Stonehill Financial, Inc.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Company the 1st day  
 of July A.D., 19 93 at 3:44 o'clock P M., and duly recorded in Vol. M93  
 of Mortgages on Page 15836.

FEE \$85.00

Evelyn Biehn County Clerk

By David L. Mullens