Marc Katzen et al vs John Bean
2004-1759-CD

04-1759-CD
MARC KATZFN, etal. vs. JOHN W. BEAN, etal.

The Superior Court of Pennsylvania

Sitting at Pittsburgh

Suite 600, Grant Bldg.
310 Grant Street
Pittsburgh, Pennsylvania
15219

FILED
m/l 3:30 BH
MAY 11 2006
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF CONTENTS OF REMANDED RECORD
AND NOTICE OF REMAND
under
PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:

RECORD IN TWO P ARTS, CERTIFIED COPY OF ORDER

As remanded from said court in the following matter:

In Re: Marc Katzen, et al. v. John W. Bean, et al.
NO. 986 WDA 2005

Court of Common Pleas, Civil Div of the County of Clearfield
At NO 2004-1759

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is **May 9, 2006**

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

Eleanor R Valecko

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: May 11, 2006

(Signature & Title)

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

FILED

MAY 11 2006

William A. Shaw
Prothonotary/Clerk of Courts



July 15, 2005

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

Re: Marc Katzen, Marshall Katzen, M.D. and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Britt Katzen Trust and the Brook Katzen Trust
Vs.
John W. Bean and George V. Cohen
No. 04-1759-CD
Superior Court No. 986 WDA 2005

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

P. Kevin Brobson
213 Market St., 3rd Floor
Harrisburg, PA 17101

Kevin P. Allen
One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219

Marc Katzen, Marshall Katzen, M.D. and Harry Kellar as
Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust,
the Britt Katzen Trust and the Brook Katzen Trust
Vs.
John W. Bean and George V. Cohen

Court No. 04-1759-CD; Superior Court No. 986 WDA 2005

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on July 15, 2005.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Clearfield County Court of Common Pleas

ROA Report

Case: 2004-01759-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date		Judge
11/05/2004	Filing: Civil Complaint Paid by: Buchanan Ingersoll Receipt number: 1889923 Dated: 11/5/2004 Amount: $85.00 (Check) 2 Cert. copies to Sheriff and 3 Cert. to Atty.	No Judge
12/01/2004	Affidavit of Service, Complaint upon John W. Bean by certified Mail, return receipt attached. Filed by s/ Nicole L. Borda. No CC	No Judge
12/02/2004	Preliminary Objections, filed by s/Kevin P. Allen No CC	No Judge
12/03/2004	Praecipe to Amend Caption, filed by s/ P. Kevin Brobson, Esquire. No CC	No Judge
12/06/2004	Filing: Reissue Complaint for an additional thirty days. Paid by: Brobson, P. Kevin (attorney for Katzen, Marc) Receipt number: 1891647 Dated: 12/06/2004 Amount: $7.00 (Cashiers Check). filed by s/ P. Kevin Brobson, Esquire. 1 Compl. reinstated to Shff.	No Judge
12/16/2004	Acceptance of Service of Complaint on behalf of George V. Cohen. Filed by s/ Kevin P. Allen, Esquire. 1CC To Atty	No Judge
12/20/2004	Objections to Subpoena Pursuant to Pa. R. CIV. P. 4009.21(c). Filed by s/ Kevin P. Allen, Esquire. 1CC Atty Allen	No Judge
12/27/2004	Order, AND NOW, this 27th day of Dec., 2004, it is the Order of the Court that argument on Defendant's Preliminary Objections filed in the above-captioned matter has been scheduled for the 9th day of Feb. 2005, at 2:00 p.m. in Courtroom no. 1, Clfd. Co. Courthouse. BY THE COURT: Fredric J. Ammerman, President Judge. 3CC & Memo Re: Service to Atty Allen.	Fredric Joseph Ammerman
12/28/2004	Preliminary Objections, filed by s/ Kevin P. Allen, Esquire. no cc	Fredric Joseph Ammerman
12/30/2004	Affidavit of Service filed by s/ Kevin P. Allen, Esquire. No CC	Fredric Joseph Ammerman
01/11/2005	Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ Nicole L. Borda, Esquire. No CC	Fredric Joseph Ammerman
01/12/2005	Plaintiff's Motion To Compel Defendant John W. Bean To Respond Fully to Plaintiffs' First Request For Production of Documents, filed by s/ Nicole L. Borda, Esquire. 1CC Atty	Fredric Joseph Ammerman
	Plaintiffs Motion To Compel Defendant George V. Cohen To Respond Fully To Plaintiffs' First Request For Production of Documents, filed by s/ Nicole L. Borda, Esquire. 1CC Atty Borda	Fredric Joseph Ammerman
01/17/2005	ORDER, filed. 1 cert. to Atty. Borda NOW, this 14th day of January, 2005, Defendant John W. Bean is hereby directed to produce full and complete discovery responses withing 30 days of the date of this Order.	Fredric Joseph Ammerman
	ORDER, filed. 1 cert. to Atty. Borda NOW, this 14th day of January, 2005, Defendant George V. Cohen is hereby directed to produce full and complete discovery responses within 30 days of the date of this Order.	Fredric Joseph Ammerman
01/18/2005	Defendant's Response In Opposition To Plaintiffs' Motions to Compel, filed by s/ Kevin P. Allen, Esquire. No CC	Fredric Joseph Ammerman
01/19/2005	Sheriff Return, Papers served on George Cohen. Not Served as to John W. Bean. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm $95.00 Sheriff Hawkins paid by Attorney $21.50 Lycoming Co. Sheriff paid by Attorney	Fredric Joseph Ammerman
01/20/2005	Order, AND NOW, this 20th day of Jan., 2005 it is the Order of the Court that argument on Defendant's Preliminary Objections filed in the above-captioned matter has been scheduled for the 9th day of Feb., 2005 at 2:00 p.m. in Courtroom No. 1, Clfd. Co. courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC & Memo to Atty Allen	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2004-01759-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date		Judge
01/25/2005	Affidavits of Service filed. 1. Jan 21, 2005 served counsel for Plaintiffs the Court's Jan. 20, 2005 Order scheduling argument on the Defendants' Preliminary Objections for Feb. 9, 2005 at 2:00 2. Dec. 1, 2004 served Plaintiffs' counsel with copy of Defendant Bean's Preliminary Objections. 3. Dec. 27, 2004, served Plaintiffs' counsel with copy of Defendant Cohen's Preliminary Objections. Filed by s/ Kevin P. Allen, Esquire. 1CC to Atty	Fredric Joseph Ammerman
02/02/2005	Plaintiffs Response to Defendant George V. Cohen's Preliminary Objections, filed by Atty. Brobson 1 cert. to Atty.	Fredric Joseph Ammerman
	Order, NOW, this 1st day of February, 2005, the Court's Order of January 14, 2005 requiring the Defendants to proceed with discovery; the Defendant's Response to the Plaintiff's Motion to Compel having been filed January 18, 2005; Defendants believing that their preliminary objections in the nature of a demurrer to Plaintiff's complaint should be resolved prior to conducting discovery and in consideration of the circumstances it is the Order of this Court that the provisions of the Court's Order of January 14, 2005 by stayed pending further Order. Argument on the Motion to Compel is hereby scheduled for February 9, 2005, at 2:00 p.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys: Brobson, Allen One CC Def. Cohen-2618 Waldman Drive, Williamsport, PA 17701	Fredric Joseph Ammerman
	Plaintiffs Response to Defendant John W. Bean's Preliminary Objections, filed by Atty. Brobson 1 Cert. to Atty.	Fredric Joseph Ammerman
05/06/2005	Opinion And Order: NOW, this 6th day of may, 2005, consistent with the provisions of the foregoing Opininon, it is the Order of this Court that the Defendants' Preliminary Objections be granted and the Plaintiffs' Complaint is hereby dismissed, with prejudice. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Attys: R. Brobson, K. Allen, and D. Mikesell	Fredric Joseph Ammerman
06/03/2005	Filing: Appeal to High Court Paid by: Brobson, P. Kevin (attorney for Katzen, Marc) Receipt number: 1902214 Dated: 06/03/2005 Amount: $45.00 (Check) 1 Cert. with $60.00 check to Superior Court & 2 Cert. to Atty.	Fredric Joseph Ammerman
06/13/2005	Appeal Docket Sheet filed. No CC	Fredric Joseph Ammerman
06/16/2005	Order, NOW, this 15th day of June, 2005, the court having been notified of Appeal to the Superior court of Pennsylvania, it is the ORDER of this Court that Marc Katzen, et al, Appellants, file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys. K. Allen & P. Keving Brobson	Fredric Joseph Ammerman
06/27/2005	Statement of Matters Complained of on Appeal, Filed by s/ P. Kevin Brobson, Esquire. No CC	Fredric Joseph Ammerman
07/15/2005	Appeal Mailed to Superior Court July 15, 2005.	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

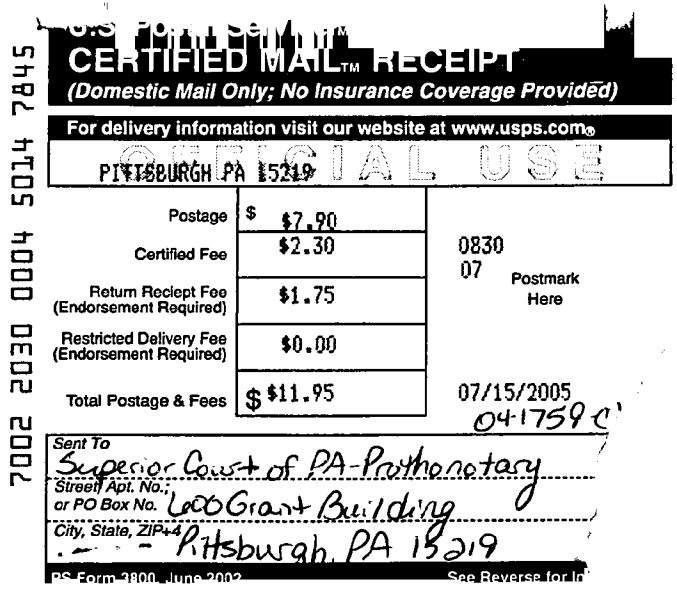
ROA Report

Case: 2004-01759-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date		Judge
01/25/2005	Affidavits of Service filed. 1. Jan 21, 2005 served counsel for Plaintiffs the Court's Jan. 20, 2005 Order scheduling argument on the Defendants' Preliminary Objections for Feb. 9, 2005 at 2:00 2. Dec. 1, 2004 served Plaintiffs' counsel with copy of Defendant Bean's Preliminary Objections. 3. Dec. 27, 2004, served Plaintiffs' counsel with copy of Defendant Cohen's Preliminary Objections. Filed by s/ Kevin P. Allen, Esquire. 1CC to Atty	Fredric Joseph Ammerman
02/02/2005	Plaintiffs Response to Defendant George V. Cohen's Preliminary Objections, filed by Atty. Brobson 1 cert. to Atty.	Fredric Joseph Ammerman
	Order, NOW, this 1st day of February, 2005, the Court's Order of January 14, 2005 requiring the Defendants to proceed with discovery; the Defendant's Response to the Plaintiff's Motion to Compel having been filed January 18, 2005; Defendants believing that their preliminary objections in the nature of a demurrer to Plaintiff's complaint should be resolved prior to conducting discovery and in consideration of the circumstances it is the Order of this Court that the provisions of the Court's Order of January 14, 2005 by stayed pending further Order. Argument on the Motion to Compel is hereby scheduled for February 9, 2005, at 2:00 p.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys: Brobson, Allen One CC Def. Cohen-2618 Waldman Drive, Williamsport, PA 17701	Fredric Joseph Ammerman
	Plaintiffs Response to Defendant John W. Bean's Preliminary Objections, filed by Atty. Brobson 1 Cert. to Atty.	Fredric Joseph Ammerman
05/06/2005	Opinion And Order: NOW, this 6th day of may, 2005, consistent with the provisions of the foregoing Opininon, it is the Order of this Court that the Defendants' Preliminary Objections be granted and the Plaintiffs' Complaint is hereby dismissed, with prejudice. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Attys: R. Brobson, K. Allen, and D. Mikesell	Fredric Joseph Ammerman
06/03/2005	Filing: Appeal to High Court Paid by: Brobson, P. Kevin (attorney for Katzen, Marc) Receipt number: 1902214 Dated: 06/03/2005 Amount: $45.00 (Check) 1 Cert. with $60.00 check to Superior Court & 2 Cert. to Atty.	Fredric Joseph Ammerman
06/13/2005	Appeal Docket Sheet filed. No CC	Fredric Joseph Ammerman
06/16/2005	Order, NOW, this 15th day of June, 2005, the court having been notified of Appeal to the Superior court of Pennsylvania, it is the ORDER of this Court that Marc Katzen, et al, Appellants, file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys. K. Allen & P. Keving Brobson	Fredric Joseph Ammerman
06/27/2005	Statement of Matters Complained of on Appeal, Filed by s/ P. Kevin Brobson, Esquire. No CC	Fredric Joseph Ammerman



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04-1759-CD

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JUL 15 2005
William A. Shaw
Prothonotary/Clerk of Courts

04-1759 CD

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Pittsburgh, PA 15219

04-1759-CD

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m/ 11:25 BH
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Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	CIVIL ACTION No.: 2004-1759-CD
Plaintiffs,	
v.	
JOHN W. BEAN and GEORGE V. COHEN,	
Defendants.	

RECORD
FILED 1cc
JAN 18 2005
PITTSBURGH OFFICE OF SUPERIOR COURT

DEFENDANTS' RESPONSE IN OPPOSITION
TO PLAINTIFFS' MOTIONS TO COMPEL

Defendants John W. Bean and George V. Cohen (together "Defendants") oppose the Plaintiffs' Motions to Compel. The pendency of the Defendants' potentially-dispositive Preliminary Objections to the Plaintiffs' Complaint renders the Plaintiffs' discovery requests unreasonable and unnecessary until the Court has the opportunity to resolve those Preliminary Objections.

The Plaintiffs initiated this action on or about November 5, 2004. The Defendants have each filed Preliminary Objections in the nature of a demurrer to the Complaint. The Court has scheduled argument on those Preliminary Objections for February 9, 2005. As set forth in the Defendants' Preliminary Objections, the Plaintiffs' Complaint is legally insufficient and fails to state any valid claims against the Defendants. The Plaintiffs' Complaint is a transparent and improper attempt to transform a simple breach of contract action into a tort claim against the Defendants. The Defendants' Preliminary Objections do not raise any issues of fact

and were not endorsed with a Notice to Plead. The Preliminary Objections merely test the facial validity of the Complaint.

In the event that the Court determines that the action can proceed, the Plaintiffs would obviously have every opportunity to proceed with their discovery, and will suffer no prejudice from allowing the Court to first resolve the Preliminary Objections. However, while the Preliminary Objections remain pending and have put into question the validity of this action in its entirety, subjecting the Defendants to the burden and expense of extensive discovery is unreasonable. See Pa. R. Civ. P. 4011. Moreover, the Court's resolution of the Defendants' Preliminary Objections, if not resulting in a complete dismissal of the Plaintiffs' claims, could significantly curtail those claims and thus, potentially restrict the scope of permissible discovery. See Pa. R. Civ. P. 4003.1. Accordingly, the Plaintiffs should permit the Court to resolve the Preliminary Objections before the Plaintiffs forge ahead with what could be a waste of time and resources for all parties.

WHEREFORE, the Defendants request that the Court deny the Plaintiffs' Motions to Compel.

Respectfully submitted,

Dated: January 17, 2005

Kevin P. Allen
Pa. I.D. 76426

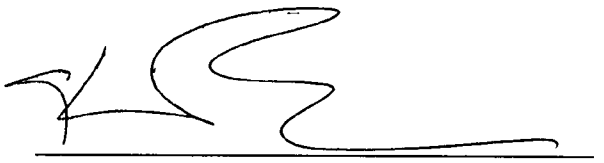
THORP REED & ARMSTRONG, LLP
One Oxford Centre, 14th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 394-2374

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** has been served this 17th day of January 2005, by U.S. Mail, first class, postage prepaid, on the following individuals:

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

ORDER OF COURT

AND NOW, this _____ day of January 2005, upon consideration of the foregoing Defendants' Response in Opposition to Plaintiffs' Motions to Compel, it is hereby ORDERED that the Motions are DENIED.

BY THE COURT:

_____

(P

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST, Plaintiffs	:	CIVIL ACTION
v.	:	NO: 2004-1759
JOHN W. BEAN and GEORGE V. COHEN, Defendants	:	

ORDER

AND NOW, this 14th day of January, 2005, it is hereby ORDERED that Plaintiffs' Motion to Compel Defendant George V. Cohen to Respond Fully to Plaintiffs' First Request for Production of Documents is hereby GRANTED. Defendant George V. Cohen is hereby directed to produce full and complete discovery responses, including all responsive documents, within thirty (30) FJA ~~seven (7)~~ days of the date of this Order, or suffer sanctions upon further application to this Court by Plaintiffs in accordance with Pa. R.C.P. 4019.

BY THE COURT:

Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

(D

FILED 1cc Atty Borda
01 3:30 BY
JAN 17 2005

William A. Shaw
Prothonotary/Clerk of Courts

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FILED

JAN 17 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED 1cc Atty Borda
m/11:26 BCA
JAN 12 2005
William A. Shaw
Prothonotary/Clerk of Courts

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST, Plaintiffs	:	CIVIL ACTION
v.	:	NO: 2004-1759
JOHN W. BEAN and GEORGE V. COHEN, Defendants	:	

PLAINTIFFS' MOTION TO COMPEL DEFENDANT GEORGE V. COHEN TO RESPOND FULLY TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust, by and through their counsel Buchanan Ingersoll PC, hereby seek an order from the Court, compelling Defendant George V. Cohen ("Cohen") to respond fully to Plaintiffs' First Request for Production of Documents ("Document Requests").

I. INTRODUCTION

Cohen has refused to produce documents responsive to the Document Requests primarily because he has filed preliminary objections to Plaintiffs' Complaint, which are pending before the Court. Plaintiffs, however, are confident the Court will overrule those preliminary objections on several grounds, not the least of which is Cohen's improper reliance on facts not found in the Complaint and his failure to accept as true all of the facts averred in the Complaint.

In the meantime, Plaintiffs seek and deserve responses to their Document Requests. This is the only discovery Plaintiffs have undertaken while the preliminary objections are pending, and the Document Requests are not onerous or burdensome. To the contrary, the Document Requests are narrowly tailored to the facts of the Complaint and solicit additional information with respect to the scope and extent of Defendants' wrongful conduct.

Though Plaintiffs sought to resolve this dispute amicably with Defendants prior to the lawsuit, Cohen's co-Defendant John W. Bean rebuffed them in a terse, rude, and vulgar manner, prompting this lawsuit. (Compl. ¶¶ 34, 35.) Defendants concealed information from Plaintiffs with respect to the scope and extent of Defendants' wrongful conduct before the lawsuit. Now, when Plaintiffs invoke lawfully and properly the discovery procedures available to them, Defendants still refuse to be forthcoming with information, hoping that this Court might dismiss the lawsuit summarily without any light being shed on Defendants' actions.

Through other informal mechanisms, Plaintiffs have been able to obtain some evidence, confirming Defendants' wrongful acts. Specifically, and as suspected (Compl. ¶¶ 46, 51, 52), at a time when Defendants took the position that B Warehouse Co., a nonparty entity, was in financial hardship and, thus, was unable to make the $3,750 mandatory monthly minimum interest payments to Plaintiffs under the Commercial Development Second Mortgage Revenue Bonds, Series 1985 ("Bonds") of the Clearfield County Redevelopment Authority ("Authority"), Defendants distributed/converted nearly $300,000 of collateral pledged to Plaintiffs.[1] In addition, Defendants have instructed S&T to refrain from paying the real estate taxes on the

[1] A true and correct copy of a "Statement of Transactions" that Plaintiffs obtained from S&T Bank is attached hereto as Exhibit "A". This document shows that the monthly interest payments to Plaintiffs under the Bonds ceased as of July 1, 2004. That same month, at the direction of Defendant George V. Cohen, S&T Bank disbursed nearly $300,000 from the monies that S&T Bank held and that it previously had used to fund the minimum monthly payments to Plaintiffs under the Bonds.

project facility, further impairing Plaintiffs' collateral.[2] Plaintiffs believe that Defendants are in possession of additional documents that would further establish the scope and extent of Defendants' wrongful conduct at issue in this lawsuit. Defendants, however, seek to avoid such scrutiny by either Plaintiffs or this Court.

For these reasons, and as explained further below, Plaintiffs respectfully file this Motion to Compel, asking this Court to require Defendants to produce full and complete discovery responses, including all responsive documents, or suffer sanctions upon further application to this Court in accordance with Pa. R.C.P. 4019. In support of their Motion to Compel, Plaintiffs state the following:

II. PROCEDURAL HISTORY

A. THE DISPUTE

1. Plaintiffs commenced this action by filing their Complaint on November 5, 2004.

2. Plaintiffs were forced to commence this action because Defendants have embarked on a scheme to harm Plaintiffs' rights and interests as the holders of the Authority Bonds. (Compl. ¶¶ 9, 26, 62.)

3. Briefly stated, Defendants decided to attempt to force indirectly Plaintiffs to renegotiate the Bond terms to establish new terms that are more favorable to Defendants and a nonparty entity, B Warehouse Co.. (Compl. ¶¶ 32, 41, 47, 63.)

[2] A true and correct copy of a July 13, 2004 letter from Defendant George V. Cohen ("Cohen") to Susan Ansin, a joint venturer in B Warehouse Co., is attached hereto as Exhibit "B." In the letter, Cohen reveals Defendants' scheme—particularly, Defendants' intention to stop paying the real estate taxes and the minimum monthly interest on the bonds to force Plaintiffs to renegotiate.

4. Defendants efforts included:

(a) Instructing the paying agent on the Bonds—S&T Bank ("Bank")—to cease paying Plaintiffs the required monthly interest on the Bonds (a minimum of $3,750 per month) as of July 2004, notwithstanding the Bank's contractual obligation under the relevant Bond documents to do so. (Compl. ¶¶ 29, 30, 33, 37, 40, 41-43.)

(b) Unlawfully and unjustifiably exerting control over B Warehouse Co., preventing B Warehouse Co. from performing its obligations under the Bond documents with respect to payment of the minimum monthly interest on the Bonds. (Compl. ¶¶ 29, 30, 42, 43.)

(c) While claiming, *inter alia*, that B Warehouse Co. lacked the funds to continue to honor the Bonds, concealing from Plaintiffs the distribution of nearly $300,000 in collateral funds held by the Bank that could and should have been used to satisfy B Warehouse Co.'s obligations under the Bonds. (Compl. ¶¶ 46, 52, 57.)

(d) They have instructed S&T to refrain from paying real estate taxes on the Project facility, further endangering and impairing the value of collateral securing performance of the Bonds to Plaintiffs' benefit. (Ex. "B" hereto.)

5. Defendants engaged in this scheme notwithstanding B Warehouse Co.'s strong financial position as of December 31, 2003—*i.e.*, cash and investments valued in excess of $1.5 million. (Compl. ¶ 36.)

6. Defendants have not yet responded to the specific allegations in the Complaint; rather, they have interposed unverified preliminary objections pursuant to Pa. R.C.P. 1028.[3]

B. THE DOCUMENT REQUESTS

7. On November 29, 2004, Plaintiffs served upon Cohen the Document Requests pursuant to Pa. R.C.P. 4009.1 and 4009.11. A true and correct copy of the Document Requests is attached hereto as Exhibit "C".

8. This is the only discovery Plaintiffs have sought of Cohen while Defendants' preliminary objections are pending before the Court.

9. Each of the 20 categories of documents Plaintiffs seek relate to genuine issues of material fact in this case, as revealed by Cohen's preliminary objections ("Cohen POs"). A true and correct copy of the Cohen POs is attached hereto as Exhibit "D".

10. Specifically, the Document Requests seek discovery with respect to, *inter alia*, the following genuine issues of material facts, as revealed by the Cohen POs:

(a) Whether the lack of payment of the minimum monthly interest on the Bonds to Plaintiffs is the result of the unlawful, unauthorized, unjustified, and malicious tortious conduct of Defendants, as Plaintiffs claim in their Complaint (Compl. ¶¶ 29, 30, 33, 37, 40, 41-43), or is the result of the loss of a long-time tenant of the warehouse, as alleged in the Cohen POs (Cohen POs ¶ 7);

[3] The Court has scheduled argument on the Defendant John W. Bean's preliminary objections for February 9, 2004. No argument date has been set with respect to the Cohen POs.

(b) Whether in the course of committing the alleged tortious conduct, Cohen acted unlawfully and unjustifiably, as alleged in the Complaint (Compl. ¶ 42), or acted lawfully and justifiably on account of B Warehouse Co. or as a joint venturer, as alleged in the Cohen POs (Cohen POs ¶ 20);

(c) Whether Defendants concealed distributions and conversion of collateral funds from Plaintiffs and the extent of the distributions and conversion, as alleged in the Complaint (Compl. ¶¶ 46, 52)—averments which Cohen claims are vague and unspecified (Cohen POs ¶¶ 27, 29); and

(d) Whether Plaintiffs had a current possessory interest in the funds that Defendants caused to be distributed and converted, as alleged in the Complaint (Compl. ¶ 51)—an averment of fact in the Complaint that Cohen fails to accept as true in his demurer to Count III (Cohen POs ¶ 30).

11. The Document Requests are narrowly tailored to the dispute in this case.

12. The Document Requests are the only discovery that Plaintiffs have sought from Cohen while the Cohen POs are pending.

13. The Document Requests relate to, *inter alia*, disputes over additional factual averments made by Cohen in the Cohen POs in defense of the facts and claims Plaintiffs assert in the Complaint—the existence of which actually prevent this Court from granting the Cohen POs and dismissing the Complaint at this preliminary stage. *See, e.g.*, *Stalsitz v. Allentown Hosp.*, 814 A.2d 766 (Pa. Super. 2002) (holding that "in reviewing a trial court's decision to grant a demurrer, all material facts set forth in the complaint and all inferences reasonably deducible therefrom are accepted as true, and the core issue is whether on the facts averred, the law says

with certainty that recovery is impossible. Any doubt should be resolved in favor of overruling the demurrer." (citation omitted)), *appeal denied*, 578 Pa. 717, 854 A.2d 968 (2004); *Mellon Bank N.A. v. Fabinyi*, 650 A.2d 895, 899 (Pa. Super. 1994) ("[P]reliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer.").

C. THE OBJECTIONS

14. On December 29, 2004, Plaintiffs received Cohen's Objections and Responses to Plaintiffs' First Request for Production of Documents ("Cohen Objections"). A true and correct copy of the Cohen Objections is attached hereto as Exhibit "E."

15. The Cohen Objections include a "Preliminary Statement," in which Cohen generally refuses to respond to the Document Requests because of his pending preliminary objections.

16. The Cohen Objections also include several "General Objections," which are simply boilerplate discovery objections.

17. Of the twenty categories of documents sought, Cohen objects to fifteen (Nos. 2, 3, 5, 6, 8-11, 13, 15-20) for the sole reason that his preliminary objections are pending before the Court.

18. With respect to the other five categories (Nos. 1, 4, 7, 12, 14), Cohen asserts, without elaboration, additional objections of relevancy, vagueness, ambiguity, over-breadth, annoyance, oppression, and/or undue burden and expense.

III. ARGUMENT

19. Setting aside the boilerplate objections in the Cohen Objections, the crux of the Cohen Objections is that Cohen does not want Plaintiffs to have access to documents that may further bolster their position and that may contradict the additional facts asserted in the Cohen POs, in the hope that this Court might grant the Cohen POs and dismiss this case at its most preliminary stage.[4]

20. There is, however, nothing in the Pennsylvania Rules of Civil Procedure that excuses a party from responding to discovery if the party has filed preliminary objections.

21. Although there may be a circumstance where it is appropriate for a court, at a party's request, to stay discovery pending the resolution of potentially dispositive preliminary objections, Plaintiffs respectfully suggest that this is not one of those circumstances.

22. Plaintiffs have not inundated Cohen or his co-Defendant John W. Bean with discovery at this early stage in the proceeding.

23. The discovery Plaintiffs have propounded on Cohen is limited to a single set of document requests, seeking the production of twenty discrete categories of documents.

24. Plaintiffs have not availed themselves of the many other more costly discovery tools available to them—such as depositions and interrogatories.

[4] Cohen acknowledges the boilerplate nature of his other objections at the conclusion of his "Preliminary Statement," where he notes his intent to supplement his response to the Document Requests if the Court denies the Cohen POs.

25. Though Cohen claims that responding to this single discovery request "would cause unreasonable annoyance, oppression, burden and expense, and . . . would require an unreasonable investigation," he provides no explanation as to why producing the requested documents would require such a Herculean effort.

26. Instead, he relies only an assumption that this Court will dismiss this case summarily in response to the Cohen POs, delaying, if not denying, a full and fair vetting of Defendants' conduct by Plaintiffs and the Court.

27. In addition, documents responsive to the Document Requests may very well contradict some of the additional unverified facts that Cohen and his co-Defendant John W. Bean include in their preliminary objections to the Complaint. For that reason, Plaintiffs respectfully request that the Court order production within a reasonable period time in advance of the scheduled February 9, 2004 hearing on Defendant John W. Bean's preliminary objections.

28. Though Defendants may have an interest in avoiding potentially unnecessary expenses in responding to voluminous discovery if the Court determines that Plaintiffs' Complaint should be summarily dismissed, Plaintiffs have an equally strong interest in receiving a prompt and efficient resolution of their claims.

29. Defendants' rights in litigation are no greater than Plaintiffs' rights and interests. Nonetheless, to deny Plaintiffs the right to engage in the limited discovery they seek at this point in the case is to place Defendants' interests above Plaintiffs, especially if this Court ultimately concludes, as Plaintiffs believe it will, that this case should not be summarily dismissed and, rather, should proceed through discovery and trial.

30. Though preliminary objections are pending, requiring Defendants to respond fully and completely to the limited discovery Plaintiffs seek strikes a balance between Plaintiffs' and Defendants' competing interests without presuming, or assuming, in advance the Court's disposition of the pending preliminary objections.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request that this Court enter an Order granting Plaintiffs' Motion to Compel, compelling Defendant George V. Cohen to produce full and complete responses, including all responsive documents, to Plaintiffs' Document Requests or suffer sanctions upon further application to this Court in accordance with Pa. R.C.P. 4019.

Respectfully submitted,

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street - 3rd Floor
Harrisburg, PA 17101
(717) 237-4800 (ph)
(717) 233-0852 (fax)

Attorneys for Plaintiffs

DATE: January 11, 2005

RECEIVED NOV 29 2004

S & T BANK

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
05/17/2004	S&T MONEY MARKET INCOME REDEEM	179.52	0.00	-179.52
05/19/2004	S&T MONEY MARKET INCOME REDEEM	16,737.00	0.00	-16,737.00
06/01/2004	S&T MONEY MARKET INCOME REDEEM	3,750.00	0.00	-3,750.00
06/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
06/22/2004	S&T MONEY MARKET INCOME REDEEM	161.38	0.00	-161.38
07/01/2004	S&T MONEY MARKET INCOME REDEEM	3,750.00	0.00	-3,750.00
07/09/2004	S&T MONEY MARKET INCOME REDEEM	503.50	0.00	-503.50
07/12/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
07/19/2004	S&T MONEY MARKET INCOME REDEEM	341.49	0.00	-341.49
07/19/2004	S&T MONEY MARKET INCOME REDEEM	0.00	296,199.31	-296,199.31
08/02/2004	S&T MONEY MARKET REDEEM	0.00	12,695.45	-12,695.45
08/05/2004	S&T MONEY MARKET REDEEM	402.80	0.00	-402.80
08/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
08/20/2004	S&T MONEY MARKET INCOME REDEEM	0.00	2,873.35	-2,873.35
09/13/2004	S&T MONEY MARKET REDEEM	670.17	0.00	-670.17
09/17/2004	S&T MONEY MARKET INCOME REDEEM	0.00	250.12	-250.12
09/22/2004	S&T MONEY MARKET REDEEM	278.49	0.00	-278.49
09/22/2004	S&T MONEY MARKET INCOME REDEEM	0.00	15,000.00	-15,000.00
10/06/2004	S&T MONEY MARKET REDEEM	175.84	0.00	-175.84
10/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
10/12/2004	S&T MONEY MARKET INCOME REDEEM	0.00	2,873.39	-2,873.39
10/21/2004	S&T MONEY MARKET REDEEM	302.28	0.00	-302.28
11/03/2004	S&T MONEY MARKET INCOME REDEEM	100.00	0.00	-100.00
11/10/2004	S&T MONEY MARKET INCOME REDEEM	115.00	0.00	-115.00
11/11/2004	S&T MONEY MARKET INCOME REDEEM	1,266.75	0.00	-1,266.75
11/17/2004	S&T MONEY MARKET INCOME REDEEM	459.85	0.00	-459.85
	Total PROCEEDS FROM THE WITHDRAWAL OF ASSETS	**59,379.33**	**343,398.21**	**-402,777.54**
	DISBURSEMENTS TO OR FOR BENEFICIARIES			
01/02/2004	RICHARD GORDON	-750.00	0.00	0.00

For the Account of: ***B WAREHOUSE RESERVE DTD 04/15/85***
Account Number: ***62 00 0745 1P 4***
Period: ***Calendar Year to Date***
Date Prepared: ***November 23, 2004***

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254439			
01/02/2004	MARC KATZEN	-1,687.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254440			
01/02/2004	MARSHALL KATZEN	-562.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254441			
01/02/2004	H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254442			
01/02/2004	H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254443			
01/02/2004	H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254444			
01/02/2004	H KELLER TRSTEE FOR BROOK KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254445			
02/02/2004	RICHARD GORDON	-750.00	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255687			
02/02/2004	MARC KATZEN	-1,687.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255688			
02/02/2004	MARSHALL KATZEN	-562.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255689			
02/02/2004	H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255690			
02/02/2004	H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255691			
02/02/2004	H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255692			
02/02/2004	H KELLER TRSTEE FOR BROOK KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255693			
03/01/2004	RICHARD GORDON	-750.00	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256888			
03/01/2004	MARC KATZEN	-1,687.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256889			
03/01/2004	MARSHALL KATZEN	-562.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256890			
03/01/2004	H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256891			
03/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256892			
03/01/2004	H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00

S & T BANK

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256893			
03/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256894	-187.50	0.00	0.00
03/08/2004	MAUTHE YUTZEY & GABLER SERVICES RENDERED FINANCIAL STATEMENT 12/31/03 PREPARATION OF TAX RETURNS CHECK NUMBER 257324	-915.00	0.00	0.00
03/29/2004	EASLEY, MCCALEB & ASSOCIATES, INC. PER JOHN BEAN CHECK NUMBER 258340	-300.00	0.00	0.00
04/01/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258464	-750.00	0.00	0.00
04/01/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258465	-1,687.50	0.00	0.00
04/01/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258466	-562.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258467	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258468	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258469	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258470	-187.50	0.00	0.00
05/03/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260204	-750.00	0.00	0.00
05/03/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260205	-1,687.50	0.00	0.00
05/03/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260206	-562.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260207	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260208	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260209	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260210	-187.50	0.00	0.00
05/19/2004	MARC KATZEN ADDITIONAL INTEREST DUE FOR 2003	-7,531.65	0.00	0.00

S & T BANK

For the Account of: ***B WAREHOUSE RESERVE DTD 04/15/85***
Account Number: ***62 00 0745 1P 4***
Period: ***Calendar Year to Date***
Date Prepared: ***November 23, 2004***

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	CHECK NUMBER 260948			
05/19/2004	RICHARD GORDON ADDITIONAL INTEREST DUE FOR 2003	-3,347.40	0.00	0.00
	CHECK NUMBER 260949			
05/19/2004	H KELLER TRSTEE FOR HARRY KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260950			
05/19/2004	H KELLER TRSTEE FOR HIRSH KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260951			
05/19/2004	H KELLER TRSTEE FOR BRIT KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260952			
05/19/2004	H KELLER TRSTEE FOR BROOK KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260953			
05/19/2004	MARSHALL KATZEN ADDITIONAL INTEREST DUE FOR 2003	-2,510.55	0.00	0.00
	CHECK NUMBER 260954			
06/01/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15%	-750.00	0.00	0.00
	CHECK NUMBER 261410			
06/01/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15%	-1,687.50	0.00	0.00
	CHECK NUMBER 261411			
06/01/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15%	-562.50	0.00	0.00
	CHECK NUMBER 261412			
06/01/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261413			
06/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261414			
06/01/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261415			
06/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261416			
07/19/2004	RALDO E SHIPMAN TESTAMENTARY TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
	CHECK NUMBER 263745			
07/19/2004	GEORGE L COHEN IRA C/O WOODLANDS BANK DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
	CHECK NUMBER 263746			
07/19/2004	IDEAL RETIREMENT TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
	CHECK NUMBER 263747			
07/19/2004	BERTRAM B LEOPOLD RESIDUARY TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-65,163.85	0.00
	CHECK NUMBER 263748			
07/19/2004	SUSAN ANSIN DISTRIBUTION PER GEORGE COHEN	0.00	-33,569.26	0.00
	CHECK NUMBER 263749			
07/19/2004	JOHN BEAN	0.00	-49,366.55	0.00

Exhibit B

407-566-8836

McNERNEY, PAGE, VANDERLIN & HALL
ATTORNEYS AND COUNSELLORS AT LAW

George V. Cohen
Michael H. Collins
Garth D. Everett
Peter G. Facey
Brett O. Feese*
Jason K. Fetter
Matthew F. Golden
T. Max Hall
Benjamin E. Landon
Joy Reynolds McCoy
Thomas C. Marshall
Arin S. Pepperman
Cynthia R. Person
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Joseph M. McNerney
1939-1957
Allen P. Page, Jr.
1943-1976
O. William Vanderlin
1950-1999
Charles J. McKelvey
1969-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mpvh@mcnerneypage.com

July 13, 2004

Ms. Susan Ansin
61 Possum Lane
Weston, MA 02193-2317

Dear Susie:

Now that B Warehouse no longer has an ongoing net lease for its space, the Katzen Bonds (which are secured by a mortgage on the B Warehouse real estate and which I will collectively refer to as the "Bonds") have become onerous. Even when we succeeded in renting the space, since B Warehouse had to pay all the expenses of ownership (i.e. it was a "gross" lease), by having to pay part of the rents to the bondholders, we actually suffered a net loss. Our leasing agent has advised us there is no demand for warehouse space in Dubois, regardless of the rent requested.

As you know, B Warehouse has retained the law firm of Thorp Reed & Armstrong, LLP in the person of Attorney James Goldberg to advise and represent us in our efforts to renegotiate the Bonds. Your representative, Raymond Hess, of M&T Investment Group was present at that meeting. While we did not want to default, to remain in compliance with the Bond terms would assure the bankruptcy of B Warehouse under the current economic circumstances. Thus we have caused our counsel to send a letter to Marc Katzen and have asked them to fax you a copy.

The Bonds prohibit us from drawing down our reserve below $300,000 but impose no personal obligation to re-instate the reserve if it falls below that level. Thus, we have instructed S&T Bank to distribute the reserve in excess of $300,000 to the joint venturers and you will soon receive your pro-rata share. We may in the future need to replenish the

reserve to B Warehouse but for the moment we believe it is better to remove the excess reserve from the account.

John Bean has asked me to step up to the position of managing the joint venture and I reluctantly do so. By my letter to the bank you will see we have prohibited payment of any B Warehouse expenses without the prior approval of John Bean or me. It is our plan to make no further payments on the Bonds nor to pay the real estate taxes until we have renegotiated the bonds. If negotiations are unsuccessful, our counsel advises the bondholders sole remedy is to foreclose on the property. This would enable us to pay off the bonds (which we are otherwise precluded from doing) and to then hopefully lease the warehouse on a profitable basis. Our non-payment of real estate taxes may force a foreclosure sale on the premises even if the bondholders do not elect to renegotiate or foreclose.

John and I would like to meet with you and your representative to more fully apprise you of our activities. John has promised to set time aside the next time he comes north and hopefully you will be available.

I hope all is going well with you and your family. Janice and I are having a great time enjoying our semi-retired status. I look forward to seeing you. With fondest regards, I remain

Very truly yours,

George V. Cohen

GVC/mcn
cc: John W. Bean
Timothy M. Slavish, Esquire
Raymond C. Hess

PS. Susie, will you please get me your email address for future use.

Exhibit C

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

PLAINTIFFS FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT GEORGE V. COHEN

TO: GEORGE V. COHEN
2618 Waldman Drive
Williamsport, PA 17701

PLEASE TAKE NOTICE, that pursuant to the Rules 4009.1 and 4009.11 of the Pennsylvania Rules of Civil Procedure, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust ("Plaintiffs"), requests Defendant George V. Cohen to produce and permit the inspection or photographing of the following documents or things. Plaintiffs request production thirty (30) days after receipt of this request at the offices of its counsel, Buchanan Ingersoll, P.C., 213 Market Street, Third Floor, Harrisburg, PA 17101 or at such other time and place as to which the parties may agree in writing.

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street
3rd Floor
Harrisburg, PA 17101
(717)237-4800

DATE: November 29, 2004

INSTRUCTIONS

A. These requests call for documents within your possession, custody or control, whether directly or indirectly. A document is in your possession, custody or control for purposes of these requests if it is within the possession of your attorneys, accountants, financial advisors, consultants, agents or representatives.

B. Documents shall be segregated according to the paragraph of the request to which they respond. Documents produced in response to any one paragraph need not be duplicated for production in response to any other paragraph.

C. The use of the singular form of any worked includes the plural, and vice versa.

D. This request for documents is continuing in nature, and any information obtained subsequent to the service of your response to this request for documents shall promptly be supplied by supplemental response whenever the Company finds, locates, acquires or creates such document.

DEFINITIONS

A. The word "document" shall mean the originals and any and all copies of any and all written, printed, typed or otherwise recorded matter, however produced or reproduced, of every kind and description in whatever form, including final and draft versions, physical or electronic media, and including, but not limited to, all writings, correspondence, letters, e-mails, telegrams, notes, notes of any meetings, memoranda, reports, studies, charts, photographs, or any other tangible things. "Documents" also means originals and copies of all of the above on which notations in writing, printed or otherwise have been made do not appear on the originals, and all attachments, envelopes, explanatory notes or memoranda, and any other material that accompanied the requested items. If the specific document elicited a response, that response is

also to be identified and produced. If the document was itself a response, the document to which it is responding is also to be identified and produced.

B. The word "communication(s)" shall mean any oral or written statement or exchange of information of any type between two or more persons, including but not limited to documents, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

C. The word "person" shall mean any natural person, individual, proprietorship, partnership, corporation, association, organization, joint venture, business trust or other business enterprise, governmental body or agency, or governmental, public, legal, or business entity, or group of natural persons or other entities whether *sui juris* or otherwise.

D. The phrase "evidence, refer or relate to" shall mean concerning, considering, constituting, regarding, reflecting, representing, supporting, contradicting, referring to, referencing, stating, describing, evidencing, recording, noting, embodying, containing, mentioning, memorializing, studying, analyzing, pertaining to discussing, evaluating, relating to, or in relation to, or relevant to. As indicated, the term necessarily includes responsive information that is in opposition to as well as in support of the position(s) and claim(s) of the party to whom the Interrogatory is addressed.

E. The term "concerning" means relating to, referring to, refuting, supporting, describing, evidencing or constituting.

F. The words "and" and "or" shall be construed both conjunctively and disjunctively so as to make the request inclusive rather than exclusive. The singular shall be construed to include the plural and the plural to include the singular.

G. "You" and "Your" shall mean and refer to Defendant George V. Cohen, his agents and/or employees.

H. "Complaint" shall mean and refer to the Complaint on file in the present action, Court of Common Pleas, Clearfield Count, No. 2004-1759, filed on November 5, 2004.

I. "Authority" shall mean the Clearfield County Industrial Development Authority.

J. "Agreement" shall mean the Joint Venture Agreement signed on April 25, 1985 forming the B Warehouse Company.

K. "Bonds" shall mean the $300,000 of Commercial Development Second Mortgage Revenue Bonds, Series 1985 issued on or about April 18, 1985 by the Clearfield Industrial Development Authority.

L. "B Warehouse Co." shall mean the B Warehouse Company and its corporate affiliates including corporate parents, subsidiaries, sisters, predecessors, successors, assigns and its officers, directors, employees, representatives, attorneys, accountants, financial advisors, consultants, agents, and all persons who act or acted for or on behalf of B Warehouse Co.

M. "Joint Venturer(s)" shall mean the individuals and/or entities which either had or currently have an ownership interest in B Warehouse Company subject to the Agreement.

N. "Lease" shall have its ordinary meaning and shall include all lease, rental, or use agreements for any term related to the Warehouse.

O. "Project" shall mean the acquisition and construction of a commercial economic development warehouse project that is the subject of the above-captioned proceeding in Sandy Township, Clearfield County, Pennsylvania pursuant to the Authority's April 18, 1985 Debt Resolution.

P. "S&T Bank" shall mean S&T Bank, formerly known as The Savings & Trust Company of Pennsylvania.

Q. "Warehouse" shall mean the warehouse constructed pursuant to the B Warehouse Project.

UNAVAILABILITY OF DOCUMENTS

To the extent a document is sought herein and such document was, but is no longer, in your possession, or subject to your control, or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred, voluntarily or involuntarily, to others, or (iv) has been otherwise disposed of, and, in each instance, explain the circumstances surrounding, and authorization for, such disposition thereof; state the date or approximate date thereof; the contents of said document; and the person(s) who authorized the transfer, destruction, or other disposition of said document. Documents prepared prior to, but which relate or refer to, the time-period covered by these documents, are to be identified.

PRIVILEGE

Identify by date, author, recipient, distribution list, and subject matter, each document which is responsive to a specific request, but which the deponents does not intend to be produced based upon the assertion of a claim of privilege or other asserted justification for non-production, *e.g.*, attorney's work product, and with respect thereto, specifically identify the alleged privilege asserted for each document.

DOCUMENTS TO BE PRODUCED

1. Copies of financial statements, profit and loss statements, balance sheets, ledgers, books of account and any other documents that evidence, refer, or relate to the financial matters of B Warehouse Co. from its inception to the present.

2. All documents that evidence, refer, or relate to communications between you and Joe Varacallo and/or any other real estate agent and/or broker consulted with respect to the Project.

3. All documents that evidence, refer, or relate to communications between you and Defendant John W. Bean concerning the Project.

4. All documents that evidence, refer, or relate to communications between you and any Joint Venturer.

5. All documents that evidence, refer, or relate to communications between B Warehouse Co. and any Joint Venturer.

6. All documents that evidence, refer, or relate to communications between B Warehouse Co. and Joe Varacallo and/or any other real estate agent and/or broker consulted with respect to the Project.

7. Copies of your federal, state, and local tax returns for years 1999 through 2003.

8. Copies of all federal, state, and local tax returns filed by B Warehouse Co. from its inception to the present.

9. All documents that evidence, refer, or relate to communications between you and S&T Bank concerning the accounts, obligations, or assets of B Warehouse Co.

10. All documents that evidence, refer, or relate to communications between B Warehouse Co. and S&T Bank concerning the accounts, obligations, or assets of B Warehouse Co.

11. All bank statements and cancelled checks with any financial institution with respect to any B Warehouse Co. account for the past 5 years.

12. All bank statements and cancelled checks on any account with any financial institution on which your name appears for the past 5 years.

13. All documents that evidence, refer, or relate to the distribution of assets from any B Warehouse Co. account or of any asset of B Warehouse Co., whether to a Joint Venturer(s) or other individual(s) or entity(ies).

14. All documents that evidence, refer, or relate to the current possession and/or ownership by any person or entity of any distribution from an account of B Warehouse Co. or otherwise from the assets, real or personal, of B Warehouse Co.

15. All contracts, listing agreements, appraisals, and/or value estimates prepared or provided by Coldwell Banker Developac, Inc. concerning the Project or the Warehouse.

16. All contracts, listing agreements, appraisals, and/or value estimates prepared or provided by Joe Varacallo concerning the B Warehouse Project.

17. All contracts, listing agreements, appraisals, and/or value estimates provided by any other individual or entity concerning the B Warehouse Project.

18. All Leases.

19. All documents that evidence, refer, or relate to communications between B Warehouse Co. and the Authority concerning the Warehouse, the Bonds, or the Project.

20. All documents that evidence, refer, or relate to communications between you and the Authority concerning the Warehouse, the Bonds, or the Project.

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the person listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

GEORGE V. COHEN
2618 Waldman Drive
Williamsport, PA 17701

By _____
Nicole L. Borda

DATE: November 29, 2004

RECEIVED DEC 29 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

PRELIMINARY OBJECTIONS

George V. Cohen submits the following Preliminary Objections to the Plaintiffs' Complaint.

Introduction

1. In 1985, the Plaintiffs purchased certain Second Mortgage Revenue Bonds in the aggregate principal amount of $300,000 ("Bonds") from the Clearfield County Industrial Development Authority ("Authority") related to the financing and construction of a commercial warehouse ("Project") in Clearfield County. Complaint, ¶ 26.

2. B Warehouse Company ("B Warehouse"), a joint venture, was the "Investor Developer" of the Project. B Warehouse obtained financing for the construction of the Project, a portion of which was derived from the Plaintiffs' purchase of the Bonds. Id. at ¶ 14.

3. The Project's financing, including the Plaintiffs' purchase of the Bonds, is governed by a series of financing documents (collectively, the "Contracts") between or among the Plaintiffs, the Authority, B Warehouse, and the Savings & Trust Company of Pennsylvania, now known as S&T Bank ("S&T"). Id. at Exs. A through C, E.

4. The Contracts, which are all interrelated and cross-reference each other, include detailed provisions regarding security for the Bonds and the remedies available in the event of a default by B Warehouse in its obligations under the Contracts. Id.

5. The Contracts specifically and repeatedly provide, that the debt issued in connection with the Project, including the Bonds, "is payable solely from the receipts and revenues derived from the Project . . . ." The debt related to the Project is also secured by a First Mortgage (now satisfied) on the Project and a Second Mortgage. Id.

6. Critically, for purposes of this action, the Contracts also place strict limits on any liability of B Warehouse, or any of its constituent members. Specifically, section 6.5 of the Mortgage Loan Agreement for the Project provides:

> 6.5. DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited . . . [subject to certain specified conditions] to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives,

> successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding..

Id. at Ex. E.

7. In 2002, the Project's warehouse lost its longtime tenant, and, as a result, B Warehouse has not made scheduled interest payments under the Contracts. Id. at ¶¶ 28, 30 and 33.

8. The Plaintiffs have recourse under the Contracts as a result of the non-payments, but that recourse is limited to the security set forth in the Contracts, and does not extend to the personal assets of the Defendants. Id. at Ex. E § 6.5.

9. This tort action represents an improper attempt by the Plaintiffs to circumvent the detailed Contracts, and the remedies set forth therein, to which the Plaintiffs agreed in 1985.

10. For the multiple reasons set forth below, the Plaintiffs' Complaint is legally insufficient in its entirety, and also violates the Pennsylvania Rules of Civil Procedure in other fundamental respects as well. As a result, Cohen requests that the Court dismiss the Plaintiffs' Complaint with prejudice.

DEMURRER – ALL COUNTS

11. The Plaintiffs' rights regarding the Bonds are governed by the Contracts. See Complaint, Ex. A through C, E and G.

12. The Contracts specify and limit the rights of the contracting parties in the event of non-payment or other default by B Warehouse. See, e.g., id. at Ex. C, § 6.5.

13. The Bonds are "payable solely from the receipts and revenues derived from the Project . . ." and are secured by the land and building. The Contracts provide that, beyond the security specified in the Contracts, the obligation of the Investor Developer is unsecured, with no recourse to the joint venturers of B Warehouse. Id. at Ex. A, p. 3 and Ex. E, § 6.5.

14. The Plaintiffs' Complaint constitutes an improper attempt to circumvent the Contracts to which the Plaintiffs agreed.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – ALL COUNTS – GIST OF THE ACTION

15. The Plaintiffs' Complaint constitutes an improper attempt to recast an ordinary breach of contract claim into tort claims because of the Plaintiffs' apparent dissatisfaction with the contractual remedies contained in the written agreements governing the Project's financing.

16. Pennsylvania's gist of the action doctrine bars the Plaintiffs' claims.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT I

17. In Count I, the Plaintiffs purport to set forth a claim against Cohen for tortious interference with contract.

18. However, under Pennsylvania law, a party cannot tortiously interfere with a contract to which he or his principal is a party.

19. Here, the Plaintiffs' allegations in Count I are based on Cohen's alleged interference with the Contracts, a series of agreements to which B Warehouse is one of the parties. Complaint, ¶¶ 15 and 17.

20. Cohen's alleged improper interference occurred while he was acting in his role as a joint venturer in, or agent for, B Warehouse. Id. at ¶¶ 19, 22-23.

21. Consequently, under Pennsylvania law, the Plaintiffs' claim for tortious interference with contract is legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count I of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT II

22. In Count II, the Plaintiffs allege that Cohen "concealed information" from the Plaintiffs concerning B Warehouse. Complaint, ¶ 46.

23. Under Pennsylvania law, silence cannot amount to fraud absent a duty to speak.

24. The Plaintiffs' Complaint fails to establish any duty on the part of Cohen to disclose to Plaintiffs the unspecified information he allegedly concealed.

25. Accordingly, Count II is legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count II of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT II

26. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

27. In Count II, the Plaintiffs allege evasively and vaguely that they "believe[] and, therefore, aver[]" that Cohen concealed unspecified information regarding an unspecified distribution of unspecified assets of B Warehouse. Complaint, ¶ 46.

28. Count II lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count II of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) – (4).

DEMURRER – COUNT III

29. In Count III, an alleged claim for conversion, the Plaintiffs contend that they had a "current possessory interest" in funds held in unspecified accounts.

30. The Plaintiffs' Complaint sets forth no basis for the conclusory allegation that the Plaintiffs held such an interest in the alleged accounts, or that Plaintiffs had any right or interest in the alleged accounts.

31. To the contrary, the Plaintiffs' Complaint and the Contracts attached thereto established that the Bonds are secured only by the interest of B Warehouse in the Project, i.e., by the land and warehouse and leases related thereto.

32. For example, the Mortgage Loan Agreement, a copy of which is attached to the Complaint as Ex. E, calls for the creation of a "Reserve Fund." Under the Mortgage Loan Agreement, payments from that fund are strictly limited to specified uses. Payments from the Reserve Fund for debt service on the Bonds are not permissible under the Mortgage Loan Agreement. Complaint, Ex. E, § 4.1.

33. Moreover, the Contracts specifically preclude the Plaintiffs from pursuing any claim against Cohen individually. Id. at Ex. E, § 6.5.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count III of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT IV

34. In Count IV, the Plaintiffs seek injunctive relief based on an alleged - albeit unspecified - fraudulent transfer from B Warehouse to the Defendants.

35. Count IV is legally insufficient because B Warehouse is not a debtor in relation to Plaintiffs. To the contrary, the Plaintiffs purchased the Bonds from the Authority, not B Warehouse.

36. Count IV is also legally insufficient because the Plaintiffs failed to allege that B Warehouse is "insolvent."

37. The absence of any allegation of insolvency on the part of B Warehouse is highlighted by the fact that the Plaintiffs are attempting to circumvent the security provisions contained in the Contracts in the event of non-payment by B Warehouse.

38. The security for the Bonds provided by the Contracts remains available; the Plaintiffs have simply – but improperly – chosen not to pursue it.

39. Count IV is also legally insufficient because of the Plaintiffs' failure to resort to the security available and because the Plaintiffs have not exhausted their remedies at law or reduced any claim related to the Bonds to a judgment.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count IV of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT IV

40. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

41. In Count IV, the Plaintiffs allege evasively and vaguely "upon information and belief" that the Defendants "divested" B Warehouse of unspecified "assets" through unspecified "disbursements." Complaint, ¶ 56.

42. Count IV lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count IV with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) and (3).

DEMURRER – COUNT V

43. Count V, an alleged cause of action for civil conspiracy, is dependent on the existence of some valid underlying claim.

44. As set forth above, the Plaintiffs have failed to allege any valid claim against Cohen.

45. Consequently, Count V is legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count V with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

COMPLAINT EX. J - PA. R. CIV. P. 1028(a)(2).

46. Plaintiffs attached Exhibit J to the Complaint for no material reason.

47. Cohen requests that, in the event the Court does not dismiss the Complaint in its entirety, the Court strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

CLAIM FOR ATTORNEY FEES

48. In the Complaint, the Plaintiffs assert claims to recover attorney fees.

49. The Complaint includes no valid basis for the recovery of attorney fees by the Plaintiffs, even if the Plaintiffs could otherwise sustain any of their claims.

50. In the event that any of Plaintiffs' claims survive these Preliminary Objections, Cohen requests that the Court strike Plaintiffs' request to recover attorney fees.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss and/or strike Plaintiffs' claims to recover attorney fees.

FAILURE TO JOIN INDISPENSABLE PARTIES

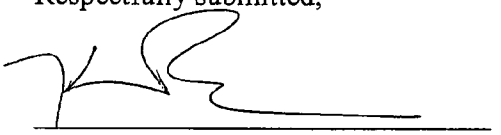
51. Plaintiffs' claims are inextricably interwoven with the Contracts.

52. In the Complaint, the Plaintiffs seek, *inter alia*, injunctive relief against entities that are not parties to this action. See Complaint at pp. 9, 10 and 12 through 14.

53. The Plaintiffs' failure to join indispensable parties deprives this Court of jurisdiction over this action and renders the Plaintiffs' Complaint legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint pursuant to Pa. R. Civ. P. 1028(a)(1) and (4).

Respectfully submitted,

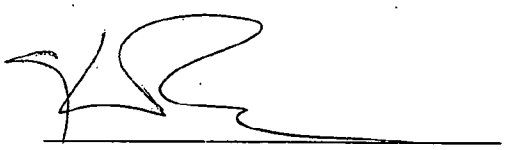


Kevin P. Allen
Pa. I.D. 76426
THORP REED & ARMSTRONG, LLP
One Oxford Centre, 14th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 394-2374
(412) 394-2555
Counsel for George V. Cohen

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRELIMINARY OBJECTIONS** has been served this 27th day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



ALL STATE LEGAL 800-222-0510 EDR11 RECYCLED

RECEIVED DEC 2 9 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

DEFENDANT GEORGE V. COHEN'S OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant George V. Cohen ("Cohen") submits the following Objections and Responses to Plaintiffs' First Request for Production of Documents:

PRELIMINARY STATEMENT

The Defendants have filed Preliminary Objections to the Plaintiffs' Complaint. Those Preliminary Objections are potentially dispositive of the entire Complaint and remain pending. The Court's resolution of the Defendants' Preliminary Objections will determine whether this action will proceed at all, or, if it does proceed, the scope of the action. Consequently, because resolution of the Preliminary Objections could result in the termination or curtailment of this action, the Plaintiffs' Requests for Production of Documents are objectionable in their entirety pursuant to the Pa. R. Civ. P. 4009.12(b)(4) because the Requests would cause unreasonable annoyance, oppression, burden and expense, and because they would require an unreasonable investigation. The Plaintiffs' Requests are also objectionable because, until the

Court resolves the Defendants' Preliminary Objections, the scope of the Plaintiffs' claims, if any survive, is unknown, and, consequently, certain of the Plaintiffs' Requests may be beyond the scope of permissible discovery. In the event that any claims survive the pending Preliminary Objections, Cohen will supplement his responses to the Plaintiffs' Requests.

GENERAL OBJECTIONS

In addition to the Objections set forth in his Preliminary Statement, Cohen asserts the following General Objections with respect to each of the Plaintiffs' Document Requests:

1. Cohen objects to Plaintiffs' Document Requests to the extent they seek information regarding matters that are not relevant to the subject matter of the pending action or not reasonably calculated to lead to the discovery of admissible evidence.

2. Cohen objects to Plaintiffs' Document Requests to the extent they would cause annoyance, embarrassment, oppression or undue burden or expense.

3. Cohen objects to Plaintiffs' Document Requests to the extent that the Requests seek any document that is protected from disclosure by the attorney-client or other privilege, as work product, and/or as the mental impressions, conclusions, opinions, memoranda, notes or summaries, legal research or legal theories of one or more of the attorneys for Cohen, as well as the mental impressions, conclusions or opinions respecting the value or merit of a claim or defense, or respecting the strategy or tactics of one or more representatives of Cohen.

RESPONSES AND SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION

Cohen incorporates by reference his Preliminary Statement and General Objections into his Response to each of the following Requests for Production.

1. Copies of financial statements, profit and loss statements, balance sheets, ledgers, books of account and any other documents that evidence, refer, or relate to the financial matters of B Warehouse Co. from its inception to the present.

RESPONSE: Cohen objects to this Request because it is vague and ambiguous and overbroad. Cohen further objects to this Request to the extent that it seeks documents that are not relevant to the subject matter involved in the pending action, and because it is not reasonably calculated to lead to the discovery of admissible evidence.

2. All documents that evidence, refer, or relate to communications between you and Joe Varacallo and/or any other real estate agent and/or broker consulted with respect to the Project.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

3. All documents that evidence, refer, or relate to communications between you and Defendant John W. Bean concerning the Project.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

4. All documents that evidence, refer, or relate to communications between you and any Joint Venturer.

RESPONSE: Cohen objects to this Request because it is vague and ambiguous and overbroad. Cohen further objects to this Request to the extent that it seeks documents that are not relevant to the subject matter involved in the pending action, and because it is not reasonably calculated to lead to the discovery of admissible evidence.

5. All documents that evidence, refer, or relate to communications between B Warehouse Co. and any Joint Venturer.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

6. All documents that evidence, refer, or relate to communications between B Warehouse Co. and Joe Varacallo and/or any other real estate agent and/or broker consulted with respect to the Project.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

7. Copies of your federal, state, and local tax returns for years 1999 through 2003.

RESPONSE: Cohen objects to this Request because it is vague and ambiguous and overbroad. Cohen further objects to this Request to the extent that it seeks documents that are not relevant to the subject matter involved in the pending action, and because it is not reasonably calculated to lead to the discovery of admissible evidence. Cohen further objects to this Request because it would cause unreasonable annoyance, oppression, and undue burden and expense.

8. Copies of all federal, state, and local tax returns filed by B Warehouse Co. from its inception to the present.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

9. All documents that evidence, refer, or relate to communications between you and S&T Bank concerning the accounts, obligations, or assets of B Warehouse Co.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

10. All documents that evidence, refer, or relate to communications between B Warehouse Co. and S&T Bank concerning the accounts, obligations, or assets of B Warehouse Co.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

11. All bank statements and cancelled checks with any financial institution with respect to any B Warehouse Co. account for the past 5 years.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

12. All bank statements and cancelled checks on any account with any financial institution on which your name appears for the past 5 years.

RESPONSE: Cohen objects to this Request because it is vague and ambiguous and overbroad. Cohen further objects to this Request to the extent that it seeks documents that are not relevant to the subject matter involved in the pending action, and because it is not reasonably calculated to lead to the discovery of admissible evidence. Cohen further objects to this Request because it would cause unreasonable annoyance, oppression, and undue burden and expense.

13. All documents that evidence, refer, or relate to the distribution of assets from any B Warehouse Co. account or of any asset of B Warehouse Co., whether to a Joint Venturer(s) or other individual(s) or entity(ies).

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

14. All documents that evidence, refer, or relate to the current possession and/or ownership by any person or entity of any distribution from an account of B Warehouse Co. or otherwise from the assets, real or personal, of B Warehouse Co.

RESPONSE: Cohen objects to this Request because it is vague and ambiguous and overbroad. Cohen further objects to this Request for the reasons set forth in his Preliminary Statement.

15. All contracts, listing agreements, appraisals, and/or value estimates prepared or provided by Coldwell Banker Developac, Inc. concerning the Project or the Warehouse.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

16. All contracts, listing agreements, appraisals, and/or value estimates prepared or provided by Joe Varacallo concerning the B Warehouse Project.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

17. All contracts, listing agreements, appraisals, and/or value estimates provided by any other individual or entity concerning the B Warehouse Project.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

18. All Leases.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

19. All documents that evidence, refer, or relate to communications between B Warehouse Co. and the Authority concerning the Warehouse, the Bonds, or the Project.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

20. All documents that evidence, refer, or relate to communications between you and the Authority concerning the Warehouse, the Bonds, or the Project.

RESPONSE: Cohen objects to this Request for the reasons set forth in his Preliminary Statement.

Respectfully submitted,

Dated: December 21, 2004

Kevin P. Allen
Pa. I.D. 76426

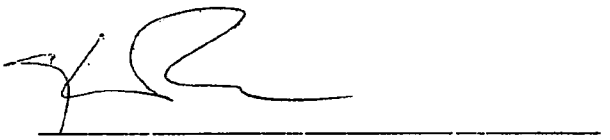
THORP REED & ARMSTRONG, LLP
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Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT GEORGE V. COHEN'S OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** has been served this 8th day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals:

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

Kevin P. Allen, Esquire
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

By: _____
Nicole L. Borda, Esquire

DATE: January 11, 2005

FILED

JAN 12 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST, Plaintiffs	:	CIVIL ACTION
v.	:	NO: 2004-1759
JOHN W. BEAN and GEORGE V. COHEN, Defendants	:	

ORDER

AND NOW, this 14th day of January, 2005, it is hereby ORDERED that Plaintiffs' Motion to Compel Defendant John W. Bean to Respond Fully to Plaintiffs' First Request for Production of Documents is hereby GRANTED. Defendant John W. Bean is hereby directed to produce full and complete discovery responses, including all responsive documents, within ~~seven~~ thirty (30) FJA ~~(7)~~ days of the date of this Order, or suffer sanctions upon further application to this Court by Plaintiffs in accordance with Pa. R.C.P. 4019.

BY THE COURT:

Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED 1cc Atty Borda
01:30 PM
JAN 17 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST, Plaintiffs	:	CIVIL ACTION
v.	:	NO: 2004-1759
JOHN W. BEAN and GEORGE V. COHEN, Defendants	:	

FILED 1cc Atty
m/1:24/01
JAN 12 2005
William A. Shaw
Prothonotary/Clerk of Courts

PLAINTIFFS' MOTION TO COMPEL DEFENDANT JOHN W. BEAN TO RESPOND FULLY TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust, by and through their counsel Buchanan Ingersoll PC, hereby seek an order from the Court, compelling Defendant John W. Bean ("Bean") to respond fully to Plaintiffs' First Request for Production of Documents ("Document Requests").

I. INTRODUCTION

Bean has refused to produce documents responsive to the Document Requests primarily because he has filed preliminary objections to Plaintiffs' Complaint, which are pending before the Court. Plaintiffs, however, are confident the Court will overrule those preliminary objections on several grounds, not the least of which is Bean's improper reliance on facts not found in the Complaint and his failure to accept as true all of the facts averred in the Complaint.

In the meantime, Plaintiffs seek and deserve responses to their Document Requests. This is the only discovery Plaintiffs have undertaken while the preliminary objections are pending, and the Document Requests are not onerous or burdensome. To the contrary, the Document Requests are narrowly tailored to the facts of the Complaint and solicit additional information with respect to the scope and extent of Defendants' wrongful conduct.

Though Plaintiffs sought to resolve this dispute amicably with Defendants prior to the lawsuit, Bean rebuffed them in a terse, rude, and vulgar manner, prompting this lawsuit. (Compl. ¶¶ 34, 35.) Defendants concealed information from Plaintiffs with respect to the scope and extent of Defendants' wrongful conduct before the lawsuit. Now, when Plaintiffs invoke lawfully and properly the discovery procedures available to them, Defendants still refuse to be forthcoming with information, hoping that this Court might dismiss the lawsuit summarily without any light being shed on Defendants' actions.

Through other informal mechanisms, Plaintiffs have been able to obtain some evidence, confirming Defendants' wrongful acts. Specifically, and as suspected (Compl. ¶¶ 46, 51, 52), at a time when Defendants took the position that B Warehouse Co., a nonparty entity, was in financial hardship and, thus, was unable to make the $3,750 mandatory monthly minimum interest payments to Plaintiffs under the Commercial Development Second Mortgage Revenue Bonds, Series 1985 ("Bonds") of the Clearfield County Redevelopment Authority ("Authority"), Defendants distributed/converted nearly $300,000 of collateral pledged to Plaintiffs.[1] In addition, Defendants have instructed S&T to refrain from paying the real estate taxes on the

[1] A true and correct copy of a "Statement of Transactions" that Plaintiffs obtained from S&T Bank is attached hereto as Exhibit "A". This document shows that the monthly interest payments to Plaintiffs under the Bonds ceased as of July 1, 2004. That same month, at the direction of Defendant George V. Cohen, S&T Bank disbursed nearly $300,000 from the monies that S&T Bank held and that it previously had used to fund the minimum monthly payments to Plaintiffs under the Bonds.

project facility, further impairing Plaintiffs' collateral.[2] Plaintiffs believe that Defendants are in possession of additional documents that would further establish the scope and extent of Defendants' wrongful conduct at issue in this lawsuit. Defendants, however, seek to avoid such scrutiny by either Plaintiffs or this Court.

For these reasons, and as explained further below, Plaintiffs respectfully file this Motion to Compel, asking this Court to require Defendants to produce full and complete discovery responses, including all responsive documents, or suffer sanctions upon further application to this Court in accordance with Pa. R.C.P. 4019. In support of their Motion to Compel, Plaintiffs state the following:

II. PROCEDURAL HISTORY

A. THE DISPUTE

1. Plaintiffs commenced this action by filing their Complaint on November 5, 2004.

2. Plaintiffs were forced to commence this action because Defendants have embarked on a scheme to harm Plaintiffs' rights and interests as the holders of the Authority Bonds. (Compl. ¶¶ 9, 26, 62.)

3. Briefly stated, Defendants decided to attempt to force indirectly Plaintiffs to renegotiate the Bond terms to establish new terms that are more favorable to Defendants and a nonparty entity, B Warehouse Co.. (Compl. ¶¶ 32, 41, 47, 63.)

[2] A true and correct copy of a July 13, 2004 letter from Defendant George V. Cohen ("Cohen") to Susan Ansin, a joint venturer in B Warehouse Co., is attached hereto as Exhibit "B." In the letter, Cohen reveals Defendants' scheme—particularly, Defendants' intention to stop paying the real estate taxes and the minimum monthly interest on the bonds to force Plaintiffs to renegotiate.

4. Defendants efforts included:

(a) Instructing the paying agent on the Bonds—S&T Bank ("Bank")—to cease paying Plaintiffs the required monthly interest on the Bonds (a minimum of $3,750 per month) as of July 2004, notwithstanding the Bank's contractual obligation under the relevant Bond documents to do so. (Compl. ¶¶ 29, 30, 33, 37, 40, 41-43.)

(b) Unlawfully and unjustifiably exerting control over B Warehouse Co., preventing B Warehouse Co. from performing its obligations under the Bond documents with respect to payment of the minimum monthly interest on the Bonds. (Compl. ¶¶ 29, 30, 42, 43.)

(c) While claiming, *inter alia*, that B Warehouse Co. lacked the funds to continue to honor the Bonds, concealing from Plaintiffs the distribution of nearly $300,000 in collateral funds held by the Bank that could and should have been used to satisfy B Warehouse Co.'s obligations under the Bonds. (Compl. ¶¶ 46, 52, 57.)

(d) They have instructed S&T to refrain from paying real estate taxes on the Project facility, further endangering and impairing the value of collateral securing performance of the Bonds to Plaintiffs' benefit. (Ex. "B" hereto.)

5. Defendants engaged in this scheme notwithstanding B Warehouse Co.'s strong financial position as of December 31, 2003—*i.e.*, cash and investments valued in excess of $1.5 million. (Compl. ¶ 36.)

6. Defendants have not yet responded to the specific allegations in the Complaint; rather, they have interposed unverified preliminary objections pursuant to Pa. R.C.P. 1028.[3]

B. THE DOCUMENT REQUESTS

7. On November 29, 2004, Plaintiffs served upon Bean the Document Requests pursuant to Pa. R.C.P. 4009.1 and 4009.11. A true and correct copy of the Document Requests is attached hereto as Exhibit "C".

8. This is the only discovery Plaintiffs have sought of Bean while Defendants' preliminary objections are pending before the Court.

9. Each of the 20 categories of documents Plaintiffs seek relate to genuine issues of material fact in this case, as revealed by Bean's preliminary objections ("Bean POs"). A true and correct copy of the Bean POs is attached hereto as Exhibit "D".

10. Specifically, the Document Requests seek discovery with respect to, *inter alia*, the following genuine issues of material facts, as revealed by the Bean POs:

(a) Whether the lack of payment of the minimum monthly interest on the Bonds to Plaintiffs is the result of the unlawful, unauthorized, unjustified, and malicious tortious conduct of Defendants, as Plaintiffs claim in their Complaint (Compl. ¶¶ 29, 30, 33, 37, 40, 41-43), or is the result of the loss of a long-time tenant of the warehouse, as alleged in the Bean POs (Bean POs ¶ 7);

[3] The Court has scheduled argument on the Bean's preliminary objections for February 9, 2004. No argument date has been set with respect to Defendant George V. Cohen's preliminary objections.

(b) Whether in the course of committing the alleged tortious conduct, Bean acted unlawfully and unjustifiably, as alleged in the Complaint (Compl. ¶ 42), or acted lawfully and justifiably on account of B Warehouse Co. or as a joint venturer, as alleged in the Bean POs (Bean POs ¶ 20);

(c) Whether Defendants concealed distributions and conversion of collateral funds from Plaintiffs and the extent of the distributions and conversion, as alleged in the Complaint (Compl. ¶¶ 46, 52)—averments which Bean claims are vague and unspecified (Bean POs ¶¶ 27, 29); and

(d) Whether Plaintiffs had a current possessory interest in the funds that Defendants caused to be distributed and converted, as alleged in the Complaint (Compl. ¶ 51)—an averment of fact in the Complaint that Bean fails to accept as true in his demurer to Count III (Bean POs ¶ 30).

11. The Document Requests are narrowly tailored to the dispute in this case.

12. The Document Requests are the only discovery that Plaintiffs have sought from Bean while the Bean POs are pending.

13. The Document Requests relate to, *inter alia*, disputes over additional factual averments made by Bean in the Bean POs in defense of the facts and claims Plaintiffs assert in the Complaint—the existence of which actually prevent this Court from granting the Bean POs and dismissing the Complaint at this preliminary stage. *See, e.g.*, *Stalsitz v. Allentown Hosp.*, 814 A.2d 766 (Pa. Super. 2002) (holding that "in reviewing a trial court's decision to grant a demurrer, all material facts set forth in the complaint and all inferences reasonably deducible therefrom are accepted as true, and the core issue is whether on the facts averred, the law says

with certainty that recovery is impossible. Any doubt should be resolved in favor of overruling the demurrer." (citation omitted)), *appeal denied*, 578 Pa. 717, 854 A.2d 968 (2004); *Mellon Bank N.A. v. Fabinyi*, 650 A.2d 895, 899 (Pa. Super. 1994) ("[P]reliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer.").

C. THE OBJECTIONS

14. On December 29, 2004, Plaintiffs received Bean's Objections and Responses to Plaintiffs' First Request for Production of Documents ("Bean Objections"). A true and correct copy of the Bean Objections is attached hereto as Exhibit "E."

15. The Bean Objections include a "Preliminary Statement," in which Bean generally refuses to respond to the Document Requests because of his pending preliminary objections.

16. The Bean Objections also include several "General Objections," which are simply boilerplate discovery objections.

17. Of the twenty categories of documents sought, Bean objects to fifteen (Nos. 2, 3, 5, 6, 8-11, 13, 15-20) for the sole reason that his preliminary objections are pending before the Court.

18. With respect to the other five categories (Nos. 1, 4, 7, 12, 14), Bean asserts, without elaboration, additional objections of relevancy, vagueness, ambiguity, over-breadth, annoyance, oppression, and/or undue burden and expense.

III. ARGUMENT

19. Setting aside the boilerplate objections in the Bean Objections, the crux of the Bean Objections is that Bean does not want Plaintiffs to have access to documents that may further bolster their position and that may contradict the additional facts asserted in the Bean POs, in the hope that this Court might grant the Bean POs and dismiss this case at its most preliminary stage.[4]

20. There is, however, nothing in the Pennsylvania Rules of Civil Procedure that excuses a party from responding to discovery if the party has filed preliminary objections.

21. Although there may be a circumstance where it is appropriate for a court, at a party's request, to stay discovery pending the resolution of potentially dispositive preliminary objections, Plaintiffs respectfully suggest that this is not one of those circumstances.

22. Plaintiffs have not inundated Bean or his co-Defendant George V. Cohen with discovery at this early stage in the proceeding.

23. The discovery Plaintiffs have propounded on Bean is limited to a single set of document requests, seeking the production of twenty discrete categories of documents.

24. Plaintiffs have not availed themselves of the many other more costly discovery tools available to them—such as depositions and interrogatories.

25. Though Bean claims that responding to this single discovery request "would cause unreasonable annoyance, oppression, burden and expense, and . . . would require an

[4] Bean acknowledges the boilerplate nature of his other objections at the conclusion of his "Preliminary Statement," where he notes his intent to supplement his response to the Document Requests if the Court denies the Bean POs.

unreasonable investigation," he provides no explanation as to why producing the requested documents would require such a Herculean effort.

26. Instead, he relies only an assumption that this Court will dismiss this case summarily in response to the Bean POs, delaying, if not denying, a full and fair vetting of Defendants' conduct by Plaintiffs and the Court.

27. In addition, documents responsive to the Document Requests may very well contradict some of the additional unverified facts that Bean includes in the Bean POs. For that reason, Plaintiffs respectfully request that the Court order production within a reasonable period time in advance of the scheduled February 9, 2004 hearing on the Bean POs.

28. Though Defendants may have an interest in avoiding potentially unnecessary expenses in responding to voluminous discovery if the Court determines that Plaintiffs' Complaint should be summarily dismissed, Plaintiffs have an equally strong interest in receiving a prompt and efficient resolution of their claims.

29. Defendants' rights in litigation are no greater than Plaintiffs' rights and interests. Nonetheless, to deny Plaintiffs the right to engage in the limited discovery they seek at this point in the case is to place Defendants' interests above Plaintiffs, especially if this Court ultimately concludes, as Plaintiffs believe it will, that this case should not be summarily dismissed and, rather, should proceed through discovery and trial.

30. Though preliminary objections are pending, requiring Defendants to respond fully and completely to the limited discovery Plaintiffs seek strikes a balance between the Plaintiffs'

and Defendants' competing interests without presuming, or assuming, in advance the Court's disposition of the pending preliminary objections.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request that this Court enter an Order granting Plaintiffs' Motion to Compel, compelling Defendant John W. Bean to produce full and complete responses, including all responsive documents, to Plaintiffs' Document Requests or suffer sanctions upon further application to this Court in accordance with Pa. R.C P. 4019.

Respectfully submitted,

BUCHANAN INGERSOLL PC

By: _____

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Attorneys for Plaintiffs

DATE: January 11, 2005

RECEIVED NOV 2 9 2004

S & T BANK

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
05/17/2004	S&T MONEY MARKET INCOME REDEEM	179.52	0.00	-179.52
05/19/2004	S&T MONEY MARKET INCOME REDEEM	16,737.00	0.00	-16,737.00
06/01/2004	S&T MONEY MARKET INCOME REDEEM	3,750.00	0.00	-3,750.00
06/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
06/22/2004	S&T MONEY MARKET INCOME REDEEM	161.38	0.00	-161.38
07/01/2004	S&T MONEY MARKET INCOME REDEEM	3,750.00	0.00	-3,750.00
07/09/2004	S&T MONEY MARKET INCOME REDEEM	503.50	0.00	-503.50
07/12/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
07/19/2004	S&T MONEY MARKET INCOME REDEEM	341.49	0.00	-341.49
07/19/2004	S&T MONEY MARKET INCOME REDEEM	0.00	296,199.31	-296,199.31
08/02/2004	S&T MONEY MARKET REDEEM	0.00	12,695.45	-12,695.45
08/05/2004	S&T MONEY MARKET REDEEM	402.80	0.00	-402.80
08/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
08/20/2004	S&T MONEY MARKET INCOME REDEEM	0.00	2,873.35	-2,873.35
09/13/2004	S&T MONEY MARKET REDEEM	670.17	0.00	-670.17
09/17/2004	S&T MONEY MARKET INCOME REDEEM	0.00	250.12	-250.12
09/22/2004	S&T MONEY MARKET REDEEM	278.49	0.00	-278.49
09/22/2004	S&T MONEY MARKET INCOME REDEEM	0.00	15,000.00	-15,000.00
10/06/2004	S&T MONEY MARKET REDEEM	175.84	0.00	-175.84
10/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
10/12/2004	S&T MONEY MARKET INCOME REDEEM	0.00	2,873.39	-2,873.39
10/21/2004	S&T MONEY MARKET REDEEM	302.28	0.00	-302.28
11/03/2004	S&T MONEY MARKET INCOME REDEEM	100.00	0.00	-100.00
11/10/2004	S&T MONEY MARKET INCOME REDEEM	115.00	0.00	-115.00
11/11/2004	S&T MONEY MARKET INCOME REDEEM	1,266.75	0.00	-1,266.75
11/17/2004	S&T MONEY MARKET INCOME REDEEM	459.85	0.00	-459.85
	Total PROCEEDS FROM THE WITHDRAWAL OF ASSETS	**59,379.33**	**343,398.21**	**-402,777.54**
	DISBURSEMENTS TO OR FOR BENEFICIARIES			
01/02/2004	RICHARD GORDON	-750.00	0.00	0.00

S & T BANK

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254439			
01/02/2004	MARC KATZEN	-1,687.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254440			
01/02/2004	MARSHALL KATZEN	-562.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254441			
01/02/2004	H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254442			
01/02/2004	H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254443			
01/02/2004	H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254444			
01/02/2004	H KELLER TRSTEE FOR BROOK KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254445			
02/02/2004	RICHARD GORDON	-750.00	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255687			
02/02/2004	MARC KATZEN	-1,687.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255688			
02/02/2004	MARSHALL KATZEN	-562.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255689			
02/02/2004	H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255690			
02/02/2004	H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255691			
02/02/2004	H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255692			
02/02/2004	H KELLER TRSTEE FOR BROOK KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255693			
03/01/2004	RICHARD GORDON	-750.00	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256888			
03/01/2004	MARC KATZEN	-1,687.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256889			
03/01/2004	MARSHALL KATZEN	-562.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256890			
03/01/2004	H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256891			
03/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256892			
03/01/2004	H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00

S & T BANK

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256893			
03/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256894	-187.50	0.00	0.00
03/08/2004	MAUTHE YUTZEY & GABLER SERVICES RENDERED FINANCIAL STATEMENT 12/31/03 PREPARATION OF TAX RETURNS CHECK NUMBER 257324	-915.00	0.00	0.00
03/29/2004	EASLEY, MCCALEB & ASSOCIATES, INC. PER JOHN BEAN CHECK NUMBER 258340	-300.00	0.00	0.00
04/01/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258464	-750.00	0.00	0.00
04/01/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258465	-1,687.50	0.00	0.00
04/01/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258466	-562.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258467	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258468	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258469	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258470	-187.50	0.00	0.00
05/03/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260204	-750.00	0.00	0.00
05/03/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260205	-1,687.50	0.00	0.00
05/03/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260206	-562.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260207	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260208	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260209	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260210	-187.50	0.00	0.00
05/19/2004	MARC KATZEN ADDITIONAL INTEREST DUE FOR 2003	-7,531.65	0.00	0.00

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	CHECK NUMBER 260948			
05/19/2004	RICHARD GORDON ADDITIONAL INTEREST DUE FOR 2003	-3,347.40	0.00	0.00
	CHECK NUMBER 260949			
05/19/2004	H KELLER TRSTEE FOR HARRY KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260950			
05/19/2004	H KELLER TRSTEE FOR HIRSH KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260951			
05/19/2004	H KELLER TRSTEE FOR BRIT KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260952			
05/19/2004	H KELLER TRSTEE FOR BROOK KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260953			
05/19/2004	MARSHALL KATZEN ADDITIONAL INTEREST DUE FOR 2003	-2,510.55	0.00	0.00
	CHECK NUMBER 260954			
06/01/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15%	-750.00	0.00	0.00
	CHECK NUMBER 261410			
06/01/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15%	-1,687.50	0.00	0.00
	CHECK NUMBER 261411			
06/01/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15%	-562.50	0.00	0.00
	CHECK NUMBER 261412			
06/01/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261413			
06/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261414			
06/01/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261415			
06/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261416			
07/19/2004	RALDO E SHIPMAN TESTAMENTARY TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
	CHECK NUMBER 263745			
07/19/2004	GEORGE L COHEN IRA C/O WOODLANDS BANK DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
	CHECK NUMBER 263746			
07/19/2004	IDEAL RETIREMENT TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
	CHECK NUMBER 263747			
07/19/2004	BERTRAM B LEOPOLD RESIDUARY TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-65,163.85	0.00
	CHECK NUMBER 263748			
07/19/2004	SUSAN ANSIN DISTRIBUTION PER GEORGE COHEN	0.00	-33,569.26	0.00
	CHECK NUMBER 263749			
07/19/2004	JOHN BEAN	0.00	-49,366.55	0.00

Exhibit B

407-566-8836

McNERNEY, PAGE, VANDERLIN & HALL
ATTORNEYS AND COUNSELLORS AT LAW

George V. Cohen
Michael H. Collins
Garth D. Everett
Peter G. Facey
Brett O. Feese*
Jason K. Fetter
Matthew F. Golden
T. Max Hall
Benjamin E. Landon
Joy Reynolds McCoy
Thomas C. Marshall
Arin S. Pepperman
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Joseph M. McNerney
1939-1957
Allen P. Page, Jr.
1943-1978
O. William Vanderlin
1950-1999
Charles J. McKelvey
1959-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mpvh@mcnerneypage.com

July 13, 2004

Ms. Susan Anslin
61 Possum Lane
Weston, MA 02193-2317

Dear Susie:

Now that B Warehouse no longer has an ongoing net lease for its space, the Katzen Bonds (which are secured by a mortgage on the B Warehouse real estate and which I will collectively refer to as the "Bonds") have become onerous. Even when we succeeded in renting the space, since B Warehouse had to pay all the expenses of ownership (i.e. it was a "gross" lease), by having to pay part of the rents to the bondholders, we actually suffered a net loss. Our leasing agent has advised us there is no demand for warehouse space in Dubois, regardless of the rent requested.

As you know, B Warehouse has retained the law firm of Thorp Reed & Armstrong, LLP in the person of Attorney James Goldberg to advise and represent us in our efforts to renegotiate the Bonds. Your representative, Raymond Hess, of M&T Investment Group was present at that meeting. While we did not want to default, to remain in compliance with the Bond terms would assure the bankruptcy of B Warehouse under the current economic circumstances. Thus we have caused our counsel to send a letter to Marc Katzen and have asked them to fax you a copy.

The Bonds prohibit us from drawing down our reserve below $300,000 but impose no personal obligation to re-instate the reserve if it falls below that level. Thus, we have instructed S&T Bank to distribute the reserve in excess of $300,000 to the joint venturers and you will soon receive your pro-rata share. We may in the future need to replenish the

reserve to B Warehouse but for the moment we believe it is better to remove the excess reserve from the account.

John Bean has asked me to step up to the position of managing the joint venture and I reluctantly do so. By my letter to the bank you will see we have prohibited payment of any B Warehouse expenses without the prior approval of John Bean or me. It is our plan to make no further payments on the Bonds nor to pay the real estate taxes until we have renegotiated the bonds. If negotiations are unsuccessful, our counsel advises the bondholders sole remedy is to foreclose on the property. This would enable us to pay off the bonds (which we are otherwise precluded from doing) and to then hopefully lease the warehouse on a profitable basis. Our non-payment of real estate taxes may force a foreclosure sale on the premises even if the bondholders do not elect to renegotiate or foreclose.

John and I would like to meet with you and your representative to more fully apprise you of our activities. John has promised to set time aside the next time he comes north and hopefully you will be available.

I hope all is going well with you and your family. Janice and I are having a great time enjoying our semi-retired status. I look forward to seeing you. With fondest regards, I remain

Very truly yours,

George V. Cohen

GVC/mcn
cc: John W. Bean
Timothy M. Slavish, Esquire
Raymond C. Hess

PS. Susie, will you please get me your email address for future use.

FILED

JAN 12 2005

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

Kevin P. Allen, Esquire
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

By: _____
Nicole L. Borda, Esquire

DATE: January 11, 2005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT JOHN W. BEAN'S OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** has been served this 27th day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals:

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



19. All documents that evidence, refer, or relate to communications between B Warehouse Co. and the Authority concerning the Warehouse, the Bonds, or the Project.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

20. All documents that evidence, refer, or relate to communications between you and the Authority concerning the Warehouse, the Bonds, or the Project.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

Respectfully submitted,

Dated: December 21, 2004

Kevin P. Allen
Pa. I.D. 76426

THORP REED & ARMSTRONG, LLP
One Oxford Centre, 14th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 394-2374

Counsel for Defendants

14. All documents that evidence, refer, or relate to the current possession and/or ownership by any person or entity of any distribution from an account of B Warehouse Co. or otherwise from the assets, real or personal, of B Warehouse Co.

RESPONSE: Bean objects to this Request because it is vague and ambiguous and overbroad. Bean further objects to this Request for the reasons set forth in his Preliminary Statement.

15. All contracts, listing agreements, appraisals, and/or value estimates prepared or provided by Coldwell Banker Developac, Inc. concerning the Project or the Warehouse.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

16. All contracts, listing agreements, appraisals, and/or value estimates prepared or provided by Joe Varacallo concerning the B Warehouse Project.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

17. All contracts, listing agreements, appraisals, and/or value estimates provided by any other individual or entity concerning the B Warehouse Project.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

18. All Leases.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

10. All documents that evidence, refer, or relate to communications between B Warehouse Co. and S&T Bank concerning the accounts, obligations, or assets of B Warehouse Co.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

11. All bank statements and cancelled checks with any financial institution with respect to any B Warehouse Co. account for the past 5 years.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

12. All bank statements and cancelled checks on any account with any financial institution on which your name appears for the past 5 years.

RESPONSE: Bean objects to this Request because it is vague and ambiguous and overbroad. Bean further objects to this Request to the extent that it seeks documents that are not relevant to the subject matter involved in the pending action, and because it is not reasonably calculated to lead to the discovery of admissible evidence. Bean further objects to this Request because it would cause unreasonable annoyance, oppression, and undue burden and expense.

13. All documents that evidence, refer, or relate to the distribution of assets from any B Warehouse Co. account or of any asset of B Warehouse Co., whether to a Joint Venturer(s) or other individual(s) or entity(ies).

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

5. All documents that evidence, refer, or relate to communications between B Warehouse Co. and any Joint Venturer.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

6. All documents that evidence, refer, or relate to communications between B Warehouse Co. and Joe Varacallo and/or any other real estate agent and/or broker consulted with respect to the Project.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

7. Copies of your federal, state, and local tax returns for years 1999 through 2003.

RESPONSE: Bean objects to this Request because it is vague and ambiguous and overbroad. Bean further objects to this Request to the extent that it seeks documents that are not relevant to the subject matter involved in the pending action, and because it is not reasonably calculated to lead to the discovery of admissible evidence. Bean further objects to this Request because it would cause unreasonable annoyance, oppression, and undue burden and expense.

8. Copies of all federal, state, and local tax returns filed by B Warehouse Co. from its inception to the present.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

9. All documents that evidence, refer, or relate to communications between you and S&T Bank concerning the accounts, obligations, or assets of B Warehouse Co.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

PLAINTIFFS FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT JOHN W. BEAN

TO: JOHN W. BEAN
4957 Peregrine Point Way
Sarasota, FL 34231

JOHN W. BEAN
470 Park Avenue 7D
New York, NY 10022

JOHN W. BEAN
735 Maple Avenue,
DuBois, PA 15801

PLEASE TAKE NOTICE, that pursuant to the Rules 4009.1 and 4009.11 of the Pennsylvania Rules of Civil Procedure, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust ("Plaintiffs"), requests Defendant John W. Bean, to produce and permit the inspection or photographing of the following documents or things. Plaintiffs request production thirty (30) days after receipt of this request at the offices of its counsel,

Buchanan Ingersoll, P.C., 213 Market Street, Third Floor, Harrisburg, PA 17101 or at such other time and place as to which the parties may agree in writing.

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street
3rd Floor
Harrisburg, PA 17101
(717)237-4800

DATE: November 29, 2004

INSTRUCTIONS

A. These requests call for documents within your possession, custody or control, whether directly or indirectly. A document is in your possession, custody or control for purposes of these requests if it is within the possession of your attorneys, accountants, financial advisors, consultants, agents or representatives.

B. Documents shall be segregated according to the paragraph of the request to which they respond. Documents produced in response to any one paragraph need not be duplicated for production in response to any other paragraph.

C. The use of the singular form of any worked includes the plural, and vice versa.

D. This request for documents is continuing in nature, and any information obtained subsequent to the service of your response to this request for documents shall promptly be supplied by supplemental response whenever the Company finds, locates, acquires or creates such document.

DEFINITIONS

A. The word "document" shall mean the originals and any and all copies of any and all written, printed, typed or otherwise recorded matter, however produced or reproduced, of every kind and description in whatever form, including final and draft versions, physical or electronic media, and including, but not limited to, all writings, correspondence, letters, e-mails, telegrams, notes, notes of any meetings, memoranda, reports, studies, charts, photographs, or any other tangible things. "Documents" also means originals and copies of all of the above on which notations in writing, printed or otherwise have been made do not appear on the originals, and all attachments, envelopes, explanatory notes or memoranda, and any other material that accompanied the requested items. If the specific document elicited a response, that response is

also to be identified and produced. If the document was itself a response, the document to which it is responding is also to be identified and produced.

B. The word "communication(s)" shall mean any oral or written statement or exchange of information of any type between two or more persons, including but not limited to documents, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

C. The word "person" shall mean any natural person, individual, proprietorship, partnership, corporation, association, organization, joint venture, business trust or other business enterprise, governmental body or agency, or governmental, public, legal, or business entity, or group of natural persons or other entities whether *sui juris* or otherwise.

D. The phrase "evidence, refer or relate to" shall mean concerning, considering, constituting, regarding, reflecting, representing, supporting, contradicting, referring to, referencing, stating, describing, evidencing, recording, noting, embodying, containing, mentioning, memorializing, studying, analyzing, pertaining to discussing, evaluating, relating to, or in relation to, or relevant to. As indicated, the term necessarily includes responsive information that is in opposition to as well as in support of the position(s) and claim(s) of the party to whom the Interrogatory is addressed.

E. The term "concerning" means relating to, referring to, refuting, supporting, describing, evidencing or constituting.

F. The words "and" and "or" shall be construed both conjunctively and disjunctively so as to make the request inclusive rather than exclusive. The singular shall be construed to include the plural and the plural to include the singular.

G. "You" and "Your" shall mean and refer to Defendant John W. Bean, his agents and/or employees.

H. "Complaint" shall mean and refer to the Complaint on file in the present action, Court of Common Pleas, Clearfield Count, No. 2004-1759, filed on November 5, 2004.

I. "Authority" shall mean the Clearfield County Industrial Development Authority.

J. "Agreement" shall mean the Joint Venture Agreement signed on April 25, 1985 forming the B Warehouse Company.

K. "Bonds" shall mean the $300,000 of Commercial Development Second Mortgage Revenue Bonds, Series 1985 issued on or about April 18, 1985 by the Clearfield Industrial Development Authority.

L. "B Warehouse Co." shall mean the B Warehouse Company and its corporate affiliates including corporate parents, subsidiaries, sisters, predecessors, successors, assigns and its officers, directors, employees, representatives, attorneys, accountants, financial advisors, consultants, agents, and all persons who act or acted for or on behalf of B Warehouse Co.

M. "Joint Venturer(s)" shall mean the individuals and/or entities which either had or currently have an ownership interest in B Warehouse Company subject to the Agreement.

N. "Lease" shall have its ordinary meaning and shall include all lease, rental, or use agreements for any term related to the Warehouse.

O. "Project" shall mean the acquisition and construction of a commercial economic development warehouse project that is the subject of the above-captioned proceeding in Sandy Township, Clearfield County, Pennsylvania pursuant to the Authority's April 18, 1985 Debt Resolution.

P. "S&T Bank" shall mean S&T Bank, formerly known as The Savings & Trust Company of Pennsylvania.

Q. "Warehouse" shall mean the warehouse constructed pursuant to the B Warehouse Project.

UNAVAILABILITY OF DOCUMENTS

To the extent a document is sought herein and such document was, but is no longer, in your possession, or subject to your control, or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred, voluntarily or involuntarily, to others, or (iv) has been otherwise disposed of, and, in each instance, explain the circumstances surrounding, and authorization for, such disposition thereof; state the date or approximate date thereof; the contents of said document; and the person(s) who authorized the transfer, destruction, or other disposition of said document. Documents prepared prior to, but which relate or refer to, the time-period covered by these documents, are to be identified.

PRIVILEGE

Identify by date, author, recipient, distribution list, and subject matter, each document which is responsive to a specific request, but which the deponents does not intend to be produced based upon the assertion of a claim of privilege or other asserted justification for non-production, *e.g.*, attorney's work product, and with respect thereto, specifically identify the alleged privilege asserted for each document.

DOCUMENTS TO BE PRODUCED

1. Copies of financial statements, profit and loss statements, balance sheets, ledgers, books of account and any other documents that evidence, refer, or relate to the financial matters of B Warehouse Co. from its inception to the present.

2. All documents that evidence, refer, or relate to communications between you and Joe Varacallo and/or any other real estate agent and/or broker consulted with respect to the Project.

3. All documents that evidence, refer, or relate to communications between you and Defendant George V. Cohen concerning the Project.

4. All documents that evidence, refer, or relate to communications between you and any Joint Venturer.

5. All documents that evidence, refer, or relate to communications between B Warehouse Co. and any Joint Venturer.

6. All documents that evidence, refer, or relate to communications between B Warehouse Co. and Joe Varacallo and/or any other real estate agent and/or broker consulted with respect to the Project.

7. Copies of your federal, state, and local tax returns for years 1999 through 2003.

8. Copies of all federal, state, and local tax returns filed by B Warehouse Co. from its inception to the present.

9. All documents that evidence, refer, or relate to communications between you and S&T Bank concerning the accounts, obligations, or assets of B Warehouse Co.

10. All documents that evidence, refer, or relate to communications between B Warehouse Co. and S&T Bank concerning the accounts, obligations, or assets of B Warehouse Co.

11. All bank statements and cancelled checks with any financial institution with respect to any B Warehouse Co. account for the past 5 years.

12. All bank statements and cancelled checks on any account with any financial institution on which your name appears for the past 5 years.

13. All documents that evidence, refer, or relate to the distribution of assets from any B Warehouse Co. account or of any asset of B Warehouse Co., whether to a Joint Venturer(s) or other individual(s) or entity(ies).

14. All documents that evidence, refer, or relate to the current possession and/or ownership by any person or entity of any distribution from an account of B Warehouse Co. or otherwise from the assets, real or personal, of B Warehouse Co.

15. All contracts, listing agreements, appraisals, and/or value estimates prepared or provided by Coldwell Banker Developac, Inc. concerning the Project or the Warehouse.

16. All contracts, listing agreements, appraisals, and/or value estimates prepared or provided by Joe Varacallo concerning the B Warehouse Project.

17. All contracts, listing agreements, appraisals, and/or value estimates provided by any other individual or entity concerning the B Warehouse Project.

18. All Leases.

19. All documents that evidence, refer, or relate to communications between B Warehouse Co. and the Authority concerning the Warehouse, the Bonds, or the Project.

20. All documents that evidence, refer, or relate to communications between you and the Authority concerning the Warehouse, the Bonds, or the Project.

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

JOHN W. BEAN
4957 Peregrine Point Way
Sarasota, FL 34231

JOHN W. BEAN
470 Park Avenue 7D
New York, NY 10022

JOHN W. BEAN
735 Maple Avenue,
DuBois, PA

By: _____
Nicole L. Borda

DATE: November 29, 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

PRELIMINARY OBJECTIONS

John W. Bean submits the following Preliminary Objections to the Plaintiffs' Complaint.

Introduction

1. In 1985, the Plaintiffs purchased certain Second Mortgage Revenue Bonds in the aggregate principal amount of $300,000 ("Bonds") from the Clearfield County Industrial Development Authority ("Authority") related to the financing and construction of a commercial warehouse ("Project") in Clearfield County. Complaint, ¶ 26.

2. B Warehouse Company ("B Warehouse"), a joint venture, was the "Investor Developer" of the Project. B Warehouse obtained financing for the construction of the Project, a portion of which was derived from the Plaintiffs' purchase of the Bonds. Id. at ¶ 14.

3. The Project's financing, including the Plaintiffs' purchase of the Bonds, is governed by a series of financing documents (collectively, the "Contracts") between or among the Plaintiffs, the Authority, B Warehouse, and the Savings & Trust Company of Pennsylvania, now known as S&T Bank ("S&T"). Id. at Exs. A through C, E.

4. The Contracts, which are all interrelated and cross-reference each other, include detailed provisions regarding security for the Bonds and the remedies available in the event of a default by B Warehouse in its obligations under the Contracts. Id.

5. The Contracts specifically and repeatedly provide, that the debt issued in connection with the Project, including the Bonds, "is payable solely from the receipts and revenues derived from the Project . . . ." The debt related to the Project is also secured by a First Mortgage (now satisfied) on the Project and a Second Mortgage. Id.

6. Critically, for purposes of this action, the Contracts also place strict limits on any liability of B Warehouse, or any of its constituent members. Specifically, section 6.5 of the Mortgage Loan Agreement for the Project provides:

> 6.5. DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited . . . [subject to certain specified conditions] to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives,

> successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding.

Id. at Ex. E.

7. In 2002, the Project's warehouse lost its longtime tenant, and, as a result, B Warehouse has not made scheduled interest payments under the Contracts. Id. at ¶¶ 28, 30 and 33.

8. The Plaintiffs have recourse under the Contracts as a result of the non-payments, but that recourse is limited to the security set forth in the Contracts, and does not extend to the personal assets of the Defendants. Id. at Ex. E § 6.5.

9. This tort action represents an improper attempt by the Plaintiffs to circumvent the detailed Contracts, and the remedies set forth therein, to which the Plaintiffs agreed in 1985.

10. For the multiple reasons set forth below, the Plaintiffs' Complaint is legally insufficient in its entirety, and also violates the Pennsylvania Rules of Civil Procedure in other fundamental respects as well. As a result, Bean requests that the Court dismiss the Plaintiffs' Complaint with prejudice.

DEMURRER – ALL COUNTS

11. The Plaintiffs' rights regarding the Bonds are governed by the Contracts. See Complaint, Ex. A through C, E and G.

12. The Contracts specify and limit the rights of the contracting parties in the event of non-payment or other default by B Warehouse. See, e.g., id. at Ex. C, § 6.5.

13. The Bonds are "payable solely from the receipts and revenues derived from the Project . . ." and are secured by the land and building. The Contracts provide that, beyond the security specified in the Contracts, the obligation of the Investor Developer is unsecured, with no recourse to the joint venturers of B Warehouse. Id. at Ex. A, p. 3 and Ex. E, § 6.5.

14. The Plaintiffs' Complaint constitutes an improper attempt to circumvent the Contracts to which the Plaintiffs agreed.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – ALL COUNTS – GIST OF THE ACTION

15. The Plaintiffs' Complaint constitutes an improper attempt to recast an ordinary breach of contract claim into tort claims because of the Plaintiffs' apparent dissatisfaction with the contractual remedies contained in the written agreements governing the Project's financing.

16. Pennsylvania's gist of the action doctrine bars the Plaintiffs' claims.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT I

17. In Count I, the Plaintiffs purport to set forth a claim against Bean for tortious interference with contract.

18. However, under Pennsylvania law, a party cannot tortiously interfere with a contract to which he or his principal is a party.

19. Here, the Plaintiffs' allegations in Count I are based on Bean's alleged interference with the Contracts, a series of agreements to which B Warehouse is one of the parties. Complaint, ¶¶ 15 and 17.

20. Bean's alleged improper interference occurred while he was acting in his role as a joint venturer in, or agent for, B Warehouse. Id. at ¶¶ 19, 21 through 23.

21. Consequently, under Pennsylvania law, the Plaintiffs' claim for tortious interference with contract is legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count I of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT II

22. In Count II, the Plaintiffs allege that Bean "concealed information" from the Plaintiffs concerning B Warehouse. Complaint, ¶ 46.

23. Under Pennsylvania law, silence cannot amount to fraud absent a duty to speak.

24. The Plaintiffs' Complaint fails to establish any duty on the part of Bean to disclose to Plaintiffs the unspecified information he allegedly concealed.

25. Accordingly, Count II is legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count II of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT II

26. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

27. In Count II, the Plaintiffs allege evasively and vaguely that they "believe[] and, therefore, aver[]" that Bean concealed unspecified information regarding an unspecified distribution of unspecified assets of B Warehouse.

28. Count II lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count II of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) – (4).

DEMURRER – COUNT III

29. In Count III, an alleged claim for conversion, the Plaintiffs contend that they had a "current possessory interest" in funds held in unspecified accounts.

30. The Plaintiffs' Complaint sets forth no basis for the conclusory allegation that the Plaintiffs held such an interest in the alleged accounts, or that Plaintiffs had any right or interest in the alleged accounts.

31. To the contrary, the Plaintiffs' Complaint and the Contracts attached thereto established that the Bonds are secured only by the interest of B Warehouse in the Project, i.e., by the land and warehouse and leases related thereto.

32. For example, the Mortgage Loan Agreement, a copy of which is attached to the Complaint as Ex. E, calls for the creation of a "Reserve Fund." Under the Mortgage Loan Agreement, payments from that fund are strictly limited to specified uses. Payments from the Reserve Fund for debt service on the Bonds are not permissible under the Mortgage Loan Agreement. Complaint, Ex. E, § 4.1.

33. Moreover, the Contracts specifically preclude the Plaintiffs from pursuing any claim against Bean individually. Id. at Ex. E, § 6.5.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count III of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT IV

34. In Count IV, the Plaintiffs seek injunctive relief based on an alleged - albeit unspecified - fraudulent transfer from B Warehouse to the Defendants.

35. Count IV is legally insufficient because B Warehouse is not a debtor in relation to Plaintiffs. To the contrary, the Plaintiffs purchased the Bonds from the Authority, not B Warehouse.

36. Count IV is also legally insufficient because the Plaintiffs failed to allege that B Warehouse is "insolvent."

37. The absence of any allegation of insolvency on the part of B Warehouse is highlighted by the fact that the Plaintiffs are attempting to circumvent the security provisions contained in the Contracts in the event of non-payment by B Warehouse.

38. The security for the Bonds provided by the Contracts remains available; the Plaintiffs have simply – but improperly – chosen not to pursue it.

39. Count IV is also legally insufficient because of the Plaintiffs' failure to resort to the security available and because the Plaintiffs have not exhausted their remedies at law or reduced any claim related to the Bonds to a judgment.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count IV of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT IV

40. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

41. In Count IV, the Plaintiffs allege evasively and vaguely "upon information and belief" that the Defendants "divested" B Warehouse of unspecified "assets" through unspecified "disbursements."

42. Count IV lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count IV with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) and (3).

DEMURRER – COUNT V

43. Count V, an alleged cause of action for civil conspiracy, is dependent on the existence of some valid underlying claim.

44. As set forth above, the Plaintiffs have failed to allege any valid claim against Bean.

45. Consequently, Count V is legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count V with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

COMPLAINT EX. J - PA. R. CIV. P. 1028(a)(2).

46. Plaintiffs attached Exhibit J to the Complaint for no material reason.

47. Bean requests that, in the event the Court does not dismiss the Complaint in its entirety, the Court strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

CLAIM FOR ATTORNEY FEES

48. In the Complaint, the Plaintiffs assert claims to recover attorney fees.

49. The Complaint includes no valid basis for the recovery of attorney fees by the Plaintiffs, even if the Plaintiffs could otherwise sustain any of their claims.

50. In the event that any of Plaintiffs' claims survive these Preliminary Objections, Bean requests that the Court strike Plaintiffs' request to recover attorney fees.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss and/or strike Plaintiffs' claims to recover attorney fees.

FAILURE TO JOIN INDISPENSABLE PARTIES

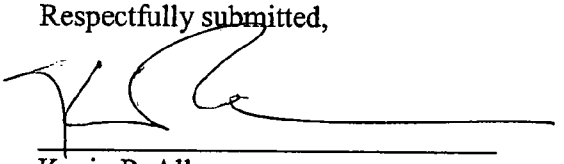
51. Plaintiffs' claims are inextricably interwoven with the Contracts.

52. In the Complaint, the Plaintiffs seek, *inter alia*, injunctive relief against entities that are not parties to this action. See Complaint and pp. 9, 10 and 12 through 14.

53. The Plaintiffs' failure to join indispensable parties deprives this Court of jurisdiction over this action and renders the Plaintiffs' Complaint legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint pursuant to Pa. R. Civ. P. 1028(a)(1) and (4).

Respectfully submitted,

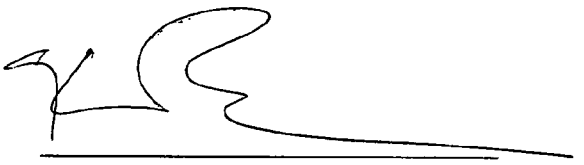


Kevin P. Allen
Pa. I.D. 76426
THORP REED & ARMSTRONG, LLP
One Oxford Centre, 14th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 394-2374
(412) 394-2555
Counsel for John W. Bean

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRELIMINARY OBJECTIONS** has been served this 1st day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



RECEIVED DEC 2 9 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

DEFENDANT JOHN W. BEAN'S OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant John W. Bean ("Bean") submits the following Objections and Responses to Plaintiffs' First Request for Production of Documents:

PRELIMINARY STATEMENT

The Defendants have filed Preliminary Objections to the Plaintiffs' Complaint. Those Preliminary Objections are potentially dispositive of the entire Complaint and remain pending. The Court's resolution of the Defendants' Preliminary Objections will determine whether this action will proceed at all, or, if it does proceed, the scope of the action. Consequently, because resolution of the Preliminary Objections could result in the termination or curtailment of this action, the Plaintiffs' Requests for Production of Documents are objectionable in their entirety pursuant to the Pa. R. Civ. P. 4009.12(b)(4) because the Requests would cause unreasonable annoyance, oppression, burden and expense, and because they would require an unreasonable investigation. The Plaintiffs' Requests are also objectionable because, until the

Court resolves the Defendants' Preliminary Objections, the scope of the Plaintiffs' claims, if any survive, is unknown, and, consequently, certain of the Plaintiffs' Requests may be beyond the scope of permissible discovery. In the event that any claims survive the pending Preliminary Objections, Bean will supplement his responses to the Plaintiffs' Requests.

GENERAL OBJECTIONS

In addition to the Objections set forth in his Preliminary Statement, Bean asserts the following General Objections with respect to each of the Plaintiffs' Document Requests:

1. Bean objects to Plaintiffs' Document Requests to the extent they seek information regarding matters that are not relevant to the subject matter of the pending action or not reasonably calculated to lead to the discovery of admissible evidence.

2. Bean objects to Plaintiffs' Document Requests to the extent they would cause annoyance, embarrassment, oppression or undue burden or expense.

3. Bean objects to Plaintiffs' Document Requests to the extent that the Requests seek any document that is protected from disclosure by the attorney-client or other privilege, as work product, and/or as the mental impressions, conclusions, opinions, memoranda, notes or summaries, legal research or legal theories of one or more of the attorneys for Bean, as well as the mental impressions, conclusions or opinions respecting the value or merit of a claim or defense, or respecting the strategy or tactics of one or more representatives of Bean.

RESPONSES AND SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION

Bean incorporates by reference his Preliminary Statement and General Objections into his Response to each of the following Requests for Production.

1. Copies of financial statements, profit and loss statements, balance sheets, ledgers, books of account and any other documents that evidence, refer, or relate to the financial matters of B Warehouse Co. from its inception to the present.

RESPONSE: Bean objects to this Request because it is vague and ambiguous and overbroad. Bean further objects to this Request to the extent that it seeks documents that are not relevant to the subject matter involved in the pending action, and because it is not reasonably calculated to lead to the discovery of admissible evidence.

2. All documents that evidence, refer, or relate to communications between you and Joe Varacallo and/or any other real estate agent and/or broker consulted with respect to the Project.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

3. All documents that evidence, refer, or relate to communications between you and Defendant George V. Cohen concerning the Project.

RESPONSE: Bean objects to this Request for the reasons set forth in his Preliminary Statement.

4. All documents that evidence, refer, or relate to communications between you and any Joint Venturer.

RESPONSE: Bean objects to this Request because it is vague and ambiguous and overbroad. Bean further objects to this Request to the extent that it seeks documents that are not relevant to the subject matter involved in the pending action, and because it is not reasonably calculated to lead to the discovery of admissible evidence.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

FILED no cc
01 11:02 BY
JAN 11 2005
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust certify that:

(1) a notice of intent to serve a subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty (20) days before the date on which the subpoena is sought to be served;

(2) a copy of the notice of intent, including the proposed subpoena, is attached to this certificate as Exhibit "A;"

(3) Defendants served Plaintiffs with Objections to the proposed subpoena on or about December 17, 2004, objecting to requests 11 through 14 contained in Schedule "A" to the subpoena;

(4) Plaintiffs agreed to amend the subpoena to withdraw requests 11 through 14, and Defendants agreed to not object to the amended subpoena; and

(5) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena, except that requests 11 through 14 were deleted pursuant to agreement of the parties. A copy of the amended subpoena is attached to this certificate as Exhibit "B."

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street
3rd Floor
Harrisburg, PA 17101
(717)237-4800

DATE: January 10, 2005

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

PLAINTIFFS' NOTICE OF INTENT TO SERVE SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

TO: GEORGE V. COHEN
2618 Waldman Drive
Williamsport, PA 17701

JOHN W. BEAN
4957 Peregrine Point Way
Sarasota, FL 34231

JOHN W. BEAN
470 Park Avenue 7D
New York, NY 10022

JOHN W. BEAN
735 Maple Avenue,
DuBois, PA 15801

Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust intend to serve the subpoena identical to the one that is attached to this notice. You have twenty (20)

days from the date listed below in which to file and serve upon the undersigned any objection to the proposed subpoenas. If no objection is made, the proposed subpoenas will be served.

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street
3rd Floor
Harrisburg, PA 17101
(717)237-4800

DATE: December 2, 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

COPY

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: S&T BANK
256 Main Street
Brookville, PA 15825

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the documents as instructed in Schedule "A" attached hereto at Buchanan Ingersoll, PC, at One South Market Square, 213 Market Street, 3rd Floor, Harrisburg, Pennsylvania.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issues at the request of the following person:

BUCHANAN INGERSOLL PC
P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street, 3rd Floor
Harrisburg, PA 17101
(717)237-4800

Counsel for Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust

DATE: _____

BY THE COURT,

COPY

_____
Prothonotary

SCHEDULE A

INSTRUCTIONS

A. These requests call for documents within your possession, custody or control, whether directly or indirectly. A document is in your possession, custody or control for purposes of these requests if it is within the possession of your attorneys, accountants, financial advisors, consultants, agents or representatives.

B. Documents shall be segregated according to the paragraph of the request to which they respond. Documents produced in response to any one paragraph need not be duplicated for production in response to any other paragraph.

C. The use of the singular form of any worked includes the plural, and vice versa.

D. This request for documents is continuing in nature, and any information obtained subsequent to the service of your response to this request for documents shall promptly be supplied by supplemental response whenever the Company finds, locates, acquires or creates such document.

DEFINITIONS

A. The word "document" shall mean the originals and any and all copies of any and all written, printed, typed or otherwise recorded matter, however produced or reproduced, of every kind and description in whatever form, including final and draft versions, physical or electronic media, and including, but not limited to, all writings, correspondence, letters, e-mails, telegrams, notes, notes of any meetings, memoranda, reports, studies, charts, photographs, or any other tangible things. "Documents" also means originals and copies of all of the above on which

notations in writing, printed or otherwise have been made do not appear on the originals, and all attachments, envelopes, explanatory notes or memoranda, and any other material that accompanied the requested items. If the specific document elicited a response, that response is also to be identified and produced. If the document was itself a response, the document to which it is responding is also to be identified and produced.

B. The word "communication(s)" shall mean any oral or written statement or exchange of information of any type between two or more persons, including but not limited to documents, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

C. The word "person" shall mean any natural person, individual, proprietorship, partnership, corporation, association, organization, joint venture, business trust or other business enterprise, governmental body or agency, or governmental, public, legal, or business entity, or group of natural persons or other entities whether *sui juris* or otherwise.

D. The phrase "evidence, refer or relate to" shall mean concerning, considering, constituting, regarding, reflecting, representing, supporting, contradicting, referring to, referencing, stating, describing, evidencing, recording, noting, embodying, containing, mentioning, memorializing, studying, analyzing, pertaining to discussing, evaluating, relating to, or in relation to, or relevant to. As indicated, the term necessarily includes responsive information that is in opposition to as well as in support of the position(s) and claim(s) of the party to whom the Interrogatory is addressed.

E. The term "concerning" means relating to, referring to, refuting, supporting, describing, evidencing or constituting.

F. The words "and" and "or" shall be construed both conjunctively and disjunctively so as to make the request inclusive rather than exclusive. The singular shall be construed to include the plural and the plural to include the singular.

G. "You" and "Your" shall mean and refer to S&T Bank, formerly known as The Savings & Trust Company of Pennsylvania and all other predecessors in title or interest to S&T Bank.

H. "Complaint" shall mean and refer to the Complaint on file in the present action, Court of Common Pleas, Clearfield Count, No. 2004-1759, filed on November 5, 2004.

I. "Authority" shall mean the Clearfield County Industrial Development Authority.

J. "Agreement" shall mean the Joint Venture Agreement signed on April 25, 1985 forming the B Warehouse Company.

K. "Bonds" shall mean the $300,000 of Commercial Development Second Mortgage Revenue Bonds, Series 1985 issued on or about April 18, 1985 by the Clearfield Industrial Development Authority.

L. "B Warehouse Co." shall mean the B Warehouse Company and its corporate affiliates including corporate parents, subsidiaries, sisters, predecessors, successors, assigns and its officers, directors, employees, representatives, attorneys, accountants, financial advisors, consultants, agents, and all persons who act or acted for or on behalf of B Warehouse Co.

M. "Joint Venturer(s)" shall mean the individuals and/or entities which either had or currently have an ownership interest in B Warehouse Co. subject to the Agreement.

N. "Lease" shall have its ordinary meaning and shall include all lease, rental, or use agreements for any term related to the Warehouse.

O. "Defendant John W. Bean" shall mean the adult individual identified in the above-captioned proceeding as a defendant and who maintains residences at (1) 4957 Peregrine Point Way, Sarasota, Sarasota County, Florida, 34231; (2) 470 Park Avenue 7D, New York, New York, 10022; and (3) 735 Maple Avenue, DuBois, Clearfield County, Pennsylvania, 15801.

P. "Defendant George V. Cohen" shall mean the adult individual identified in the above-captioned proceeding as a defendant and who resides at 2618 Waldman Drive, Williamsport, Lycoming County, Pennsylvania, 17701.

Q. "Project" shall mean the acquisition and construction of a commercial economic development warehouse project that is the subject of the above-captioned proceeding in Sandy Township, Clearfield County, Pennsylvania pursuant to the Authority's April 18, 1985 Debt Resolution.

R. "Warehouse" shall mean the warehouse constructed pursuant to the B Warehouse Project.

UNAVAILABILITY OF DOCUMENTS

To the extent a document is sought herein and such document was, but is no longer, in your possession, or subject to your control, or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred, voluntarily or involuntarily, to others, or (iv) has been otherwise disposed of, and, in each instance, explain the circumstances surrounding, and authorization for, such disposition thereof; state the date or approximate date

thereof; the contents of said document; and the person(s) who authorized the transfer, destruction, or other disposition of said document. Documents prepared prior to, but which relate or refer to, the time-period covered by these documents, are to be identified.

PRIVILEGE

Identify by date, author, recipient, distribution list, and subject matter, each document which is responsive to a specific request, but which the deponents does not intend to be produced based upon the assertion of a claim of privilege or other asserted justification for non-production, *e.g.*, attorney's work product, and with respect thereto, specifically identify the alleged privilege asserted for each document.

DOCUMENTS TO BE PRODUCED

1. All documents that evidence, refer, or relate to communications between you and any Joint Venturer concerning B Warehouse Co. or the Project.

2. All documents that evidence, refer, or relate to communications between you and B Warehouse Co.

3. All documents that evidence, refer, or relate to communications between you and Joseph Varacallo or any other agent/broker concerning B Warehouse Co. or the Project.

4. All documents that evidence, refer, or relate to communications between you and Defendant John W. Bean concerning B Warehouse Co. or the Project.

5. All documents that evidence, refer, or relate to communications between you and Defendant George V. Cohen concerning B Warehouse Co. or the Project.

6. All documents that evidence, refer, or relate to accounts maintained by you in the name of B Warehouse Co. or that otherwise relate to the Project.

7. All account records, accounting books and records, and all other documents that evidence, refer, or relate to deposits, disbursements, or distributions to or from any account of B Warehouse Co. or the Project.

8. All statements or reports prepared, maintained, and/or issued by you with respect to any account of B Warehouse Co. or the Project.

9. All cancelled checks written on, or receipts or other records or electronic transfers from, any account of B Warehouse Co. or the Project.

10. Detailed account history, including transaction descriptions, for all accounts that relate to B Warehouse Co. or the Project for the years 2003 and 2004, including, without limitation, account balances, deposits, withdrawals, transfers, and account investment history.

11. All statements prepared and/or issued by you with respect to any account on which Defendant John W. Bean's name appears for the past five years.

12. All cancelled checks written on any account on which Defendant John W. Bean's name appears for the past five years.

13. All statements prepared and/or issued by you with respect to any account on which Defendant George V. Cohen's name appears for the past five years.

14. All cancelled checks written on any account on which Defendant George V. Cohen's name appears for the past five years.

15. All documents that evidence, refer, or relate to property tax assessments, statements, bills, or payments with respect to B Warehouse Co. or the Project.

16. All documents that evidence, refer, or relate to insurance policies, statements, bills, or payments with respect to B Warehouse Co. or the Project.

17. All documents that evidence, refer, or relate to any accounts that have been closed, liquidated, or otherwise at any time previously maintained at or by you relating in any way to B Warehouse Co., the Project, including all information relating thereto as set forth in items 7-10 above.

Exhibit B

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: S&T BANK
256 Main Street
Brookville, PA 15825

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the documents as instructed in Schedule "A" attached hereto at Buchanan Ingersoll, PC, at One South Market Square, 213 Market Street, 3rd Floor, Harrisburg, Pennsylvania.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issues at the request of the following person:

BUCHANAN INGERSOLL PC
P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street, 3rd Floor
Harrisburg, PA 17101
(717)237-4800

Counsel for Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust

DATE: _____

BY THE COURT,

_____
Prothonotary

SCHEDULE A

INSTRUCTIONS

A. These requests call for documents within your possession, custody or control, whether directly or indirectly. A document is in your possession, custody or control for purposes of these requests if it is within the possession of your attorneys, accountants, financial advisors, consultants, agents or representatives.

B. Documents shall be segregated according to the paragraph of the request to which they respond. Documents produced in response to any one paragraph need not be duplicated for production in response to any other paragraph.

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D. This request for documents is continuing in nature, and any information obtained subsequent to the service of your response to this request for documents shall promptly be supplied by supplemental response whenever the Company finds, locates, acquires or creates such document.

DEFINITIONS

A. The word "document" shall mean the originals and any and all copies of any and all written, printed, typed or otherwise recorded matter, however produced or reproduced, of every kind and description in whatever form, including final and draft versions, physical or electronic media, and including, but not limited to, all writings, correspondence, letters, e-mails, telegrams, notes, notes of any meetings, memoranda, reports, studies, charts, photographs, or any other tangible things. "Documents" also means originals and copies of all of the above on which

notations in writing, printed or otherwise have been made do not appear on the originals, and all attachments, envelopes, explanatory notes or memoranda, and any other material that accompanied the requested items. If the specific document elicited a response, that response is also to be identified and produced. If the document was itself a response, the document to which it is responding is also to be identified and produced.

B. The word "communication(s)" shall mean any oral or written statement or exchange of information of any type between two or more persons, including but not limited to documents, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

C. The word "person" shall mean any natural person, individual, proprietorship, partnership, corporation, association, organization, joint venture, business trust or other business enterprise, governmental body or agency, or governmental, public, legal, or business entity, or group of natural persons or other entities whether *sui juris* or otherwise.

D. The phrase "evidence, refer or relate to" shall mean concerning, considering, constituting, regarding, reflecting, representing, supporting, contradicting, referring to, referencing, stating, describing, evidencing, recording, noting, embodying, containing, mentioning, memorializing, studying, analyzing, pertaining to discussing, evaluating, relating to, or in relation to, or relevant to. As indicated, the term necessarily includes responsive information that is in opposition to as well as in support of the position(s) and claim(s) of the party to whom the Interrogatory is addressed.

E. The term "concerning" means relating to, referring to, refuting, supporting, describing, evidencing or constituting.

F. The words "and" and "or" shall be construed both conjunctively and disjunctively so as to make the request inclusive rather than exclusive. The singular shall be construed to include the plural and the plural to include the singular.

G. "You" and "Your" shall mean and refer to S&T Bank, formerly known as The Savings & Trust Company of Pennsylvania and all other predecessors in title or interest to S&T Bank.

H. "Complaint" shall mean and refer to the Complaint on file in the present action, Court of Common Pleas, Clearfield Count, No. 2004-1759, filed on November 5, 2004.

I. "Authority" shall mean the Clearfield County Industrial Development Authority.

J. "Agreement" shall mean the Joint Venture Agreement signed on April 25, 1985 forming the B Warehouse Company.

K. "Bonds" shall mean the $300,000 of Commercial Development Second Mortgage Revenue Bonds, Series 1985 issued on or about April 18, 1985 by the Clearfield Industrial Development Authority.

L. "B Warehouse Co." shall mean the B Warehouse Company and its corporate affiliates including corporate parents, subsidiaries, sisters, predecessors, successors, assigns and its officers, directors, employees, representatives, attorneys, accountants, financial advisors, consultants, agents, and all persons who act or acted for or on behalf of B Warehouse Co.

M. "Joint Venturer(s)" shall mean the individuals and/or entities which either had or currently have an ownership interest in B Warehouse Co. subject to the Agreement.

N. "Lease" shall have its ordinary meaning and shall include all lease, rental, or use agreements for any term related to the Warehouse.

O. "Defendant John W. Bean" shall mean the adult individual identified in the above-captioned proceeding as a defendant and who maintains residences at (1) 4957 Peregrine Point Way, Sarasota, Sarasota County, Florida, 34231; (2) 470 Park Avenue 7D, New York, New York, 10022; and (3) 735 Maple Avenue, DuBois, Clearfield County, Pennsylvania, 15801.

P. "Defendant George V. Cohen" shall mean the adult individual identified in the above-captioned proceeding as a defendant and who resides at 2618 Waldman Drive, Williamsport, Lycoming County, Pennsylvania, 17701.

Q. "Project" shall mean the acquisition and construction of a commercial economic development warehouse project that is the subject of the above-captioned proceeding in Sandy Township, Clearfield County, Pennsylvania pursuant to the Authority's April 18, 1985 Debt Resolution.

R. "Warehouse" shall mean the warehouse constructed pursuant to the B Warehouse Project.

UNAVAILABILITY OF DOCUMENTS

To the extent a document is sought herein and such document was, but is no longer, in your possession, or subject to your control, or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred, voluntarily or involuntarily, to others, or (iv) has been otherwise disposed of, and, in each instance, explain the circumstances surrounding, and authorization for, such disposition thereof; state the date or approximate date

thereof; the contents of said document; and the person(s) who authorized the transfer, destruction, or other disposition of said document. Documents prepared prior to, but which relate or refer to, the time-period covered by these documents, are to be identified.

PRIVILEGE

Identify by date, author, recipient, distribution list, and subject matter, each document which is responsive to a specific request, but which the deponents does not intend to be produced based upon the assertion of a claim of privilege or other asserted justification for non-production, *e.g.*, attorney's work product, and with respect thereto, specifically identify the alleged privilege asserted for each document.

DOCUMENTS TO BE PRODUCED

1. All documents that evidence, refer, or relate to communications between you and any Joint Venturer concerning B Warehouse Co. or the Project.

2. All documents that evidence, refer, or relate to communications between you and B Warehouse Co.

3. All documents that evidence, refer, or relate to communications between you and Joseph Varacallo or any other agent/broker concerning B Warehouse Co. or the Project.

4. All documents that evidence, refer, or relate to communications between you and Defendant John W. Bean concerning B Warehouse Co. or the Project.

5. All documents that evidence, refer, or relate to communications between you and Defendant George V. Cohen concerning B Warehouse Co. or the Project.

6. All documents that evidence, refer, or relate to accounts maintained by you in the name of B Warehouse Co. or that otherwise relate to the Project.

7. All account records, accounting books and records, and all other documents that evidence, refer, or relate to deposits, disbursements, or distributions to or from any account of B Warehouse Co. or the Project.

8. All statements or reports prepared, maintained, and/or issued by you with respect to any account of B Warehouse Co. or the Project.

9. All cancelled checks written on, or receipts or other records or electronic transfers from, any account of B Warehouse Co. or the Project.

10. Detailed account history, including transaction descriptions, for all accounts that relate to B Warehouse Co. or the Project for the years 2003 and 2004, including, without limitation, account balances, deposits, withdrawals, transfers, and account investment history.

11. All documents that evidence, refer, or relate to property tax assessments, statements, bills, or payments with respect to B Warehouse Co. or the Project.

12. All documents that evidence, refer, or relate to insurance policies, statements, bills, or payments with respect to B Warehouse Co. or the Project.

13. All documents that evidence, refer, or relate to any accounts that have been closed, liquidated, or otherwise at any time previously maintained at or by you relating in any way to B Warehouse Co., the Project, including all information relating thereto as set forth in items 7-10 above.

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

Kevin P. Allen, Esquire
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

By: _____
Nicole L. Borda, Esquire

DATE: January 10, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED 1cc
6K m 11:00 BL
DEC 30 2004
William A. Shaw
Prothonotary/Clerk of Courts

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

AFFIDAVIT OF SERVICE

1. On December 29, 2004, counsel for the Defendants served counsel for the Plaintiffs by facsimile and mail with the Court's December 27, 2004 Order scheduling argument on the Defendants' Preliminary Objections for February 9, 2005.

2. Counsel for Defendants served Plaintiffs' counsel with a copy of Defendant Bean's Preliminary Objections on December 1, 2004.

3. Counsel for Defendants served Plaintiffs' counsel with a copy of Defendant Cohen's Preliminary Objections on December 27, 2004.

The undersigned submits this Affidavit of Service pursuant to 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

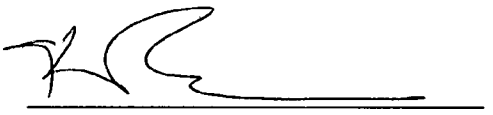
Kevin P. Allen
Pa. I.D. 76426
THORP REED & ARMSTRONG, LLP
Counsel for Defendants

10

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **AFFIDAVIT OF SERVICE** has been served this 29th day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street -- 3rd Floor
Harrisburg, PA 17101



CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

FILED No CC
m/1:04(3)
DEC 28 2004
William A. Shaw
Prothonotary/Clerk of Courts

PRELIMINARY OBJECTIONS

George V. Cohen submits the following Preliminary Objections to the Plaintiffs' Complaint.

Introduction

1. In 1985, the Plaintiffs purchased certain Second Mortgage Revenue Bonds in the aggregate principal amount of $300,000 ("Bonds") from the Clearfield County Industrial Development Authority ("Authority") related to the financing and construction of a commercial warehouse ("Project") in Clearfield County. Complaint, ¶ 26.

2. B Warehouse Company ("B Warehouse"), a joint venture, was the "Investor Developer" of the Project. B Warehouse obtained financing for the construction of the Project, a portion of which was derived from the Plaintiffs' purchase of the Bonds. Id. at ¶ 14.

3. The Project's financing, including the Plaintiffs' purchase of the Bonds, is governed by a series of financing documents (collectively, the "Contracts") between or among the Plaintiffs, the Authority, B Warehouse, and the Savings & Trust Company of Pennsylvania, now known as S&T Bank ("S&T"). Id. at Exs. A through C, E.

(9)

4. The Contracts, which are all interrelated and cross-reference each other, include detailed provisions regarding security for the Bonds and the remedies available in the event of a default by B Warehouse in its obligations under the Contracts. Id.

5. The Contracts specifically and repeatedly provide, that the debt issued in connection with the Project, including the Bonds, "is payable solely from the receipts and revenues derived from the Project . . . ." The debt related to the Project is also secured by a First Mortgage (now satisfied) on the Project and a Second Mortgage. Id.

6. Critically, for purposes of this action, the Contracts also place strict limits on any liability of B Warehouse, or any of its constituent members. Specifically, section 6.5 of the Mortgage Loan Agreement for the Project provides:

> 6.5. DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited . . . [subject to certain specified conditions] to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives,

> successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding.

Id. at Ex. E.

7. In 2002, the Project's warehouse lost its longtime tenant, and, as a result, B Warehouse has not made scheduled interest payments under the Contracts. Id. at ¶¶ 28, 30 and 33.

8. The Plaintiffs have recourse under the Contracts as a result of the non-payments, but that recourse is limited to the security set forth in the Contracts, and does not extend to the personal assets of the Defendants. Id. at Ex. E § 6.5.

9. This tort action represents an improper attempt by the Plaintiffs to circumvent the detailed Contracts, and the remedies set forth therein, to which the Plaintiffs agreed in 1985.

10. For the multiple reasons set forth below, the Plaintiffs' Complaint is legally insufficient in its entirety, and also violates the Pennsylvania Rules of Civil Procedure in other fundamental respects as well. As a result, Cohen requests that the Court dismiss the Plaintiffs' Complaint with prejudice.

DEMURRER – ALL COUNTS

11. The Plaintiffs' rights regarding the Bonds are governed by the Contracts. See Complaint, Ex. A through C, E and G.

12. The Contracts specify and limit the rights of the contracting parties in the event of non-payment or other default by B Warehouse. See, e.g., id. at Ex. C, § 6.5.

13. The Bonds are "payable solely from the receipts and revenues derived from the Project . . ." and are secured by the land and building. The Contracts provide that, beyond the security specified in the Contracts, the obligation of the Investor Developer is unsecured, with no recourse to the joint venturers of B Warehouse. Id. at Ex. A, p. 3 and Ex. E, § 6.5.

14. The Plaintiffs' Complaint constitutes an improper attempt to circumvent the Contracts to which the Plaintiffs agreed.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – ALL COUNTS – GIST OF THE ACTION

15. The Plaintiffs' Complaint constitutes an improper attempt to recast an ordinary breach of contract claim into tort claims because of the Plaintiffs' apparent dissatisfaction with the contractual remedies contained in the written agreements governing the Project's financing.

16. Pennsylvania's gist of the action doctrine bars the Plaintiffs' claims.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT I

17. In Count I, the Plaintiffs purport to set forth a claim against Cohen for tortious interference with contract.

18. However, under Pennsylvania law, a party cannot tortiously interfere with a contract to which he or his principal is a party.

19. Here, the Plaintiffs' allegations in Count I are based on Cohen's alleged interference with the Contracts, a series of agreements to which B Warehouse is one of the parties. Complaint, ¶¶ 15 and 17.

20. Cohen's alleged improper interference occurred while he was acting in his role as a joint venturer in, or agent for, B Warehouse. Id. at ¶¶ 19, 22-23.

21. Consequently, under Pennsylvania law, the Plaintiffs' claim for tortious interference with contract is legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count I of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT II

22. In Count II, the Plaintiffs allege that Cohen "concealed information" from the Plaintiffs concerning B Warehouse. Complaint, ¶ 46.

23. Under Pennsylvania law, silence cannot amount to fraud absent a duty to speak.

24. The Plaintiffs' Complaint fails to establish any duty on the part of Cohen to disclose to Plaintiffs the unspecified information he allegedly concealed.

25. Accordingly, Count II is legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count II of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT II

26. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

27. In Count II, the Plaintiffs allege evasively and vaguely that they "believe[] and, therefore, aver[]" that Cohen concealed unspecified information regarding an unspecified distribution of unspecified assets of B Warehouse. Complaint, ¶ 46.

28. Count II lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count II of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) – (4).

DEMURRER – COUNT III

29. In Count III, an alleged claim for conversion, the Plaintiffs contend that they had a "current possessory interest" in funds held in unspecified accounts.

30. The Plaintiffs' Complaint sets forth no basis for the conclusory allegation that the Plaintiffs held such an interest in the alleged accounts, or that Plaintiffs had any right or interest in the alleged accounts.

31. To the contrary, the Plaintiffs' Complaint and the Contracts attached thereto established that the Bonds are secured only by the interest of B Warehouse in the Project, i.e., by the land and warehouse and leases related thereto.

32. For example, the Mortgage Loan Agreement, a copy of which is attached to the Complaint as Ex. E, calls for the creation of a "Reserve Fund." Under the Mortgage Loan Agreement, payments from that fund are strictly limited to specified uses. Payments from the Reserve Fund for debt service on the Bonds are not permissible under the Mortgage Loan Agreement. Complaint, Ex. E, § 4.1.

33. Moreover, the Contracts specifically preclude the Plaintiffs from pursuing any claim against Cohen individually. Id. at Ex. E, § 6.5.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count III of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT IV

34. In Count IV, the Plaintiffs seek injunctive relief based on an alleged - albeit unspecified - fraudulent transfer from B Warehouse to the Defendants.

35. Count IV is legally insufficient because B Warehouse is not a debtor in relation to Plaintiffs. To the contrary, the Plaintiffs purchased the Bonds from the Authority, not B Warehouse.

36. Count IV is also legally insufficient because the Plaintiffs failed to allege that B Warehouse is "insolvent."

37. The absence of any allegation of insolvency on the part of B Warehouse is highlighted by the fact that the Plaintiffs are attempting to circumvent the security provisions contained in the Contracts in the event of non-payment by B Warehouse.

38. The security for the Bonds provided by the Contracts remains available; the Plaintiffs have simply – but improperly – chosen not to pursue it.

39. Count IV is also legally insufficient because of the Plaintiffs' failure to resort to the security available and because the Plaintiffs have not exhausted their remedies at law or reduced any claim related to the Bonds to a judgment.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count IV of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT IV

40. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

41. In Count IV, the Plaintiffs allege evasively and vaguely "upon information and belief" that the Defendants "divested" B Warehouse of unspecified "assets" through unspecified "disbursements." Complaint, ¶ 56.

42. Count IV lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count IV with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) and (3).

DEMURRER – COUNT V

43. Count V, an alleged cause of action for civil conspiracy, is dependent on the existence of some valid underlying claim.

44. As set forth above, the Plaintiffs have failed to allege any valid claim against Cohen.

45. Consequently, Count V is legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count V with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

COMPLAINT EX. J - PA. R. CIV. P. 1028(a)(2).

46. Plaintiffs attached Exhibit J to the Complaint for no material reason.

47. Cohen requests that, in the event the Court does not dismiss the Complaint in its entirety, the Court strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

CLAIM FOR ATTORNEY FEES

48. In the Complaint, the Plaintiffs assert claims to recover attorney fees.

49. The Complaint includes no valid basis for the recovery of attorney fees by the Plaintiffs, even if the Plaintiffs could otherwise sustain any of their claims.

50. In the event that any of Plaintiffs' claims survive these Preliminary Objections, Cohen requests that the Court strike Plaintiffs' request to recover attorney fees.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss and/or strike Plaintiffs' claims to recover attorney fees.

FAILURE TO JOIN INDISPENSABLE PARTIES

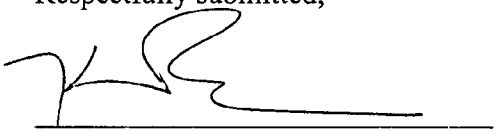
51. Plaintiffs' claims are inextricably interwoven with the Contracts.

52. In the Complaint, the Plaintiffs seek, *inter alia*, injunctive relief against entities that are not parties to this action. See Complaint at pp. 9, 10 and 12 through 14.

53. The Plaintiffs' failure to join indispensable parties deprives this Court of jurisdiction over this action and renders the Plaintiffs' Complaint legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint pursuant to Pa. R. Civ. P. 1028(a)(1) and (4).

Respectfully submitted,

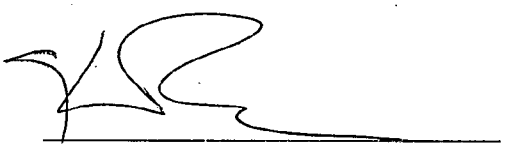


Kevin P. Allen
Pa. I.D. 76426
THORP REED & ARMSTRONG, LLP
One Oxford Centre, 14th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 394-2374
(412) 394-2555
Counsel for George V. Cohen

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRELIMINARY OBJECTIONS** has been served this 27th day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



FILED

DEC 28 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSCH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST	:	
vs.	:	No. 04-1759-CD
JOHN W. BEAN and GEORGE V. COHEN	:	

ORDER

AND NOW, this 27th day of December, 2004, it is the Order of the Court that argument on Defendant's Preliminary Objections filed in the above-captioned matter has been scheduled for the 9 day of February, 2005, at 3:00 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED 3CC8
6K 013:39/BY Memo Re: service
DEC 27 2004 to Atty Allen

William A. Shaw
Prothonotary/Clerk of Courts

FILED

DEC 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
PHONE: (814) 765-2641
FAX: 1-814-765-7649

DAVID S. MEHOLICK
COURT ADMINISTRATOR

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

FILED ICC
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DEC 20 2004 Allen
William A. Shaw
Prothonotary/Clerk of Courts

OBJECTIONS TO SUBPOENA PURSUANT TO Pa. R. CIV. P. 4009.21(c)

Defendants John W. Bean and George V. Cohen ("Defendants") submit the following objections pursuant to Pa. R. Civ. P. 4009.21(c) in response to the Plaintiffs' Notice of Intent to Serve a Subpoena on a non-party, S&T Bank.

1. On or about December 2, 2004, Plaintiffs served Defendants with a Notice of Intent to Serve a Subpoena on S&T Bank pursuant to Pa. R. Civ. P. 4009.21. A copy of the Plaintiffs' Notice of Intent is attached as Exhibit A.

2. The proposed subpoena includes 17 categories of requested documents. Most of those requests are limited to documents concerning "B Warehouse Co." or the "Project." Those requests relate to subjects that are at issue in this litigation.

3. Requests 11-14, however, are not restricted to matters related to this litigation. Rather, those requests seek to require S&T Bank to produce all statements and all canceled checks from any accounts that make any reference to either of the Defendants.

4. Defendants object to the proposed subpoena because Requests 11-14 seek documents that are not relevant to the subject matter involved in the pending action and because those Requests are not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the subpoena because requests 11-14 would cause Defendants unreasonable annoyance.

Respectfully submitted,

Dated: December 17, 2004

Kevin P. Allen
Pa. I.D. 76426
THORP REED & ARMSTRONG, LLP
One Oxford Centre, 14th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 394-2374
Counsel for Defendants

XEROX 9000 SERIES
RECYCLED 30% P.C.W.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

PLAINTIFFS' NOTICE OF INTENT TO SERVE SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

TO: GEORGE V. COHEN
2618 Waldman Drive
Williamsport, PA 17701

JOHN W. BEAN
4957 Peregrine Point Way
Sarasota, FL 34231

JOHN W. BEAN
470 Park Avenue 7D
New York, NY 10022

JOHN W. BEAN
735 Maple Avenue,
DuBois, PA 15801

Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust intend to serve the subpoena identical to the one that is attached to this notice. You have twenty (20)

days from the date listed below in which to file and serve upon the undersigned any objection to the proposed subpoenas. If no objection is made, the proposed subpoenas will be served.

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street
3rd Floor
Harrisburg, PA 17101
(717)237-4800

DATE: December 2, 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	COPY
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: S&T BANK
256 Main Street
Brookville, PA 15825

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the documents as instructed in Schedule "A" attached hereto at Buchanan Ingersoll, PC, at One South Market Square, 213 Market Street, 3rd Floor, Harrisburg, Pennsylvania.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issues at the request of the following person:

BUCHANAN INGERSOLL PC
P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street, 3rd Floor
Harrisburg, PA 17101
(717)237-4800

Counsel for Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust

DATE: _____

BY THE COURT,

COPY

_____
Prothonotary

SCHEDULE A

INSTRUCTIONS

A. These requests call for documents within your possession, custody or control, whether directly or indirectly. A document is in your possession, custody or control for purposes of these requests if it is within the possession of your attorneys, accountants, financial advisors, consultants, agents or representatives.

B. Documents shall be segregated according to the paragraph of the request to which they respond. Documents produced in response to any one paragraph need not be duplicated for production in response to any other paragraph.

C. The use of the singular form of any worked includes the plural, and vice versa.

D. This request for documents is continuing in nature, and any information obtained subsequent to the service of your response to this request for documents shall promptly be supplied by supplemental response whenever the Company finds, locates, acquires or creates such document.

DEFINITIONS

A. The word "document" shall mean the originals and any and all copies of any and all written, printed, typed or otherwise recorded matter, however produced or reproduced, of every kind and description in whatever form, including final and draft versions, physical or electronic media, and including, but not limited to, all writings, correspondence, letters, e-mails, telegrams, notes, notes of any meetings, memoranda, reports, studies, charts, photographs, or any other tangible things. "Documents" also means originals and copies of all of the above on which

notations in writing, printed or otherwise have been made do not appear on the originals, and all attachments, envelopes, explanatory notes or memoranda, and any other material that accompanied the requested items. If the specific document elicited a response, that response is also to be identified and produced. If the document was itself a response, the document to which it is responding is also to be identified and produced.

B. The word "communication(s)" shall mean any oral or written statement or exchange of information of any type between two or more persons, including but not limited to documents, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

C. The word "person" shall mean any natural person, individual, proprietorship, partnership, corporation, association, organization, joint venture, business trust or other business enterprise, governmental body or agency, or governmental, public, legal, or business entity, or group of natural persons or other entities whether *sui juris* or otherwise.

D. The phrase "evidence, refer or relate to" shall mean concerning, considering, constituting, regarding, reflecting, representing, supporting, contradicting, referring to, referencing, stating, describing, evidencing, recording, noting, embodying, containing, mentioning, memorializing, studying, analyzing, pertaining to discussing, evaluating, relating to, or in relation to, or relevant to. As indicated, the term necessarily includes responsive information that is in opposition to as well as in support of the position(s) and claim(s) of the party to whom the Interrogatory is addressed.

E. The term "concerning" means relating to, referring to, refuting, supporting, describing, evidencing or constituting.

F. The words "and" and "or" shall be construed both conjunctively and disjunctively so as to make the request inclusive rather than exclusive. The singular shall be construed to include the plural and the plural to include the singular.

G. "You" and "Your" shall mean and refer to S&T Bank, formerly known as The Savings & Trust Company of Pennsylvania and all other predecessors in title or interest to S&T Bank.

H. "Complaint" shall mean and refer to the Complaint on file in the present action, Court of Common Pleas, Clearfield Count, No. 2004-1759, filed on November 5, 2004.

I. "Authority" shall mean the Clearfield County Industrial Development Authority.

J. "Agreement" shall mean the Joint Venture Agreement signed on April 25, 1985 forming the B Warehouse Company.

K. "Bonds" shall mean the $300,000 of Commercial Development Second Mortgage Revenue Bonds, Series 1985 issued on or about April 18, 1985 by the Clearfield Industrial Development Authority.

L. "B Warehouse Co." shall mean the B Warehouse Company and its corporate affiliates including corporate parents, subsidiaries, sisters, predecessors, successors, assigns and its officers, directors, employees, representatives, attorneys, accountants, financial advisors, consultants, agents, and all persons who act or acted for or on behalf of B Warehouse Co.

M. "Joint Venturer(s)" shall mean the individuals and/or entities which either had or currently have an ownership interest in B Warehouse Co. subject to the Agreement.

N. "Lease" shall have its ordinary meaning and shall include all lease, rental, or use agreements for any term related to the Warehouse.

O. "Defendant John W. Bean" shall mean the adult individual identified in the above-captioned proceeding as a defendant and who maintains residences at (1) 4957 Peregrine Point Way, Sarasota, Sarasota County, Florida, 34231; (2) 470 Park Avenue 7D, New York, New York, 10022; and (3) 735 Maple Avenue, DuBois, Clearfield County, Pennsylvania, 15801.

P. "Defendant George V. Cohen" shall mean the adult individual identified in the above-captioned proceeding as a defendant and who resides at 2618 Waldman Drive, Williamsport, Lycoming County, Pennsylvania, 17701.

Q. "Project" shall mean the acquisition and construction of a commercial economic development warehouse project that is the subject of the above-captioned proceeding in Sandy Township, Clearfield County, Pennsylvania pursuant to the Authority's April 18, 1985 Debt Resolution.

R. "Warehouse" shall mean the warehouse constructed pursuant to the B Warehouse Project.

UNAVAILABILITY OF DOCUMENTS

To the extent a document is sought herein and such document was, but is no longer, in your possession, or subject to your control, or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred, voluntarily or involuntarily, to others, or (iv) has been otherwise disposed of, and, in each instance, explain the circumstances surrounding, and authorization for, such disposition thereof; state the date or approximate date

thereof; the contents of said document; and the person(s) who authorized the transfer, destruction, or other disposition of said document. Documents prepared prior to, but which relate or refer to, the time-period covered by these documents, are to be identified.

PRIVILEGE

Identify by date, author, recipient, distribution list, and subject matter, each document which is responsive to a specific request, but which the deponents does not intend to be produced based upon the assertion of a claim of privilege or other asserted justification for non-production, *e.g.*, attorney's work product, and with respect thereto, specifically identify the alleged privilege asserted for each document.

DOCUMENTS TO BE PRODUCED

1. All documents that evidence, refer, or relate to communications between you and any Joint Venturer concerning B Warehouse Co. or the Project.

2. All documents that evidence, refer, or relate to communications between you and B Warehouse Co.

3. All documents that evidence, refer, or relate to communications between you and Joseph Varacallo or any other agent/broker concerning B Warehouse Co. or the Project.

4. All documents that evidence, refer, or relate to communications between you and Defendant John W. Bean concerning B Warehouse Co. or the Project.

5. All documents that evidence, refer, or relate to communications between you and Defendant George V. Cohen concerning B Warehouse Co. or the Project.

6. All documents that evidence, refer, or relate to accounts maintained by you in the name of B Warehouse Co. or that otherwise relate to the Project.

7. All account records, accounting books and records, and all other documents that evidence, refer, or relate to deposits, disbursements, or distributions to or from any account of B Warehouse Co. or the Project.

8. All statements or reports prepared, maintained, and/or issued by you with respect to any account of B Warehouse Co. or the Project.

9. All cancelled checks written on, or receipts or other records or electronic transfers from, any account of B Warehouse Co. or the Project.

10. Detailed account history, including transaction descriptions, for all accounts that relate to B Warehouse Co. or the Project for the years 2003 and 2004, including, without limitation, account balances, deposits, withdrawals, transfers, and account investment history.

11. All statements prepared and/or issued by you with respect to any account on which Defendant John W. Bean's name appears for the past five years.

12. All cancelled checks written on any account on which Defendant John W. Bean's name appears for the past five years.

13. All statements prepared and/or issued by you with respect to any account on which Defendant George V. Cohen's name appears for the past five years.

14. All cancelled checks written on any account on which Defendant George V. Cohen's name appears for the past five years.

15. All documents that evidence, refer, or relate to property tax assessments, statements, bills, or payments with respect to B Warehouse Co. or the Project.

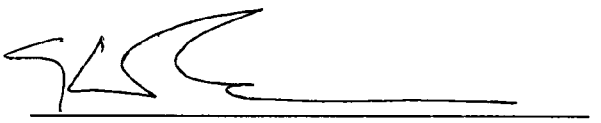
16. All documents that evidence, refer, or relate to insurance policies, statements, bills, or payments with respect to B Warehouse Co. or the Project.

17. All documents that evidence, refer, or relate to any accounts that have been closed, liquidated, or otherwise at any time previously maintained at or by you relating in any way to B Warehouse Co., the Project, including all information relating thereto as set forth in items 7-10 above.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **OBJECTIONS TO SUBPOENA PURSUANT TO Pa. R. CIV. P. 4009.21(c)** has been served this 17th day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals:

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST, Plaintiffs	:	CIVIL ACTION
v.	:	NO: 2004-1759
JOHN W. BEAN and GEORGE V. COHEN, Defendants	:	

ACCEPTANCE OF SERVICE

I, Kevin P. Allen, Esquire, accept service of the Complaint on behalf of George V. Cohen and certify that I am authorized to do so.

THORP REED & ARMSTRONG, LLP

By _____

Kevin P. Allen, Esquire
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219
(412) 394-7711

DATE: December 13, 2004

FILED 6cc
m 11:27BA Atty
DEC 16 2004
William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

Kevin P. Allen, Esquire
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

By: _____
Nicole L. Borda, Esquire

DATE: December 14, 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED for Atty pd. 7.00
M/12:27 BK
DEC 06 2004 1 Compl.
William A. Shaw Reinstated
Prothonotary/Clerk of Courts to Atty Shiff

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

PRAECIPE TO REINSTATE COMPLAINT

TO THE PROTHONOTARY:

Kindly reinstate the Complaint filed in the above-captioned case for an additional thirty (30) days.

Respectfully submitted,

BUCHANAN INGERSOLL
PROFESSIONAL CORPORATION

By: _____
P. Kevin Brobson
Attorney I.D. #76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street - 3rd Floor
Harrisburg, PA 17101
(717) 237-4845

Dated: December 2, 2004

Attorney for Plaintiffs

(5)

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

JOHN W. BEAN
4957 Peregrine Point Way
Sarasota, FL 34231

JOHN W. BEAN
470 Park Avenue 7D
New York, NY 10022

JOHN W. BEAN
735 Maple Avenue,
DuBois, PA 15801

GEORGE V. COHEN
2618 Waldman Drive
Williamsport, PA 17701

By: _____
Nicole L. Borda

DATE: December 2, 2004

FILED

DEC 06 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED 2cc NO Cc
m/11:19801
DEC 03 2004
William A. Shaw
Prothonotary/Clerk of Courts

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

PRAECIPE TO AMEND CAPTION

TO THE PROTHONOTARY:

Kindly amend the above caption to reflect a spelling correction as follows:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

Respectfully submitted,

BUCHANAN INGERSOLL
PROFESSIONAL CORPORATION

By: _____

P. Kevin Brobson
Attorney I.D. #76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street - 3rd Floor
Harrisburg, PA 17101
(717) 237-4845

Attorney for Plaintiffs

Dated: December 2, 2004

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

JOHN W. BEAN
4957 Peregrine Point Way
Sarasota, FL 34231

JOHN W. BEAN
470 Park Avenue 7D
New York, NY 10022

JOHN W. BEAN
735 Maple Avenue,
DuBois, PA 15801

GEORGE V. COHEN
2618 Waldman Drive
Williamsport, PA 17701

By: Nicole L. Borda

DATE: December 2, 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED No CC
m/1:05BA
DEC 02 2004
William A. Shaw
Prothonotary/Clerk of Courts

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

CIVIL ACTION

Plaintiffs,

No.: 2004-1759-CD

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

PRELIMINARY OBJECTIONS

John W. Bean submits the following Preliminary Objections to the Plaintiffs' Complaint.

Introduction

1. In 1985, the Plaintiffs purchased certain Second Mortgage Revenue Bonds in the aggregate principal amount of $300,000 ("Bonds") from the Clearfield County Industrial Development Authority ("Authority") related to the financing and construction of a commercial warehouse ("Project") in Clearfield County. Complaint, ¶ 26.

2. B Warehouse Company ("B Warehouse"), a joint venture, was the "Investor Developer" of the Project. B Warehouse obtained financing for the construction of the Project, a portion of which was derived from the Plaintiffs' purchase of the Bonds. Id. at ¶ 14.

3. The Project's financing, including the Plaintiffs' purchase of the Bonds, is governed by a series of financing documents (collectively, the "Contracts") between or among the Plaintiffs, the Authority, B Warehouse, and the Savings & Trust Company of Pennsylvania, now known as S&T Bank ("S&T"). Id. at Exs. A through C, E.

4. The Contracts, which are all interrelated and cross-reference each other, include detailed provisions regarding security for the Bonds and the remedies available in the event of a default by B Warehouse in its obligations under the Contracts. Id.

5. The Contracts specifically and repeatedly provide, that the debt issued in connection with the Project, including the Bonds, "is payable solely from the receipts and revenues derived from the Project . . . ." The debt related to the Project is also secured by a First Mortgage (now satisfied) on the Project and a Second Mortgage. Id.

6. Critically, for purposes of this action, the Contracts also place strict limits on any liability of B Warehouse, or any of its constituent members. Specifically, section 6.5 of the Mortgage Loan Agreement for the Project provides:

> 6.5. DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited . . . [subject to certain specified conditions] to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives,

> successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding.

Id. at Ex. E.

7. In 2002, the Project's warehouse lost its longtime tenant, and, as a result, B Warehouse has not made scheduled interest payments under the Contracts. Id. at ¶¶ 28, 30 and 33.

8. The Plaintiffs have recourse under the Contracts as a result of the non-payments, but that recourse is limited to the security set forth in the Contracts, and does not extend to the personal assets of the Defendants. Id. at Ex. E § 6.5.

9. This tort action represents an improper attempt by the Plaintiffs to circumvent the detailed Contracts, and the remedies set forth therein, to which the Plaintiffs agreed in 1985.

10. For the multiple reasons set forth below, the Plaintiffs' Complaint is legally insufficient in its entirety, and also violates the Pennsylvania Rules of Civil Procedure in other fundamental respects as well. As a result, Bean requests that the Court dismiss the Plaintiffs' Complaint with prejudice.

DEMURRER – ALL COUNTS

11. The Plaintiffs' rights regarding the Bonds are governed by the Contracts. See Complaint, Ex. A through C, E and G.

12. The Contracts specify and limit the rights of the contracting parties in the event of non-payment or other default by B Warehouse. See, e.g., id. at Ex. C, § 6.5.

13. The Bonds are "payable solely from the receipts and revenues derived from the Project . . ." and are secured by the land and building. The Contracts provide that, beyond the security specified in the Contracts, the obligation of the Investor Developer is unsecured, with no recourse to the joint venturers of B Warehouse. Id. at Ex. A, p. 3 and Ex. E, § 6.5.

14. The Plaintiffs' Complaint constitutes an improper attempt to circumvent the Contracts to which the Plaintiffs agreed.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – ALL COUNTS – GIST OF THE ACTION

15. The Plaintiffs' Complaint constitutes an improper attempt to recast an ordinary breach of contract claim into tort claims because of the Plaintiffs' apparent dissatisfaction with the contractual remedies contained in the written agreements governing the Project's financing.

16. Pennsylvania's gist of the action doctrine bars the Plaintiffs' claims.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT I

17. In Count I, the Plaintiffs purport to set forth a claim against Bean for tortious interference with contract.

18. However, under Pennsylvania law, a party cannot tortiously interfere with a contract to which he or his principal is a party.

19. Here, the Plaintiffs' allegations in Count I are based on Bean's alleged interference with the Contracts, a series of agreements to which B Warehouse is one of the parties. Complaint, ¶¶ 15 and 17.

20. Bean's alleged improper interference occurred while he was acting in his role as a joint venturer in, or agent for, B Warehouse. Id. at ¶¶ 19, 21 through 23.

21. Consequently, under Pennsylvania law, the Plaintiffs' claim for tortious interference with contract is legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count I of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT II

22. In Count II, the Plaintiffs allege that Bean "concealed information" from the Plaintiffs concerning B Warehouse. Complaint, ¶ 46.

23. Under Pennsylvania law, silence cannot amount to fraud absent a duty to speak.

24. The Plaintiffs' Complaint fails to establish any duty on the part of Bean to disclose to Plaintiffs the unspecified information he allegedly concealed.

25. Accordingly, Count II is legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count II of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT II

26. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

27. In Count II, the Plaintiffs allege evasively and vaguely that they "believe[] and, therefore, aver[]" that Bean concealed unspecified information regarding an unspecified distribution of unspecified assets of B Warehouse.

28. Count II lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count II of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) – (4).

DEMURRER – COUNT III

29. In Count III, an alleged claim for conversion, the Plaintiffs contend that they had a "current possessory interest" in funds held in unspecified accounts.

30. The Plaintiffs' Complaint sets forth no basis for the conclusory allegation that the Plaintiffs held such an interest in the alleged accounts, or that Plaintiffs had any right or interest in the alleged accounts.

31. To the contrary, the Plaintiffs' Complaint and the Contracts attached thereto established that the Bonds are secured only by the interest of B Warehouse in the Project, i.e., by the land and warehouse and leases related thereto.

32. For example, the Mortgage Loan Agreement, a copy of which is attached to the Complaint as Ex. E, calls for the creation of a "Reserve Fund." Under the Mortgage Loan Agreement, payments from that fund are strictly limited to specified uses. Payments from the Reserve Fund for debt service on the Bonds are not permissible under the Mortgage Loan Agreement. Complaint, Ex. E, § 4.1.

33. Moreover, the Contracts specifically preclude the Plaintiffs from pursuing any claim against Bean individually. Id. at Ex. E, § 6.5.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count III of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT IV

34. In Count IV, the Plaintiffs seek injunctive relief based on an alleged - albeit unspecified - fraudulent transfer from B Warehouse to the Defendants.

35. Count IV is legally insufficient because B Warehouse is not a debtor in relation to Plaintiffs. To the contrary, the Plaintiffs purchased the Bonds from the Authority, not B Warehouse.

36. Count IV is also legally insufficient because the Plaintiffs failed to allege that B Warehouse is "insolvent."

37. The absence of any allegation of insolvency on the part of B Warehouse is highlighted by the fact that the Plaintiffs are attempting to circumvent the security provisions contained in the Contracts in the event of non-payment by B Warehouse.

38. The security for the Bonds provided by the Contracts remains available; the Plaintiffs have simply – but improperly – chosen not to pursue it.

39. Count IV is also legally insufficient because of the Plaintiffs' failure to resort to the security available and because the Plaintiffs have not exhausted their remedies at law or reduced any claim related to the Bonds to a judgment.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count IV of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT IV

40. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

41. In Count IV, the Plaintiffs allege evasively and vaguely "upon information and belief" that the Defendants "divested" B Warehouse of unspecified "assets" through unspecified "disbursements."

42. Count IV lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count IV with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) and (3).

DEMURRER – COUNT V

43. Count V, an alleged cause of action for civil conspiracy, is dependent on the existence of some valid underlying claim.

44. As set forth above, the Plaintiffs have failed to allege any valid claim against Bean.

45. Consequently, Count V is legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count V with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

COMPLAINT EX. J - PA. R. CIV. P. 1028(a)(2).

46. Plaintiffs attached Exhibit J to the Complaint for no material reason.

47. Bean requests that, in the event the Court does not dismiss the Complaint in its entirety, the Court strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

CLAIM FOR ATTORNEY FEES

48. In the Complaint, the Plaintiffs assert claims to recover attorney fees.

49. The Complaint includes no valid basis for the recovery of attorney fees by the Plaintiffs, even if the Plaintiffs could otherwise sustain any of their claims.

50. In the event that any of Plaintiffs' claims survive these Preliminary Objections, Bean requests that the Court strike Plaintiffs' request to recover attorney fees.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss and/or strike Plaintiffs' claims to recover attorney fees.

FAILURE TO JOIN INDISPENSABLE PARTIES

51. Plaintiffs' claims are inextricably interwoven with the Contracts.

52. In the Complaint, the Plaintiffs seek, *inter alia*, injunctive relief against entities that are not parties to this action. See Complaint and pp. 9, 10 and 12 through 14.

53. The Plaintiffs' failure to join indispensable parties deprives this Court of jurisdiction over this action and renders the Plaintiffs' Complaint legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint pursuant to Pa. R. Civ. P. 1028(a)(1) and (4).

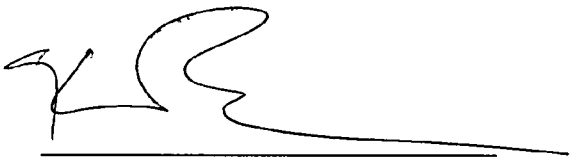
Respectfully submitted,

Kevin P. Allen
Pa. I.D. 76426
THORP REED & ARMSTRONG, LLP
One Oxford Centre, 14th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 394-2374
(412) 394-2555
Counsel for John W. Bean

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRELIMINARY OBJECTIONS** has been served this 1st day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

FILED 2cc
m/12:55
DEC 01 2004
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

I, Nicole L. Borda, hereby certify and affirm that pursuant to Rules 404(2) and 403 of the Pennsylvania Rules of Civil Procedure, I served the Complaint filed in this Court in the above-referenced matter upon John W. Bean by United States Certified Mail, Postage Prepaid, Return Receipt Requested.

A true and correct copy of the U.S. Postal Service Form 3811, Domestic Return Receipt, acknowledging delivery and receipt are attached hereto as Exhibit "A." It appears from the form that the Complaint was served on or about November 12, 2004.

I understand that the foregoing is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsifications to authorities.

BUCHANAN INGERSOLL PC

By: _____

Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street
3rd Floor
Harrisburg, PA 17101
(717)237-4800

DATE: November 29, 2004

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John W. Bean
470 Park Avenue 7D
New York, NY 10022

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X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) B. Hoover C. Date of Delivery 11/8/04

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Nicole L. Borda, Esquire
Buchanan Ingersoll
213 Market Street
Third Floor
Harrisburg, PA 17101

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

JOHN W. BEAN
4957 Peregrine Point Way
Sarasota, FL 34231

JOHN W. BEAN
470 Park Avenue 7D
New York, NY 10022

JOHN W. BEAN
735 Maple Avenue,
DuBois, PA 15801

GEORGE V. COHEN
2618 Waldman Drive
Williamsport, PA 17701

By: _____
Nicole L. Borda

DATE: November 29, 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.:** 2004-1759-CD
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after the complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money, property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

FILED

NOV 05 2004

m/ 2:00/c

William A. Shaw
Prothonotary

2 CERT TO SHFF

3 CERT TO ATTY

(1)

AVISO

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objecciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.:**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

COMPLAINT

Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust ("Plaintiffs"), by and through their undersigned counsel Buchanan Ingersoll, PC, hereby file the within Complaint, averring as follows:

PARTIES

1. Plaintiff Marc Katzen is an adult individual residing at 147 S. Interlachen, Unit 400, Winter Park, Florida.

2. Plaintiff Marshall Katzen, M.D., is an adult individual residing at 28 Aylesbury Road, Worcester, Massachusetts.

3. Plaintiff Harry Keller is and adult individual residing at 6 Scott Street, Sykesville, Jefferson County, Pennsylvania. Plaintiff Harry Keller brings this action in his capacity as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust.

4. Defendant John W. Bean is an adult individual. Defendant John W. Bean maintains residences at (1) 4957 Peregrine Point Way, Sarasota, Sarasota County, Florida, 34231; (2) 470 Park Avenue 7D, New York, New York, 10022; and (3) 735 Maple Avenue, DuBois, Clearfield County, Pennsylvania, 15801.

5. Defendant George V. Cohen is an adult individual residing at 2618 Waldman Drive, Williamsport, Lycoming County, Pennsylvania, 17701.

JURISDICTION AND VENUE

6. This action arises under the laws of the Commonwealth of Pennsylvania and is within the subject matter jurisdiction of this Court pursuant to 42 Pa. C.S. § 931.

7. This Court has personal jurisdiction over Defendants pursuant to 42 Pa. C.S. §§ 5301, 5322.

8. Venue in this Court is proper because, *inter alia*, the cause of action arose in Clearfield County, Pennsylvania. Pa. R.C.P. 1006.

BACKGROUND

9. On or about April 18, 1985, the Clearfield County Industrial Development Authority (the "Authority") issued and sold $300,000 of Commercial Development Second Mortgage Revenue Bonds, Series 1985 (the "Bonds") with a maturity date of February 1, 2020. A true and correct copy of the Form of the Bonds is attached hereto as Exhibit "A."

10. The Authority issued the Bonds pursuant to an April 18, 1985 Debt Resolution ("Debt Resolution"), authorizing the issuance of a First Mortgage Note in the amount of $1,700,000 ("First Mortgage") and the Bonds. A true and correct copy of the Debt Resolution is attached hereto as Exhibit "B."

11. The Debt Resolution provides that The Savings & Trust Company of Pennsylvania ("S&T") is the Paying Agent on the Bonds and the "Mortgagee" of the First Mortgage.

12. A Commercial Development Second Mortgage ("Second Mortgage") secures the Bonds and names the Authority as the Mortgagor and S&T as Mortgagee. A true and correct copy of the Second Mortgage is attached hereto as Exhibit "C."

13. The Authority issued the Bonds to provide a portion of the funds for the acquisition and construction of a commercial economic development warehouse project (the "B Warehouse Project") in Sandy Township, Clearfield County, Pennsylvania.

14. The developer of the B Warehouse Project is B Warehouse Company ("B Warehouse Co."), which was formed pursuant to a Joint Venture Agreement on April 25, 1985. A true and correct copy of the Joint Venture Agreement is attached hereto as Exhibit "D."

15. B Warehouse Co. is in the exclusive business of maintaining and operating the B Warehouse Project, which generates rental income to B Warehouse Co.

16. In addition to the Bonds, B Warehouse Co. obtained funding for the B Warehouse Project through the First Mortgage and an additional $500,000 investment by the parties to the Joint Venture Agreement (the "Joint Venturers").

17. All financing for the B Warehouse Project was subject to a certain Mortgage Loan Agreement dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, by and between the Authority, B Warehouse Co., and S&T. A true and correct copy of the Mortgage Loan Agreement is attached hereto as Exhibit "E."

18. The original Joint Venturers included Calvin Bean; The Retirement Plan for Employees of Ideal Products, Inc.; The George V. Cohen, P.C. Pension Plan; Creekside Farms; Bertram B. Leopold; and the Profit Sharing Plan for Leopold, Eberhardt & Goldstein.

19. Upon information and belief, the current Joint Venturers and their respective interests in B Warehouse Co. are as follows:

Susan Ansin	11.334%
Mid-State Bank – Bertram Leopold Trust	22%
Defendant John W. Bean	16.667%
Retirement Plan – Ideal Products, Inc.	16.666%
George V. Cohen Rollover IRA	16.666%
R.E. Shipman Trust	16.667%

20. With the exception of the Bonds, the original financing for the B Warehouse Project (*i.e.*, the First Mortgage and the initial $500,000 investment by the Joint Venturers) has been paid back in full.

21. On or about March 23, 1992, B Warehouse Co. appointed Defendant John W. Bean "the true and lawful attorney for B Warehouse Co." pursuant to a Durable Power of Attorney. A true and correct copy of the March 23, 1992 Durable Power of Attorney is attached hereto as Exhibit "F."

22. Upon information and belief and at all times relevant, Defendant John W. Bean has abdicated, delegated, and/or shared control and decision making authority with respect to the affairs of B Warehouse Co., in whole or in part, to Defendant George V. Cohen.

23. At all times relevant hereto, Defendants have exerted control over B Warehouse Co.'s affairs.

24. Upon information and belief, from January 1, 1986 through June 30, 2002, a single tenant (the "Tenant") continuously occupied the warehouse, which was constructed pursuant to the B Warehouse Project, subject to a "triple net" lease, *i.e.*, the tenant paid a market rental rate, plus all costs for utilities, insurance, maintenance and repairs and taxes (the "Lease").

25. Upon information and belief, B Warehouse Co. recognized additional rental income from the warehouse in 2003 of nearly $200,000.

THE DISPUTE

26. Plaintiffs purchased the Bonds on or about May 7, 1985. A true and correct copy of the Purchasers' Receipt is attached hereto as Exhibit "G."

27. The Bonds provide that the S&T, as Paying Agent, shall pay Plaintiffs interest at the minimum rate shown on the Bonds—*i.e.* fifteen percent, on the first day of each month plus an additional contingent interest equal to fifty percent of the rental income paid in each calendar year to the Investor Developer in excess of . . . $157,500 during the last twenty years." *See* Exhibit A.

28. Upon information and belief, on or about June 30, 2002, the Lease expired and the Tenant vacated the premises.

29. Plaintiffs, nonetheless, continued to receive their regularly scheduled interest payments until July 2004, when the payments stopped.

30. Upon information and belief, Defendants wantonly, intentionally, maliciously, and without cause took action to prevent B Warehouse Co., as the obligor on the Bonds, and S&T, as Paying Agent, from making the regularly scheduled monthly payments to Plaintiffs under the Bonds.

31. On or about July 8, 2004, counsel for B Warehouse Co. informed Plaintiffs that "the prospects for locating future tenants of the warehouse are not promising." A true and correct copy of the July 8, 2004 letter is attached hereto as Exhibit "H."

32. In the July 8, 2004 letter, counsel for B Warehouse Co. suggests that the parties (1) negotiate a "modification to the payment terms for the Bonds," (2) agree that the Bonds may be immediately repaid in full, thereby foregoing future payments on the Bonds, which were expected through the year 2020, or (3) declare a default on the Bonds.

33. By the time Plaintiffs received the July 8, 2004 letter from counsel for B Warehouse Co., however, S&T had already ceased making the regularly scheduled payments to Plaintiffs on the Bonds.

34. In an attempt to resolve the dispute, Plaintiff Marc Katzen sent a letter to Defendant John W. Bean on or about September 9, 2004, wherein Plaintiff Marc Katzen highlighted the parties' past business dealings and suggested a reasonable alternative to the course of action suggested by counsel for B Warehouse Co. A true and correct copy of the September 9, 2004 letter is attached hereto as Exhibit "I."

35. On or about September 10, 2004, Defendant John W. Bean sent Plaintiff Marc Katzen a terse and vulgar acknowledgment of receipt of Plaintiff Marc Katzen's letter. The e-mail correspondence attaches a photograph, demonstrating Defendants' improper behavior and unwillingness to respond in good faith to Plaintiffs' concerns. A true and correct copy of the September 10, 2004 email and attachment is attached hereto as Exhibit "J."

36. According to B Warehouse Co. financial statements dated December 31, 2003, the company possessed cash and investments valued in excess of $1,500,000. A true and correct copy of the December 31, 2003 Financial Statements is attached hereto as Exhibit "K."

37. Although the B Warehouse Co. financial statements suggest that B Warehouse Co. had funds as of December 31, 2003, that would be sufficient to pay the interest on the Bonds as required, Defendants prevented B Warehouse Co. and S&T, as the Paying Agent, from making the July 2004 payment and all subsequent interest payments as they became due.

COUNT I: TORTIOUS INTERFERENCE

38. The averments in paragraphs 1 through 37 above are incorporated by reference as if fully set forth herein.

39. As "Paying Agent" on the Bonds, S&T is required to make certain payments from the B Warehouse Co. accounts to Plaintiffs.

40. Upon information and belief, Defendants instructed S&T to cease any payments on the Bonds and/or prevented S&T from making payments through other unlawful conduct as alleged herein.

41. Defendants' actions in this regard were wanton, intentional, and malicious and specifically intended to coerce Plaintiffs to agree to renegotiate the terms of the Bonds and to establish terms more favorable to the Joint Venturers and Defendants.

42. Defendants' actions were neither lawful, justified, nor privileged.

43. Through their conduct, Defendants have interfered unlawfully with B Warehouse Co.'s contractual obligations, as obligor under the Bonds, to Plaintiffs and S&T's obligations, as Paying Agent for the Bonds, to Plaintiffs.

44. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds in an amount believed to be in excess of $1,500,000.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request judgment in their favor and against Defendants George V. Cohen and John W. Bean as follows:

(1) a preliminary and permanent injunction, which enjoins any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds;

(2) damages in an amount believed to be in excess of $1,500,000 and, in any event, to be proved at trial;

(3) punitive damages; and

(4) attorneys' fees, costs, interest and such other relief as this Court deems just and appropriate.

COUNT II: FRAUD

45. The averments in paragraphs 1 through 44 above are incorporated by reference as if fully set forth herein.

46. It is believed and, therefore, averred that Defendants wantonly, intentionally, and maliciously concealed information regarding the distribution of the assets of B Warehouse Co. to avoid the regularly scheduled interest payments on the Bonds to Plaintiffs.

47. It is further believed that Defendants' actions were intended to force Plaintiffs to agree to renegotiate the terms of the Bonds to establish new terms that are more favorable to the Joint Venturers and Defendants.

48. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds.

49. Defendants are, thus, liable to Plaintiffs for these intentional, fraudulent, and improper acts, which have caused harm to Plaintiffs in an amount believed to be in excess of $1,500,000.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request judgment in their favor and against Defendants George V. Cohen and John W. Bean as follows:

(1) a preliminary and permanent injunction, which enjoins any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds;

(2) damages in an amount believed to be in excess of $1,500,000 and, in any event, to be proved at trial;

(3) punitive damages; and

(4) attorneys' fees, costs, interest and such other relief as this Court deems just and appropriate.

COUNT III: CONVERSION

50. The averments in paragraphs 1 through 49 above are incorporated by reference as if fully set forth herein.

51. Plaintiffs had a current possessory interest in the funds held in the B Warehouse Co. accounts at the time that Defendants depleted those accounts.

52. Defendants wantonly, intentionally, and maliciously converted those assets for their own personal use and the use of others without justification or compensation to Plaintiffs.

53. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request judgment in their favor and against Defendants George V. Cohen and John W. Bean as follows:

(1) a preliminary and permanent injunction, which enjoins any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds;

(2) damages in an amount believed to be in excess of $1,500,000 and, in any event, to be proved at trial;

(3) punitive damages; and

(4) attorneys' fees, costs, interest and such other relief as this Court deems just and appropriate.

COUNT IV: FRAUDULENT TRANSFERS

54. The averments in paragraphs 1 through 53 above are incorporated by reference as if fully set forth herein.

55. Despite B Warehouse Co.'s obligation under the Bonds to pay Plaintiffs the regularly scheduled interest payments, B Warehouse Co.'s counsel notified Plaintiffs in a July 8, 2004 letter that B Warehouse Co. would cease further payments unless Plaintiffs agreed to renegotiate the terms of the Bonds.

56. Upon information and belief, Defendants wantonly, intentionally, and maliciously divested the B Warehouse Co. of its assets through disbursements to themselves and others, thereby preventing B Warehouse Co. from satisfying its obligations to Plaintiffs on the Bonds.

57. Defendants have concealed these disbursements from Plaintiffs.

58. The divestiture of assets from the accounts of B Warehouse Co. and resultant failure of B Warehouse Co. to pay amounts due on the Bonds has impaired the value of the Bonds.

59. The disbursements Defendants made violate common law and the Uniform Fraudulent Transfers Act, 12 Pa. C.S. §§ 5101-5110 .

60. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request that this Court preliminarily and permanently enjoin any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds, plus such other relief as this Court deems just and appropriate.

COUNT V: CIVIL CONSPIRACY

61. The averments in paragraphs 1 through 60 above are incorporated by reference as if fully set forth herein.

62. As described more fully above, Defendants acted in concert to defraud Plaintiffs and interfere with Plaintiffs' contractual rights.

63. Defendants actions were wanton, intentional, malicious, and without lawful purpose and, in fact, were intended to coerce Plaintiffs into renegotiating the terms of the Bonds to establish new terms that are more favorable to the Joint Venturers and Defendants.

64. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request judgment in their favor and against Defendants George V. Cohen and John W. Bean as follows:

(1) a preliminary and permanent injunction, which enjoins any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds;

(2) damages in an amount believed to be in excess of $1,500,000 and, in any event, to be proved at trial;

(3) punitive damages; and

(4) attorneys' fees, costs, interest and such other relief as this Court deems just and appropriate.

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street - 3rd Floor
Harrisburg, PA 17101
(717) 237-4800 (ph)
(717) 233-0852 (fax)

Attorneys for Plaintiffs

DATE: November 4, 2004

VERIFICATION

I, Marc Katzen, have read the foregoing document and verify that the facts set forth are true and correct to the best of my knowledge, information and belief. To the extent that the foregoing document and/or its language is that of counsel, I have relied upon counsel in making this Verification.

I understand that any false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



Marc Katzen

"EXHIBIT B"

(FORM OF DEFINITIVE FULLY REGISTERED SERIES OF 1985 BOND)

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BOND,
SERIES OF 1985
(B WAREHOUSE COMPANY PROJECT)

Registered Holder:
No. IR-
$_____
Maturity Date: February 1, 2020
Interest Rate: 15% Minimum

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (the "Authority"), a public instrumentality and body politic and corporate of the Commonwealth of Pennsylvania, duly organized and existing under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"), for value received, hereby promises to pay on this Commercial Development Second Mortgage Revenue Bond, Series of 1985 (B Warehouse Company Project) (the "Bond"), but solely from the receipts and revenues hereinafter mentioned, to the Registered Holder shown hereon, or registered assigns, on the Maturity Date shown hereon, unless this Bond shall be redeemable and before said date shall have been duly called for redemption in whole or in part and payment of the redemption price made or provided for, upon surrender hereof, the principal sum shown hereon, and to pay interest only monthly hereon from the first day of the month preceding the authentication date hereof, unless the date hereof is prior to May 1, 1985, then from April 15, 1985, at the minimum rate shown hereon, on the first day of each month thereafter, plus additional contingent interest computed to be equal to a total of fifty (50%) percent of the rental income paid in each calendar year to the Investor Developer in excess of $337,500 during the first ten (10) years, and in excess of $227,500 during the next five (5) years, and in excess of $157,500 during the last twenty (20) years, payable proportionately to the Registered Holder of this Bond in the same proportion as the principal amount of this Bond bears to the total of all Bonds then Outstanding over the period of approximately thirty-five (35) years (which is the term of this Bond) in monthly payments, and plus further additional contingent interest for Appreciated Value computed to be equal to a total of fifty (50%) percent of the amount (if any) by which (a) the Appreciated Value of the Project exceeds $2,500,000 if the Registered Holders of all of the Bonds approve the sale of the Project before the maturity of the Bonds, or (b) the Appraised Value of the Project exceeds $2,500,000 at maturity of the Bonds, or on Transfer, or on the borrowing of funds not used for Capital Additions on the Project exceeds the Base Amount (in accordance with each of the foregoing terms as hereinafter defined), payable at said time proportionately to the Registered Holder of this (Shared Appreciation) Bond in the same proportion as the principal amount of this Bond bears to the total of all (Shared Appreciation) Bonds then Outstanding (Note - the Investor Developer at its option may from time to time pay this additional contingent interest for Appreciated Value on this (Shared Appreciation) Bond in advance by having the Project appraised. Upon payment of additional contingent interest for Appreciated Value of said total of fifty (50%) percent of the Appreciated Value on all (Shared Appreciation) Bonds, including this Bond, over the Base Amount, the Base Amount will then thereafter be increased. If the Project is not sold or otherwise refinanced at maturity of the (Shared Appreciation) Bonds, the Registered Holder must refinance the outstanding obligation (up to the $300,000) of all of the (Shared Appreciation) Bonds (including this Bond), including the then due fifty (50%) percent of the Appreciated Value over the then Base Value. The aforesaid Registered Holder must refinance using a fully amortizing mortgage instrument with a term of thirty (30) years. Said mortgage instrument shall require interest at a minimum of fifteen (15%) percent or two (2%) percent above the highest interest rate on comparable commercial mortgages in the 180 days preceding said refinancing. The

mortgage shall be a first mortgage on the Project and shall contain the shared appreciation terms and the variable interest terms which apply the (Shared Appreciation) Bonds (including this Bond). Registered Holder holding in total seventy-five (75%) percent of the (Shared Appreciation) Bonds (including this Bond) may in writing elect to defer all or part of this additional contingent interest for Appreciated Value on Transfer. Prior to each Transfer (in sufficient time to permit the appraisal provided for to determine the Appreciated Value as hereinafter defined), the Investor Developer shall give the Registered Holder (including the Registered Holder of this Bond) written notice thereof, together with an executed copy of the transfer agreement. Upon each sale of the Project or Investor Developer's interest in the Project, the Investor Developer shall furnish to all Registered Holders (including the Registered Holder of this Bond) an executed copy of the closing statement signed by the Investor Developer and the purchaser and such other evidence of the sale price as any of the Registered Holders may reasonably request), upon the then surrender hereof, said interest and principal payments to be made either until the Authority's obligation with respect to the payment of such principal sum shall be discharged as provided hereinafter, or until maturity hereof, or if this Bond shall have been duly called for previous redemption and payment of the redemption price shall have been made or provided for, until the redemption date.

"Appreciated Value" shall mean in the case of a sale of the Project or the Investor Developer's interest therein (whether for cash or in installments), the gross sale price (including the then balance of the indebtedness whether or not assumed by the purchaser) or, if the gross sale price does not reasonably reflect the then current market conditions, the Fair Market Value of the Project and, in all other cases, the Fair Market Value of the Project. Whether the gross sale price reasonably reflects the then current market conditions and the Fair Market Value shall be determined by appraisal. The Fair Market Value shall be determined by an average of two appraisals. One appraiser shall be selected and paid for by the Investor Developer and one selected and paid for by the Paying Agent for the Bondholders, and both shall be M.I.A. appraisers. "Base Amount" shall mean at the time or each Transfer and at maturity the sum of $2,500,000 reduced by insurance proceeds and condemnation proceeds not used for Capital Additions and increased by any Capital Additions not paid for by insurance proceeds and condemnation proceeds. The Base Amount shall from time to time be increased to the Appreciated Value at the time that actual payment of contingent interest based on appreciation is paid to Bondholders. "Transfer" shall mean and includes a sale, installment sale contract, agreement for deed, refinancing, creation of a lien subordinate to the First and Second Mortgages, leasing, or a judicial sale on execution or other legal process; but does not include a transfer by devise, descent or by operation of law upon the death of any Joint Venturer of the Investor Developer or his descendants, a gift to a relative of any Joint Venturer of the Investor Developer by blood or marriage without consideration of any kind, or a transfer to a spouse of any Joint Venturer of the Investor Developer pursuant to divorce decree or property settlement.

The principal of, premium, if any, and interest on this Bond shall be payable at the Principal Corporate Trust Office of The Savings & Trust Company of Pennsylvania (the "Paying Agent"), in the Borough of Brookville, Pennsylvania, or of any successor paying agent under the Debt Resolution of the Authority hereinafter mentioned, in any coin or currency of the United States of America which, at time of payment, is legal tender for the payment of public and private debts. The interest hereon is payable by check or draft mailed by the Paying Agent to the Registered Holder of this Bond on the record date for payment of such interest and principal, namely the day which is the 10th day prior to said payment date. Payments of principal and interest shall be noted on the Payment Record maintained by the Paying Agent and such payments shall fully discharge the obligation of the Authority hereon to the extent of the payments so made. Upon final payment of principal and interest, this Bond shall be submitted to the Paying Agent for cancellation as to the Authority.

This Bond is issued in full compliance with the Constitution and statutes of the Commonwealth of Pennsylvania, including among others, the Act. Pursuant to law and the proceedings under which this Bond is issued, this Bond is payable solely out of the revenues and receipts derived from the mortgage loan financing by the Authority of a certain commercial economic development warehouse facility which is to be acquired and constructed and is located in the Township of Sandy, Clearfield County, Pennsylvania, to B Warehouse Company (the "Investor Developer"), a Joint

Venture. The installments to be paid by the Investor Developer under the mortgage loan financing of the facility hereinafter described have been assigned to the Paying Agent as security for the Bonds and such installments are sufficient to pay the principal of and interest on the Bonds as the same become due and payable.

This Bond and such other Bonds of the series of which it forms a part are issued pursuant to and in full compliance with the Constitution and statutes of the Commonwealth of Pennsylvania, particularly the Act, and pursuant to the Debt Resolution of the Authority, hereinafter mentioned. This Bond and the series of which it forms a part and the interest appertaining hereto are limited obligations of the Authority and are payable solely from the receipts and revenues derived from the Project hereinafter defined. This Bond and the interest and contingent interest appertaining hereto do not now and shall never in any respect be a general obligation of the Authority nor a general obligation of the Commonwealth of Pennsylvania or any political subdivision thereof, nor do they in any manner pledge the general credit nor taxing power of the Commonwealth of Pennsylvania or any political subdivision thereof, nor shall they be payable in any manner from funds raised by taxation.

Neither the County of Clearfield, Pennsylvania, nor the Commonwealth of Pennsylvania shall in any event be liable for the payment of the principal of or interest or contingent interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever of the Authority, and none of the Bonds, nor any of the Authority's agreements or obligations shall be construed to constitute an indebtedness of the County of Clearfield, Pennsylvania, or the Commonwealth of Pennsylvania, within the meaning of any constitutional or statutory provision whatsoever.

This Bond is one of an initially authorized series of $300,000, aggregate principal amount, of commercial development revenue bonds of the Authority, known as "Clearfield County Industrial Development Authority, Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project)" (the "Bonds"), all of like date and tenor, except as to amount, rate of interest, registration, maturity and provisions for redemption, and all issued under and secured by the Debt Resolution of the Authority, adopted on April 18, 1985 (the "Debt Resolution"), and by the pledge of the income, installments, receipts and revenues payable under a Mortgage Loan Agreement (the "Mortgage Loan Agreement"), dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, by and between the Investor Developer, the Paying Agent and the Authority, and by the pledge of certain other moneys of the Project financed, as set forth above, and further secured by the collateral assignment of a commercial lease and all subsequent commercial leases (the "Lease" and "Leases") of the facility, after completion of the acquisition and construction, from the Investor Developer, as the Landlord, to Brockway, Inc. (NY), as the Initial Tenant, or various subsequent commercial entities, as the subsequent Tenants, which Lease and Leases (if not extended in some cases as the Initial Tenant or subsequent Tenants have the option to do) may be terminated in certain years less than the terms of the Bonds, which if this occurs then the Bonds will thereafter be secured by the land and building only with the Investor Developer nevertheless remaining unconditionally obligated to make the mortgage loan installment payments under the Mortgage Loan Agreement (although that obligation will then be unsecured), all as provided in the Debt Resolution and in the Mortgage Loan Agreement. Reference is made to the Debt Resolution, a copy of which is on file at the Principal Corporate Trust Office of the Paying Agent, and to the Mortgage Loan Agreement and the Lease for, inter alia, a definition and description of the "Project", and a statement of the income, installments, receipts, revenues and moneys of the Authority pledged for the payment of the principal of, premiums and other charges, if any, and interest on the Bonds, the nature, extent and manner of enforcement of the security, the rights of holders of the Bonds and of the Paying Agent with respect to such security, and the terms under which the Bonds are issued. All of the Bonds issued under the Debt Resolution are subordinate to the First Mortgage Loan Note (the "First Mortgage Loan Note") issued by the Authority under the Debt Resolution to The Savings & Trust Company of Pennsylvania simultaneously herewith, but otherwise are equally and ratably secured as to principal, premium, if any, and interest (except said Bonds and the second lien of the Debt Resolution may be automatically released by operation of law and/or subordinated to any financing not under the Debt Resolution subsequently entered into

Registered Holders of the Bonds which the Investor Developer determines is necessary to finance an extention, enlargement, addition or improvement to the Project on any parcel of undeveloped ground which is so designated for release and/or subordination and is now a portion of the Premises), as provided in said Mortgage Loan Agreement, to all of the provisions of which any holder of this Bond by his acceptance hereof thereby assents, and to which Debt Resolution and Mortgage Loan Agreement reference is hereby made for a description of the nature and extent of the security, and a statement of the terms and conditions upon which the Bonds are issued and secured, the rights of the Registered Holders thereof and of the Paying Agent thereunder, and the bond indebtedness which is equally secured, and the other matters set forth therein.

This Bond is transferable by the Registered Holder hereof or his duly authorized attorney at the Principal Corporate Trust Office of the Paying Agent, upon surrender of this Bond, accompanied by a duly executed instrument of transfer, in form and with guarantee of signature satisfactory to the Paying Agent, subject to such reasonable regulations as the Authority or the Paying Agent may prescribe, and upon payment of any taxes or other governmental charges incident to such transfer. Upon any such transfer, a new registered Bond or Bonds in the same aggregate principal amount will be issued to the transferee. The person in whose name this Bond is registered shall be deemed to be the absolute owner hereof for all purposes, whether or not this Bond shall be overdue, and the Authority and the Paying Agent shall not be affected by any notice to the contrary.

The Bonds are issuable in fully registered form without coupons in requested denominations thereof. The Bonds, upon surrender thereof at the Principal Corporate Trust Office of the Paying Agent with, if required by the Paying Agent, a written instrument of transfer, in the form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Holder or his duly authorized attorney, may, at the option of the Registered Holder hereof, be exchanged for an equal aggregate principal amount of new Bonds of any other authorized denomination, upon payment of any tax, fee or other governmental charge required to be paid with respect to such exchange, and in the manner and subject to the conditions provided in the Debt Resolution.

Neither the Authority nor the Paying Agent shall be required to transfer or exchange any Bonds for a period of ten (10) days next preceding any interest payment date or any selection by lot of Bonds to be redeemed, nor to transfer or exchange any Bonds selected, called or being called for redemption.

As permitted by the Act, this Bond is issued with the intent that the laws of the Commonwealth of Pennsylvania shall govern its construction, and, as declared by the Act, the Authority shall not be required to pay any taxes upon any property acquired or used for its purposes, and this Bond, which is being issued for a proper public purpose by the Authority, its transfer and the income therefrom (including any profits made on the sale thereof), shall at all times be free from taxation within the Commonwealth of Pennsylvania.

This Bond is not subject to Optional Redemption (prepayment) prior to its maturity.

The Bonds, including this Bond, are subject to Mandatory Extraordinary Redemption (prepayment) in whole at 100% of the principal amount, plus accrued interest thereon to the redemption date, if, as a result of changes in the Constitution of the Commonwealth of Pennsylvania or in the Constitution of the United States of America, or of legislative or administrative action (whether State or Federal), or of a final decree, judgment or order of any court or administrative body having jurisdiction in the premises (after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate), the obligations of the Investor Developer under the Mortgage Loan Agreement shall become unenforceable or impossible of performance in any material respect in accordance with the intent and purpose of the parties as expressed in said Mortgage Loan Agreement.

The Bonds, including this Bond, are subject to Mandatory Extraordinary Redemption (prepayment) in whole or in part at 100% of the principal amount, plus accrued interest thereon to the redemption (prepayment) date, to the extent of those Bonds held to be illegal, unauthorized or unenforceable as a result of changes in the

Constitution of the Commonwealth of Pennsylvania or in the Constitution of the United States of America, or of legislative or administrative action (whether State or Federal), or of a final decree, judgment or order of any court or administrative body having jurisdiction in the premises (after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate).

The Bonds, including this Bond, are subject to an increase in the rate of interest payable hereon to an adjusted taxable rate at all times thereafter equal to a rate which renders an equivalent taxable return to the Registered Holders, which will occur in the event interest on the Bonds, including this Bond, shall be determined by the Internal Revenue Service or by the Federal courts (in each case, after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate) to have become subject to Federal income taxes by virtue of the applicable limitation imposed by Section 103 (b) of the Internal Revenue Code of 1954, as amended, (the "Code"), on bond issuance and/or capital expenditures having been exceeded, or in the event the interest on the Bonds shall become subject to taxation as the result of any other provision of Section 103 or the rules and regulations thereunder (except for interest on any Bond during the period it is held by a "substantial user" of the Project or a "related person" within the meaning of the Code). In such event, the Investor Developer will be obligated to pay this increased taxable rate on the Bonds, including this Bond, from the date interest on the Bonds, including this Bond, is determined to be taxable.

In any case where less than all the Bonds are to be redeemed and/or prepaid, such Bonds shall be called pro rata according to date of maturity by the Paying Agent as specified herein and in the manner provided for in the Debt Resolution.

Any redemption or prepayments, as hereinbefore authorized (except in the cases of Mandatory Extraordinary Redemption (prepayment) wherein notice shall be given and be effective immediately, shall be deemed to be the redemption (prepayment) date, and thereafter interest on the Bonds, including this Bond, shall cease to accrue), shall be made after timely notice by certified mail -return receipt requested shall be given by the Paying Agent to the Registered Holders of the affected Bonds.

In case an Event of Default, as defined in the Mortgage Loan Agreement, shall occur, the principal of all Bonds then Outstanding may be declared or may become due and payable upon the conditions, in the manner, and with the effect provided in the Debt Resolution.

No recourse under or upon any obligation, covenant or agreement contained in the Debt Resolution or the Mortgage Loan Agreement, or in any Bond or interest thereby secured or under any judgment obtained against the Authority or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances under or independent of the Debt Resolution or the Mortgage Loan Agreement, shall be had against any board member, officer, agent, attorney or employee, as such, past, present or future, of the Authority, either directly or through the Authority or otherwise, for the payment for or to the Authority or any receiver thereof, or for or to the Registered Holder of any Bond or otherwise, of any sum that may be due and unpaid by the Authority upon any such Bond. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such board member, officer, agent, attorney or employee, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for, or to the Authority or any receiver thereof, or for or to the Registered Holder of any Bond or otherwise, of any sum that may remain due and unpaid upon the Bonds and interest thereby secured or any of them, is hereby expressly waived and released as a condition of and consideration for the issuance of the Bonds.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Mortgage Loan Agreement and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; and the issuance of this Bond and the series of which it forms a part, together with all other obligations of the Authority, do not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any benefit under the Debt Resolution nor shall it be valid or obligatory for any purpose until this Bond shall have been manually authenticated by the Certificate of Authentication endorsed hereon being duly signed by the Paying Agent.

IN WITNESS WHEREOF, CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY has caused this Bond to be signed in its name and in its behalf by the manual or facsimile signature of its Chairman or Vice Chairman and a manual or facsimile of its corporate seal to be impressed or imprinted hereon, duly attested by the manual or facsimile signature of its Secretary or Assistant Secretary, all effective as of _____, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

By_____
Chairman

(AUTHORITY SEAL)

Attest:

_____
Secretary

* * * * * *

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds, of the series designated therein, described in the within-mentioned Debt Resolution.

The Text of Opinion attached to the reverse hereof is the text of the opinion of Messers. Lynch and Lynch, of Pittsburgh, Pennsylvania, an executed counterpart of which, dated the date of delivery of and payment for the series of Bonds of which this Bond is one, is on file at the Principal Corporate Trust Office of the Paying Agent.

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as Paying Agent

Authentication Date:_____ By_____
Authorized Person

* * * * * *

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

_____

_____

PLEASE INSERT SOCIAL SECURITY OR OTHER TAX IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

the within Bond issued by the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, and hereby irrevocably constitutes and appoints _____ as his Attorney to transfer said Bond on the books of said Authority with full power of substitution in the premises.

Dated _____

_____
(Sign here exactly as name(s) is (are) shown on the face of this Bond without any change or alteration whatever.)

SIGNATURE GUARANTEED: _____

* * * * * *

TEXT OF OPINION OF MESSRS. LYNCH AND LYNCH, BOND COUNSEL, OF PITTSBURGH, PENNSYLVANIA, ISSUED IN RESPECT OF THE CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS, SERIES OF 1985.

* * * * * *

PAYMENT RECORD

Page No. ____

Fully Registered
Bond No. IR - ____

Due Date	Principal Payment	Principal Balance Due	Interest Payment (15%)	Date Paid	Name of Paying Agent's Authorized Official and Title

CERTIFICATION

I, the undersigned, Secretary of Clearfield County Industrial Development Authority, do hereby certify that the foregoing Debt Resolution was duly adopted and passed by a majority vote of a quorum of members present at a special meeting of said Authority duly called and held on April 18, 1985, which meeting was at all times open to the public and at which meeting a quorum of said Authority was present and participating, and that the vote of the members of said Authority on said Debt Resolution was as follows:

Members of the Authority	Vote
Stanley E. Crum, Chairman	Yes
William Ginter, Vice Chairman	Yes
Robert E. Watson, Secretary and Treasurer and Executive Director	Yes
Francis E. Reed, Assistant Secretary-Treasurer	Yes
Samuel Mollica, Member	Yes
William R. Harkins, Member	absent
Gerald Buzzard, Member	Yes

I hereby further certify that said Debt Resolution has not been amended, modified or rescinded and is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto placed my hand and the seal of Clearfield County Industrial Development Authority on this May 7, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

By Robert E. Watson
Secretary

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BOND, SERIES OF 1985 (B WAREHOUSE COMPANY PROJECT)

No. IR-_____

$_____

Maturity Date: FEBRUARY 1, 2020

Interest Rate: 15% MINIMUM

REGISTERED HOLDER: SAMPLE

_____ (DOLLARS)

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (the "Authority"), a public instrumentality and body politic and corporate of the Commonwealth of Pennsylvania, duly organized and existing under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"), for value received, hereby promises to pay on this Commercial Development Second Mortgage Revenue Bond, Series of 1985 (B Warehouse Company Project) (the "Bond"), but solely from the receipts and revenues hereinafter mentioned, to the Registered Holder shown hereon, or registered assigns, on the Maturity Date shown hereon, unless this Bond shall be redeemable and before said date shall have been duly called for redemption in whole or in part and payment of the redemption price made or provided for, upon surrender hereof, the principal sum shown hereon, and to pay interest only monthly hereon from the first day of the month preceding the authentication date hereof, unless the date hereof is prior to May 1, 1985, then from April 15, 1985, at the minimum rate shown hereon, on the first day of each month thereafter, plus additional contingent interest computed to be equal to a total of fifty (50%) percent of the rental income paid in each calendar year to the Investor Developer in excess of $387,500 during the first ten (10) years, and in excess of $237,500 during the next five (5) years, and in excess of $157,500 during the last twenty (20) years, payable proportionately to the Registered Holder of this Bond in the same proportion as the principal amount of this Bond bears to the total of all Bonds then Outstanding over the period of approximately thirty-five (35) years (which is the term of this Bond) in monthly payments, and plus further additional contingent interest for Appreciated Value computed to be equal to a total of fifty (50%) percent of the amount (if any) by which (a) the Appreciated Value of the Project exceeds $2,500,000 if the Registered Holders of all of the Bonds approve the sale of the Project before the maturity of the Bonds, or (b) the Appraised Value of the Project exceeds $2,500,000 at maturity of the Bonds, or on Transfer, or on the borrowing of funds not used for Capital Additions on the Project exceeds the Base Amount (in accordance with each of the foregoing terms as hereinafter defined), payable at said time proportionately to the Registered Holder of this (Shared Appreciation) Bond in the same proportion as the principal amount of this Bond bears to the total of all (Shared Appreciation) Bonds then Outstanding (Note - the Investor Developer at its option may from time to time pay this additional contingent interest for Appreciated Value on this (Shared Appreciation) Bond in advance by having the Project appraised. Upon payment of additional contingent interest for Appreciated Value of said total of fifty (50%) percent of the Appreciated Value on all (Shared Appreciation) Bonds, including this Bond, over the Base Amount, the Base Amount will then thereafter be increased. If the Project is not sold or otherwise refinanced at maturity of the (Shared Appreciation) Bonds, the Registered Holder must refinance the outstanding obligation (up to the $300,000) of all of the (Shared Appreciation) Bonds (including this Bond), including the then due fifty (50%) percent of the Appreciated Value over the then Base Value. The aforesaid Registered Holder must refinance using a fully amortizing mortgage instrument with a term of thirty (30) years. Said mortgage instrument shall require interest at a minimum of fifteen (15%) percent or two (2%) percent above the highest interest rate on comparable commercial mortgages in the 120 days preceding said refinancing. The mortgage shall be a first mortgage on the Project and shall contain the shared appreciation terms and the variable interest terms which apply the (Shared Appreciation) Bonds (including this Bond). Registered Holder holding in total seventy-five (75%) percent of the (Shared Appreciation) Bonds (including this Bond) may in writing elect to defer all or part of this additional contingent interest for Appreciated Value on Transfer. Prior to each Transfer (in sufficient time to permit the appraisal provided for to determine the Appreciated Value as hereinafter defined), the Investor Developer shall give the Registered Holder (including the Registered Holder of this Bond) written notice thereof, together with an executed copy of the transfer agreement. Upon each sale of the Project or Investor Developer's interest in the Project, the Investor Developer shall furnish to all Registered Holders (including the Registered Holder of this Bond) an executed copy of the closing statement signed by the Investor Developer and the purchaser and such other evidence of the sale price as any of the Registered Holders may reasonably request), upon the then surrender hereof, said interest and principal payments to be made either until the Authority's obligation with respect to the payment of such principal sum shall be discharged as provided hereinafter, or until maturity hereof, or if this Bond shall have been duly called for previous redemption and payment of the redemption price shall have been made or provided for, until the redemption date.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE SIDE HEREOF AND SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH ON THE FRONT SIDE HEREOF.

This Bond shall not be entitled to any benefit under the Debt Resolution nor shall it be valid or obligatory for any purpose until this Bond shall have been manually authenticated by the Certificate of Authentication endorsed hereon being duly signed by the Paying Agent.

IN WITNESS WHEREOF, CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY has caused this Bond to be signed in its name and in its behalf by the manual or facsimile signature of its Chairman or Vice Chairman and a manual or facsimile of its corporate seal to be impressed or imprinted hereon, duly attested by the manual or facsimile signature of its Secretary or Assistant Secretary, all effective as of May 7, 1985.

(AUTHORITY SEAL)

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Attest:

_____
Secretary

SAMPLE

_____
Chairman

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds, of the series designated therein, described in the within-mentioned Debt Resolution.

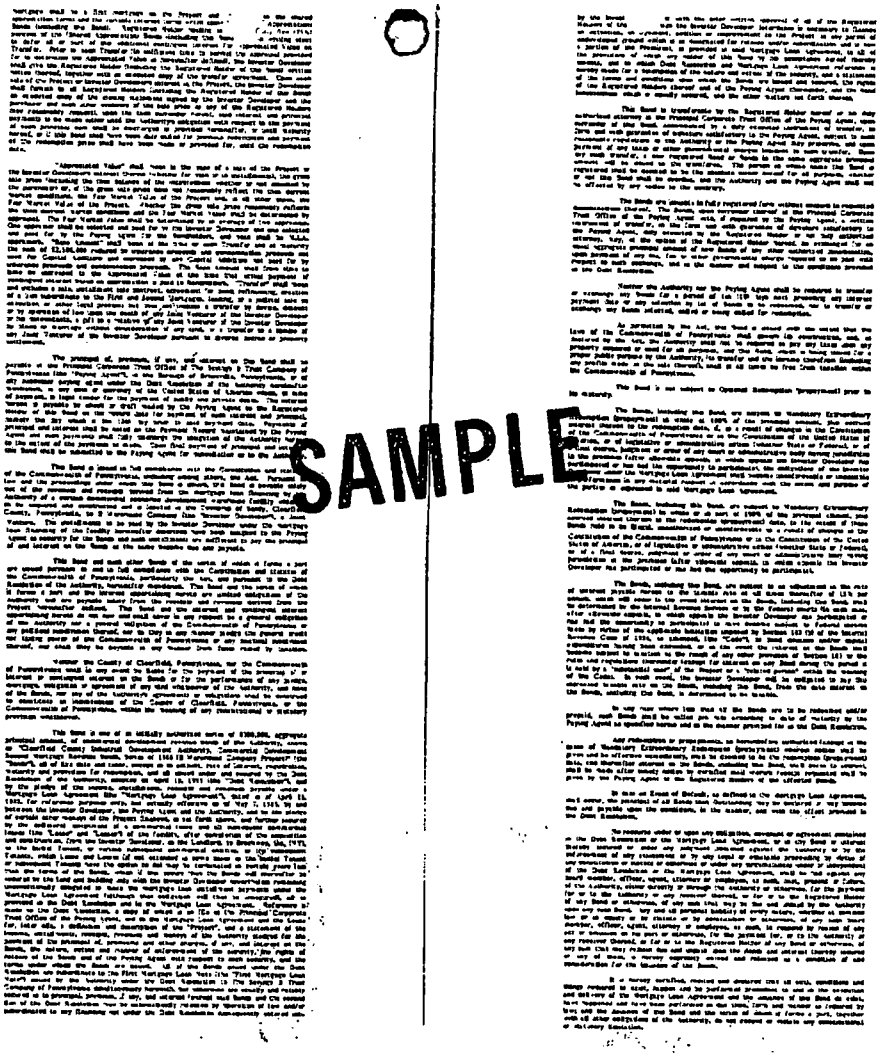
The Text of Opinion attached to the reverse hereof is the text of the opinion of Messers. Lynch and Lynch, of Pittsburgh, Pennsylvania, an executed counterpart of which, dated the date of delivery of and payment for the series of Bonds of which this Bond is one, is on file at the Principal Corporate Trust Office of the Paying Agent.

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as Paying Agent

By_____
Authorized Person

Authentication Date:_____

32.



SAMPLE

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

_____

_____

SAMPLE

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

the within Bond issued by the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, and hereby irrevocably constitutes and appoints _____ as his Attorney to transfer said Bond on the books of said Authority with full power of substitution in the premises.

Dated _____

_____

(Sign here exactly as name(s) is (are) shown on the face of this Bond without any change or alteration whatever.)

SIGNATURE GUARANTEED: _____

Exhibit B

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
(Clearfield County, Pennsylvania)

DEBT RESOLUTION

A DEBT RESOLUTION OF THE CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY ACCEPTING AND APPROVING THE NOTE PURCHASE PROPOSAL AND THE BOND PURCHASE PROPOSALS OF THE VARIOUS PURCHASERS, AND AUTHORIZING AND DIRECTING PURSUANT THERETO THE ISSUANCE OF THE $1,700,000 COMMERCIAL DEVELOPMENT FIRST MORTGAGE LOAN NOTE (B WAREHOUSE COMPANY PROJECT) AND OF $300,000, AGGREGATE PRINCIPAL AMOUNT, OF COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS, SERIES OF 1985 (B WAREHOUSE COMPANY PROJECT), AND THE RELATED EXECUTION AND DELIVERY OF THE MORTGAGE LOAN AGREEMENT, THE FIRST MORTGAGE, THE SECOND MORTGAGE AND THE ASSIGNMENT, AND ACCEPTING THE COLLATERAL ASSIGNMENT OF THE LEASE IN CONNECTION THEREWITH; ESTABLISHING A CLEARING FUND, AN ACQUISITION AND CONSTRUCTION FUND AND A BOND FUND; AUTHORIZING ALL OTHER NECESSARY ACTION; AND REPEALING ALL INCONSISTENT RESOLUTIONS.

Adopted: April 18, 1985

WHEREAS, Clearfield County Industrial Development Authority (the "Authority") has been requested to finance a certain commercial development warehouse project (the "Project") for B Warehouse Company (the "Investor Developer" and "Lessor"), which is to be leased to Brockway, Inc. (NY) (the "Initial Tenant" and "Lessee"), and has determined that said Project will further the purposes for which the Authority was incorporated, namely to promote industry and develop trade by inducing manufacturing, industrial and commercial enterprises to locate in or remain within Clearfield County and the Commonwealth of Pennsylvania; and

WHEREAS, the Authority has determined to finance the Project and its related costs by the issuance of said $1,700,000 Commercial Development First Mortgage Loan Note (B Warehouse Company Project) (the "First Mortgage Loan Note" and "Note") to The Savings & Trust Company of Pennsylvania (in this capacity, the "Bank" and "Noteholder"), and said $300,000 in aggregate principal amount of its subordinated bonds to be designated as "Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project)" (the "Second Mortgage Revenue Bonds" and "Bonds"), both to be issued under and pursuant to this Debt Resolution, and as secured by a Mortgage Loan Agreement, dated as of April 15, 1985, for reference purposes only (the "Mortgage Loan Agreement"), with the Investor Developer and the Bank, and a Collateral Assignment of the Lease of the Project between the Investor Developer, as the Landlord, and Brockway, Inc. (NY), as the Initial Tenant; and

WHEREAS, certain purchasers have heretofore offered to purchase said Note and said Bonds and have heretofore or herewith presented to the Authority their respective Note and Bond Purchase Proposals (the "Note and Bond Purchase Proposals") relating thereto; and

WHEREAS, certain actions are required to be taken by the Authority as a prerequisite to the issuance and sale of said Note and Bonds.

NOW, THEREFORE, BE IT RESOLVED, AND IT HEREBY IS RESOLVED, by Clearfield County Industrial Development Authority, as follows:

SECTION 1. It is hereby found and determined that the financing of the commercial development warehouse facility herein referred to as the Project through the issuance of the $1,700,000 Commercial Development First Mortgage Loan Note (B Warehouse Company Project) and the issuance and sale of the $300,000 Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project), under and pursuant to this Debt Resolution, is a proper public purpose and will be of benefit to the health, prosperity, economic stability and general welfare of the Township of Sandy and the County of Clearfield and the Commonwealth of Pennsylvania, and their citizens.

SECTION 2. The Note Purchase Proposal from The Savings & Trust Company of Pennsylvania ($1,700,000) and the Bond Purchase Proposals from Marc Katzen ($135,000), Harry Kellar, Trustee ($75,000), Richard Gordon ($60,000), and Marshall Katzen ($30,000), which have heretofore been presented to this Authority are hereby accepted and approved.

SECTION 3. The Clearfield County Industrial Development Authority, Commercial Development First Mortgage Loan Note (B Warehouse Company Project), in the principal amount of $1,700,000, to be issued to The Savings & Trust Company of Pennsylvania, as the Noteholder, is hereby authorized and directed to be issued and delivered substantially in the form which is attached hereto and marked "Exhibit A". The manual signature of the Chairman or Vice Chairman is hereby authorized and directed to be affixed to said Note, and the corporate seal of the Authority is hereby authorized and directed to be affixed thereon by the Secretary or Assistant Secretary of the Authority. The Chairman or Vice Chairman or Secretary or Assistant Secretary is further hereby authorized and directed to deliver said Note to the Bank pursuant to the Note Purchase Proposal against receipt of the purchase price therefore, and to deposit the amount so received into the Acquisition and Construction Fund as provided herein and in the Mortgage Loan Agreement. The Clearfield County Industrial Development Authority, Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project), in the principal amount of $300,000, are hereby also authorized and directed to be issued and delivered in permanent form, pursuant to and in accordance with substantially the form attached hereto and marked "Exhibit B", and subject to and in compliance with the further provisions provided for herein. The manual or facsimile signature of the Chairman or Vice Chairman is hereby authorized and directed to be affixed to or printed on the face of said Bonds, and the manual or facsimile of the corporate seal of the Authority is hereby adopted and authorized to be affixed to or imprinted thereon. It is also hereby directed that said Bonds shall be executed manually or in facsimile by the Secretary or Assistant Secretary. The Chairman or Vice Chairman or Secretary or Assistant Secretary is further hereby authorized and directed to deliver said Bonds to the Paying Agent for manual authentication under the provisions of this Debt Resolution and, when said Bonds have been authenticated, to deliver them or cause them to be delivered to the respective Purchasers pursuant to the Bond Purchase Proposals against receipt of the purchase price therefor, and to deposit the amounts so received into the Acquisition and Construction Fund as provided herein and in the Mortgage Loan Agreement. The Mortgage Loan Agreement, dated as of April 15, 1985, for reference purposes only, the Assignment of the Mortgage Loan Agreement and the Pledged Revenues, dated as of April 15, 1985, for reference purposes only, and the Collateral Assignment of the Lease, dated as of April 15, 1985, for reference purposes only, and all of the necessary supporting documentation (including the Statement of Election and the Information Return for Private Activity Bonds, IRS Form 8038, to be filed with the Internal Revenue Service) are hereby approved in substantially the forms presented herewith and are directed to be in such final forms as the Authority Board's Attorney shall approve, and the Chairman or Vice Chairman is hereby authorized and directed to execute and deliver, and the Secretary or Assistant Secretary is hereby authorized and directed to execute and affix the corporate seal of the Authority to, and to attest, all of said documents in substantially said final approved forms and upon the terms and conditions therein set forth, with such changes therein as such officers and the Authority Board's Attorney shall approve, such approval to be conclusively evidenced by said officers' execution thereof.

SECTION 4. The Authority hereby appoints The Savings & Trust Company of Pennsylvania, located in Brookville, Pennsylvania, to be the Paying Agent for the Second Mortgage Revenue Bonds under this Debt Resolution.

SECTION 5. The Paying Agent is hereby requested to authenticate said Bonds and to deliver the same to or upon the order of the Secretary or Assistant Secretary of this Authority.

SECTION 6. The interest on the Bonds shall be payable by check or draft mailed by the Paying Agent to the Registered Holders of the Bonds on the record date for payment of such interest and principal, said record date being the day which is the 10th day prior to said payment date. Payments of principal and interest shall be noted on the Payment Record maintained by the Paying Agent and such payments shall fully discharge the obligations of the Authority thereon to the extent of the payments so made. Upon final payment of principal and interest, the Bonds shall be submitted to the Paying Agent for cancellation as to the Authority.

The Bonds shall have the qualities of negotiable instruments under the Pennsylvania Uniform Commercial Code, subject to the provisions for registration and transfer contained herein and in the Bonds.

SECTION 7. No Bonds shall become valid or obligatory for any purpose until such Bonds shall have been dated and manually authenticated by the Paying Agent, or by any successor paying agent, and such authentication by said Paying Agent or by any successor paying agent upon any Bond shall be conclusive and the only evidence that such Bond has been duly authenticated and delivered and that the Registered Holder thereof is entitled to the benefit of the trusts and liens hereby created.

All Bonds are exchangeable for other denominations or transferable by the Registered Holder thereof or his duly authorized attorney at the Principal Corporate Trust Office of the Paying Agent, upon surrender of said Bond, accompanied by a duly executed instrument of transfer, in form and with guarantee of signatures satisfactory to the Paying Agent, subject to such reasonable regulations as the Authority or the Paying Agent shall prescribe, and upon payment of any taxes or other governmental charges incident to such exchange or transfer. On any such exchange or transfer, a new fully registered Bond or Bonds of the same type and in the same aggregate principal amount will be issued to the Registered Holder or his transferee. The person in whose name said Bond is registered shall be deemed to be the absolute owner thereof for all purposes, whether or not said Bond shall be overdue, and the Authority and the Paying Agent shall not be affected by any notice to the contrary.

Neither the Authority nor the Paying Agent shall be required to transfer or exchange any Bond for a period of ten (10) days next preceding any interest payment date or any selection by lot of any Bonds to be redeemed, nor to transfer or exchange any Bonds selected, called or being called for redemption.

SECTION 8. The Authority shall cause to be kept, at the Principal Corporate Trust Office of the Paying Agent for the Bonds, a book for the registration and transfer of the Bonds in the manner provided herein and therein so long as any Bonds shall remain outstanding. Said Registration Book shall be the final and conclusive evidence of the true Registered Holder of each Bond issued hereunder. Such registrations and transfers shall be made without charge to Registered Holders of the Bonds, except for actual costs which shall be paid by the Registered Holder as a condition precedent, including postage, insurance and any taxes or other governmental charges required to be paid with respect to the same. The Authority and the Paying Agent may treat the Registered Holder of any Bond as the absolute owner of said Bond for all purposes, and neither the Authority nor the Paying Agent shall be affected by any contrary notice. Any consent, waiver or other action taken by the Registered Holder of any Bond pursuant to the provisions of this Debt Resolution shall be conclusive and binding upon said Registered Holder, his heirs, successors or assigns, and upon all transferees of said Bond, whether or not any notation of such consent, waiver or other action shall have been made on said Bond or on any Bond issued in exchange therefor.

SECTION 9. If any Bond shall become mutilated or shall be destroyed, lost or stolen, the Authority, in its discretion, may issue and thereupon the Paying Agent shall authenticate and deliver a new Bond of like date, tenor, amount and maturity, in exchange and in substitution for said mutilated Bond upon surrender thereof, or in lieu of and in substitution for said Bond destroyed, lost or stolen, upon the Registered Holder of the Bond: (1) filing with the Paying Agent evidence satisfactory to the Authority and the Paying Agent that said Bond has been destroyed, lost or stolen; (2) furnishing the Authority and the Paying Agent with indemnity (if any) satisfactory to them; and (3) complying with such other reasonable regulations as the Authority and the Paying Agent may require. A reasonable charge may be imposed upon the Registered Holder of the Bond to reimburse the Authority and the Paying Agent for the expenses of issuing each such new Bond, which cost shall be paid before delivery of such new Bond. If such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond, the Authority and the Paying Agent may pay the same, upon receiving evidence and being indemnified as aforesaid, and if such Bond shall be destroyed, lost or stolen, without surrender thereof.

Any Bond issued under this Section shall constitute an original additional contractual obligation on the part of the Authority, whether or not the Bond so alleged to have been destroyed, lost or stolen shall be found at any time; and any Bond issued under this Section shall be entitled to the benefits hereof, in the manner, to the extent, and subject to the conditions provided herein.

SECTION 10. All Bonds surrendered to the Paying Agent for the purpose of payment, exchange or substitution shall be destroyed by the Paying Agent, and the Paying Agent shall furnish the Authority with a certificate of destruction; provided, however, that the Paying Agent upon a written request of the Authority, in lieu of such destruction, may cancel such Bonds and deliver the same to the Authority.

SECTION 11. In the manner, at the times, and upon the terms and conditions provided in the Form of Bonds hereinafter in this Debt Resoluion set forth, the Bonds shall and may be redeemed prior to maturity at the option of the Authority or pursuant to the requirements of this Debt Resolution.

The Authority shall give written notice to the Paying Agent of its election to redeem Bonds and of the redemption date, which notice shall be given at least forty (40) days prior to the redemption date or at such later date as shall be acceptable to the Paying Agent, but no such notice shall be required in the case of mandatory redemptions (if any) pursuant hereto which shall be processed by the Paying Agent without notice from the Authority.

On the date so designated for redemption, notice having been given in the manner and under the conditions herein provided and funds for payment of the Bonds being held in accounts by the Paying Agent in trust for the Registered Holders of the Bonds, the Bonds so called for redemption shall become and be due and payable on such date; interest on the Bonds so called for redemption shall cease to accrue; the interest on any Bonds so called for redemption payable subsequent to the redemption date if the redemption date is an interest payment date or subsequent to the next succeeding interest payment date if the redemption date is not an interest payment date, shall be void; such Bonds shall cease to be entitled to any benefit or security under this Debt Resolution and the Registered Holders of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price plus interest accrued to the date fixed for redemption, and such Bonds shall no longer be deemed outstanding under the provisions of this Debt Resolution.

All unpaid interest which appertain to Bonds so called for redemption and which shall have become due and payable on or prior to the date of redemption designated in such notice shall continue to be payable to the Registered Holders severally and respectively.

Bonds so redeemed shall be cancelled and destroyed by the Paying Agent upon the surrender thereof.

SECTION 12. There is hereby assigned and pledged to the Noteholder and to the Paying Agent for and on behalf of the Registered Holders of the Bonds the Mortgage Loan Agreement and all documents related thereto and the rights (but not the obligations) of the Authority under and pursuant thereto, and all revenues and receipts receivable by the Authority from the Project thereunder, including, without limitation, all mortgage loan installments to be received by the Authority, from the mortgaging of the Project, but excluding the rights and remedies granted to the Authority pursuant to Section 6.2 (a) and 9.1 of the Mortgage Loan Agreement, and all right, title and interest of the Investor Developer, including in particular the rentals provided for therein, in the Lease and all subsequent Leases (if any), dated as of various dates (the "Lease" and "Leases", respectively), by and between the Investor Developer, as the Landlord, and Brockway, Inc. (NY), as the Initial Tenant, and various commercial entities, as the subsequent Tenants (if any), as heretofore assigned by the Collateral Assignment (the "Collateral Assignment"), dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, pursuant to the terms of which the aforementioned mortgage loan installments and aforementioned rentals are to be paid promptly to the Investor Developer and under certain circumstances directly to the Paying Agent at the Principal Corporate Trust Office of the Paying Agent for the account of the Authority.

SECTION 13. There is hereby created hereunder the "Clearing Fund", which is to be a corporate trust department account of the Paying Agent hereunder, held at its Principal Corporate Trust Office. The proceeds from the sale of said Note and said Bonds shall be deposited in said Clearing Fund and shall be used only for the purposes specifically approved heretofore in accordance with the provisions hereof and as hereafter approved by the Investor Developer. At the Note and Bonds Closing for the Note and Bonds, all required transfers to the Acquisition and Construction Fund and all fees due and payable at said Note and Bonds Closing are hereby approved, and

the proper officer or officers of the Paying Agent are hereby directed to execute and deliver to the appropriate payees the necessary checks to be drawn on the Clearing Fund in order to make said required transfers and to pay said fees and thereby complete said Note and Bonds Closing.

SECTION 14. There is hereby created hereunder the "Acquisition and Construction Fund", which is to be held by the Paying Agent hereunder, at the Office of the Paying Agent designated by the Investor Developer. The balance of the proceeds from the sale of the Note and Bonds remaining in the Clearing Fund after paying the required fees at the Note and Bonds Closing shall be transferred by the Paying Agent to this Acquisition and Construction Fund. The moneys in said Acquisition and Construction Fund shall be expended in the manner and for the purposes stated herein and in the Mortgage Loan Agreement, including the transfer from this Fund to the Bond Fund of all money which is necessary for the payment of interest during the construction and development period on the Note and Bonds. Said moneys in the interim may be invested at the direction of the Investor Developer at any time, all in accordance with applicable law and with the written approval of the Bank as the Noteholder and Paying Agent.

SECTION 15. There is hereby created hereunder a fund for the payment of the Note and Bonds hereby authorized, said fund to be known as the "Bond Fund", and which Fund is to be an account in the corporate trust department of the Paying Agent hereunder, held at its Principal Corporate Trust Office. All moneys realized from the Mortgage Loan Agreement shall be paid directly to the Paying Agent in the appropriate amounts on or before the last business day stipulated in the Mortgage Loan Agreement immediately preceeding each interest and principal payment date for said Note and Bonds into the Bond Fund hereby created as required, and shall be applied on each payment date exclusively to the payment of the principal and interest and taxes thereon of said Note and Bonds, to which purpose they are hereby irrevocably pledged. The Authority hereby authorizes and directs the Paying Agent to make payments out of said Bond Fund at such times and in such monthly amounts as are sufficient for the payment of the interest and taxes on said Note and Bonds as they become due.

SECTION 16. The Authority hereby covenants with the Noteholders and the Registered Holders from time to time of the Note and Bonds that it will make no use of the proceeds of the Note and Bonds which, if such use had been reasonably expected on the date of issuance of said Note and Bonds, would have caused said Note and Bonds to be "arbitrage bonds" within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended, and the regulations thereunder, and that it will comply with the requirements of said Section and said regulations throughout the term of said Note and Bonds.

SECTION 17. In the event the Authority shall default in the payment of the principal of, or interest on, the Note or any of the Bonds issued under this Debt Resolution after the same shall have become due and said default shall continue for a period of thirty (30) days, or in the event the Authority shall fail or refuse to comply with any agreement made with the Noteholder or the Bondholders in this Debt Resolution or in the Mortgage Loan Agreement, then the Noteholder or a Registered Holder shall have the right to recover the amount due in the manner, with the effect, and subject to the conditions provided under law. The Noteholder or Registered Holder of a Bond shall have no right to take any actions with respect to any Event of Default, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in under law.

SECTION 18. If the Authority, its successors or assigns, shall pay or cause to be paid unto the Registered Holders of all Bonds outstanding hereunder the principal and interest and premium (if any) to become due thereon at the times and in the manner stipulated therein, then the estate and rights hereby established shall thereafter cease, determine and be void.

Bonds for the payment or redemption of which moneys in the full amount required therefor shall have been deposited in the Bond Fund or in a special redemption fund established for such purpose, whether upon or prior to the maturity or the redemption date of such Bonds, shall be deemed to be paid within the meaning hereof and under law; provided, however, that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or provisions shall have been properly made therefor.

If any Bond shall not be presented for payment when the principal thereof shall become due, either at maturity or otherwise, or at the date fixed for the redemption thereof, and if the Authority shall have deposited in the Bond Fund or any special redemption fund, as the case may be, for the purpose, moneys sufficient to pay the principal of such Bond and the premium (if any) payable upon the redemption thereof, together with all interest due thereon to the date of maturity thereof or to the date fixed for the redemption thereof, for the benefit of the Registered Holder or Registered Holders thereof, respectively, all liability of the Authority to the Registered Holder of such Bond for the payment of the principal thereof and the interest thereon, and all liability of the Authority to the Registered Holder of such Bond for the premium (if any), as the case may be, shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold said moneys, without liability for interest thereon, for the benefit of the Registered Holder of such Bond, as the case may be, for a period of two (2) years thereafter, who shall thereafter be restricted exclusively to said moneys for any claim of whatsoever nature on his part under this Debt Resolution or on, or with respect to, said Bond. At the end of said two (2) year period, the Paying Agent shall return all such unclaimed moneys to the Investor Developer.

SECTION 19. In consideration of the purchase and acceptance of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Debt Resolution shall be deemed to be and shall constitute a contract between the Authority and the Registered Holders from time to time of said Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal benefit, protection and security of the Registered Holders of any and all of the Bonds, all of which, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided herein and under law.

SECTION 20. Nothing in this Debt Resolution, expressed or implied, is intended or shall be construed to confer upon, or to give to, any person, other than the Noteholder or the Registered Holders of the Bonds outstanding hereunder, any right, remedy or claim under or by reason of this Debt Resolution or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Debt Resolution contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Noteholder and the Registered Holders of the Bonds Outstanding hereunder.

SECTION 21. If any one or more of the covenants or agreements provided in this Debt Resolution on the part of the Authority to be performed should be contrary to any express provisions of law or contrary to the policy of express law or against public policy, then such covenant or covenants or agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements, and shall in no way affect the validity of this Debt Resolution.

SECTION 22. Any consent or other instrument herein required to be executed by the Registered Holders of the Bonds may be in any number of concurrent writings of similar tenor and may be executed by such Registered Holders in person or by an agent duly appointed in writing. Proof of execution of such instrument or of the writing appointing such agent, if made in the following manner, shall be sufficient for purposes hereof and shall be conclusive in favor of the Authority with regard to action taken thereunder:

A. The fact and date of execution by any person of such instrument may be proved: (1) by a certificate of an officer in any jurisdiction, who by the laws thereof has power to take acknowledgments within such jurisdiction, to the effect that the person executing such instrument acknowledged before him the execution thereof; or (2) by affidavit of a witness to such execution.

B. Ownership of Bonds shall be proved only by the Registration Book maintained by the Paying Agent.

Nothing contained in this Section shall be construed as limiting the Authority to the proof hereinabove specified, it being intended that the Authority may accept other evidence of matters herein stated which it deems sufficient.

Any consent or other instrument executed by the Registered Holder of any Bond shall bind every future Registered Holder of such Bond with respect to anything done by the Authority in pursuance thereof.

SECTION 23. Recourse under or upon any obligation, covenant or agreement contained herein or in the Note or in any Bond issued hereunder or because of any indebtedness hereby secured, shall not be had against any past, present or future board member, officer, agent, attorney or employee of the Authority or of any successors to them, under any rule of law, statute or constitutional provision, or by enforcement of any assessment, or by legal or equitable proceeding or otherwise, it being expressly understood and agreed that obligations hereby secured shall be solely corporate obligations of the Authority and that no personal liability whatsoever shall attach to or be incurred by such board members, officers, agents, attorneys or employees of the Authority or of any successors to them because of the incurring of the indebtedness hereby authorized or by reason of the obligations, covenants or agreements contained herein or in the Note or in the Bonds hereby secured or implied herefrom.

SECTION 24. The appropriate officers of the Authority are hereby further authorized and directed to execute and deliver all such other documents and to take all such other actions as may be necessary or appropriate in order to effectuate the issuance of said Note and the issuance and sale of said Bonds.

THIS DEBT RESOLUTION shall be in full force and effect immediately from and after its passage.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

By Stanley E Lamm
Chairman

Attest:

Robert G Watson
Secretary

EXHIBIT "A"

COMMERCIAL DEVELOPMENT
FIRST MORTGAGE LOAN NOTE
(B WAREHOUSE COMPANY PROJECT)

$1,700,000.00

Clearfield, Pennsylvania

Dated as of April 15, 1985, for reference purposes only, but actually on May 7, 1985.

FOR VALUE RECEIVED,

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, a non-profit corporation, organized under the laws of the Commonwealth of Pennsylvania, having its principal place of business in the Borough of Clearfield, County of Clearfield, and State of Pennsylvania, hereinafter called the "OBLIGOR",

promises to pay to the order of

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, a state banking corporation, with its principal office in Brookville, Pennsylvania, hereinafter referred to as the "OBLIGEE",

in lawful money of the United States of America, the sum of ONE MILLION SEVEN HUNDRED THOUSAND ($1,700,000.00) DOLLARS, and any additional moneys loaned or advanced by any Holder hereof as hereinafter provided:

ONE MILLION SEVEN HUNDRED THOUSAND ($1,700,000.00) DOLLARS payable and owing to THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, due and payable in full ten (10) years from the date hereof, together with interest thereon at the rate of interest equal from time to time to 85% of Mellon Bank, N.A. Prime as announced from time to time with a minimum rate of 8% per annum and a maximum rate of 11% per annum, and with a fixed rate of 9% per annum for the first three (3) years hereof; said principal to be amortized commencing January 1, 1986, for the first three (3) years hereof on a seven (7) year pay back period by successive monthly installments of Twenty Seven Thousand Three Hundred Fifty One Dollars and Forty Three Cents ($27,351.43) DOLLARS each applied first to interest and then to principal, with said monthly payments to be reset at the end of said first three (3) year period for the remaining seven (7) year period, until said principal and all interest accrued thereon shall be fully paid and discharged; with the right to the Undersigned to anticipate maturity of any or all of the said deferred payments on any payment due date. In the payment of the monthly payments of interest and principal on this indebtedness, the Undersigned shall make all payments on account of both principal and interest in the principal office of The Savings & Trust Company of Pennsylvania, in Brookville, Pennsylvania. In the event the Federal Government and/or the Internal Revenue Service, during the term of this First Mortgage Loan Note, shall deem the interest payment hereunder to be taxable, then the interest rate herein set forth shall be increased immediately to an adjusted taxable rate at all times thereafter equal to the taxable Prime Rate as announced from time to time of Mellon Bank, N.A., and the above payments shall be adjusted accordingly.

This First Mortgage Loan Note shall evidence and the First Mortgage given to secure its payments shall cover and be security for any future loans or advances for this Project (said Project being the purchase of the land and the erection thereon of a 135,000 square foot warehouse facility by B Warehouse Company, as the Investor Developer, and the leasing thereof to Brockway, Inc. (NY), as the initial

Tenant) that may be made to or on behalf of the Undersigned by any Holder hereof at any time or times hereafter and intended by the Undersigned and the then Holder to be so evidenced and secured, as well as any sums paid by any Holder pursuant to the terms of said First Mortgage, and any such loans, advances or payments shall be added to and shall bear interest at the same rate as the principal debt.

In case a default be made for the period of thirty (30) days in the payment of any installment of principal or interest, or in the performance by the Undersigned of any of the other obligations of this First Mortgage Loan Note, or said First Mortgage, the entire unpaid balance of the principal debt, additional loans or advances, and all other sums paid by any Holder hereof to or on behalf of the Undersigned pursuant to the terms of this First Mortgage Loan Note or said First Mortgage, together with unpaid interest thereon, shall at the option of the Holder and without notice become immediately due and payable, and one or more executions may forthwith issue on any judgment or judgments obtained by virtue hereof; and no failure on the part of any Holder hereof to exercise any of the rights hereunder shall be deemed a wavier of any such right or of any default hereunder.

The Undersigned hereby empowers any attorney of any court of record within the United States of America or elsewhere to appear for the Undersigned, and with or without complaint filed, confess judgment or a series of judgments, against the Undersigned in favor of any Holder hereof, as of any term, for the unpaid balance of the principal debt, additional loans or advances, and all other sums paid by the Holder hereof, to or on behalf of the Undersigned pursuant to the terms of this First Mortgage Loan Note or said First Mortgage, together with unpaid interest thereon, costs of suit and an attorney's commission for collection of five (5%) per cent of the total indebtedness, or $500.00, whichever is the larger amount, on which judgment or judgments one or more executions may issue forthwith upon failure to comply with any of the terms and conditions of this First Mortgage Loan Note or said First Mortgage. The Undersigned hereby forever waives and releases all errors in said proceedings, waives stay of execution, the right or inquisition and extension of time of payment, agrees to condemnation of any property levied upon by virtue of any such execution, and waives all exemptions from levy and sale of any property that now is or hereafter may be exempted by law.

EXHIBIT "A"

This obligation shall bind the Undersigned and the Undersigned's successors and assigns, and the benefits hereof shall inure to the payees hereof and their successors and assigns. If this First Mortgage Loan Note is executed by more than one person, the undertakings and liabilities of each shall be joint and several.

This First Mortgage Loan Note is secured by a First Mortgage of even date herewith upon real estate described therein.

WITNESS due execution hereof the day and year first above written.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

Attest:

By_____
Chairman

_____
Secretary

"EXHIBIT B"

(FORM OF DEFINITIVE FULLY REGISTERED SERIES OF 1985 BOND)

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BOND,
SERIES OF 1985
(B WAREHOUSE COMPANY PROJECT)

Registered Holder:
No. IR-
$_____
Maturity Date: February 1, 2020
Interest Rate: 15% Minimum

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (the "Authority"), a public instrumentality and body politic and corporate of the Commonwealth of Pennsylvania, duly organized and existing under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"), for value received, hereby promises to pay on this Commercial Development Second Mortgage Revenue Bond, Series of 1985 (B Warehouse Company Project) (the "Bond"), but solely from the receipts and revenues hereinafter mentioned, to the Registered Holder shown hereon, or registered assigns, on the Maturity Date shown hereon, unless this Bond shall be redeemable and before said date shall have been duly called for redemption in whole or in part and payment of the redemption price made or provided for, upon surrender hereof, the principal sum shown hereon, and to pay interest only monthly hereon from the first day of the month preceding the authentication date hereof, unless the date hereof is prior to May 1, 1985, then from April 15, 1985, at the minimum rate shown hereon, on the first day of each month thereafter, plus additional contingent interest computed to be equal to a total of fifty (50%) percent of the rental income paid in each calendar year to the Investor Developer in excess of $337,500 during the first ten (10) years, and in excess of $227,500 during the next five (5) years, and in excess of $157,500 during the last twenty (20) years, payable proportionately to the Registered Holder of this Bond in the same proportion as the principal amount of this Bond bears to the total of all Bonds then Outstanding over the period of approximately thirty-five (35) years (which is the term of this Bond) in monthly payments, and plus further additional contingent interest for Appreciated Value computed to be equal to a total of fifty (50%) percent of the amount (if any) by which (a) the Appreciated Value of the Project exceeds $2,500,000 if the Registered Holders of all of the Bonds approve the sale of the Project before the maturity of the Bonds, or (b) the Appraised Value of the Project exceeds $2,500,000 at maturity of the Bonds, or on Transfer, or on the borrowing of funds not used for Capital Additions on the Project exceeds the Base Amount (in accordance with each of the foregoing terms as hereinafter defined), payable at said time proportionately to the Registered Holder of this (Shared Appreciation) Bond in the same proportion as the principal amount of this Bond bears to the total of all (Shared Appreciation) Bonds then Outstanding (Note - the Investor Developer at its option may from time to time pay this additional contingent interest for Appreciated Value on this (Shared Appreciation) Bond in advance by having the Project appraised. Upon payment of additional contingent interest for Appreciated Value of said total of fifty (50%) percent of the Appreciated Value on all (Shared Appreciation) Bonds, including this Bond, over the Base Amount, the Base Amount will then thereafter be increased. If the Project is not sold or otherwise refinanced at maturity of the (Shared Appreciation) Bonds, the Registered Holder must refinance the outstanding obligation (up to the $300,000) of all of the (Shared Appreciation) Bonds (including this Bond), including the then due fifty (50%) percent of the Appreciated Value over the then Base Value. The aforesaid Registered Holder must refinance using a fully amortizing mortgage instrument with a term of thirty (30) years. Said mortgage instrument shall require interest at a minimum of fifteen (15%) percent or two (2%) percent above the highest interest rate on comparable commercial mortgages in the 180 days preceding said refinancing. The

mortgage shall be a first mortgage on the Project and shall contain the shared appreciation terms and the variable interest terms which apply the (Shared Appreciation) Bonds (including this Bond). Registered Holder holding in total seventy-five (75%) percent of the (Shared Appreciation) Bonds (including this Bond) may in writing elect to defer all or part of this additional contingent interest for Appreciated Value on Transfer. Prior to each Transfer (in sufficient time to permit the appraisal provided for to determine the Appreciated Value as hereinafter defined), the Investor Developer shall give the Registered Holder (including the Registered Holder of this Bond) written notice thereof, together with an executed copy of the transfer agreement. Upon each sale of the Project or Investor Developer's interest in the Project, the Investor Developer shall furnish to all Registered Holders (including the Registered Holder of this Bond) an executed copy of the closing statement signed by the Investor Developer and the purchaser and such other evidence of the sale price as any of the Registered Holders may reasonably request), upon the then surrender hereof, said interest and principal payments to be made either until the Authority's obligation with respect to the payment of such principal sum shall be discharged as provided hereinafter, or until maturity hereof, or if this Bond shall have been duly called for previous redemption and payment of the redemption price shall have been made or provided for, until the redemption date.

"Appreciated Value" shall mean in the case of a sale of the Project or the Investor Developer's interest therein (whether for cash or in installments), the gross sale price (including the then balance of the indebtedness whether or not assumed by the purchaser) or, if the gross sale price does not reasonably reflect the then current market conditions, the Fair Market Value of the Project and, in all other cases, the Fair Market Value of the Project. Whether the gross sale price reasonably reflects the then current market conditions and the Fair Market Value shall be determined by appraisal. The Fair Market Value shall be determined by an average of two appraisals. One appraiser shall be selected and paid for by the Investor Developer and one selected and paid for by the Paying Agent for the Bondholders, and both shall be M.I.A. appraisers. "Base Amount" shall mean at the time or each Transfer and at maturity the sum of $2,500,000 reduced by insurance proceeds and condemnation proceeds not used for Capital Additions and increased by any Capital Additions not paid for by insurance proceeds and condemnation proceeds. The Base Amount shall from time to time be increased to the Appreciated Value at the time that actual payment of contingent interest based on appreciation is paid to Bondholders. "Transfer" shall mean and includes a sale, installment sale contract, agreement for deed, refinancing, creation of a lien subordinate to the First and Second Mortgages, leasing, or a judicial sale on execution or other legal process; but does not include a transfer by devise, descent or by operation of law upon the death of any Joint Venturer of the Investor Developer or his descendants, a gift to a relative of any Joint Venturer of the Investor Developer by blood or marriage without consideration of any kind, or a transfer to a spouse of any Joint Venturer of the Investor Developer pursuant to divorce decree or property settlement.

The principal of, premium, if any, and interest on this Bond shall be payable at the Principal Corporate Trust Office of The Savings & Trust Company of Pennsylvania (the "Paying Agent"), in the Borough of Brookville, Pennsylvania, or of any successor paying agent under the Debt Resolution of the Authority hereinafter mentioned, in any coin or currency of the United States of America which, at time of payment, is legal tender for the payment of public and private debts. The interest hereon is payable by check or draft mailed by the Paying Agent to the Registered Holder of this Bond on the record date for payment of such interest and principal, namely the day which is the 10th day prior to said payment date. Payments of principal and interest shall be noted on the Payment Record maintained by the Paying Agent and such payments shall fully discharge the obligation of the Authority hereon to the extent of the payments so made. Upon final payment of principal and interest, this Bond shall be submitted to the Paying Agent for cancellation as to the Authority.

This Bond is issued in full compliance with the Constitution and statutes of the Commonwealth of Pennsylvania, including among others, the Act. Pursuant to law and the proceedings under which this Bond is issued, this Bond is payable solely out of the revenues and receipts derived from the mortgage loan financing by the Authority of a certain commercial economic development warehouse facility which is to be acquired and constructed and is located in the Township of Sandy, Clearfield County, Pennsylvania, to B Warehouse Company (the "Investor Developer"), a Joint

Venture. The installments to be paid by the Investor Developer under the mortgage loan financing of the facility hereinafter described have been assigned to the Paying Agent as security for the Bonds and such installments are sufficient to pay the principal of and interest on the Bonds as the same become due and payable.

This Bond and such other Bonds of the series of which it forms a part are issued pursuant to and in full compliance with the Constitution and statutes of the Commonwealth of Pennsylvania, particularly the Act, and pursuant to the Debt Resolution of the Authority, hereinafter mentioned. This Bond and the series of which it forms a part and the interest appertaining hereto are limited obligations of the Authority and are payable solely from the receipts and revenues derived from the Project hereinafter defined. This Bond and the interest and contingent interest appertaining hereto do not now and shall never in any respect be a general obligation of the Authority nor a general obligation of the Commonwealth of Pennsylvania or any political subdivision thereof, nor do they in any manner pledge the general credit nor taxing power of the Commonwealth of Pennsylvania or any political subdivision thereof, nor shall they be payable in any manner from funds raised by taxation.

Neither the County of Clearfield, Pennsylvania, nor the Commonwealth of Pennsylvania shall in any event be liable for the payment of the principal of or interest or contingent interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever of the Authority, and none of the Bonds, nor any of the Authority's agreements or obligations shall be construed to constitute an indebtedness of the County of Clearfield, Pennsylvania, or the Commonwealth of Pennsylvania, within the meaning of any constitutional or statutory provision whatsoever.

This Bond is one of an initially authorized series of $300,000, aggregate principal amount, of commercial development revenue bonds of the Authority, known as "Clearfield County Industrial Development Authority, Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project)" (the "Bonds"), all of like date and tenor, except as to amount, rate of interest, registration, maturity and provisions for redemption, and all issued under and secured by the Debt Resolution of the Authority, adopted on April 18, 1985 (the "Debt Resolution"), and by the pledge of the income, installments, receipts and revenues payable under a Mortgage Loan Agreement (the "Mortgage Loan Agreement"), dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, by and between the Investor Developer, the Paying Agent and the Authority, and by the pledge of certain other moneys of the Project financed, as set forth above, and further secured by the collateral assignment of a commercial lease and all subsequent commercial leases (the "Lease" and "Leases") of the facility, after completion of the acquisition and construction, from the Investor Developer, as the Landlord, to Brockway, Inc. (NY), as the Initial Tenant, or various subsequent commercial entities, as the subsequent Tenants, which Lease and Leases (if not extended in some cases as the Initial Tenant or subsequent Tenants have the option to do) may be terminated in certain years less than the terms of the Bonds, which if this occurs then the Bonds will thereafter be secured by the land and building only with the Investor Developer nevertheless remaining unconditionally obligated to make the mortgage loan installment payments under the Mortgage Loan Agreement (although that obligation will then be unsecured), all as provided in the Debt Resolution and in the Mortgage Loan Agreement. Reference is made to the Debt Resolution, a copy of which is on file at the Principal Corporate Trust Office of the Paying Agent, and to the Mortgage Loan Agreement and the Lease for, inter alia, a definition and description of the "Project", and a statement of the income, installments, receipts, revenues and moneys of the Authority pledged for the payment of the principal of, premiums and other charges, if any, and interest on the Bonds, the nature, extent and manner of enforcement of the security, the rights of holders of the Bonds and of the Paying Agent with respect to such security, and the terms under which the Bonds are issued. All of the Bonds issued under the Debt Resolution are subordinate to the First Mortgage Loan Note (the "First Mortgage Loan Note") issued by the Authority under the Debt Resolution to The Savings & Trust Company of Pennsylvania simultaneously herewith, but otherwise are equally and ratably secured as to principal, premium, if any, and interest (except said Bonds and the second lien of the Debt Resolution may be automatically released by operation of law and/or subordinated to any financing not under the Debt Resolution subsequently entered into

Registered Holders of the Bonds which the Investor Developer determines is necessary to finance an extention, enlargement, addition or improvement to the Project on any parcel of undeveloped ground which is so designated for release and/or subordination and is now a portion of the Premises), as provided in said Mortgage Loan Agreement, to all of the provisions of which any holder of this Bond by his acceptance hereof thereby assents, and to which Debt Resolution and Mortgage Loan Agreement reference is hereby made for a description of the nature and extent of the security, and a statement of the terms and conditions upon which the Bonds are issued and secured, the rights of the Registered Holders thereof and of the Paying Agent thereunder, and the bond indebtedness which is equally secured, and the other matters set forth therein.

This Bond is transferable by the Registered Holder hereof or his duly authorized attorney at the Principal Corporate Trust Office of the Paying Agent, upon surrender of this Bond, accompanied by a duly executed instrument of transfer, in form and with guarantee of signature satisfactory to the Paying Agent, subject to such reasonable regulations as the Authority or the Paying Agent may prescribe, and upon payment of any taxes or other governmental charges incident to such transfer. Upon any such transfer, a new registered Bond or Bonds in the same aggregate principal amount will be issued to the transferee. The person in whose name this Bond is registered shall be deemed to be the absolute owner hereof for all purposes, whether or not this Bond shall be overdue, and the Authority and the Paying Agent shall not be affected by any notice to the contrary.

The Bonds are issuable in fully registered form without coupons in requested denominations thereof. The Bonds, upon surrender thereof at the Principal Corporate Trust Office of the Paying Agent with, if required by the Paying Agent, a written instrument of transfer, in the form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Holder or his duly authorized attorney, may, at the option of the Registered Holder hereof, be exchanged for an equal aggregate principal amount of new Bonds of any other authorized denomination, upon payment of any tax, fee or other governmental charge required to be paid with respect to such exchange, and in the manner and subject to the conditions provided in the Debt Resolution.

Neither the Authority nor the Paying Agent shall be required to transfer or exchange any Bonds for a period of ten (10) days next preceding any interest payment date or any selection by lot of Bonds to be redeemed, nor to transfer or exchange any Bonds selected, called or being called for redemption.

As permitted by the Act, this Bond is issued with the intent that the laws of the Commonwealth of Pennsylvania shall govern its construction, and, as declared by the Act, the Authority shall not be required to pay any taxes upon any property acquired or used for its purposes, and this Bond, which is being issued for a proper public purpose by the Authority, its transfer and the income therefrom (including any profits made on the sale thereof), shall at all times be free from taxation within the Commonwealth of Pennsylvania.

This Bond is not subject to Optional Redemption (prepayment) prior to its maturity.

The Bonds, including this Bond, are subject to Mandatory Extraordinary Redemption (prepayment) in whole at 100% of the principal amount, plus accrued interest thereon to the redemption date, if, as a result of changes in the Constitution of the Commonwealth of Pennsylvania or in the Constitution of the United States of America, or of legislative or administrative action (whether State or Federal), or of a final decree, judgment or order of any court or administrative body having jurisdiction in the premises (after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate), the obligations of the Investor Developer under the Mortgage Loan Agreement shall become unenforceable or impossible of performance in any material respect in accordance with the intent and purpose of the parties as expressed in said Mortgage Loan Agreement.

The Bonds, including this Bond, are subject to Mandatory Extraordinary Redemption (prepayment) in whole or in part at 100% of the principal amount, plus accrued interest thereon to the redemption (prepayment) date, to the extent of those Bonds held to be illegal, unauthorized or unenforceable as a result of changes in the

Constitution of the Commonwealth of Pennsylvania or in the Constitution of the United States of America, or of legislative or administrative action (whether State or Federal), or of a final decree, judgment or order of any court or administrative body having jurisdiction in the premises (after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate).

The Bonds, including this Bond, are subject to an increase in the rate of interest payable hereon to an adjusted taxable rate at all times thereafter equal to a rate which renders an equivalent taxable return to the Registered Holders, which will occur in the event interest on the Bonds, including this Bond, shall be determined by the Internal Revenue Service or by the Federal courts (in each case, after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate) to have become subject to Federal income taxes by virtue of the applicable limitation imposed by Section 103 (b) of the Internal Revenue Code of 1954, as amended, (the "Code"), on bond issuance and/or capital expenditures having been exceeded, or in the event the interest on the Bonds shall become subject to taxation as the result of any other provision of Section 103 or the rules and regulations thereunder (except for interest on any Bond during the period it is held by a "substantial user" of the Project or a "related person" within the meaning of the Code). In such event, the Investor Developer will be obligated to pay this increased taxable rate on the Bonds, including this Bond, from the date interest on the Bonds, including this Bond, is determined to be taxable.

In any case where less than all the Bonds are to be redeemed and/or prepaid, such Bonds shall be called pro rata according to date of maturity by the Paying Agent as specified herein and in the manner provided for in the Debt Resolution.

Any redemption or prepayments, as hereinbefore authorized (except in the cases of Mandatory Extraordinary Redemption (prepayment) wherein notice shall be given and be effective immediately, shall be deemed to be the redemption (prepayment) date, and thereafter interest on the Bonds, including this Bond, shall cease to accrue), shall be made after timely notice by certified mail -return receipt requested shall be given by the Paying Agent to the Registered Holders of the affected Bonds.

In case an Event of Default, as defined in the Mortgage Loan Agreement, shall occur, the principal of all Bonds then Outstanding may be declared or may become due and payable upon the conditions, in the manner, and with the effect provided in the Debt Resolution.

No recourse under or upon any obligation, covenant or agreement contained in the Debt Resolution or the Mortgage Loan Agreement, or in any Bond or interest thereby secured or under any judgment obtained against the Authority or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances under or independent of the Debt Resolution or the Mortgage Loan Agreement, shall be had against any board member, officer, agent, attorney or employee, as such, past, present or future, of the Authority, either directly or through the Authority or otherwise, for the payment for or to the Authority or any receiver thereof, or for or to the Registered Holder of any Bond or otherwise, of any sum that may be due and unpaid by the Authority upon any such Bond. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such board member, officer, agent, attorney or employee, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for, or to the Authority or any receiver thereof, or for or to the Registered Holder of any Bond or otherwise, of any sum that may remain due and unpaid upon the Bonds and interest thereby secured or any of them, is hereby expressly waived and released as a condition of and consideration for the issuance of the Bonds.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Mortgage Loan Agreement and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; and the issuance of this Bond and the series of which it forms a part, together with all other obligations of the Authority, do not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any benefit under the Debt Resolution nor shall it be valid or obligatory for any purpose until this Bond shall have been manually authenticated by the Certificate of Authentication endorsed hereon being duly signed by the Paying Agent.

IN WITNESS WHEREOF, CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY has caused this Bond to be signed in its name and in its behalf by the manual or facsimile signature of its Chairman or Vice Chairman and a manual or facsimile of its corporate seal to be impressed or imprinted hereon, duly attested by the manual or facsimile signature of its Secretary or Assistant Secretary, all effective as of _____, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

By_____
Chairman

(AUTHORITY SEAL)

Attest:

_____
Secretary

* * * * * *

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds, of the series designated therein, described in the within-mentioned Debt Resolution.

The Text of Opinion attached to the reverse hereof is the text of the opinion of Messers. Lynch and Lynch, of Pittsburgh, Pennsylvania, an executed counterpart of which, dated the date of delivery of and payment for the series of Bonds of which this Bond is one, is on file at the Principal Corporate Trust Office of the Paying Agent.

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as Paying Agent

Authentication Date:_____ By_____
Authorized Person

* * * * * *

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

_____

_____

PLEASE INSERT SOCIAL SECURITY OR OTHER TAX IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

the within Bond issued by the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, and hereby irrevocably constitutes and appoints _____ as his Attorney to transfer said Bond on the books of said Authority with full power of substitution in the premises.

Dated _____

_____
(Sign here exactly as name(s) is (are) shown on the face of this Bond without any change or alteration whatever.)

SIGNATURE GUARANTEED: _____

* * * * * *

TEXT OF OPINION OF MESSRS. LYNCH AND LYNCH, BOND COUNSEL, OF PITTSBURGH, PENNSYLVANIA, ISSUED IN RESPECT OF THE CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS, SERIES OF 1985.

* * * * * *

PAYMENT RECORD

Page No. ____

Fully Registered
Bond No. IR - ____

Due Date	Principal Payment	Principal Balance Due	Interest Payment (15%)	Date Paid	Name of Paying Agent's Authorized Official and Title

CERTIFICATION

I, the undersigned, Secretary of Clearfield County Industrial Development Authority, do hereby certify that the foregoing Debt Resolution was duly adopted and passed by a majority vote of a quorum of members present at a special meeting of said Authority duly called and held on April 18, 1985, which meeting was at all times open to the public and at which meeting a quorum of said Authority was present and participating, and that the vote of the members of said Authority on said Debt Resolution was as follows:

Members of the Authority	Vote
Stanley E. Crum, Chairman	Yes
William Ginter, Vice Chairman	Yes
Robert E. Watson, Secretary and Treasurer and Executive Director	Yes
Francis E. Reed, Assistant Secretary-Treasurer	Yes
Samuel Mollica, Member	Yes
William R. Harkins, Member	Absent
Gerald Buzzard, Member	Yes

I hereby further certify that said Debt Resolution has not been amended, modified or rescinded and is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto placed my hand and the seal of Clearfield County Industrial Development Authority on this May 7, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

By Robert E. Watson
Secretary

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

No. IR-_____

$_____

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Maturity Date: FEBRUARY 1, 2020

Interest Rate: 15% MINIMUM

COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BOND, SERIES OF 1985 (B WAREHOUSE COMPANY PROJECT)

REGISTERED HOLDER: SAMPLE

_____ (DOLLARS)

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (the "Authority"), a public instrumentality and body politic and corporate of the Commonwealth of Pennsylvania, duly organized and existing under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"), for value received, hereby promises to pay on this Commercial Development Second Mortgage Revenue Bond, Series of 1985 (B Warehouse Company Project) (the "Bond"), but solely from the receipts and revenues hereinafter mentioned, to the Registered Holder shown hereon, or registered assigns, on the Maturity Date shown hereon, unless the Bond shall be redeemable and before said date shall have been duly called for redemption in whole or in part and payment of the redemption price made or provided for, upon surrender hereof, the principal sum shown hereon, and to pay interest only monthly hereon from the first day of the month preceding the authentication date hereof, unless the date hereof is prior to May 1, 1985, then from April 15, 1985, at the minimum rate shown hereon, on the first day of each month thereafter, plus additional contingent interest computed to be equal to a total of fifty (50%) percent of the rental income paid in each calendar year to the Investor Developer in excess of $337,500 during the first ten (10) years, and in excess of $227,309 during the next five (5) years, and in excess of $157,500 during the last twenty (20) years, payable proportionately to the Registered Holder of this Bond in the same proportion as the principal amount of this Bond bears to the total of all Bonds then Outstanding over the period of approximately thirty-five (35) years (which is the term of this Bond) in monthly payments, and plus further additional contingent interest for Appreciated Value computed to be equal to a total of fifty (50%) percent of the amount (if any) by which (a) the Appreciated Value of the Project exceeds $2,500,000 if the Registered Holders of all of the Bonds approve the sale of the Project before the maturity of the Bonds, or (b) the Appraised Value of the Project exceeds $2,500,000 at maturity of the Bonds, or on Transfer, or on the borrowing of funds not used for Capital Additions on the Project exceeds the Base Amount (in accordance with each of the foregoing terms as hereinafter defined), payable at said time proportionately to the Registered Holder of this (Shared Appreciation) Bond in the same proportion as the principal amount of this Bond bears to the total of all (Shared Appreciation) Bonds then Outstanding (Note - the Investor Developer at its option may from time to time pay this additional contingent interest for Appreciated Value on this (Shared Appreciation) Bond in advance by having the Project appraised. Upon payment of additional contingent interest for Appreciated Value of said total of fifty (50%) percent of the Appreciated Value on all (Shared Appreciation) Bonds, including this Bond, over the Base Amount, the Base Amount will then thereafter be increased. If the Project is not sold or otherwise refinanced at maturity of the (Shared Appreciation) Bonds, the Registered Holder must refinance the outstanding obligation (up to the $300,000) of all of the (Shared Appreciation) Bonds (including this Bond), including the then due fifty (50%) percent of the Appreciated Value over the then Base Value. The aforesaid Registered Holder must refinance using a fully amortizing mortgage instrument with a term of thirty (30) years. Said mortgage instrument shall require interest at a minimum of fifteen (15%) percent or two (2%) percent above the highest interest rate on comparable commercial mortgages in the 180 days preceding said refinancing. The mortgage shall be a first mortgage on the Project and shall contain the shared appreciation terms and the variable interest terms which apply the (Shared Appreciation) Bonds (including this Bond). Registered Holder holding in total seventy-five (75%) percent of the (Shared Appreciation) Bonds (including this Bond) may in writing elect to defer all or part of this additional contingent interest for Appreciated Value on Transfer. Prior to each Transfer (in sufficient time to permit the appraisal provided for to determine the Appreciated Value as hereinafter defined), the Investor Developer shall give the Registered Holder (including the Registered Holder of this Bond) written notice thereof, together with an executed copy of the transfer agreement. Upon each sale of the Project or Investor Developer's interest in the Project, the Investor Developer shall furnish to all Registered Holders (including the Registered Holder of this Bond) an executed copy of the closing statement signed by the Investor Developer and the purchaser and such other evidence of the sale price as any of the Registered Holders may reasonably request), upon the then surrender hereof, said interest and principal payments to be made either until the Authority's obligation with respect to the payment of such principal sum shall be discharged as provided hereinafter, or until maturity hereof, or if this Bond shall have been duly called for previous redemption and payment of the redemption price shall have been made or provided for, until the redemption date.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE SIDE HEREOF AND SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH ON THE FRONT SIDE HEREOF.

This Bond shall not be entitled to any benefit under the Debt Resolution nor shall it be valid or obligatory for any purpose until this Bond shall have been manually authenticated by the Certificate of Authentication endorsed hereon being duly signed by the Paying Agent.

IN WITNESS WHEREOF, CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY has caused this Bond to be signed in its name and in its behalf by the manual or facsimile signature of its Chairman or Vice Chairman and a manual or facsimile of its corporate seal to be impressed or imprinted hereon, duly attested by the manual or facsimile signature of its Secretary or Assistant Secretary, all effective as of May 7, 1985.

(AUTHORITY SEAL)

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Attest:

_____
Secretary

SAMPLE

_____
Chairman

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds, of the series designated therein, described in the within-mentioned Debt Resolution.

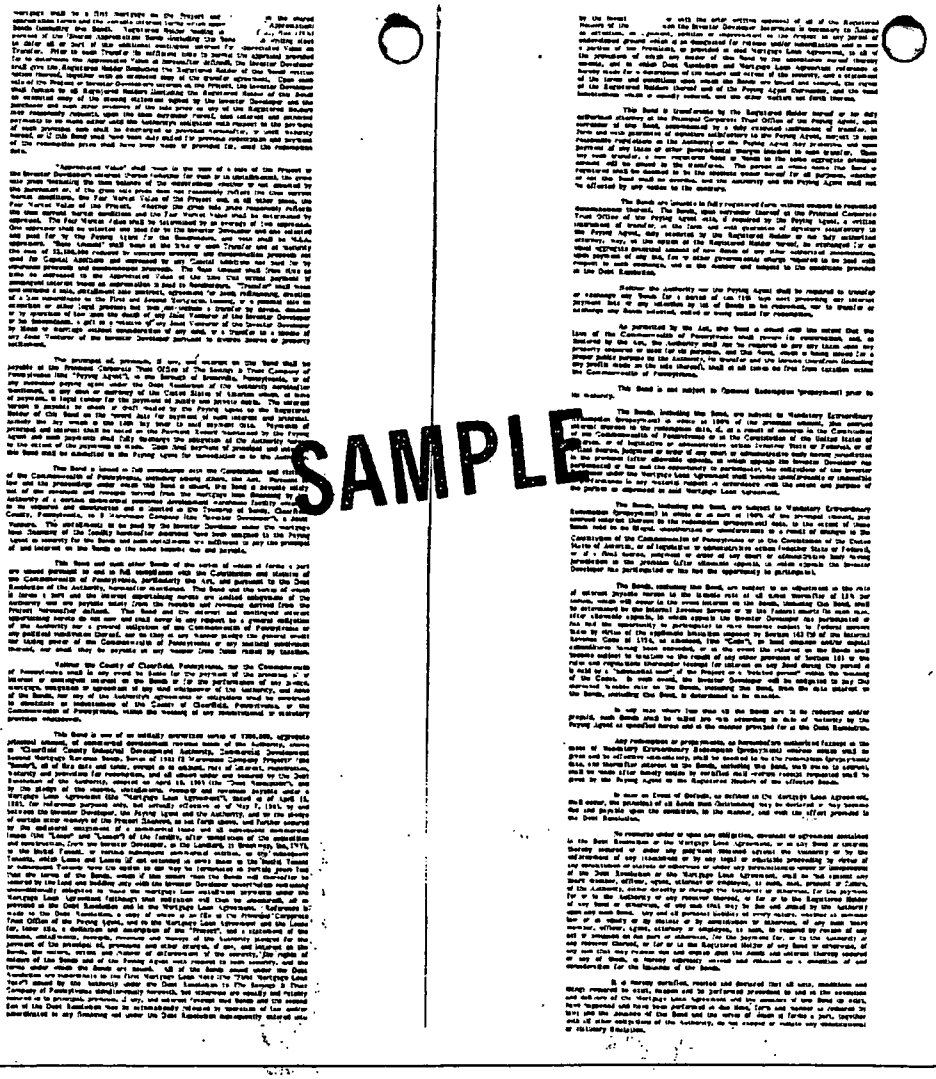
The Text of Opinion attached to the reverse hereof is the text of the opinion of Messers. Lynch and Lynch, of Pittsburgh, Pennsylvania, an executed counterpart of which, dated the date of delivery of and payment for the series of Bonds of which this Bond is one, is on file at the Principal Corporate Trust Office of the Paying Agent.

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as Paying Agent

Authentication Date: _____

By _____
Authorized Person

32.



SAMPLE

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

_____

_____

SAMPLE

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

the within Bond issued by the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, and hereby irrevocably constitutes and appoints _____ as his Attorney to transfer said Bond on the books of said Authority with full power of substitution in the premises.

Dated _____

_____
(Sign here exactly as name(s) is (are) shown on the face of this Bond without any change or alteration whatever.)

SIGNATURE GUARANTEED: _____

Exhibit C

SECOND MORTGAGE

MADE as of April 15, 1985, for reference purposes only, but actually on this 7th day of May, 1985, between:

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, a non-profit corporation, organized under the laws of the Commonwealth of Pennsylvania, having its principal place of business in the Borough of Clearfield, County of Clearfield, and State of Pennsylvania, hereinafter called the "MORTGAGOR",

A
N
D

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as the Paying Agent under the Debt Resolution, a state banking corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, and having its principal place of business in the Borough of Brookville, County of Jefferson, State of Pennsylvania, hereinafter referred to as the "MORTGAGEE".

WHEREAS, the Mortgagor has executed and delivered to the certain Bond Purchasers with the Mortgagee as the Paying Agent under the Debt Resolution of the Mortgagor, adopted on April 18, 1985 (the "Debt Resolution"), certain Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project) (hereinafter called the "Second Mortgage Revenue Bonds"), of even date herewith, payable to the order of said Bond Purchasers in the total principal sum of THREE HUNDRED THOUSAND ($300,000.00) DOLLARS, lawful money of the United States of America, and has provided in the Debt Resolution for the payment of the debt service on the Second Mortgage Revenue Bonds issued thereunder by the Mortgagor for this Project (said Project being the purchase of the land and the erection thereon of a 135,000 square foot warehouse facility by B Warehouse Company, as the Investor Developer, and the leasing thereof to Brockway, Inc. (NY), as the Initial Tenant), together with interest thereon at the rate provided in said Second Mortgage Revenue Bonds and Debt Resolution in the manner and at the times therein set forth, and containing certain other terms and conditions, all of which are specifically incorporated herein by reference.

NOW, THEREFORE, the Mortgagor in consideration of said debt or principal sum and as security for the payment of the same and interest as aforesaid, together with all other sums payable hereunder or under the terms of the Second Mortgage Revenue Bonds and the Mortgage Loan Agreement, dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, between the Mortgagor, the Investor Developer and the Mortgagee (the "Mortgage Loan Agreement"), does grant and convey unto the Mortgagee, as the Paying Agent under the Debt Resolution for and on behalf of the Bond Purchasers, and its and their successors and assigns:

ALL that certain piece, parcel or tract of land situate in the Township of Sandy, County of Clearfield, State of Pennsylvania, more particularly bounded and described as follows:

PARCEL ONE: BEGINNING at the Southeast corner of herein described 9.13 Acres on the West side of a 50 foot right of way for a road; thence by land of General Warehousing of DuBois, Inc., North 66 degrees 50 minutes West a distance of 500.0 feet and North 23 degrees 10 minutes East a distance of 700.0 feet; thence along said right of way for a road the following courses and distances: North 89 degrees 45 minutes East a distance of 386.0 feet, South 71 degrees 55 minutes East a distance of 80.0 feet, South 31 degrees 55 minutes East a distance of 80.0 feet, and South 23 degrees 10 minutes West a distance of 814.0 feet to the place of beginning. CONTAINING 9.13 Acres.

EXCEPTING AND RESERVING from the above described Parcel One the right of ingress and egress to, along, over and from the same, together with the right to make installations, repairs, and replacements of a railroad track and utility lines.

PARCEL TWO: BEGINNING at the center line of LR 402 (Shaffer Road) 55 feet Southwest of the intersection with the center of the Chessie System track right of way; thence along the Chessie System right of way the following courses and distances: South 48 degrees 22 minutes East 100.0 feet, South 62 degrees 45 minutes East 228.7 feet, and by a curve to the left with a radius of 816 feet, the chord of which is South 76 degrees 27 minutes East, 388.7 feet; thence continuing along the Chessie System right of way North 89 degrees 45 minutes East a distance of 641.0 feet; thence by land of General Warehousing of DuBois, Inc., the following courses and distances: South 40 degrees 20 minutes East 90.0 feet, South 23 degrees 10 minutes West 917.0 feet, and North 66 degrees 50 minutes West 50.0 feet; thence along land of B Warehouse Company, a Joint Venture, the following courses and distances: North 23 degrees 10 minutes East 814.0 feet, North 31 degrees 55 minutes West 80.0 feet, North 71 degrees 55 minutes West 80.0 feet; thence still along land of B Warehouse Company, a Joint Venture, and General Warehousing of DuBois, Inc., South 89 degrees 45 minutes West a distance of 495.0 feet; thence still by land of General Warehousing of DuBois, Inc., by a curve to the right with a radius of 866.0 feet, the chord of which is North 76 degrees 27 minutes West, 412.3 feet; thence North 62 degrees 45 minutes West a distance of 225.3 feet; and thence North 77 degrees 12 minutes West a distance of 100.0 feet; thence along the center line of LR 402 North 25 degrees 35 minutes East a distance of 100.0 feet to the place of beginning.

EXCEPTING AND RESERVING from the above described Parcel Two the right of ingress and egress to, along, over and from the same, together with the right to make installations, repairs, and replacements of roads, sidewalks, utility lines, railroad tracks, signs, guardrails, and landscaping.

ALSO EXCEPTING AND RESERVING from the above described Parcels One and Two the right to construct, reconstruct and perpetually maintain any and all utility services, including water, sewage, and gas or any other necessary utilities, together with all necessary laterals in, upon and accross the said premises, the said utility lines to follow any feasible course through the said premises, together with the right and privilege at any and all times to enter the said premises or any part thereof for the purpose of constructing, reconstructing and maintaining any and all of the aforesaid utility lines and also for making connections

with any such utility lines as are now or hereafter constructed on the said premises or which may serve the same; all upon the condition that the Clearfield County Industrial Development Authority, its successors or assigns, will, after doing any work in connection with the foregoing, restore the premises to the condition in which the same were found before such work was undertaken. The foregoing reservations shall be perpetual and inure to the benefit of the Clearfield County Industrial Development Authority, its successors and assigns.

BEING parts of the same premises which became vested in the Clearfield County Industrial Development Authority by Deed dated July 11, 1977, of the DuBois Area Chamber of Commerce, fictitious registered name for the DuBois Area Board of Trade.

* **PROVIDED, HOWEVER,** that if the Mortgagor shall pay to the Mortgagee for payment to the Bond Purchasers the aforesaid debt or principal sum, including the debt service and all other sums payable by the Mortgagor to the Mortgagee hereunder for payment to the Bond Purchasers and under the terms of the Second Mortgage Revenue Bonds, together with interest thereon, and under the Mortgage Loan Agreement, and shall keep and perform each of the other covenants, conditions and agreements hereinafter set forth, then this Second Mortgage and the estate hereby granted and conveyed shall become void.

THIS SECOND MORTGAGE is executed and delivered subject and subordinate to the First Mortgage, dated of even date herewith, from the Mortgagor hereunder to the Mortgagee hereunder which secures the $1,700,000 Clearfield County Industrial Development Authority, Commercial Development First Mortgage Loan Note (B Warehouse Company Project) issued immediately prior hereto, and further subject to the following covenants, conditions and agreements:

(1) The Second Mortgage Revenue Bonds secured hereby shall evidence and this Second Mortgage shall cover and be security for any future additional bonds for this Project that may be issued by the Mortgagor at any time or times hereafter and intended by the Mortgagor and the Mortgagee to be so evidenced and secured, and said additional bonds shall be added to the total principal sum.

(2) From time to time until said debt and interest are fully paid, the Mortgagor shall: (a) pay and discharge, when and as the same shall become due and payable, all taxes, assessments, sewer and water rents, and all other charges and claims assessed or levied from time to time by any lawful authority upon any part of the

* This deed is not intended to convey Parcel Two in fee, but rather is a conveyance of a permanent easement for roadway purposes over and across said Parcel Two for ingress and egress to and from Parcel One.

mortgaged premises and which shall or might have priority in lien or payment to the debt secured hereby, (b) pay all ground rents (if any) reserved from the mortgaged premises and pay and discharge all mechanic's liens which may be filed against said premises and which shall or might have priority in lien or payment to the debt secured hereby, (c) pay and discharge any documentary stamp or other tax, including interest and penalties thereon (if any) now or hereafter becoming payable on the Second Mortgage Revenue Bonds evidencing the debt secured hereby, (d) provide, renew and keep alive by paying the necessary premiums and charges thereon such policies of hazard and liability insurance as the Mortgagee on behalf of the Bond Purchasers may from time to time require upon the buildings and improvements now or hereafter erected upon the mortgaged premises, with loss payable clauses in favor of the Mortgagor and the Mortgagee on behalf of the Bond Purchasers and the Investor Developer and the Tenant as their respective interests may appear, and (e) promptly submit to the Mortgagee on behalf of the Bond Purchasers evidence of the due and punctual payment of all the foregoing charges; provided, however, that the Mortgagee on behalf of the Bond Purchasers may at its option require that sums sufficient to discharge the foregoing charges be paid in installments to the Mortgagee.

(3) The Mortgagor shall maintain or cause to be maintained all buildings and improvements subject to this Second Mortgage in good and substantial repair, as determined by the Mortgagee on behalf of the Bond Purchasers. The Mortgagee on behalf of the Bond Purchasers shall have the right to enter upon the mortgaged premises at any reasonable hour for the purpose of inspecting the order, condition and repair of the buildings and improvements erected thereon.

(4) In the event the Mortgagor neglects or refuses to pay the charges mentioned at (2) above, or fails to maintain or cause to be maintained the buildings and improvements as aforesaid, the Mortgagee on behalf of the Bond Purchasers may do so, add the cost thereof to the principal debt secured hereby, and collect the same as a part of said principal debt.

(5) The Mortgagor covenants and agrees not to create, not permit to accrue, upon all or any part of the mortgaged premises, any debt, lien, or charge which would be prior to, or on a parity with, the lien of this Second Mortgage, although

it is hereby specifically agreed that the aforementioned First Mortgage, to which this Second Mortgage is subordinate, shall be entered prior hereto against the mortgaged premises as security for its $1,700,000 of Clearfield County Industrial Development Authority, Commercial Development First Mortgage Loan Note (B Warehouse Company Project), being issued immediately prior hereto.

(6) In case a default be made for the period of thirty (30) days in the payment of any installment of principal or interest pursuant to the terms of the Second Mortgage Revenue Bonds, or in the performance by the Mortgagor of any of the other obligations of the Second Mortgage Revenue Bonds or this Second Mortgage, the entire unpaid balance of said principal sum, additional bonds and all other sums paid pursuant to the terms of the Second Mortgage Revenue Bonds or this Second Mortgage, together with unpaid interest thereon, shall at the option of the Mortgagee on behalf of the Bond Purchasers and without notice, become immediately due and payable, and foreclosure proceedings may be brought forthwith on this Second Mortgage and prosecuted to judgment, execution and sale for the collection of the same, together with costs of suit and attorneys' commission for collection of five per cent (5%) of the total indebtedness or $500.00, whichever is the larger amount. The Mortgagor hereby forever waives and releases all errors in said proceedings, waives stay of execution, the right of inquisition and extension of time of payment, agrees to condemnation of any property levied upon by virtue of any such execution, and waives all exemptions, from levy and sale of any property that is now or hereafter may be exempted by law.

The covenants, conditions and agreements contained in this Second Mortgage shall bind, and the benefits thereof shall inure to, the respective parties hereto and their respective heirs, executors, administrators, successors and assigns, and if this Second Mortgage is executed by more than one person, the undertakings and liability of each shall be jointly and several.

AND the Clearfield County Industrial Development Authroity, above named Mortgagor, doth hereby constitute and appoint its Chairman or Vice Chairman to be its attorney for it, and in its name and as for its corporate act and deed to acknowledge this Second Mortgage before any person having authority by they laws of the Commonwealth of Pennsylvania to take such acknowledgement, to the intent that the same may be duly recorded.

AND, the said Mortgagor, through its officers executing this Second Mortgage, does certify that the same has been duly authorized and directed to be executed and delivered to the Mortgagee on behalf of the Bond Purchasers herein named by the Debt Resolution of the said Clearfield County Industrial Development Authority, a non-profit corporation, the Mortgagor herein, duly passed by the Board of Directors thereof at a special meeting, legally called, whereat a legal quorum was present, and voted in favor of said Debt Resolution, and that the same is duly spread upon the minutes of said Authority.

IN WITNESS WHEREOF, the said Clearfield County Industrial Development Authority, the Mortgagor herein, has caused this Second Mortgage to be signed in its corporate name, by its Chairman or Vice Chairman, and has caused to be affixed hereunto the common and corporate seal of said corporation, attested by its Secretary or Assistant Secretary, the day and year first above written.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

Attest:

By _____
Chairman

_____
Secretary

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF CLEARFIELD)

I hereby certify that on this 7th day of May, 1985, before me, the undersigned subscriber, personally appeared STANLEY E. CRUM, the Chairman named in the foregoing Second Mortgage and by virtue and in pursuance of the authority therein conferred upon him acknowledged said Second Mortgage to be the act of the said Clearfield County Industrial Development Authority.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

RHONDA J. BASH, Notary Public
Clearfield, Clearfield County, Pa.
My commission expires Sept. 1, 1986

Rhonda J. Bash
Notary Public

(NOTARY SEAL)

My Commission Expires:

* * * * * *

CERTIFICATE OF RESIDENCE OF MORTGAGEE

We do hereby certify that the precise residence and complete post office address of the within named Mortgagee, The Savings & Trust Company of Pennsylvania, is 256 Main Street, Brockway, Pennsylvania 15825.

BLAKLEY & JONES

By
David E. Blakley, ~~Esquire~~
Attorney for Mortgagor

* * * * * * *

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF CLEARFIELD)

RECORDED in the office of the Recorder of Deeds in and for said County on the ____ day of _____, 1985, in Mortgage Book Volume ____, at Page ____.

WITNESS my hand and seal of said office the day and year aforesaid.

Recorder

B WAREHOUSE COMPANY

JOINT VENTURE AGREEMENT

Dated: April 25, 1985

6(a)

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B WAREHOUSE COMPANY

JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT made and executed in triplicate this 15th day of April, 1985, by and among CALVIN BEAN, an individual; THE RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC.; GEORGE V. COHEN, P.C. PENSION PLAN; CREEKSIDE FARMS, a Partnership; BERTRAM B. LEOPOLD, an individual; and THE PROFIT SHARING PLAN FOR LEOPOLD, EBERHARDT & GOLDSTEIN, (hereinafter individually called "Joint Venturer" and collectively called "Joint Venturers").

WITNESSETH:

WHEREAS, the parties hereto desire to join together in a Joint Venture for the purposes of (i) acquiring and owning certain real property (hereinafter sometimes referred to as the "land" or "property") situate in Sandy Township, Clearfield County, Pennsylvania, containing approximately 9.1 acres and more particularly described in Exhibit "A" which is attached hereto and made a part hereof; (ii) developing and constructing on the land certain improvements including a warehouse having approximately 135,000 square feet and related facilities; (iii) operating and leasing the warehouse to be constructed on the land; and (iv) carrying on any and all activities related thereto; and

WHEREAS, the parties hereto desire to set forth in full the terms and provisions of their agreements and understandings in this Joint Venture Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Formation and Name of Joint Venture. The parties hereto do hereby

form and confirm the existence of a Joint Venture for the purposes and subject to the terms and conditions as are contained herein. The Joint Venture shall be known as the B Warehouse Company.

2. Principal Office of the Joint Venture. The principal office and place of business of the Joint Venture shall be c/o The Savings and Trust Company of Pennsylvania, P.O. Box 499, 256 Main Street, Brookville, Pennsylvania 15825. The Joint Venture may have such other or additional offices as the Joint Venturers shall deem advisable.

3. Purpose of the Joint Venture. The purpose of the Joint Venture shall consist of (i) acquiring and owning the land; (ii) developing and constructing a warehouse of approximately 135,000 square feet and any additional improvements determined by the Joint Venturers to be feasible and desirable; (iii) operating the improvements as investments and for the production of income by initially leasing said warehouse for a term of three (3) years at a rental of Two and Fifty One Hundredth ($2.50) Dollars per square foot to Brockway, Inc. (NY), a New York Corporation; and (iv) carrying on any and all activities related thereto.

The foregoing powers and purposes of the Joint Venture shall also apply to personal or mixed property relating to the land and improvements. In furtherance of the business and purposes of the Joint Venture this Joint Venture may enter into such contracts, agreements, ventures or arrangements with such other joint venturers, partnerships, corporations, trusts, associations, individuals or other entities as may be deemed necessary by the Joint Venture to accomplish any of its purposes.

4. Interests of Joint Venturers. The percentage ownership interests of each Joint Venturer is as follows:

Calvin Bean	16.666667
The Retirement Plan for the Employees of Ideal Products, Inc.	16.666666
George V. Cohen, P.C. Pension Plan	16.666666
Creekside Farms	16.666667
Bertram B. Leopold	22.000000
The Profit Sharing Plan for Leopold, Eberhardt & Goldstein	11.333334

5. Capital Contributions and Capital Accounts.

A. On the date of the purchase of the land, each Joint Venturer shall contribute to the capital of the Joint Venture, in cash, the amount set forth after his name below, and shall receive a credit to his capital account therefore:

Joint Venturer	Amount
Calvin Bean	$ 83,333.34
The Retirement Plan for the Employees of Ideal Products, Inc.	83,333.33
George V. Cohen, P.C. Pension Plan	83,333.33
Creekside Farms	83,333.34
Bertram B. Leopold	110,000.00
The Profit Sharing Plan for Leopold, Eberhardt & Goldstein	56,666.67
TOTAL	$500,000.01

The aforesaid initial capital contribution together with the proceeds of the initial Joint Venture borrowing through Clearfield County Industrial Development Authority in the amount of $2,000,000.00 as follows: $1,700,000.00 in tax free

bonds payable in equal monthly installments over a period of ten (10) years with interest at a fixed rate of nine (9%) percent per annum for a period of three (3) years on a seven (7) year amortization schedule and at a variable rate for the remaining seven (7) years based upon eighty-five (85%) percent of the prime interest rate quoted by Mellon Bank of Pittsburgh, Pennsylvania, with a floor of eight (8%) percent and a ceiling of eleven (11%) percent on a seven (7) year amortization schedule and $300,000.00 in tax free Shared Appreciation Bonds with interest at the rate of fifteen (15%) percent per annum plus an additional variable interest equal to fifty (50%) percent of the gross rents received by the Joint Venture in excess of $337,500.00 in any calendar year during the first fifteen (15) years and in excess of $200,000.00 in any calendar year during the last twenty (20) years or the prorated portion of such gross rents for any year which is less than a calendar year, payable over a period of thirty-five (35) years in semi-annual payments of interest only and the principal plus fifty (50%) percent of the then fair market value of the land and improvements in excess of $2,300,000.00 plus the actual cost of any additional capital improvements made by the Joint Venture over and above the construction of the proposed 135,000 square foot warehouse which shall be due and payable thirty-five (35) years from date of issue with no prepayment permitted;

shall be used by the Joint Venture for the following purposes:

(i) To purchase the land and all closing costs and expenses, including legal fees, in connection therewith.

(ii) To pay all of the closing costs and expenses, including legal fees, in connection with the Clearfield County Industrial Development Authority loan.

(iii) To pay for the construction of the improvements upon the land and all costs and expenses in connection therewith.

(iv) To provide and fund the Reserve Fund of $250,000.00.

B. The Joint Venture shall initially fund a Reserve Fund in the amount of $250,000.00. To the extent that sufficient cash flow is not available from the operation of the warehouse, said Reserve Fund shall be used exclusively for the payment of proper expenses of the Joint Venture in connection with the operation of the warehouse, including but not limited to the payment of real estate taxes, principal and interest due on the outstanding bonds, and repairs. It is understood that the said Reserve Fund may from time to time be reduced to a balance of less than $250,000.00 in order to make timely payments of such expenses; however, it will be promptly restored and maintained in an amount of not less than $300,000.00 as and when the cash flow from the operation of the warehouse will permit.

C. It is anticipated that the Joint Venture may have additional cash requirements to carry out its obligations and meet its costs and expenses, and therefore each Joint Venturer shall be required to contribute to the capital of the Joint Venture a sum equal to his pro-rata share of his capital account to the total capital which contributions shall be due within thirty (30) days of written notice. The Joint Venture shall retain the services of a Certified Public Accountant to maintain the books and records of the Joint Venture so as to make recommendations of cash requirements to the Joint Venture from time to time.

D. In the event that a Joint Venturer fails to contribute to the capital of the Joint Venture the entire amount which such Joint Venturer may be required from time to time to contribute to the Joint Venture pursuant to this

Paragraph, then and in such event the Joint Venture and the Joint Venturers shall have either of the following remedies:

(i) The non-defaulting Joint Venturers may, but shall not be required to, contribute to the Joint Venture, on behalf of the Defaulting Joint Venturer, the amount remaining due from the Defaulting Joint Venturer. The Defaulting Joint Venturer shall be liable to the contributing Joint Venturer(s) for any contributions so made on behalf of the Defaulting Joint Venturer, together with interest at the prime rate of interest as quoted by Mellon Bank of Pittsburgh, Pennsylvania plus three (3%) percent; provided, however, that any such liability of the Defaulting Joint Venturer shall be exclusively limited to the interest of such Defaulting Joint Venturer in this Joint Venture. In the event that the option referred to in paragraph (ii) below is exercised, any contributions made by a Joint Venturer on behalf of the Defaulting Joint Venturer under this paragraph (i), shall be deemed to be contributions made by such Joint Venturer on his own behalf rather than on behalf of the Defaulting Joint Venturer; or

(ii) Within ninety (90) days after the contribution date, the other Joint Venturers, in proportion to their percentages of interest in the Joint Venture, one to the other, or in such other proportions as they may agree to, shall have the option to purchase the entire interest of the Defaulting Joint Venturer. The purchase price shall be equal to the Defaulting Joint Venturer's capital account as of the last day of the month preceding the month in which the default occurred.

Settlement shall take place at the principal office of the Joint Venture at 10:00 a.m. on the tenth business day following the date of the exercise of the option. In the event that the Defaulting Joint Venturer fails to appear at settlement, the remaining Joint Venturers shall have the power to

execute, as attorneys-in-fact of the Defaulting Joint Venturer, any assignments or other settlement documents requiring the signatures of the Defaulting Joint Venturer. The purchase price shall be paid in cash at settlement.

E. For all purposes of this Agreement, the "capital account" of the Joint Venturer as of any date is hereby defined to mean the amount of cash contributed by such Joint Venturer to the capital of the Joint Venture pursuant to Paragraph 5, properly adjusted to reflect (i) such Joint Venturer's distributive share of profits and losses (including, if such date is not the close of a Joint Venture accounting year, his distributive share of profits and losses of the Joint Venture for the period from the close of the last such Joint Venture accounting year to such date), and (ii) distributions by the Joint Venture to such Joint Venturer (including, if such date is not the close of a Joint Venture accounting year, distributions by the Joint Venture to him during the period from the close of the last such Joint Venture accounting year to such date).

6. Profits and Losses.

A. The profits of the Joint Venture shall be shared, and the losses of the Joint Venture shall be borne, by the Joint Venturers pro rata, in proportion to their respective percentages of interest in the Joint Venture.

B. To the extent that Section 702 and 704 of the Internal Revenue Code of 1954, or the corresponding sections of any future Federal internal revenue law, or any similar tax law or any state or jurisdiction, shall apply to the Joint Venture and the Joint Venturers, the determination of each Joint Venturer's distributive share of any Joint Venture item of income, gain, loss, deduction, credit or allowance for any accounting year or other period shall be made in accordance with and in proportion to such Joint Venturer's percentage of interest in the Joint Venture.

In the event of the transfer of all or any part of a Joint Venture interest (in accordance with the provisions of this Agreement) at any time other than the end of a Joint Venture accounting year, the distributive share of the aforesaid Joint Venture terms (in respect of the Joint Venture interest so transferred), as computed for income tax purposes, shall be allocated between the transferor and the transferee in the same ratio as the number of days in such Joint Venture accounting year before and after such transfer; provided, however, that the provisions of this sentence shall not be applicable to a gain or loss on the sale or other disposition of all or substantially all of the property of the Joint Venture or to other extraordinary nonrecurring items.

7. Term of Joint Venture. The term of the Joint Venture shall commence on the date of the execution of this Agreement by the Joint Venture and shall continue until terminated by written agreement of all of the Joint Venturers, provided, however, that the Joint Venture shall be terminated prior to such date upon:

A. The failure of the Joint Venture to acquire the land and financing;

B. Disposition by the Joint Venture of its entire interest in the land and improvements;

C. The sale of all the assets of the Joint Venture, including the disposition of any mortgage or leasehold interests which may be acquired by the Joint Venture;

D. The happening of any of the eventualities described elsewhere in this Agreement.

8. Legal Title to Joint Venture Property. Legal title to the Joint

Venture property shall be held in the name of the Joint Venture, the Clearfield County Industrial Development Authority or in whatever other manner the Joint Venturers shall determine to be in the best interests of the Joint Venture. The Joint Venturers acting together in their capacity as Joint Venturers, shall have the right, power and authority acting for and on behalf of the Joint Venture, to lease, sell, mortgage, convey, refinance, grant easements on or dedicate the property (or any part thereof) of the Joint Venture, to borrow money and execute promissory notes, to secure the same by mortgage (the term "mortgage" being hereby defined for all purposes of this Agreement to include a deed of trust, financing statement, chattel mortgage, pledge, conditional sales contract and similar security instruments) upon such Joint Venture property, to renew or extend any and all such loans or notes, to convey such Joint Venture property in fee simple by deed, mortgage or otherwise, and to create straw corporations to act as straw parties and nominees solely for and on behalf of the Joint Venture. In no event shall any party dealing with such Joint Venturers with respect to any property of the Joint Venture, or to whom any such property (or any part thereof) shall be conveyed, contracted to be sold, leased, mortgaged or refinanced by such Joint Venturers, be obligated to see to the application of any purchase money, rent or money borrowed or advanced thereon, or be obligated to see that the terms of this Agreement have been compiled with, or be obligated to inquire into the necessity or expediency of any act or action of such Joint Venturers, or be obligated to inquire into any of the terms of this Agreement. Every contract, agreement, deed, mortgage, lease, promissory note or other instrument or document executed by all such Joint Venturers with respect to any property of the Joint Venture shall be conclusive evidence in favor of any and every person relying thereon or claiming thereunder that (i) at the time or

times of the execution and/or delivery thereof, the Joint Venture was in full force and effect, (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Joint Venture and all of the Joint Venturers hereof, and (iii) such Joint Venturers were duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Joint Venture. In the event that title to any Joint Venture property shall be held in a manner other than in the name of the Joint Venture or the Clearfield County Industrial Development Authority, it is expressly understood and agreed that the manner of holding title to the property (or any part thereof) of the Joint Venture is solely for the convenience of the Joint Venture. Accordingly, the spouse, heirs, executors or administrators, beneficiaries, distributees, successors or assigns of any Joint Venturer shall have no right, title or interest in or to any such Joint Venture property by reason of the manner in which title is held, but all such property shall be treated as Joint Venture property held subject to the terms of this Agreement.

9. Management of Joint Venture.

A. Management and control of the Joint Venture and all its affairs shall be in the Joint Venturers. The Joint Venturers shall have the responsibility of the day-to-day operation of the Joint Venture and are hereby authorized, directed and empowered, upon the agreement of any of the Joint Venturers holding not less than sixty-five (65%) percent of the interest in the Joint Venture to do the following:

(1) To establish and maintain one or more bank accounts in the name of the Joint Venture, in a bank or banks chosen by them, and deposit in

said accounts all the monies received by or on behalf of the Joint Venture;

(2) To pay all expenses and obligations of the Joint Venture, which shall be paid and discharged only by checks drawn on said accounts and signed by any one of the Joint Venturers;

(3) To collect, receive and deposit all sums due or to become due to the Joint Venture;

(4) To employ Certified Public Accountants, attorneys, real estate brokers and a general manager for the Joint Venture.

(5) To pay any and all taxes, charges and assessments that may be levied, assessed or imposed upon any of the property of the Joint Venture;

(6) To manage, repair, rebuild or reconstruct any building, property or improvements belonging to the Joint Venture;

(7) To demand, sue for, collect, recover and receive all goods, claims, debts, monies, interest and demands whatsoever now due or that may hereafter become due or belong to the Joint Venture, including the right to institute any action, suit, or other legal proceedings for the recovery of any land, building, other property, or any part or parts thereof, to the possession of which the Joint Venture may be entitled, and to make, execute, and deliver receipts, releases and other discharges thereafter under seal or otherwise;

(8) To make, execute, endorse, accept, collect and deliver any and all bills of exchange, checks, drafts and notes of the Joint Venture;

(9) To defend, settle, adjust, compound, submit to arbitration and compromise all actions, suits, accounts, reckonings, claims and demands whatsoever that now are or hereafter shall be pending between the Joint Venture and any person, firm, association or corporation, in such manner and in all respects as they shall deem fit;

(10) To apply for zoning, rezoning variances, permits for construction, other permits, licenses and the like; and

(11) To determine the cash requirements of the Joint Venture as required by Paragraph 5B and the reserve accounts of the Joint Venture as required by Paragraph 5C.

(12) Without limiting the foregoing, generally to do, execute and perform any other act, deed, matter, or thing whatsoever that ought to be done, executed and performed or that in their opinion ought to be done, executed or performed, of every nature and kind whatsoever to effectuate the business of the Joint Venture, or as may be contemplated by this Agreement.

B. Notwithstanding the provisions of Paragraph 9(A) hereof, the prior written approval of all of the Joint Venturers shall be required for:

(1) The construction of any improvements upon the real property of the Joint Venture in excess of $10,000.00.

(2) The sale or other disposition of any of the real property or improvements thereon erected;

(3) The financing or refinancing of any obligation on the property; or

(4) Any amendment to this Agreement.

10. Management Services. The Joint Venturers shall not be paid any salaries nor receive any fees, commission or other compensation for serving as Joint Venturers; however, each Joint Venturer shall be fully and entirely reimbursed by the Joint Venture for any and all out-of-pocket costs and expenses incurred by such Joint Venture in connection with the management of the Joint Venture business. Subject to the provisions of Paragraph 9 hereof, the Joint

Venturers may, in their sole discretion, contract with any person, firm or corporation, including themselves and any firm or corporation in which they (or any of them) may have an interest, at reasonable and competitive rates of compensation, commission or remuneration, for (i) the development and construction (including engineering, architectural services and the like), and repair and maintenance of the land and/or improvements, (ii) the placement or refinancing of mortgage on the land and/or improvements, (iii) the lease, sale, assignment or transfer of the Joint Venturer's interest in the land and/or improvements (or any part thereof), as well as any other property or assets of the Joint Venture, (iv) the management of assets of the Joint Venture and (v) the performance of any other services which may at any time be necessary, proper, convenient or advisable to carry on the business of the Joint Venture.

11. Books of Account. There shall be kept at the principal office of the Joint Venture (or at such other office as the Joint Venturers may designate), books of account, in which shall be entered fully and accurately each and every transaction of the Joint Venture. Each Joint Venturer shall have access thereto at all reasonable times. The books shall be kept on the cash receipts and disbursements method or an accural method, and for such accounting year (calendar or fiscal) as the Joint Venturers may determine. An audit (which need not be certified) shall be made as of the end of each accounting year by such public accountants or certified public accountants as the Joint Venturers may agree upon, and each Joint Venturer shall be entitled to a copy of the audit report or a summary thereof. Any Joint Venturer shall further have the right to a private audit of the books and records of the Joint Venture, provided such audit is made at the expense of the Joint Venturer requesting such audit and is made at reasonable times after due notice.

12. Distribution of Operating Cash Flow.

A. So far as practicable, and provided that a Reserve Fund of $300,000.00 is maintained at all times, the operating cash flow of the Joint Venture shall first be applied to the paying the principal debt of the ten (10) year bonds and thereafter shall be distributed semi-annually among the Joint Venturers as provided in Paragraph 12C hereof, but such distribution may be made more or less frequently if the Joint Venturers shall unanimously agree to do so.

B. (1) For all purposes of this Agreement, the term "operating cash flow" shall mean:

(a) The taxable income for Federal income tax purposes as shown on the books of the Joint Venture, increased by (i) the amount of depreciation or amortization deductions taken in computing such taxable income, and (ii) any nontaxable income or receipt of the Joint Venture (excluding capital contributions and the proceeds of any mortgages or of any other Joint Venture obligations or loans to the extent used to finance capital improvements and/or replacements and reduced by (i) payments upon the principal of any mortgages upon Joint Venture property or of any other Joint Venture obligations or loans, (ii), expenditures for the acquisition of Joint Venture property and for capital improvements and/or replacements (except to the extent financed through capital contributions, mortgages on Joint Venture property or any other Joint Venture obligations or loans, or reserves previously set aside by the Joint Venture for such purposes), and (iii) such reserves (in addition to the aforesaid reserve account) for capital improvements and/or replacements and for repairs and to meet anticipated expenses as all the Joint Venturers shall deem to be reasonable necessary in the efficient conduct of the Joint Venture business; plus

(b) To the extent not included in taxable income under Paragraph 12B(1)(a), the net proceeds from the sale or other disposition of any part (but not all or substantially all) of the property owned by the Joint Venture; plus

(c) Any other funds (including amounts previously set aside as reserves by the Joint Venturers, where and to the extent the Joint Venturers unanimously agree that such reserves are no longer reasonably necessary in the efficient conduct of the Joint Venture business) deemed available for distribution and designated as operating cash flow by all of the Joint Venturers.

(2) All distributions made within the Joint Venture accounting year shall be subject to adjustment by reference to the audit report for such Joint Venture accounting year. If any additional amount is to be distributed by reason of such audit report, such additional amount shall be deemed a distribution for such Joint Venture accounting year; and if any excess amount was distributed during such Joint Venture accounting year, as reflected by such audit report, the excess amount shall be taken into account in reducing subsequent distributions.

C. In determining operating cash flow, any negative balance in any category described in Paragraph 12B hereof shall be netted against the positive balance in the other such categories.

D. The operating cash flow of the Joint Venture shall be distributed among the Joint Venturers hereof pro rata, in proportion to their respective interest in Joint Venture interest.

E. Notwithstanding any other provisions of this Agreement:

(1) In the event of the sale or other disposition (including, but not limited to, condemnation (or voluntary sale in lieu thereof) of all

or substantially all of the property owned by the Joint Venture, the net proceeds therefrom shall, after payment or provision for all liabilities to creditors of the Joint Venture (including the repayment of loans made by Joint Venturers to the Joint Venture), be distributed to the Joint Venturers in the manner set forth in Paragrah 12D hereof; and

(2) In the event of the refinancing (which term "refinancing" is hereby defined for all purposes of this Agreement to include the recasting, modifying, increasing or extending) of any mortgage on any of the property of the Joint Venture, such proceeds therefrom as are not used to finance capital improvements or replacements (hereinafter in this Agreement sometimes referred to as "excess refinancing proceeds"), if any, shall, after payment of or provision for (to the extent the Joint Venturers may determine such payment or provision to be appropriate) all liabilities to creditors of the Joint Venture, including the repayment of any loans made to the Joint Venture, be distributed to the Joint Venturers in the manner set forth in Paragraph 15D hereof.

13. Assignability of Joint Venture Interest.

A. Subject to the provisions of Paragraph 15 hereof and subparagraphs B and C hereof, the Joint Venture interest of each Joint Venturer (including such Joint Venturer's right to receive a share of the profits and a return of his capital account) shall be assignable; provided, however, that the assignee shall not become a substituted Joint Venturer of the Joint Venture unless (i) the assigning Joint Venturer so provides in the instrument of assignment, (ii) the assignee agrees in writing to be bound by the provisions of this Agreement, and (iii) the remaining Joint Venturers unanimously so consent in writing. If the assigning Joint Venturer so provides in the instrument of

assignment and the remaining Joint Venturers unanimously so consent in writing, the assignee shall have the right to become a substituted Joint Venturer. Unless named in this Agreement, or unless admitted to the Joint Venture as above provided, or unless admitted to the Joint Venture by unanimous written consent of all Joint Venturers, no person shall be considered a Joint Venturer hereof. The Joint Venture, each Joint Venturer and any other person having business with the Joint Venture need deal only with the Joint Venturers so named or so admitted; they shall not be required to deal with any other person by reason of an assignment by a Joint Venturer or by reason of death of a Joint Venturer, except as otherwise provided in this Agreement. In the absence of the substitution, as provided herein, of a Joint Venturer for an assigning or deceased Joint Venturer, any payment to a Joint Venturer or to his executors or administrators shall acquit the Joint Venture of all liability to any other persons who may be interested in such payment by reason of an assignment by, or the death of, such Joint Venturer.

B. (1) In the event that a Joint Venturer shall receive a Bona Fide Offer from an outside offeror to purchase his interest in the Joint Venture, which Bona Fide Offer such Joint Venturer is willing to accept, such Joint Venturer (hereinafter called the "Offeror") shall promptly give notice thereof to all the other Joint Venturers. The other Joint Venturers shall then have thirty (30) days from the date of such notice in which to elect, and to give notice to the Offeror and all of the other Joint Venturers of such election, to purchase, pro rata, in proportion to their respective percentages of Joint Venture interest, the Offeror's interest in the Joint Venture at a price proportionately equal to, and on the same terms as contained in the Bona Fide Offer. If one or more of the Joint Venturers, but less than all, shall elect to

purchase the Offeror's Joint Venture interest, than the Offeror shall give notice to those Joint Venturers who have elected to purchase their proportionate shares of the Joint Venture interest so offered of the failure by the other Joint Venturer(s) to elect to purchase his or their proportionate share(s) of such Joint Venture interest. Thereupon, the Joint Venturers who have elected to purchase their proportionate shares of such Joint Venture interest shall have ten (10) additional days from the date of their receipt of such last notice in which to elect, and to give notice to the Offeror and all of the other Joint Venturers of such election, to purchase, pro rata, in proportion to their respective percentages of Joint Venture interest, or in such other proportion as they may otherwise agree upon, the proportion of such Offeror's Joint Venture interest which the Joint Venturer(s) did not elect to purchase. If the Offeror does not receive elections to purchase his entire Joint Venture interest so offered for sale within the aforesaid periods of time, then the Offeror may, within a period of ninety (90) days of the last date upon which the Joint Venturers could have elected to purchase such Joint Venture interest as above provided, consummate the sale to the outside Offeror in strict accordance with the price and terms stated in the Bona fide Offer and submitted to the other Joint Venturers. If, however, such sale to the outside offeror is not consummated within said period of ninety (90) days then any subsequent sale to any outside offeror may be made only if all of the requirements of this Paragraph 13B are again complied with.

(2) In the event the Joint Venturers, or any of them, shall elect to purchase all of the Offeror's Joint Venturer interest as heretofore provided, then the transfer of such Joint Venture interest and the closing of

the transaction shall occur within thirty (30) days after the exercise of the election to purchase such Joint Venture interest. Such closing shall take place at the principal office of the Joint Venture, and, at such closing, the purchase price shall be paid in accordance with the terms and provisions of the Bona Fide Offer and the necessary instruments of transfer shall be duly executed and delivered by the Offeror with necessary documentary and/or transfer stamps, if any, affixed thereto at the cost of the Offeror.

(3) Each notice given by an Offeror to the Joint Venturers in accordance with this Paragraph 13B shall be in writing and shall be sent by registered or certified mail, return receipt requested and postage prepaid. Such notice shall contain an offer to sell the Offeror's Joint Venture interest at the same price and upon the same terms as the Bona Fide Offer; such notice, which shall be accompanied by a true and correct copy of such Bona Fide Offer, shall set forth the name, home address and business address, and business or occupation of the outside offeror, or, if the outside offeror is a corporation, such information with respect to all shareholders owning ten percent (10%) or more of the capital stock of the corporation.

(4) In order to be deemed a Bona Fide Offer within the meaning of this Paragraph 13B, an offer must be in writing, signed by the outside offeror (who must be a person financially capable of carrying out the terms of the offer), in a form legally enforceable against the outside offeror, and accompanied by a good faith deposit equal to at least ten percent (10%) of the proposed purchase price.

C. Subject to the terms of Paragraph 13A hereof but notwithstanding the provisions of Paragraph 13B hereof, the Joint Venture interest of any Joint Venturer may be transferred or disposed of by inter vivos instrument, by sale,

bequest or devise, or by intestacy, to any of the following:

(1) A parent, or parents, spouse, descendant or descendants, spouse of a descendant, brother or sister;

(2) Any corporation all of the shares of which are owned by one or more of the Joint Venturers herein;

(3) A trust, whether inter vivos or testamentary, of which a Joint Venturer or any person named above in (1) or (2) is the primary income beneficiary.

(4) A Joint Venturer named herein or a duly substituted Joint Venturer.

(5) A partnership owned or controlled by a Joint Venturer.

In the event of the transfer of any Joint Venture interest pursuant to this paragraph, any subsequent transfer of such interest by such transferee shall be subject to all terms and provisions of this paragraph, as well as any and all other provisions of this Agreement, and at or prior to the date of the transfer of any Joint Venture interest as aforesaid, the transferor shall give notice of such transfer to each of the other Joint Venturers hereof, setting forth in such notice the name and address of the transferee.

14. Bankruptcy of a Joint Venturer. If any Joint Venturer shall take advantage of any bankruptcy or insolvency act, or if an insolvency petition shall be filed against any Joint Venturer and a final adjudication of insolvency entered thereon, or if any Joint Venturer shall make an assignment for the benefit of creditors, then the other Joint Venturers shall have the option (exercisable by giving notice thereof to such Joint Venturer or to his assignee, trustee in bankruptcy, receiver or other legal representative) to purchase all,

but not less than all, of such Joint Venturer's interest in the Joint Venture within ninety (90) days after such taking advantage or such adjudication or assignment, as the case may be, at a price equal to such Joint Venturer's capital account at such time. The aforesaid option is granted to the other Joint Venturers hereof pro rata, in proportion to their respective percentages of Joint Venture interest, or in such other proportion as they may otherwise agree upon. The terms of payment shall be all cash or as otherwise agreed upon by the respective parties.

15. Termination of Joint Venture.

A. The Joint Venture shall not terminate upon the occurrence of any of the following events: the retirement, adjudication of insanity or incompetency, adjudication of bankruptcy (unless the option under Paragraph 14 above is exercised), or death of any Joint Venturer, or the occurrence of any other event causing the termination of a Joint Venture under the laws of the State of Pennsylvania, unless the remaining Joint Venturers elect not to continue the Joint Venture and the Joint Venture business. In the event that the remaining Joint Venturers so elect, (i) the Joint Venture shall be terminated, (ii) the Joint Venture and the Joint Venture business shall not be continued, (iii) the Joint Venture interest owned by the Joint Venturer who retires, is adjudged to be insane, incompetent or bankrupt, or dies, shall not be deemed to be a Joint Venture interest, and such Joint Venturer (or his committee, trustee in bankruptcy, executors or administrators, successors or assigns, or other legal representatives) shall not be deemed to be a Joint Venturer.

B. Upon the insanity, incompetency, bankruptcy or death of one of the Joint Venturers, then the remaining Joint Venturers shall determine as speedily as possible whether or not the Joint Venture (as a limited partnership,

general partnership, joint venture or similar organization) shall be terminated.

C. (1) In the event that all of the remaining Joint Venturers agree not to continue the Joint Venture, then the remaining Joint Venturers shall proceed with dispatch and without any unnecessary delay to sell or otherwise liquidate the assets and property of the Joint Venture, and, after paying or duly providing for all liabilities to creditors of the Joint Venture, to distribute the net proceeds and any other liquid assets of the Joint Venture among the Joint Venturers in the manner set forth in Paragraph 15D hereof.

(2) Anything herein contained to the contrary notwithstanding, in the event of termination, before any property of the Joint Venture shall be on the market for sale, the remaining Joint Venturers shall call a meeting of all of the Joint Venturers. In the event that any or all of the remaining Joint Venturers shall determine that he or they wish to purchase all, but not less than all, of such Joint Venture property, than such Joint Venturer(s) (hereinafter referred to as the "Purchasing Joint Venturers") shall have the option to purchase the interests of the other Joint Venturers (hereinafter referred to as the "Selling Joint Venturers") in such property. The amount and terms of the purchase price shall be as mutually agreed upon by the Purchasing Joint Venturers and the Selling Joint Venturers. If the Purchasing Joint Venturers and Selling Joint Venturers are unable to reach such mutual agreement, the Purchasing Joint Venturers' group and the Selling Joint Venturers' group shall each promptly appoint an appraiser to find the value of the equity of such property, for purposes of a cash sale subject to existing encumbrances and liabilities. If the two appraisers agree upon the equity value of such property, they shall jointly render a single written report of their opinion

thereon. If the two appraisers cannot agree then they shall appoint a third appraiser and the joint written report of two of the three appraisers shall be binding upon the parties hereto. All appraisers shall be qualified by experience and ability to appraise the property of the Joint Venture. The fees and other costs of each of the first two appraisers shall be borne by the group appointing each such appraiser, with the fees and other costs of the third appraiser being shared equally by both such groups. The agreed equity value or the equity value contained in the aforesaid joint written report of the appraisers, as the case may be, shall be used to determine the purchase price of the interests of the Selling Joint Venturers, as if such property were sold on the basis of such value and the net proceeds thereof and other liquidated assets of the Joint Venture were distributed among the Joint Venturers in accordance with the provision of Paragraph 15D hereof. Within sixty (60) days after the final written report (as aforesaid) has been rendered, the Purchasing Joint Venturers shall give notice to the Selling Joint Venturers of their decision as to the exercise of the aforesaid option. Such option is granted to all Purchasing Joint Venturers pro rata, in proportion to their respective percentages of Joint Venture interest, or in such other proportion as they may otherwise agree upon. If such option is exercised, settlement shall be held within thirty (30) days from the date of such exercise. Unless otherwise mutually agreed upon by the Purchasing Joint Venturers and the Selling Joint Venturers, the terms of payment of the purchase price shall be: Twenty percent (20%) cash down, with the balance of the principal payable over a period of five (5) years in five (5) equal annual installments, with interest payable annually at the rate of Mellon Bank, Pittsburgh, Pennsylvania prime rate plus two (2%) percent per annum on the unpaid principal balance, and with the right of prepayment in

whole or in part at any time without penalty. The obligation of the Purchasing Joint Venturers to the Selling Joint Venturers shall be evidenced by the several promissory notes of the Purchasing Joint Venturers, secured by the entire Joint Venture interests of the Purchasing Joint Ventures, with financing statements to be executed and recorded in order to evidence the same, if so requested by the Selling Joint Venturers.

D. Any excess refinancing proceeds (as defined in Paragraph 12E(2) hereof) and/or the net proceeds from the sales or other disposition of all or substantially all of the property of the Joint Venture and any other liquid assets of the Joint Venture shall, to the extent thereof after payment of or provision for all liabilities to creditors of the Joint Venture, including the repayment of any loans made to the Joint Venture by a Joint Venturer, be distributed among all the Joint Venturers hereof pro rata, in proportion to their respective percentages of Joint Venturer interest.

E. The Joint Venture shall terminate when all property and assets owned by the Joint Venture shall have been disposed of, and the net proceeds therefrom and any other liquid assets of the Joint Venture, after payment of or provision for all liabilities to creditors of the Joint Venture, shall have been distributed to the Joint Venturers as provided in Paragraph 15D hereof.

16. Miscellaneous Provisions.

A. Unless otherwise so provided in this Agreement, no Joint Venturer shall be liable to any other Joint Venturer or to the Joint Venture by reason of his actions in connection with the Joint Venture, except in the case of actual fraud, gross negligence or dishonest conduct.

B. Except as provided herein, nothing herein contained shall be

construed to constitute any Joint Venturer hereof the agent of any other Joint Venturer hereof or to limit in any manner the Joint Venturers in the carrying on of their own respective businesses or activities.

C. Any Joint Venturer may engage in or possess any interest in other business and real estate venturers of every nature and description, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage and development of real property; and neither the Joint Venture or the Joint Venturers hereof shall have any rights in or to any such independent venture or the income or profits derived therefrom.

D. Any claim or controversy arising out of or relating to this Agreement or a breach hereof shall, upon the request of any party involved, be submitted to and settled by arbitration in accordance with the rules then obtaining in the State of Pennsylvania of the American Arbitration Association (or any other form of arbitration mutually acceptable to the parties so involved). The decision made pursuant to such arbitration shall be binding and conclusive on all parties involved; and judgment upon such decision may be entered in the highest court of any forum, state or Federal, having jurisdiction.

E. All notices provided for herein shall be sent by certified or registered mail, return receipt requested, and first-class postage prepaid to the address of the Joint Venturer as shown on the books of the Joint Venture, unless notice of a change of address is given to the Joint Venture pursuant to the provisions of this paragraph. Time periods shall commence on the date of mailing of a notice. Any notice which is required to be given within a stated period of time shall be considered timely if postmarked before midnight of the

last day of such period.

F. The terms "bankrupcy" and "bankrupt", and derivations thereof, shall be deemed to refer not only to an adjudication of bankruptcy under the Federal Bankruptcy Act, but also to an adjudication of insolvency under any state or local insolvency procedure.

G. The use of any gender herein shall be deemed to be or include the other genders and the use of the singular herein shall be deemed to be or include the plural, and vice versa, wherever appropriate.

H. This agreement sets forth all, and is intended by all parties hereto to be an integration of all of the promises, agreements, conditions, understandings, warranties, and representations among the parties hereto with respect to the Joint Venture the Joint Venture business and the property of the Joint Venture; there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, among them other than as set forth herein.

17. Governing Law. It is the intention of the parties hereto that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State of Pennsylvania.

18. Burden and Benefit. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective spouses, heirs, executors, administrators, personal and legal representatives, successors and assigns.

19. Notices. All notices to be given hereunder to a Joint Venturer or the Joint Venture shall be in writing and sent by certified mail, return receipt

requested, with a copy to the other Joint Venturers at the following addresses:

Calvin Bean - P.O. Box 1006, DuBois, PA 15801

The Retirement Plan for the Employees of Ideal Products, Inc., - P.O. Box 1006, DuBois, PA 15801

George V. Cohen, P.C. Pension Plan - 433 Market Street, P.O. Box 7, Williamsport, PA 17703

Creekside Farms - 433 Market Street, P.O. Box 7, Williamsport, PA 17703

Bertram B. Leopold - 414 N. Logan Boulevard, Altoona, PA 16602

The Profit Sharing Plan for Leopold, Eberhardt & Goldstein - 414 N. Logan Boulevard, Altoona, PA 16602

A Joint Venturer hereto may designate in writing a change of address or the name of another person and address to whom such notices shall be sent.

20. Construction Contract. Notwithstanding anything in this Joint Venture Agreement to the contrary, the Joint Venture and the Joint Venturers do hereby appoint Bertram B. Leopold, one of the Joint Venturers, as the attorney-in-fact for the Joint Venture in its name and each of the Joint Venturers in their own name and on behalf of the Joint Venture and each of the Joint Venturers to take all actions and perform all acts including without limitation the execution of any and all documents with respect to the construction of the 135,000.00 square foot warehouse including the execution of the construction agreement between the Joint Venture and its contractor, Hallstrom Construction, Inc.

IN WITNESS WHEREOF, the undersigned Joint Venturers have hereto affixed their signatures as of the day and year first above written.

Witness:

_____

_____
John Bean, Agent for Calvin Bean

THE RETIREMENT PLAN FOR THE EMPLOYEES OF IDEAL PRODUCTS, INC.

By _____
John Bean, Co-Trustee

GEORGE V. COHEN, P.C. PENSION PLAN

By _____
George V. Cohen, Trustee

CREEKSIDE FARMS

By _____
George V. Cohen, Attorney-in-Fact

_____
Bertram B. Leopold

THE PROFIT SHARING PLAN FOR LEOPOLD, EBERHARDT & GOLDSTEIN

By _____
Bertram B. Leopold, Co-Trustee

ALL that piece or parcel of real estate situate in Sandy Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a point on the west edge of existing concrete road; thence by residue of tract North 74 degrees 10 minutes West 500 feet and North 15 degrees 50 minutes East 700 feet to south side of a 50 foot right-of-way for a road; thence along said right-of-way the following North 83 degrees 10 minutes East 410 feet, by a curve to the right the chord of which is South 72 degrees 50 minutes East 95 feet, by a curve to the right the chord of which is South 7 degrees 30 minutes East 68 feet; thence continuing along said right-of-way and west edge of concrete road South 15 degrees 50 minutes West 795 feet to the place of beginning. Containing 9.1 acres.

Exhibit A

B Warehouse Company

May 8, 85

Altoona, Pa.

Disbursements made on your behalf:

Recording Partial Release of Mortgage	$ 15.50
Recording Amended Partial Release of Mortgage	15.50
Recording First Mortgage	19.50
Recording Second Mortgage	19.50
Recording Mortgage Loan Agreement	60.50
Recording Memorandum of Mortgage Loan Agreement	23.50
Recording Memorandum of Collateral Assignment	21.50
Recording deed	15.50
Recording two UCC1's	31.00
Filing Waiver of Mechanic's Lien	10.00
Filing two UCC1's	17.00
Filing two Ucc1's with Department of State	18.00
	$ 267.00

Exhibit E

MORTGAGE LOAN AGREEMENT

By and Among

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

and

B WAREHOUSE COMPANY

and

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA,
as Noteholder and Bonds Paying Agent

Dated as of April 15, 1985,
for reference purposes only, but actually
effective as of May 7, 1985

(B WAREHOUSE COMPANY PROJECT)

MORTGAGE LOAN AGREEMENT

THIS MORTGAGE LOAN AGREEMENT (the "Mortgage Loan Agreement"), dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, is between the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (the "Authority"), a non-profit public corporate and political instrumentality of the Commonwealth of Pennsylvania, and CALVIN BEAN, RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC., GEORGE V. COHEN, P.C. PENSION PLAN, CREEKSIDE FARMS, A PARTNERSHIP, BERTRAM B. LEOPOLD, AND LEOPOLD, EBERHARDT & GOLDSTEIN PROFIT SHARING PLAN, Joint Venturers trading and doing business as B WAREHOUSE COMPANY (the "Investor Developer"), and THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as the Noteholder and Bonds Paying Agent (the "Bank").

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and representations hereinafter contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows (provided that in the performance of the agreements of the Authority herein contained any obligation it may incur for the payment of money shall not be a debt of the Commonwealth of Pennsylvania or any political subdivision thereof other than as a special obligation of the Authority, and neither the Commonwealth of Pennsylvania nor any political subdivision other than the Authority shall be liable on any obligation so incurred, but the Authority shall be obligated to pay the Note and Bonds solely out of the income and revenues to be derived by the Authority under this Mortgage Loan Agreement).

ARTICLE I

BACKGROUND, REPRESENTATIONS, FINDINGS, WARRANTIES

1.1 BACKGROUND. The Authority is a public instrumentality of the Commonwealth of Pennsylvania, and a public body politic and corporate, organized under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"). Under the Act, the Authority is authorized to enter into agreements providing for the mortgaging of commercial development projects for commercial occupants by an investor developer for the public purpose of alleviating unemployment, maintaing employment as a high level, creating and developing business opportunities and improving the economy of the Commonwealth of Pennsylvania and Clearfield County, by the acquisition, construction, improvement, rehabilitation, revitalization and financing of commercial development enterprises.

The Investor Developer has requested the Authority to undertake a project (the "Project") consisting of the financing of the acquisition of the site (the "Premises"), described in Exhibit "A", together with the construction of a certain warehouse facility thereon (the "Project Facilities"), described in Exhibit "B", with the understanding that the Investor Developer may also in the near future construct certain improvements to said Project Facilities.

Fee simple title to the Premises has heretofore been conveyed by a proper Deed to the Authority and, after recording of this instrument and certain related documents, will be reconveyed to the Investor Developer for due and appropriate considerations, and said fee simple title to said Premises will thereafter remain and will continue to remain and be vested in the Investor Developer. In conjunction with the mortgage of the Premises as hereinafter provided, the Investor Developer (the "Landlord") has concurrently herewith entered into a commercial lease of the Premises, the Agreement of Lease (referred to herein as the "Lease"), with Brockway, Inc. (NY) (the initial "Tenant"). Concurrently with the execution of this Mortgage Loan Agreement and the documents related hereto, the Investor Developer has executed a Collateral Assignment of the Lease, dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985 (the "Collateral Assignment"), to the Bank as the Noteholder and Bonds Paying Agent under the Debt Resolution hereinafter identified, as collateral security for the Note and Bonds to be issued by the Authority for purposes of financing the acquisition of the Premises and construction of the Project Facilities.

1.2 INVESTOR DEVELOPER'S REPRESENTATIONS AND WARRANTIES. The Investor Developer represents and warrants to the Authority that:

(a) The Investor Developer is a Joint Venture consisting of Calvin Bean, Retirement Plan for Employees of Ideal Products, Inc., George V. Cohen, P.C. Pension Plan, Creekside Farms, a Partnership, Bertram B. Leopold, and Leopold, Eberhardt & Goldstein Profit Sharing Plan, collectively trading and doing business as B Warehouse Company, and is in the business of general real estate development and investment. The Investor Developer is properly doing business in the Commonwealth of Pennsylvania and has full power and authority to enter into this Agreement and perform its obligations hereunder. The making and performance of this Agreement by the Investor Developer will not violate any governmental rule or regulation, or agreement, instrument or other document by which the Investor Developer or its property is bound.

(b) The acquisition and financing of the Premises and construction thereon of the Project Facilities, as provided under this Agreement, is intended to promote employment opportunities and diversification of industry in order to improve the prosperity, economic stability and general welfare of the Commonwealth of Pennsylvania, by promoting and retaining substantial employment opportunities for residents thereof.

(c) The Investor Developer intends to cause the Premises and Project Facilities to be operated as a revenue producing enterprise and "Commercial Development Project", as defined in the Act.

(d) The Investor Developer is engaged in commercial activities in Clearfield County, Pennsylvania, requiring substantial capital and creating substantial employment opportunities. The Investor Developer is financially responsible to assume all obligations prescribed by the Authority in this Agreement and by the Act.

(e) The Project will promote the purposes of the Act by promoting a commercial and business enterprise, and developing, creating and retaining employment opportunities and business opportunities in Clearfield County, Pennsylvania.

(f) The Premises and Project Facilities are land and property of a character subject to allowance for depreciation under Section 167 of the Internal Revenue Code of 1954, as amended, and not less than ninety (90%) per cent of the proceeds of the Note and Bonds shall be applied to the acquisition and construction of the Project.

1.3 AUTHORITY'S REPRESENTATIONS AND FINDINGS. The Authority represents, finds and warrants that:

(a) The Authority is duly organized under the provisions of the Act. The Authority has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Project constitutes and will constitute a "Commercial Development Project" within the meaning of the Act. By proper corporate action, the Authority has been duly authorized to execute and deliver this Agreement.

(b) To permanently finance the cost of the Project, the Authority proposes initially to issue a $1,700,000 Commercial Development First Mortgage Loan Note (B Warehouse Company Project) (the "First Mortgage Loan Note" and "Note") and up

to but not exceeding $300,000, principal amount, of its Commercial Development Second Mortgage Revenue Bonds, Series of 1985, (B Warehouse Company Project) (the "Second Mortgage Revenue Bonds" and "Series of 1985 Bonds" and "Bonds"). Additional Bonds of the Authority may be issued as provided for under its Debt Resolution, hereinafter identified.

(c) Both the First Mortgage Loan Note and the Second Mortgage Revenue Bonds will be issued under a Debt Resolution (the "Debt Resolution"), adopted on April 18, 1985, by the Authority with The Savings & Trust Company of Pennsylvania, as the Noteholder and the Bonds Paying Agent thereunder, having its principal office and its corporate trust office in the Borough of Brookville, Pennsylvania (the "Bank"), and will be in such form, mature, bear interest, be redeemable and have such other terms and provisions as are set forth in said Debt Resolution, pursuant to which the Authority's interests in this Agreement and the revenues and receipts derived by the Authority from the Project will be pledged, and the Premises and Project Facilities will be mortgaged by the Authority to the Bank under a First Mortgage (the "First Mortgage"), and a Second Mortgage (the "Second Mortgage"), both dated as of April 15, 1985, for reference purposes only, but actually both effective as of May 7, 1985, both of which in turn will be assigned to the Bank as security for the payment of the principal and interest on both the Note and the Bonds.

(d) Within the meaning of Section 103(b)(6) of the Internal Revenue Code of 1954, as amended (the "Code"), the Note and the Bonds to be issued by the Authority are the only debt obligation of the Authority or any other governmental unit which have been issued on behalf of the Principal Users with respect to the Project or any other facilities located in the Township of Sandy, Clearfield County, Pennsylvania, an incorporated municipality, of which the Principal Users are the Investor Developer and the initial Tenant or any persons or corporations related to any of them.

ARTICLE II

ACQUISITION, MORTGAGING AND CONSTRUCTION OF THE PROJECT

2.1 ACQUISITION OF PROJECT. The Authority acknowledges and covenants that it has good and marketable fee simple title to the Premises free and clear of any lien or encumbrance (subject to easements, restrictions and title objections with respect thereto shown on any title report submitted by the Investor Developer herewith and which are acceptable to the Authority), and further agrees to cause the execution and delivery of the First Mortgage, the Second Mortgage, the First Mortgage Loan Note, the Second Mortgage Revenue Bonds, this Agreement, and the Assignment thereof, and of the Collateral Assignment of the Lease to the Bank, all at or before the settlement which will occur simultaneously with the execution hereof.

2.2 MORTGAGE LOAN. The Authority agrees, upon the terms and subject to the conditions hereinafter set forth, to make a loan to the Investor Developer in the principal amount of TWO MILLION DOLLARS ($2,000,000) (the "Mortgage Loan") for the purposes set forth hereinabove.

2.3 FIRST MORTGAGE LOAN NOTE AND SECOND MORTGAGE REVENUE BONDS. The Mortgage Loan shall be evidenced by a promissory note in substantially the form of the $1,700,000 First Mortgage Loan Note executed and delivered simultaneously herewith and by reference thereto made a part hereof (the "First Mortgage Loan Note"), and the $300,000 Second Mortgage Revenue Bonds, Series

of 1985, in substantially the form set forth in the Debt Resolution (the "Second Mortgage Revenue Bonds"), said Note and said Bonds both to be dated as of April 15, 1985, for reference purposes only, and to actually be effective as of May 7, 1985, after the actual execution and delivery thereof. The Mortgage Loan shall be repaid as provided in the First Mortgage Loan Note and the Second Mortgage Revenue Bonds and shall bear the interest rates on the unpaid principal amount from the effective date of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds until payment in full of the entire principal amount outstanding from time to time as set forth and pursuant to the terms of the Mortgage Loan Note and the Second Mortgage Revenue Bonds. In the event that interest on the First Mortgage Loan Note and the Second Mortgage Revenue Bonds issued by the Authority in connection with the Project ever becomes includable for purposes of Federal income taxation in the gross income of the recipients thereof (except that the reason for such inclusion is because the recipient is determined to be a "substantial user" or "related person" as provided for in Section 103(b) of the Internal Revenue Code of 1954, as amended, or as provided in the First Mortgage Loan Note and the Second Mortgage Revenue Bonds issued by the Authority), then the First Mortgage Loan Note and the Second Mortgage Revenue Bonds shall be increased immediately in the rate of interest payable thereon to an adjusted taxable rate at all times thereafter equal to a rate which will render an equivalent return to the Noteholder and Bondholders.

2.4 SECURITY FOR THE FIRST MORTGAGE LOAN NOTE AND SECOND MORTGAGE REVENUE BONDS. The First Mortgage Loan Note shall be secured by a First Mortgage, in the form of the First Mortgage executed and delivered concurrently herewith, and by reference thereto made a part hereof (the "First Mortgage"), on the Premises, and the Second Mortgage Revenue Bonds shall be secured by a Second Mortgage, in the form of the Second Mortgage also executed and delivered concurrently herewith, and by reference thereto made a part hereof (the "Second Mortgage"), on the Premises both as more fully described in the Debt Resolution of the Authority, which Mortgages when filed in the appropriate recording office, shall constitute a first lien and a second lien, respectively on the Premises. Said Mortgages shall both be dated as of April 15, 1985, for reference purposes only, but both to be actually effective as of May 7, 1985, after the actual execution and delivery thereof. As further security for the payments due hereunder and under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, the Investor Developer shall also execute and deliver to the Bank the Collateral Assignment of the Lease concurrently with the execution and delivery of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds. Also as further security for the payments due hereunder and under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, the Investor Developer hereby grants to the Authority a security interest in all personal property and fixtures of the Investor Developer located on the Premises as set forth in the Financing Statement which is to be filed simultaneously with the execution and delivery hereof, and the Investor Developer will join in filing such other Financing Statements from time to time in connection herewith as the Authority may request.

2.5 EXPENSES AND FEES. The Investor Developer, at the time of execution of this Agreement or, at the option of the Authority, at any time or times hereafter specified by the Authority, shall pay all attorneys' fees, other fees and charges, including the Authority's initial fee of $1,975.00 (and thereafter shall also pay the Authority's yearly fee of $625.00 annually) and the charges for the examination of the title to the Premises, surveys, continuations of surveys and title reports, inspections and drawing of papers, and shall also pay the recording and filing fees, and transfer and mortgage recording taxes, if any, with respect to the Premises and Project.

2.6 TITLE INSURANCE. If requested in writing by the Authority, the Investor Developer shall procure and deliver to the Authority a certificate of title insurance issued by a firm of recognized attorneys, naming the Authority as insured, and insuring the same to be first and second liens, respectively, on the Premises.

2.7 INCORPORATION OF TERMS. The First Mortgage Loan Note and the First Mortgage and the Second Mortgage Revenue Bonds and the Second Mortgage to be executed, acknowledged and delivered pursuant to this Agreement shall be made subject to all the terms and conditions contained in this Agreement, to the

same extent and effect as they would be if fully set forth in and made a part of said First Mortgage Loan Note and Second Mortgage Revenue Bonds and First and Second Mortgages. This Agreement is made subject to all the conditions, stipulations, agreements and covenants contained in said First Mortgage Loan Note and Second Mortgage Revenue Bonds and First and Second Mortgages to the same extent and effect as they would be if fully set forth herein and made a part hereof. Notwithstanding any of the foregoing, if any provisions of said First Mortgage Loan Note and Second Mortgage Revenue Bonds and First and Second Morgages are inconsistent with this Agreement, this Agreement shall control.

2.8 PREPAYMENT OF THE FIRST MORTGAGE LOAN NOTE AND SECOND MORTGAGE REVENUE BONDS. The First Mortgage Loan Note and Second Mortgage Revenue Bonds are subject to optional prepayment by the Investor Developer under certain circumstances as more specifically set forth therein and in the Debt Resolution of the Authority. The First Mortgage Loan Note and Second Mortgage Revenue Bonds shall also be subject to acceleration and mandatory prepayment upon the occurrence of certain events, as more specifically set forth therein and in the Debt Resolution of the Authority.

2.9 CONSTRUCTION OF PROJECT. The Investor Developer agrees to construct the Project Facilities in accordance with the Debt Resolution of the Authority and this Agreement.

2.10 CHANGES IN PROJECT FACILITIES. The Investor Developer will revise Exhibit "B" to reflect additions, deletions and changes in the Project Facilities from time to time made, and will notify the Authority and the Bonds of such modifications so that the Authority and the Bonds will at all times be able to ascertain the nature, location and cost of the facilities covered by this Agreement.

2.11 ADMINISTRATION OF CONSTRUCTION CONTRACTS, CHANGES WITH RESPECT TO ANY FUTURE IMPROVEMENTS. The Investor Developer, in conjunction with the construction of the Project Facilities and any improvements that are made in the future to the Project, and subject to the provisions of this Agreement, will have full responsibility for preparing, administering, amending and enforcing any construction contracts and litigating or settling all claims thereunder, and will be entitled to all warranties, guarantees and indemnities provided under any such construction contracts and by law. The Authority agrees to execute and deliver to the Investor Developer any and all documents necessary to evidence the Investor Developer's rights to such warranties, guarantees and indemnities, and agrees to cooperate with the Investor Developer in amending, enforcing and litigating any such construction contracts.

ARTICLE III

FINANCING THE PROJECT

3.1 ISSUANCE OF AUTHORITY'S NOTE AND BONDS. In order to finance the Project, the Authority will issue to the Bank the First Mortgage Loan Note in the principal amount of $1,700,000, and will issue and sell the Second Mortgage Revenue Bonds to the Bond Purchasers in an initial principal amount of $300,000, for an initial total amount of $2,000,000.

The First Mortgage Loan Note and the Second Mortgage Revenue Bonds will be issued under the Debt Resolution of the Authority and will be sold at such times, in such amounts, and for such prices as have been approved by the Investor Developer. The liability of the Authority under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds shall be enforceable only to the extent of its rights and duties hereunder and under the Debt Resolution of the Authority, or any amendment or supplement hereto or thereto. The First Mortgage Loan Note and the Second Mortgage Revenue Bonds shall be payable solely from the payments made by the Investor Developer hereunder to the Authority, as assigned to the Bank, as Noteholder and Bond Paying Agent, of principal, premium, if any, and interest as therein and hereinafter provided, provided that payments on the First Mortgage Loan and the Second Mortgage Revenue Bonds may be made from other moneys, if any, accruing to

the Bank or to the Authority in respect of the Premises or Project Facilities, including insurance moneys and all payments of moneys under the Collateral Assignment, but in any event there shall be no other recourse against the Authority or any property now or hereafter owned by it.

3.2 ACQUISITION AND CONSTRUCTION FUND. The net proceeds of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds under and pursuant to the Mortgage Loan shall be loaned to the Investor Developer and shall be deposited with the Bank as provided for hereunder and under the Debt Resolution of the Authority to be held in an acquisition and construction fund (the "Acquisition and Construction Fund") for payment of the Costs of the Project. The Bank will make payments from the Acquisition and Construction Fund, subject to and in accordance with the provisions of this Agreement as hereinafter provided, and as provided under the terms of the Debt Resolution of the Authority, upon receipt of a requisition from the Investor Developer, signed by any one of the Authorized Investor Developer Representatives, in accordance with this Agreement, stating:

(a) the cost to which the payment relates and the nature of the payment;

(b) the payee;

(c) the amount; and

(d) that the payment is a proper charge against the Acquisition and Construction Fund.

For purposes of this Acquisition and Construction Fund, Project Costs may include any cost in respect of the Premises and/or Project Facilities, and shall include, specifically, mortgage loan installments (including principal and interest on the First Mortgage Loan Note and the Second Mortgage Revenue Bonds) that cannot be paid for any reason from moneys not received or that are not otherwise adequately provided for from any other source.

3.3 NOTE AND BONDS NOT TO BECOME ARBITRAGE BONDS. The Investor Developer hereby covenants to the Authority for the benefit of the Holders of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds that, notwithstanding any other provision of this Agreement or any other instrument, it will neither make nor instruct the Bank to make any investment or other use of the Acquisition and Construction Fund or other proceeds of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds which, if such investment or use had been reasonably expected on the date of issuance of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, would have caused the First Mortgage Loan Note and the Second Mortgage Revenue Bonds to be "arbitrage bonds", under Section 103(c) of the Internal Revenue Code of 1954, as amended, and the regulations thereunder, and that it will comply with the requirements of such Section and regulations throughout the term of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds.

3.4 COMPLETION OF THE ACQUISITION AND CONSTRUCTION OF THE PROJECT. When the Investor Developer certifies to the Bank and the Authority that the acquisition and construction of the Project is complete and the final payment of Project Costs has been made, any amounts thereafter remaining in the Acquisition and Construction Fund will be released to the Bank and deposited in and credited to the Bond Fund under the Debt Resolution of the Authority and applied against the next and succeeding principal payments due on the First Mortgage Loan Note, or as otherwise provided in the Debt Resolution of the Authority. If for any reason the amount in the Acquisition and Construction Fund proves insufficient to pay all Project Costs, the Investor Developer will pay the remainder of said Costs.

3.5 ACQUISITION AND CONSTRUCTION FUND IN EVENT OF DEFAULT. If the Authority should, because of the occurrence of an Event of Default (as hereinafter defined), declare the entire principal amount of the Mortgage Loan due and payable, then any moneys in the Acquisition and Construction Fund shall be taken over by the Authority to complete the Project or satisfy the amount of the Mortgage Loan then due and payable.

3.6 BANK'S RESPONSIBILITIES. The Bank, as the Bonds Paying Agent, shall act as such for the Authority and the Investor Developer hereunder as specifically provided herein and in the Debt Resolution of the Authority and may exercise such additional powers as are reasonably incidental thereto. Neither the Bank nor any of its officers, directors, agents, attorneys or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct. The Bank shall not be under a duty to examine into or pass upon the validity, effectiveness, genuineness or value of this Agreement, the First Mortgage Loan Note, the Second Mortgage Revenue Bonds, or any requisition, affidavit, certificate or other instrument, document or agreement related hereto, and shall be entitled to assume that the same are valid, effective and genuine and what they purport to be. The Bank shall incur no liability under or in respect of this Agreement, the First Mortgage Loan Note, the Second Mortgage Revenue Bonds, or any such requisition, affidavit, certificate or other instrument, document or agreement, reasonably believed by it to be genuine or authentic or to be signed by the proper party or parties, or with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment, or which may seem to it to be necessary or desirable. The Bank may consult with legal counsel selected by it and any action taken or suffered by it in accordance with the opinion of such counsel shall be full justification and protection to it.

ARTICLE IV

REPAYMENT OF THE MORTGAGE LOAN

4.1 MORTGAGES BY AUTHORITY OF THE PREMISES AND PROJECT FACILITIES AND ESTABLISHMENT AND MAINTENANCE OF THE RESERVE FUND. As hereinbefore provided, the Authority shall mortgage to the Bank the Premises and the Project Facilities as security for the Mortgage Loan, which shall be represented by the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, and the repayment of said Mortgage Loan shall be made in the installment payments, including principal, interest and premium, if any, as set forth under the provisions of Section 4.2 below.

RESERVE FUND. There shall be and hereby is established by the Investor Developer a Reserve Fund in an amount to be deposited at Closing of not less than $250,000.00 in cash and acceptable securities which Reserve Fund shall be maintained by the Investor Developer in the Trust Department of the Bank. To the extent that sufficient cash flow from the Project's gross revenues is not available from the operation of the Project, said Reserve Fund shall be used exclusively for the payment of proper expenses of the Investor Developer in connection with the operation of the Project, including and limited to the payment of real estate taxes, principal and interest due on the outstanding First Mortgage Loan Note, legal, accounting, Paying Agent's fees, Authority's fees, management fees paid to other than the Investor Developer, insurance and repairs. There shall be deposited into this Reserve Fund from time to time the balance of the cash flow from the Project's gross revenues after payment of all Project operating, maintenance and debt service costs on the First Mortgage Loan Note and Second Mortgage Revenue Bonds. The aforementioned balance of the cash flow and all earnings in the Reserve Fund shall accumulate in said Reserve Fund during the first seven (7) years up to a maximum of $500,000. The moneys in this Reserve Fund shall be invested from time to time by the Bank in prudent investments as directed by the Investor Developer. During the first seven (7) years, the Investor Developer will not draw any moneys from the Project if the reserves in the Reserve Fund are less than $500,000. After the seventh year, the Investor Developer will not draw any moneys from the Project if the reserves in the Reserve Fund are less than $300,000. This provision shall be binding upon the Investor Developer, individually and collectively, their heirs, legal representatives, successors and assigns.

4.2 PAYMENT OF THE MORTGAGE LOAN INSTALLMENTS. The repayment of the Mortgage Loan through the Mortgage Loan installment payments, including principal, interest and premium, if any, shall be payable by the Investor Developer to the Bank, as the Noteholder and the Bonds Paying Agent, the Authority's assignee hereof, in Clearing House Funds of the city in which is located the principal corporate trust office of the Bank in installments in the combined total amounts and on the dates as follows:

(a) On or before the business day next preceding June 1, 1985, and on the first day of each month thereafter as to the First Mortgage Loan Note, and on or before the business day next preceding June 1, 1985, and on the first day of each month thereafter, as to and so long as any of the Second

Mortgage Revenue Bonds are Outstanding, the sum which, together with other moneys available therefor in the Bond Fund (as created under the Debt Resolution of the Authority), will equal the sum of (i) the interest on the First Mortgage Loan Note and the Second Mortgage Revenue Bonds (or the appropriate pro rata shares thereof for the initial and final periods) which will become due on the succeeding monthly interest payment date, and (ii) the principal amount, if any, of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds (or the appropriate pro rata share thereof for the initial and final periods) which will become due under the Debt Resolution of the Authority on the monthly principal payment date next succeeding such payment.

(b) On or before the business day next preceding the yearly anniversary date of the Note and Bonds Closing, a sum equal to the Authority's yearly fee of $625.00 payable annually pursuant to and in compliance with Section 2.5 hereof.

(c) On or before the business day next preceding June 1, 1985, and on the first day of each month thereafter, so long as the First Mortgage Loan Note or any of the Second Mortgage Revenue Bonds are Outstanding, a sum equal to the monthly proportion of the total premiums for all insurance required hereunder and under the Lease, if any, unless the Investor Developer has elected to and does make or has made provisions under the Lease for the payment of any or all of these payments directly and the Bank has been so notified to such effect.

(d) On the dates specified in any supplemental debt resolution relating to additional bonds, the amounts required to be deposited on said dates to the credit of the Bond Fund pursuant to the provisions of such supplemental debt resolution for the purpose of paying the interest on and the principal of such additional bonds.

(e) On the date specified in any supplemental debt resolution relating to additional bonds, the amounts required to be deposited on said dates to the credit of the sinking fund, if any, established for such additional bonds.

(f) So long as any Second Mortgage Revenue Bonds are Outstanding on each of the mortgage loan installment payment dates referred to in paragraphs (a) and (b) above, a sum equal to the Bank's compensation and expenses as Paying Agent for said Bonds, not theretofore provided for, which have accrued and are estimated to accrue prior to the next mortgage loan installment payment date, including all premiums, costs and expenses for redemption of any Second Mortgage Revenue Bonds that are to be redeemed on or before the next interest payment date.

(g) Promptly upon receipt of a notice to the Investor Developer from the Authority or the Bank requesting payment thereof, all other amounts required to be paid hereunder or by the Investor Developer or the Authority under the Debt Resolution to the Authority or the Bank or otherwise.

4.3 NO DEFENSE OR SET-OFF. The obligations of the Investor Developer to make the payments required under this Article IV shall be absolute and unconditional and without defense or set-off by reason of any default by the Authority under this Agreement or under any other agreement between the Investor Developer and the Authority or for any other reason, including, without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Premises or Project Facilities, commercial frustration of purpose, or failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement, it

being the intention of the parties that the payments required by this Agreement will be paid in full when due without any delay or diminution whatsoever. Nothing contained hereinabove shall relieve the Authority from any covenant, obligation or duty imposed on the Authority pursuant to this Agreement, nor shall any provision hereof limit the Investor Developer's right to sue the Authority to enforce the Authority's obligations hereunder.

4.4 ASSIGNMENT OF AUTHORITY'S RIGHTS. The Authority intends to and will grant and convey to the Bank its interests in the First and Second Mortgages on the Premises and Project Facilities and assign to the Bank the Authority's rights under this Agreement (except reserving to the Authority the right to receive payments under Sections 6.2 (a) and 9.1 hereof). The Investor Developer hereby acknowledges such assignment and agrees to make or cause to be made all payments so assigned directly to the Bank without defense or set-off by reason of any dispute between the Investor Developer and the Authority or the Bank.

4.5 ASSIGNMENT OF LEASE AND OTHER INTERESTS AS COLLATERAL SECURITY. The Investor Developer, in order to secure all of its obligations to the Authority as set forth herein, will assign, transfer, set over and grant to the Bank, as collateral security for the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, a security interest in all of its rights and benefits, but none of its duties or obligations, in the Lease and all future Leases entered into with the initial Tenant and all future Tenants and in any renewals, extensions or modifications thereof, and all such rentals and other moneys payable thereunder shall be pledged to and, to the extent necessary to meet the Investor Developer's obligations under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds and hereunder, shall be paid over by the Investor Developer at the appropriate times hereunder to the Bank. Promptly upon receipt of said rentals and other moneys, the Bank shall deposit the same in the Clearing Fund under the Debt Resolution of the Authority, shall immediately set aside the amount of the note installment payments on the Mortgage Loan which are hereinabove provided for in Section 4.2, including the appropriate proportions of the Bank's Paying Agent fees and expenses and the insurance premiums, if any, if the same have not previously been paid directly by the Investor Developer or initial Tenant or Tenants, and thereafter promptly return any balance thereof to the Investor Developer as provided in the Debt Resolution of the Authority. The Investor Developer hereby acknowledges, understands and agrees that the Authority will pledge and assign to the Bank all of said rentals and other moneys to be received in connection with the Lease and subsequent Leases, and the Investor Developer agrees that if the Investor Developer does not fulfill its obligations to make payments under Section 4.2 hereunder in a timely manner then the Authority shall after the written notice to such effect have the absolute right to have the initial Tenant or Tenants under the Lease and subsequent Leases make such payments of rental and other moneys directly to the Bank.

ARTICLE V

COVENANTS OF THE INVESTOR DEVELOPER

5.1 INTERESTS OF THE INVESTOR DEVELOPER. The Investor Developer may at any time hereafter sell, assign, encumber or otherwise convey, either in whole or in part, or sub-lease under and pursuant to the Lease and subsequent Leases, any of its interests hereunder.

5.2 COMPLIANCE WITH PENNSYLVANIA LAWS. With respect to the Premises and Project Facilities, the Investor Developer will at all times comply with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter, and in particular will comply with all applicable requirements of the laws of the Commonwealth of Pennsylvania and with all applicable lawful requirements of any agency, board or commission, created under the laws of the Commonwealth of Pennsylvania or of any other duly constituted public authority, and to the extent possible, will use the Premises

and the Project Facilities only for such purposes as are lawful under the Act; provided, however, that the Investor Developer shall be deemed in compliance with Subsection 1.2(f) and Section 10.1 hereof so long as it is contesting in good faith any such requirements by appropriate legal proceedings. Any such contest may be made in the name of the Authority or the Investor Developer or both. The Authority agrees to cooperate with the Investor Developer in any such contest at the expense of the Investor Developer.

5.3 COVENANTS WITH RESPECT TO CAPITAL EXPENDITURES. Neither the Investor Developer, nor any person or corporation related to it, shall within three (3) years of the date of issuance of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, without prior notice to the Authority and/or Bank, make or permit to be made on its behalf by others, any capital expenditures, within the meaning of Section 103 (b) (6) of the Internal Revenue Code of 1954, as amended (the "Code"), with respect to the Project Facilities, which would bring the total amount of such expenditures for the six (6) year period, beginning three (3) years prior to such date, above the applicable limitation (currently $10,000,000) set forth in said Section 103 (b) (6) (D) of the Code, nor shall the Investor Developer take any other action which would result in rendering interest payable under this Agreement or on the First Mortgage Loan Note and the Second Mortgage Revenue Bonds subject to Federal income tax under the provisions of said 103 (b) (6). The Investor Developer and the initial Tenant or subsequent Tenants (if required by the Code) shall file each year during said period in the offices of the Internal Revenue Service where the Investor Developer and the initial Tenant or subsequent Tenant, respectively, are required to file their income tax returns, a supplemental statement listing by date and amount any capital expenditures made by the Investor Developer or the initial Tenant or subsequent Tenant in the Township of Sandy, Clearfield County, Pennsylvania, an incorporated municipality, in the preceding year, and, if requested in writing, shall furnish a copy of such statement to the Authority and the Bank. Additionally, the Investor Developer and the initial Tenant or subsequent Tenants (if required by the Code) shall file supplemental returns and statements as, from time to time, are required by the Internal Revenue Service, pursuant to present or future regulations.

5.4 FINANCING STATEMENTS. The Investor Developer shall, at the Investor Developer's expense, file financing statements in respect of the Premises and Project Facilities or any portion thereof, and shall take any other action which may be deemed necessary by the Bank from time to time to perfect the security interest and lien created therein under this Agreement.

5.5 REPORTS AND CERTIFICATES TO BE RENDERED. Until the Mortgage Loan has been repaid in full, upon a written request, the Investor Developer shall deliver to the Authority and the Bank, and to each Bondholder requesting the same, within ninety (90) days after the end of each fiscal year:

(a) its annual report with respect to the Project, which shall include a balance sheet and income statement in reasonable detail, and its annual budget for the next fiscal year; and

(b) a certificate that no Event of Default hereunder has occurred and is continuing.

5.6 PAYMENT OF BANK'S PAYING AGENT COMPENSATION AND EXPENSES. The Investor Developer will pay, as provided for in Section 4.2(c) above, the Bank's Paying Agent compensation and expenses, including all registration and other similar fees, under the Debt Resolution of the Authority securing the Second Mortgage Revenue Bonds.

5.7 INCREASE TO TAXABLE INTEREST RATE WITH RESPECT TO THE FIRST MORTGAGE LOAN NOTE AND THE SECOND MORTGAGE REVENUE BONDS. The First Mortgage Loan Note, as provided for under the Debt Resolution of the Authority, is subject to an immediate increase in the rate of interest payable thereon to an adjusted taxable rate at all times thereafter equal to the taxable Prime Rate as announced from time to time of Mellon Bank, N.A., and the Second Mortgage Revenue Bonds, as provided for under the Debt Resolution of the Authority, are subject to an immediate change in the rate of interest payable thereon to the taxable rate at all times thereafter of 15% per annum, in the event that the interest on the First

Mortgage Loan Note and/or the Second Mortgage Revenue Bonds shall be determined by the Internal Revenue Service or by the Federal courts (in each case, after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate) to have become subject to Federal income taxes by virtue of the applicable limitation imposed by Section 103 (b) (6) (D) of the Internal Revenue Code of 1954, as amended (the "Code"), on bond issuance and/or capital expenditures having been exceeded, or in the event the interest on the First Mortgage Loan Note and/or the Second Mortgage Revenue Bonds shall become subject to taxation as the result of any other provision of Section 103 or the rules and regulations thereunder (except for interest on the First Mortgage Loan Note and/or any Second Mortgage Revenue Bond during the period it is held by a "substantial user" of the Project or a "related person" within the meaning of the Code), and in either such event the Investor Developer shall be obligated under this Agreement to pay this adjusted taxable rate on the First Mortgage Loan Note and/or the Second Mortgage Revenue Bonds from the date that the interest on the First Mortgage Loan Note and/or the Second Mortgage Revenue Bonds is determined to be taxable by the Internal Revenue Service or by the Federal courts (in each case, after allowable appeals as provided above).

5.8 MAINTENANCE, REPAIRS AND ALTERATIONS. The Investor Developer covenants that, during the term of this Agreement, it will pay or cause to be paid by the initial Tenant or subsequent Tenants in accordance with the terms of the Lease or subsequent Leases all costs and expenses in maintaining and operating the Premises and Project Facilities and will keep the same or will cause the same to be kept by the initial Tenant or subsequent Tenants in accordance with the terms of the Lease or subsequent Leases in good repair and in good operating condition at its own cost. Except as permitted in the Lease or subsequent Leases, the Investor Developer will not undertake or permit any demolition or structural alterations or additions to the Project Facilities without first giving written notice of its intentions to do so to the Bank. All structural alterations and additions to the Project Facilities undertaken by the Investor Developer shall become a part of the Project Facilities.

In the event of a default of any contractor or subcontractor under any contract made by it in connection with any repair or improvement or in the event of a breach of warranty with respect to any materials, workmanship or performance guaranty, the Investor Developer will promptly proceed, either separately or in conjunction with others, to exhaust the remedies against the contractor or subcontractor so in default and against each such surety for the performance of such contract. The Investor Developer agrees to advise the Bank of the steps it intends to take in connection with any such default. If the Investor Developer shall so notify the Authority and Bank, the Investor Developer may, in its own name or in the name of the Investor Developer and Authority, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor or surety which the Investor Developer deems reasonably necessary, and in such event the Authority and Bank hereby agree to cooperate fully with the Investor Developer at the Investor Developer's expense.

5.9 ENFORCEMENT OF AND COMPLIANCE WITH THE LEASE AND SUBSEQUENT LEASES. The Investor Developer shall enforce the terms and conditions of the Lease and all subsequent Leases and shall require the initial Tenant and all subsequent Tenants to perform their obligations thereunder. So long as no Event of Default shall have occurred and be continuing hereunder or under the Debt Resolution of the Authority, the Investor Developer may exercise all its rights under the Lease and all subsequent Leases, except that it shall not, without prior written notice to the Bank, amend the Lease or any subsequent Leases so as to diminish the gross rentals, receipts, revenues and income to be derived from the Project Facilities. Likewise, the Investor Developer shall promptly and faithfully discharge all of its obligations under the Lease and all subsequent Leases.

5.10 COVENANT TO NOTIFY AUTHORITY IF NOTE AND/OR BONDS ARE PAID OFF PRIOR TO MATURITY. The Investor Developer covenants that if the First Mortgage Loan Note and/or the Second Mortgage Revenue Bonds are paid in full prior to their stated maturity, the Investor Developer will promptly notify the Authority in writing of such occurrence.

ARTICLE VI

DEFAULT PROVISIONS

6.1 EVENTS OF DEFAULT. Each of the following events is hereby defined hereunder as, and is declared to be and to constitute, an "Event of Default":

(a) Failure by the Investor Developer to make the payments as required under Article IV hereof within a thirty (30) day period following written notice by registered or certified mail being given by the Authority or the Bank to the Investor Developer.

(b) Upon the passage of thirty (30) days following the giving of written notice by registered or certified mail to the Investor Developer by the Authority or the Bank, the failure by the Investor Developer to observe and perform any other covenant, condition or agreement on its part to be observed or performed hereunder within said period after said written notice, specifying such failure and requesting that it be remedied, is given to the Investor Developer by the Authority or the Bank; provided, however, that so long as the Investor Developer has commenced appropriate action to cure such failure and is proceeding diligently and expeditiously, such time period shall be tolled.

(c) The filing by the Investor Developer of a voluntary petition in bankruptcy, or failure by the Investor Developer promptly to lift any execution, garnishment or attachment of such consequences as will impair its ability to carry out its obligations under this Agreement, or the commission by the Investor Developer of any act of bankruptcy, or adjudication of the Investor Developer as a bankrupt, or assignment by the Investor Developer for the benefit of its creditors, or the entry by the Investor Developer into an agreement or composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Investor Developer in any proceeding for its reorganization instituted under the provisions of the general bankruptcy law, as amended, or under any similar act which may hereafter be enacted.

(d) The occurrence of any Event of Default under the Debt Resolution of the Authority.

The above definitions of "Events of Default" are subject to the qualifications that if by reason of force majeure the Investor Developer is unable in whole or in part to carry out its obligations under subparagraph (b) of this Section of this Agreement, the Investor Developer shall not be deemed in default during the continuance of such inability. The term "force majeure" as used in this Agreement shall mean, without limitation, the following: acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind (not including condemnation proceedings) of the government of the United States or of the Commonwealth of Pennsylvania or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; or any other cause or event not reasonably within the control of the Investor Developer. The Investor Developer agrees, however, to remedy, with all reasonable dispatch, all such cause or causes preventing the Investor Developer from carrying out its agreements hereunder.

6.2 REMEDIES ON DEFAULT. Whenever any Event of Default referred to in Section 6.1 hereof shall have happened and be subsisting for a period of thirty (30) days after written notice to the Investor Developer from the Authority or the Bank, subject to the provisions of the Lease and all subsequent Leases, any one or more of the following remedial steps at the written direction of the Noteholder or Holders of not less than 65% in aggregate principal amount of the Bonds then Outstanding may be taken:

(a) The Authority and/or the Bank may perform for the account of the Investor Developer any covenant or obligation in the performance of which the Investor Developer is in default, in which event the Investor Developer shall immediately pay to the Authority and/or the Bank any amount paid by the Authority and/or the Bank, together with reasonable counsel fees as well as with interest at the rate of fifteen percent (15%) per annum, or at such lower maximum legal rate of interest as is then permissible, from the date of payment by the Authority and/or the Bank.

(b) The Authority and/or the Bank may declare all sums which the Investor Developer is obligated to pay to the Authority and/or the Bank pursuant to this Agreement, together with interest accrued thereon, immediately due and payable.

(c) The Authority through the Bank may terminate this Agreement and resell the Premises and Project Facilities at a private or public sale and the moneys collected under such resale will be applied in such order of priority as determined by the Bank. If such proceeds are in excess of the amount required to satisfy the total due from the Investor Developer to the Authority and/or the Bank under the terms of this Agreement, then such excess shall be paid to the Investor Developer.

(d) After ten (10) days written notice, the Authority through the Bank may take possession of the Premises and Project Facilities, or any appropriate portion thereof, without terminating this Agreement, and the Authority through the Bank may collect rentals and enforce all other remedies of the Investor Developer under the Lease and all subsequent Leases for any part of the Premises and Project Facilities, and the Authority through the Bank may enter into such new leases on such terms as the Authority and/or the Bank may deem fit for any portion or portions of the Premises or Project Facilities, and such leases shall not be terminated or affected if the Investor Developer cures the Event of Default. Rentals under said leases may be applied by the Authority through the Bank to any repair or maintenance of the Premises and Project Facilities or any appropriate portions thereof as the Authority and/or the Bank may reasonably deem useful, and the remaining balance shall be applied to the Investor Developer's obligations hereunder in the order of priority to be determined by the Authority and/or the Bank. Any balance of rentals remaining thereafter shall be promptly paid over to the Investor Developer by the Authority and/or the Bank.

(e) The Investor Developer herewith consents to service of process upon the appropriate Officer of the Commonwealth of Pennsylvania as its agent for such purpose should it no longer be subject to such service of process within the Commonwealth of Pennsylvania in conjunction with all remedies as provided for hereunder.

(f) The Investor Developer hereby waives and releases all errors, defects and imperfections whatsoever of a procedural nature in the entering of any judgment or any process or proceedings arising out of this Agreement. The Investor Developer also waives the benefit of any laws which now or hereafter might authorize the stay of any execution to be issued or any judgment recovered hereunder or the exemption of any property from levy or sale thereunder.

(g) The Authority through the Bank may exercise its rights to enforce the performance and observance of any obligation, agreement or covenant of the Investor Developer under this Agreement.

6.3 ADDITIONAL REMEDY. In addition to the above remedies, if the Investor Developer commits a breach, or threatens to commit a breach, of any of the provisions of Sections 3.2, 3.3, 5.2, 5.3, 5.4 and 5.5 hereof, the Authority and/or the Bank shall have the right and remedy, without posting bond or other security, to have the above provisions of this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Authority and/or the Bank and that money damages will not provide an adequate remedy thereto.

6.4 DEFAULT BY AUTHORITY AND INVESTOR DEVELOPER'S AND ALL OTHER'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Authority hereunder and under the Debt Resolution and all documents executed in connection therewith and related thereto shall be limited to its interests in the Premises and Project Facilities, the rents, rentals, mortgage loan installment payments, issues and profits therefrom, and the lien of any judgment shall be restricted thereto, and any judgement entered on any warrant of attorney or any other document filed for the purpose of entering judgement shall contain specific language expressly limiting the lien of any such judgement to the Authority's interest as restricted hereinabove.

6.5 DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited (i) severally, and not jointly, to a total maximum of $400,000 (more specifically: Calvin Bean - $66,666.67; Retirement Plan for Employees of Ideal Products, Inc. - $66,666.66; George V. Cohen, P.C. Pension Plan - $66,666.66; Creekside Farms, a Partnership - $66,666.67; Bertram B. Leopold - $88,000.00; and Leopold, Eberhardt & Goldstein Profit Sharing Plan - $45,333.34), but (ii) if Brockway, Inc. (NY) shall renew its Lease after the first three (3) year lease period for a subsequent three (3) year lease period, then this liability shall thereafter be limited to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives, successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding.

ARTICLE VII

INSURANCE

7.1 PROPERTY AND BUSINESS INTERRUPTION INSURANCE. At the option of the Investor Developer, the Investor Developer may itself keep or may cause to be kept by the initial Tenant and all subsequent Tenants under and subject to the provisions (if any) of the Leases business interruption insurance (if applicable) in accordance with the terms of the Lease and all subsequent Leases. The Investor Developer shall also keep, through others, the entire Premises and Project Facilities insured against loss or damage by fire, with extended coverage, and against loss from such other hazards as may be stipulated by the applicable provisions (if any) of the Lease and all subsequent Leases, and said insurance shall name the Noteholder and the Bondholders as additional insureds and shall provide that in the event of a partial loss or a total loss caused by fire or other casualty insured against, then the Investor

Developers shall use the insurance proceeds exclusively for the construction of improvements, renovations and capital additions to the Project, and to the extent that any such insurance proceeds are not so used, the Investor Developer shall pay such insurance proceeds to the Bank for payment and redemption of the First Mortgage Loan Note and any balance remaining after said First Mortgage Loan Note is paid in full shall be returned to the Investor Developer. All such policies and any additional fire insurance carried by the Investor Developer or initial Tenant and all subsequent Tenants on the Premises and Project Facilities shall contain the standard mortgage clause, and the originals thereof will be maintained with the Investor Developer with copies upon written request to be deposited with the Bank.

7.2 LIABILITY INSURANCE. The Investor Developer will provide or cause to be provided comprehensive general liability insurance covering at least the hazards of "Premises Operation", "Elevators" (if applicable) and "Independent Contractors", in which the Authority and the Bank shall be named as insureds with minimum limits of liability with respect to bodily injury of $1,000,000 for each person and $1,000,000 for each occurrence and $500,000 with respect to property damage for each occurrence, or such lesser minimum limits as shall be required by the Lease and all subsequent Leases.

In addition, the Investor Developer shall also provide, or cause to be provided, during the construction of the Project Facilities and whenever construction of major alterations to the Premises or Project Facilities is being performed, policies of contingent public liability insurance protecting the Authority, the Bank and the Investor Developer, in addition to providing certificates of public liability insurance and workmen's compensation insurance, insuring any contractor engaged by the Investor Developer. The above-mentioned contingent liability policy shall be in the form of a comprehensive general liability policy, if obtainable, and, if not obtainable, shall be a public liability policy covering at least the hazard of all phases of the construction being performed by the Investor Developer or any contractors, the hazard arising from the ownership and possession of the Premises and Project Facilities, and the hazard of any operations other than construction being carried on by the Investor Developer on any part of the Premises or Project Facilities during said construction period.

The Investor Developer, for the entire term of this Agreement, shall provide comprehensive general liability insurance policies in the stated amounts above or as set forth in the Lease and all subsequent Leases and/or shall provide that the initial Tenant and all subsequent Tenants under the Lease and all subsequent Leases shall provide for its own coverage against liability with respect to the Premises and/or the Project Facilites, either through self-insurance or, at the request of the Authority, in compliance with the terms (if any) of the Lease and all subsequent Leases, then in conjunction with comprehensive general liability insurance through others, and may also provide under the provisions of the Lease and all subsequent Leases that the initial Tenant and all subsequent Tenants will indemnify and save harmless the Investor Developer, who in turn hereunder will indemnify and save harmless the Authority and the Bank, as to all such liability with respect to the Premises and/or the Project Facilities for the entire term of this Agreement.

7.3 GENERAL INSURANCE PROVISIONS.

Subject to the aforementioned Sections 7.1 and 7.2, all insurance policies that are required to be provided by the Investor Developer or through others hereunder shall comply with the following general insurance provisions:

(a) All insurance as to form, amount and insurance company shall be reasonably satisfactory to the Authority and to the Bank (if deemed necessary by the Bank, to be upon advise of a qualified Insurance Consultant to be engaged by the Bank at the sole expense of the Investor Developer) and shall be at all times in full compliance with the applicable provisions (if any) of the Lease and all subsequent Leases.

(b) All policies will require that no less than ten (10) days written notice of cancellation or material change will be given to the Authority and to the Bank.

(c) All cost of insurance shall be borne by the Investor Developer or the initial Tenant and all subsequent Tenants.

(d) Renewal policies marked "premium paid" by the agent or issuing company shall be deposited at least thirty (30) days before the expiration of the prior existing policies.

(e) All insurance, other than insurance required only during major alterations, is required commencing from the date hereof and is to be continued throughout the term of this Agreement, and the Investor Developer will provide evidence thereof satisfactory to the Authority and the Bank; provided, however, that property damage insurance need not be maintained so long as builder's risk insurance shall be in full force and effect.

(f) All insurance shall name the Authority, the Bank, the Bondholders, the Investor Developer and, where required by the Lease and all subsequent Leases, the initial Tenant and all subsequent Tenants thereunder, as insureds to the extent of their respective interests and shall cover the entire Premises and Project Facilities.

ARTICLE VIII

DAMAGE AND CONDEMNATION

8.1 DAMAGE AND CONDEMNATION. Damage to, destruction of or condemnation of all or a substantial portion of the Premises and/or Project Facilities which gives the right of termination of the Lease and all subsequent Leases to the initial Tenant or a substantial number of the subsequent Tenants pursuant to the terms thereof shall give to the Investor Developer hereunder with prior written consent of the Noteholder and the Holders of not less than 65% in aggregate principal amount of the Second Mortgage Revenue Bonds then Outstanding the option to accelerate the payments hereunder and to redeem and pay at par the First Mortgage Loan Note and all of the Second Mortgage Revenue Bonds pursuant to the provisions of the Debt Resolution of the Authority (any and all insurance proceeds and condemnation award moneys shall be applied by the Investor Developer to said redemptions) and terminate this Agreement, but damage to, destruction of or condemnation of all or any portion of the buildings or improvements constituting the Premises and the Project Facilities which does not result in the termination of the Lease or a substantial number of the subsequent Leases by the respective Tenants pursuant to the terms thereof shall not terminate this Agreement or cause any abatement of or reduction in the payments to be made hereunder by the Investor Developer or otherwise affect the respective obligations of the Authority and the Investor Developer hereunder. However, if the amounts owing on payments under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds are reduced, then the mortgage loan installments or other payments hereunder shall be reduced to the same extent. The proceeds of any insurance policies shall be paid to the Investor Developer and shall be applied to the cost of repair and/or restoration of the Project Facilities, if required by the terms of the Lease and all subsequent Leases and, if not required by the terms of the Lease and all subsequent Leases to be used for repair or restoration of the Project Facilities, shall be deposited into and held by the Bank in the Clearing Fund under the Debt Resolution of the Authority and used for such purposes as may be permitted thereunder. The Investor Developer, in the event of any damage or destruction, shall, or shall cause the initial Tenant and all subsequent Tenants under the terms of the Lease and all subsequent Leases to, promptly restore the buildings and improvements to at least as good condition as existed prior to the said damage or destruction, if required by the terms of the Lease and all subsequent

Leases, and shall be entitled to the use of any proceeds held by the Bank in accomplishing such purposes. To the extent any such proceeds are held by the Bank after completion of such restoration, such amounts shall be remitted by the Bank to the Investor Developer after subtracting therefrom any expenses of the Bank and the Authority, including reasonable counsel fees.

In the event that title to or the use of the Premises or Project Facilities, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, there shall be no diminution or postponement of the payments payable hereunder by the Investor Developer; and any net proceeds received from any award made in, or resulting from the settlement of, such eminent domain proceedings shall be paid to the Investor Developer to be applied to the cost of repair or restoration which the Investor Developer may be required to undertake pursuant to the Lease and all subsequent Leases. If the Investor Developer is not required to undertake any repair or restoration under the Lease and all subsequent Leases, then such net proceeds shall be paid to the Bank and applied first against the First Mortgage Loan Note and then to the Second Mortgage Revenue Bonds or utilized in the manner agreed upon by the Bank and the Authority, with the approval of the Investor Developer, to replace any building or other facility taken or to improve any remaining portion of the Premises and Project Facilities still mortgaged by the Authority to the Bank. Any net proceeds not paid to or claimed by the Bank or utilized to replace or improve any building or other facility shall belong to and be distributed to the Investor Developer. The Authority agrees to cooperate with the Investor Developer in the conduct and defense of any condemnation proceeding at the expense of the Investor Developer, but this Agreement shall not be construed as limiting the right of the County of Clearfield to condemn all or a part of the Project in accordance with law. The Authority covenants not to settle any condemnation proceeding without the prior written consent of the Investor Developer and the Bank.

ARTICLE IX

INDEMNIFICATION OF AUTHORITY AND BANK AND WAIVER OF CLAIMS

9.1 INDEMNIFICATION OF AUTHORITY AND BANK AND WAIVER OF CLAIMS. The Investor Developer covenants and agrees to protect, exonerate, defend, indemnify and save harmless the Authority and the Bank from and against any and all costs or liabilities which may arise or have arisen out of the Authority's interests in the Premises, and from and against any and all loss, damage, cost, expense or liability based on personal injury or death or loss or damage to property suffered or incurred by any person, firm or corporation (including the parties hereto) and arising out of or attributable to the acquisition, construction, presence, condition, use, operation or maintenance of the Premises or Project Facilities, except when due to the willful misconduct of the Authority or the Bank, and from and against any and all loss, damage, cost, expense or liability arising out of or relating to any action taken in good faith by the Authority, its board members, officers, agents, attorneys or employees, to carry out the terms of this Agreement and the other documents referred to herein. The Investor Developer agrees, additionally, that it will not join, unless necessary, the Authority or the Bank as a third party defendent in any legal action alleging costs or liabilities due to the aforesaid which may at any time be instituted by any party against the Investor Developer. The Authority or the Bank shall give prompt notice to the Investor Developer of any claim asserted against the Authority or the Bank which, if sustained, may result in liability on the Investor Developer hereunder; provided, however, that the failure on the part of the Authority or the Bank to give such notice promptly shall not relieve the Investor Developer from its obligation to protect, exonerate, defend, indemnify and save the Authority or the Bank harmless as aforesaid, except to the extent that the failure to give such notice results in a failure of coverage of any of the Investor Developer's liability insurance or causes actual loss or damage to the Investor Developer. In case any action or proceeding be brought against the Authority or the Bank by reason of any such claim, the Investor Developer, upon notice from the Authority or the Bank, covenants and agrees to resist or defend such action or proceeding by counsel satisfactory to the Authority or the Bank; provided, however, that the Authority or the Bank will cooperate and assist in the defense of such action

or proceeding, if reasonably requested to do so by the Investor Developer, and at the expense of the Investor Developer. The Investor Developer will not make any claim against the Authority or the Bank, nor shall the Authority or the Bank be liable for any damage or injury to any property of the Investor Developer or any other person on the Premises or to any part of the Project Facilities due to any cause whatsoever, other than the willful misconduct of the Authority or the Bank, nor will the Investor Developer resist the Authority's or the Bank's claim to indemnification on the ground that the right to such claim is not set forth herein with sufficient particularity.

ARTICLE X

TAXES, OTHER GOVERNMENTAL CHARGES AND UTILITY CHARGES, AND PAYMENTS IN LIEU OF TAXES

10.1 TAXES, OTHER GOVERNMENTAL CHARGES AND UTILITY CHARGES, AND PAYMENTS IN LIEU OF TAXES. The Investor Developer will pay, or cause to be paid by the initial Tenant and all subsequent Tenants under the provisions of the Lease and all subsequent Leases, prior to the time the same becomes delinquent, all real estate taxes and all other taxes and payments in lieu of taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Premises and Project Facilities, the improvements, or any machinery, equipment or related property installed or brought by the Investor Developer therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the receipts, income or profits of the Authority from the Premises and Project Facilities), and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Premises and Project Facilities; provided, that with respect to special assessments or other governmental charges that lawfully may be paid in installments over a period of years, the Investor Developer or initial Tenant and all subsequent Tenants shall be obligated to pay only such installments as are required to be paid during the term hereof.

The Investor Developer (or initial Tenant and all subsequent Tenants) may, at its expense, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Authority or the Bank shall notify the Investor Developer that, in the opinion of its counsel, by non-payment of any such items the liens of the Bank as to any part of the revenues pledged hereunder or the interests of the Authority in the Premises or Project Facilities will be materially endangered or the Premises or Project Facilities or any part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly. The Authority will cooperate fully with the Investor Developer (or initial Tenant and all subsequent Tenants) in any such contest. If the Investor Developer (or initial Tenant and all subsequent Tenants) shall fail to pay any of the foregoing required items, the Authority or the Bank may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the Authority or the Bank shall become an additional obligation of the Investor Developer to the one making the advancement, which amounts, together with interest thereon at the rate of fifteen percent (15%) per annum, or at such lower maximum legal rate of interest as is then permissible, from the date thereof, the Investor Developer agrees to pay. The Investor Developer also agrees to comply at its own cost and expense with all notices received from public authorities from and after the date hereof.

ARTICLE XI

MISCELLANEOUS

11.1 ADJUSTMENTS. The Investor Developer will pay all charges, transfer taxes (if any) and costs which are required and whenever required in connection with the Authority's acquisition of its interests in the Premises and in connection with the mortgaging of the Premises and Project Facilities by the Authority.

11.2 ZONING. The Authority makes no representations as to the zoning of the Premises.

11.3 EXPENSES OF THE AUTHORITY AND BANK. The Investor Developer will pay all out-of-pocket expenses incurred by the Authority and the Bank in connection with the preparation of this Agreement (whether or not the transactions hereby contemplated shall be consummated), the making of the loan hereunder, and the enforcement of the rights of the Authority and the Bank in connection with this Agreement and the First and Second Mortgages or with the loan made hereunder, including, but not limited to, the fees and disbursements of the Bank and its counsel, as well as the Bond Counsel.

11.4 FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS. The Authority and the Investor Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project for the purpose of carrying out the intention of or facilitating the performance of this Agreement.

11.5 QUIET ENJOYMENT. The Authority covenants that the Investor Developer, on performing the covenants and conditions on its part to be performed hereunder, shall and may peaceably and quietly have, hold and enjoy the Premises and Project Facilities as the owner in possession, free from molestation, eviction or disturbance by the Authority or by any other person or persons lawfully claiming the same, by, through, or under the Authority.

11.6 NET PAYMENTS. This Agreement shall be deemed and construed to be "net", and the Investor Developer shall pay absolutely net, during the term hereof, the payments required hereunder, free of any deductions, without abatement, deduction or set-off other than those herein expressly provided.

11.7 CUMULATIVE RIGHTS. No right or remedy herein conferred upon or reserved to the Authority and/or the Bank is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy herein given or now or hereafter existing at law or in equity or by statute and may be pursued singularly, successively or together at the sole discretion of the Authority and may be exercised as often as the occasion therefor shall occur.

11.8 EFFECT OF WAIVER OF FORBEARANCE. No waiver by the Authority and/or the Bank of any breach by the Investor Developer of any of its obligations, agreements or covenants hereunder shall be a waiver of any subsequent breach of any obligation, agreement or covenant, nor shall any forbearance by the Authority and/or the Bank to seek a remedy for any breach by the Investor Developer be a waiver by the Authority and/or the Bank of its rights and remedies with respect to that or any other breach.

11.9 NOTICES. All notices are required to be in writing and sent by registered or certified mail. Subject to change by a notice from the party to be charged with such notice, notices to the Authority shall be addressed as follows:

Clearfield County Industrial
Development Authority
650 Leonard Street
P.O. Box 868
Clearfield, Pennsylvania 16830

and notices to the Investor Developer shall be addressed as follows:

B Warehouse Company
c/o Leopold, Eberhardt & Goldstein
414 North Logan Boulevard
Altoona, Pennsylvania 16602

and notices to the Bank shall be addressed as follows:

The Savings & Trust Company of Pennsylvania
256 Main Street
P.O. Box 499
Brookville, Pennsylvania 15825

11.10 SURVIVAL OF COVENANTS, CONDITIONS AND REPRESENTATIONS. All covenants, conditions and representations of the Investor Developer contained herein which, by their nature, impliedly or expressly involve performance in any particular manner after the delivery by the Authority of the First Mortgage Loan Note, the Second Mortgage Revenue Bonds and the First and Second Mortgages or which cannot be ascertained to have been performed until after the said delivery, shall survive said delivery.

11.11 ILLEGAL, ETC. PROVISIONS DISREGARDED. In case any provision of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, this Agreement shall be construed as if such provisions had never been contained herein.

11.12 HEADINGS. The captions or headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provision hereof.

11.13 NO RECOURSE. No recourse under or upon any covenant, obligation or agreement contained in this Agreement, or under any judgment obtained against the Authority or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Agreement, shall be had against any board member, officer, agent, attorney or employee, as such, past, present or future, of the Authority, either directly or through the Authority or otherwise, for the payment for or to the Authority or any receiver thereof, of any sum that may be due and unpaid by the Authority under this Agreement. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such board member, officer, agent, attorney or employee, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for, or to the Authority or any receiver thereof, of any sum that may remain due and unpaid under this Agreement, is hereby expressly waived and released as a condition of and a consideration for the execution of this Agreement.

11.14 CONTROLLING LAW. This Agreement shall be deemed to be a contract made in the Commonwealth of Pennsylvania and governed by Pennsylvania law.

11.15 AMENDMENTS. This Agreement may not be amended except by an instrument in writing signed by the parties hereto and, if such amendment adversely affects the interests of the Noteholders and/or the Bondholders, shall be concurred in by the Noteholder and the Holders of not less than 65% in aggregate principal amount of the Second Mortgage Revenue Bonds then Outstanding and by the Bank for and on behalf of the balance of the Bondholders; provided, however, that without the required Noteholder's and Bondholders' consents no amendment shall be consented to by the Bank (including in conjunction with a refunding bond issue) which would (1) decrease any amount payable under this Agreement, (2) change any date of payment or any prepayment provisions of this Agreement, or (3) change these amendment provisions of this Agreement.

11.16 DEFINITIONS. The terms used in this Agreement, for all purposes of this Agreement, shall have the meanings and definitions as set forth in the Debt Resolution of the Authority, unless the context herein clearly otherwise requires.

11.17 CONVEYANCES. Nothwithstanding anything herein to the contrary, the Investor Developer may dedicate or convey, with or without consideration, to the appropriate governmental agency, all easements and necessary land or interests therein for utilities, for ingress and egress, and for the improvement of the streets and roads which provide access to the Premises, and may also sell and convey to others, for such consideration as shall be appropriate in the absolute discretion of the Investor Developer, any land which is the subject of this Agreement and is subject to the liens of the First and Second Mortgages, but which is not encumbered by the Leases and is not occupied by a building and not required for access to a public street

or highway or for a parking area, upon filing with the Bank a certificate that such land has been transferred to the appropriate agency or properly dedicated for said above purpose, or sold to others for the aforementioned consideration. Upon the filing of such certificate, the Bank shall execute and deliver such releases and documents as the Authority and/or the Investor Developer may reasonably request to effectuate said transactions. Nevertheless, no dedication, conveyance or sale by the Investor Developer or release by the Bank as hereinabove provided shall result in any abatement as to any installment payments payable under this Agreement. All moneys received by the Investor Developer pursuant to such conveyances shall be deposited immediately with the Bank in the Clearing Fund under the Debt Resolution of the Authority and applied as therein provided.

11.18 COUNTERPARTS. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

11.19 EFFECTIVE DATE AND TERM. This Agreement shall become effective as of May 7, 1985, upon its execution and delivery by the parties hereto, shall remain in full force from said effective date, and, subject to the provisions hereof, shall expire on such date as the First Mortgage Loan Note and the interest thereon and the Second Mortgage Revenue Bonds and the interest thereon, and all other expenses or sums to which the Authority and the Bank are entitled hereunder, have been fully paid and retired or provision has been made therefor.

11.20 SUBORDINATION. Anything contained herein to the contrary notwithstanding, the Investor Developer, the Bank and the Authority expressly acknowledge and agree that all interests, rights, privileges, duties and obligations granted to or imposed upon any of the parties to this Agreement are hereby subordinated to the provisions of the First Mortgage and the Second Mortgage.

IN WITNESS WHEREOF, the parties hereto, for proper and sufficient consideration and intending to be legally bound hereby, by their respective officers thereunto duly authorized, have executed this Agreement as of April 15, 1985, for reference purposes only, with this Agreement being actually effective as of May 7, 1985, but they have actually executed this Agreement on the date of their respective acknowledgements attached hereto and made a part hereof, and have delivered this Agreement on this May 7, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

By Stanley E. Lucas
Chairman

Attest:

Robert G. Watson
Secretary

B WAREHOU COMPANY, Joint Venture

WITNESS:

CALVIN BEAN

By _____
Calvin Bean, as a Joint Venturer and in his individual capacity, by John Bean, Agent, under a Power of Attorney

WITNESS:

RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC.

By _____
John Bean, Co-Trustee

WITNESS:

GEORGE V. COHEN, P.C. PENSION PLAN

By _____
George V. Cohen, Trustee

WITNESS:

CREEKSIDE FARMS, A PARTNERSHIP

By _____
George V. Cohen, Attorney in Fact

WITNESS:

BERTRAM B. LEOPOLD

By _____
Bertram B. Leopold, as a Joint Venturer and in his individual capacity

WITNESS:

LEOPOLD, EBERHARDT & GOLDSTEIN PROFIT SHARING PLAN

By _____
Bertram B. Leopold, Co-Trustee

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as the Noteholder and Bonds Paying Agent

(CORPORATE SEAL)

By _____
Sr Vice President

Attest:

_____
Authorized Officer

EXHIBIT "A"

to

MORTGAGE LOAN AGREEMENT

Dated as of April 15, 1985,
for reference purposes only, but actually
effective as of May 7, 1985

between

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
("Authority")

and

B WAREHOUSE COMPANY
("Investor Developer")

and

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA
("Noteholder" and "Bonds Paying Agent")

PREMISES

ALL that certain piece, parcel or tract of land situate in the Township of Sandy, County of Clearfield, State of Pennsylvania, more particularly bounded and described as follows:

PARCEL ONE: BEGINNING at the Southeast corner of herein described 9.13 Acres on the West side of a 50 foot right of way for a road; thence by land of General Warehousing of DuBois, Inc., North 66 degrees 50 minutes West a distance of 500.0 feet and North 23 degrees 10 minutes East a distance of 700.0 feet; thence along said right of way for a road the following courses and distances: North 89 degrees 45 minutes East a distance of 386.0 feet, South 71 degrees 55 minutes East a distance of 80.0 feet, South 31 degrees 55 minutes East a distance of 80.0 feet, and South 23 degrees 10 minutes West a distance of 814.0 feet to the place of beginning. CONTAINING 9.13 Acres.

EXCEPTING AND RESERVING from the above described Parcel One the right of ingress and egress to, along, over and from the same, together with the right to make installations, repairs, and replacements of a railroad track and utility lines.

PARCEL TWO: BEGINNING at the center line of LR 402 (Shaffer Road) 55 feet Southwest of the intersection with the center of the Chessie System track right of way; thence along the Chessie System right of way the following courses and distances: South 48 degrees 22 minutes East 100.0 feet, South 62 degrees 45 minutes East 228.7 feet, and by a curve to the left with a radius of 816 feet, the chord of which is South 76 degrees 27 minutes East, 388.7 feet; thence continuing along the Chessie System right of way North 89 degrees 45 minutes East a distance of 641.0 feet; thence by land of General Warehousing of DuBois, Inc., the following courses and distances: South 40 degrees 20 minutes East 90.0

feet, South 23 degrees 10 minutes West 917.0 feet, and North 66 degrees 50 minutes West 50.0 feet; thence along land of B Warehouse Company, a Joint Venture, the following courses and distances: North 23 degrees 10 minutes East 814.0 feet, North 31 degrees 55 minutes West 80.0 feet, North 71 degrees 55 minutes West 80.0 feet; thence still along land of B Warehouse Company, a Joint Venture, and General Warehousing of DuBois, Inc., South 89 degrees 45 minutes West a distance of 495.0 feet; thence still by land of General Warehousing of DuBois, Inc., by a curve to the right with a radius of 866.0 feet, the chord of which is North 76 degrees 27 minutes West, 412.3 feet; thence North 62 degrees 45 minutes West a distance of 225.3 feet; and thence North 77 degrees 12 minutes West a distance of 100.0 feet; thence along the center line of LR 402 North 25 degrees 35 minutes East a distance of 100.0 feet to the place of beginning.

EXCEPTING AND RESERVING from the above described Parcel Two the right of ingress and egress to, along, over and from the same, together with the right to make installations, repairs, and replacements of roads, sidewalks, utility lines, railroad tracks, signs, guardrails, and landscaping.

ALSO EXCEPTING AND RESERVING from the above described Parcels One and Two the right to construct, reconstruct and perpetually maintain any and all utility services, including water, sewage, and gas or any other necessary utilities, together with all necessary laterals in, upon and accross the said premises, the said utility lines to follow any feasible course through the said premises, together with the right and privilege at any and all times to enter the said premises or any part thereof for the purpose of constructing, reconstructing and maintaining any and all of the aforesaid utility lines and also for making connections with any such utility lines as are now or hereafter constructed on the said premises or which may serve the same; all upon the condition that the Clearfield County Industrial Development Authority, its successors or assigns, will, after doing any work in connection with the foregoing, restore the premises to the condition in which the same were found before such work was undertaken. The foregoing reservations shall be perpetual and inure to the benefit of the Clearfield County Industrial Development Authority, its successors and assigns.

BEING parts of the same premises which became vested in the Clearfield County Industrial Development Authority by Deed dated July 11, 1977, of the DuBois Area Chamber of Commerce, fictitious registered name for the DuBois Area Board of Trade.

This deed is not intended to convey Parcel Two in fee, but rather is a conveyance of a permanent easement for roadway purposes over and across said Parcel Two for ingress and egress to and from Parcel One.

EXHIBIT "B"

to

MORTGAGE LOAN AGREEMENT

Dated as of April 15, 1985,
for reference purposes only, but actually
effective as of May 7, 1985

between

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
("Authority")

and

B WAREHOUSE COMPANY
("Investor Developer")

and

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA
("Noteholder" and "Bonds Paying Agent")

PROJECT FACILITIES

A one-story warehouse building containing a floor area totalling approximately 135,000 square feet, which is fully heated and air-conditioned. A paved parking lot is provided, together with locally approved storm water and sanitary sewer collection systems and reciprocal ingress and egress ways in conjunction with adjacent properties, streets and highways.

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared STANLEY E. CRUM and ROBERT E. WATSON, Chairman and Secretary, respectively, of the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, with whom I am personally acquainted, and who, upon oath, acknowledged that they are the Chairman and Secretary of said Authority, respectively, and who further acknowledged that they did execute and seal the foregoing instrument as the Chairman and Secretary of said Authority, in behalf of said Authority and by the authority of an appropriate Resolution of the Board of Directors of said Authority; and that said instrument is the free and voluntary act and deed of the said Chairman and Secretary as such officers, and the free and voluntary act and deed of said Authority, for the uses and purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this May 6, 1985.

Rhonda J. Bash
Notary Public

(N.P. SEAL)

My Commission Expires:

RHONDA J. BASH, Notary Public
Clearfield, Clearfield County, Pa.
My commission expires Sept. 1, 1986

* * * * * *

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF JEFFERSON)

Before me, the undersigned officer, personally appeared JOHN BEAN, with whom I am personally acquainted, who, upon oath, acknowledged that he did execute the foregoing instrument as Agent, under a Power of Attorney, for and on behalf of CALVIN BEAN, as one of six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY and in his individual capacity, and as Co-Trustee of RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC., another of the six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY; and that said instrument is the free and voluntary act and deed of each said person, said Retirement Plan, said Agent and said Co-Trustee, for the uses and purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this May 7, 1985.

MARGARET E. STOVER, NOTARY PUBLIC
BROOKVILLE BORO., JEFFERSON COUNTY
MY COMMISSION EXPIRES MARCH 14, 1987
Member, Pennsylvania Association of Notaries

Margaret E. Stover
Notary Public

(N.P. SEAL)

My Commission Expires:

* * * * *

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF LYCOMING)

Before me, the undersigned officer, personally appeared GEORGE V. COHEN, with whom I am personally acquainted, who, upon oath, acknowledged that he did execute the foregoing instrument as Trustee of GEORGE V. COHEN, P.C. PENSION PLAN, one of six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY, and as Attorney in Fact for CREEKSIDE FARMS, A PARTNERSHIP, another of the six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY; and that said instrument is the free and voluntary act and deed of each said Pension Plan, said Partnership, said Trustee and said Attorney in Fact, for the uses and purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this May 2, 1985.

Mrs. Jane M. Buhl
Notary Public

(N.P. SEAL)

MRS. JANE M. BUHL, Notary Public
Williamsport, Lycoming Co., Pa.
My Commission Expires June 22, 1987

My Commission Expires:

* * * * *

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF JEFFERSON)

Before me, the undersigned officer, personally appeared BERTRAM B. LEOPOLD, with whom I am personally acquainted, who, upon oath, acknowledged that he did execute the foregoing instrument on behalf of himself as one of six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY and in his individual capacity, and as Co-Trustee of LEOPOLD, EBERHARDT & GOLDSTEIN PROFIT SHARING PLAN, another of the six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY; and that said instrument is the free and voluntary act and deed of said person as a Joint Venturer and in his individual capacity and as said Co-Trustee, for the uses and purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this May 7, 1985.

MARGARET E. STONER, NOTARY PUBLIC
BROOKVILLE BOR., JEFFERSON COUNTY
MY COMMISSION EXPIRES MARCH 14, 1987
Member, Pennsylvania Association of Notaries

Margaret E. Stoner
Notary Public

(N.P. SEAL)

My Commission Expires:

* * * * *

Exhibit G

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COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF CLEARFIELD :

On the 16th day of April, 1992, before me, a Notary Public in and for the above State and County, personally appeared **SUSAN LEOPOLD ANSIN**, who in due form of law acknowledged the foregoing Power of Attorney to be her act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Francene H. Thomas
NOTARY PUBLIC

MY COMMISSION EXPIRES:

Notarial Seal
Francene H. Thomas, Notary Public
Pottsville, Clearfield County
My Commission Expires Feb. 17, 1996
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF CLEARFIELD :

On the 6th day of April, 1992, before me, a Notary Public in and for the above State and County, personally appeared **SUSAN LEOPOLD ANSIN**, Trustee of the Bertram Leopold Trust, who in due form of law acknowledged the foregoing Power of Attorney to be her act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Francene G. Thomas
NOTARY PUBLIC

MY COMMISSION EXPIRES:

Notarial Seal
Francene G. Thomas, Notary Public
DuBois, Clearfield County
My Commission Expires Feb. 17, 1996
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF LYCOMING :

On the 23 day of March, 19 92, before me, a Notary Public in and for the above State and County, personally appeared Fred Foulkrod, Trust Officer of Williamsport National Bank, Custodian of the George V. Cohen Rollover IRA, who in due form of law acknowledged the foregoing Power of Attorney to be his act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Barbara A. Davis
NOTARY PUBLIC

MY COMMISSION EXPIRES:

NOTARIAL SEAL
BARBARA A. DAVIS, Notary Public
Williamsport, Lycoming County, Pa.
My Commission Expires July 15, 1995

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF LYCOMING :

On the 23rd day of March, 1992, before me, a Notary Public in and for the above State and County, personally appeared **GEORGE V. COHEN**, a partner of Creekside Farms, who in due form of law acknowledged the foregoing Power of Attorney to be his act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Maxine C Newman
NOTARY PUBLIC

MY COMMISSION EXPIRES:

NOTARIAL SEAL
MAXINE C NEWMAN, Notary Public
Williamsport, Lycoming County, Pa.
My Commission Expires Aug. 30, 1993

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF CLEARFIELD :

On the 16th day of April, 1992, before me, a Notary Public in and for the above State and County, personally appeared JOHN W. BEAN, Trustee of The Retirement Plan For The Employees of Ideal Products, Inc., who in due form of law acknowledged the foregoing Power of Attorney to be his act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Francene G. Thomas
NOTARY PUBLIC

MY COMMISSION EXPIRES:

Notarial Seal
Francene G. Thomas, Notary Public
DuBois, Clearfield County
My Commission Expires Feb. 17, 1996
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF CLEARFIELD :

On the 16th day of April, 1992, before me, a Notary Public in and for the above State and County, personally appeared **JOHN W. BEAN**, who in due form of law acknowledged the foregoing Power of Attorney to be his act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Francene G. Thomas
NOTARY PUBLIC

MY COMMISSION EXPIRES:

Notarial Seal
Francene G. Thomas, Notary Public
Clearfield, Clearfield County
My Commission Expires Jan. 17, 1996
Member, Pennsylvania Association of Notaries

THIS POWER OF ATTORNEY shall not be affected by the subsequent disability or incapacity of any Partner of B Warehouse Company.

IN WITNESS WHEREOF and intending to be legally bound and to so bind our respective heirs, personal representatives and assigns, we have hereunto set our hands and seals this 23rd day of March, 1992.

_____(SEAL)
John W. Bean

_____(SEAL)
The Retirement Plan For Employees
of Ideal Products, Inc.

_____(SEAL)
Creekside Farms

_____(SEAL)
Williamsport National Bank,
Custodian of the George V. Cohen
IRA Rollover IRA

_____(SEAL)
Susan Leopold Ansin, Trustee
of the Bertram B. Leopold Trust

_____(SEAL)
Susan Leopold Ansin

13. To contract for such services, including but not limited to, accounting, legal and investment advisory (including giving discretionary trading authority to third persons) as may be required in the conduct of the affairs of B Warehouse Company and to terminate any such services.

14. To make distributions on an equal basis to the Partners of B Warehouse Company.

15. To disclaim any interest in property.

And to do all lawful acts requisite or proper to effect the above premises or any matter related to or connected therewith, and B Warehouse Company hereby ratifies and confirms all that the attorney shall do by virtue of these presents.

All authority herein contained is intended to extend to any interest in property which B Warehouse Company holds jointly as well as to property in the name of B Warehouse Company.

Any individual or corporation may rely on this power of attorney unless notified in writing that it has been revoked or that B Warehouse Company has terminated and shall indemnified and held harmless by B Warehouse Company against any resulting liability or loss.

8. To represent B Warehouse Company and to vote and act in person or by proxy at all meetings and on all matters connected with any business or corporation in which B Warehouse Company may have an interest.

9. To prosecute and compromise claims on behalf of B Warehouse Company and to defend and compromise claims against it.

10. To lease or sell, in fee simple or for any less estate, any real property or interest therein, publicly or privately, for such price and upon such terms as the attorney sees fit and to make good conveyance thereof to the purchaser, without any obligation on the latter to see to or be responsible for the purchase price.

11. To enter, deposit property in, and withdraw property from, any safe deposit box in the name of B Warehouse Company.

12. To perform any and all acts that B Warehouse Company can perform with respect to any tax due to or claimed by the United States, any state or foreign country or political subdivision or any of them; to prepare, execute and file on its behalf tax returns of all kinds, waivers, agreements, refund claims, petitions and other pertinent documents; to pay, contest and compromise such taxes as the attorney decides is in the best interest of B Warehouse Company; to receive refund checks; and to substitute representatives or to delegate any authority conveyed by this power of attorney to other representatives.

2. To buy and sell securities, commodities and any other real or personal property, and to execute on behalf of B Warehouse Company any powers of attorney or other instruments needed for that purpose.

3. To hold property unregistered or in the name of a nominee.

4. To endorse notes, checks, drafts, bills of exchange and other negotiable instruments and to deposit any funds to which B Warehouse Company is entitled in any of its accounts.

5. To demand and take possession of all real or personal property to which B Warehouse Company is now or hereafter entitled, including any interest, dividends, rentals or other income therefrom and to enter into any agreement or covenant relating thereto which the attorney thinks reasonable and to its interest.

6. To borrow money for B Warehouse Company and on its behalf on whatever terms and conditions the attorney deems advisable; to sign all notes or other documents necessary to effect such loans; and to mortgage or pledge any of B Warehouse Company's property as collateral security therefor.

7. To lend money or assets belonging to B Warehouse Company with or without security therefor and upon such terms and conditions as the attorney sees fit.

DURABLE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That JOHN W. BEAN, THE RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC., CREEKSIDE FARMS, WILLIAMSPORT NATIONAL BANK, CUSTODIAN OF THE GEORGE V. COHEN ROLLOVER IRA, SUSAN LEOPOLD ANSIN, TRUSTEE OF THE BERTRAM LEOPOLD TRUST and SUSAN LEOPOLD ANSIN, being all the partners of B WAREHOUSE COMPANY a/k/a B WAREHOUSE, a Pennsylvania General Partnership, appoint **JOHN W. BEAN** the true and lawful attorney for B Warehouse Company with full power of substitution for it and in its name and on its behalf generally to transact all business and sign, acknowledge and deliver all contracts, deeds, and other instruments needed to effectuate any matter or transaction pertaining to its affairs, all as effectually, in all respects, as all of the general partners of B Warehouse Company could do directly.

Without intending to limit or restrict the foregoing general powers the said attorney shall have full authority:

1. To sign checks or otherwise make withdrawals from any account in the name of B Warehouse Company in any bank (including bank trust departments), financial institution or brokerage firm.

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CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
(Clearfield County, Pennsyivania)
$1,700,000
COMMERCIAL DEVELOPMENT FIRST MORTGAGE LOAN NOTE
(B WAREHOUSE COMPANY PROJECT)
AND
$300,000
COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS,
SERIES OF 1985
(B WAREHOUSE COMPANY PROJECT)

PURCHASERS' RECEIPT

The undersigned hereby certify that, in pursuance of purchase made according to law, the undersigned received delivery of the designated amount of the $300,000, total principal amount, of Clearfield County Industrial Development Authority, Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project).

The Second Mortgage Revenue Bonds are dated and effective as of April 15, 1985, are in the form and denominations, and bear interest and mature as set forth and more particularly described in the "Schedule A" attached hereto.

IN WITNESS WHEREOF, each of the undersigned has caused this Purchaser's Receipt to be executed by himself or his authorized representative as of April 15, 1985, but actually on May 7, 1985.

Purchaser	Amount	Bond Numbers	Form of Bonds
MARC KATZEN By _____ Marc Katzen	$135,000	IR-1	Fully Registered
RICHARD GORDON By _____ ~~Marc Katzen,~~ Authorized Agent	60,000	IR-2	Fully Registered
MARSHALL KATZEN By _____ Marc Katzen, Authorized Agent	30,000	IR-3	Fully Registered
HARRY KELLER, TRUSTEE FOR HARRY KATZEN By _____ Marc Katzen, Authorized Agent	15,000	IR-4	Fully Registered

transferred later to Marshall Katzen

Purchaser	Amount	Bond Numbers	Form of Bonds
HARRY KELLER, TRUSTEE FOR HAROLD KATZEN	$15,000	IR-5	Fully Registered
By _____ Marc Katzen, Authorized Agent			
HARRY KELLER, TRUSTEE FOR HIRSH KATZEN	15,000	IR-6	Fully Registered
By _____ Marc Katzen, Authorized Agent			
HARRY KELLER, TRUSTEE FOR BRIT KATZEN	15,000	IR-7	Fully Registered
By _____ Marc Katzen, Authorized Agent			
HARRY KELLER, TRUSTEE FOR BROOK KATZEN	15,000	IR-8	Fully Registered
By _____ Marc Katzen, Authorized Agent			

SCHEDULE A

MATURITY SCHEDULE

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
(Clearfield County, Pennsylvania)
$300,000
COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS,
SERIES OF 1985
(B WAREHOUSE COMPANY PROJECT)

DEFINITIVE FULLY REGISTERED BONDS - $300,000

SERIES OF 1985 BONDS

Form	Denominations	Numbers	Amount	Interest Rate	Maturity
Fully Registered	$135,000	IR-1	$135,000	15%+	February 1, 2020
Fully Registered	60,000	IR-2	60,000	15%+	February 1, 2020
Fully Registered	30,000	IR-3	30,000	15%+	February 1, 2020
Fully Registered	15,000	IR-4	15,000	15%+	February 1, 2020
Fully Registered	15,000	IR-5	15,000	15%+	February 1, 2020
Fully Registered	15,000	IR-6	15,000	15%+	February 1, 2020
Fully Registered	15,000	IR-7	15,000	15%+	February 1, 2020
Fully Registered	15,000	IR-8	15,000	15%+	February 1, 2020

+ plus additional contingent interest.

Exhibit H

THORP REED & ARMSTRONG

James K. Goldberg
Direct Dial 412 394 7739
Email: jgoldberg@thorpreed.com

ATTORNEYS AT LAW SINCE 1895

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Marc Katzen
P.O. Box 470607
Celebration, Florida 34747-0607

July 8, 2004

Re: Clearfield County Industrial Development Authority Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project) ("Bonds")

Dear Mr. Katzen:

We have been engaged by B Warehouse Company (the "Investor Developer") in connection with certain matters related to the above referenced Bonds. The purpose of this letter is to open a discussion intended to resolve issues the owners of the Investor Developer have with respect to the Bonds. They have requested that all discussions be conducted between your counsel and me.

As you are aware, the Bonds were issued to finance a portion of the costs of construction of a commercial warehouse development project in Clearfield County (the "Project"). From January 1, 1986 through June 30, 2002 the warehouse was continuously occupied, always by a single tenant, under a "triple net" lease, i.e., the tenant paid a market rental rate, plus all costs for utilities, insurance, maintenance and repairs and taxes. The triple net lease arrangement was very successful and the Investor Developer and the holders of the Bonds received significant financial returns from the Project during that time period.

On June 30, 2002, the triple net lease with Owens-Illinois, Inc. expired. Since that time, the Investor Developer has struggled to find tenants for the warehouse, notwithstanding the fact that the Investor Developer has employed a real estate broker to assist in leasing the space. Utilization of the warehouse has sharply declined, and the revenues from the Project have also declined significantly, compared to the period prior to July 1, 2002. As of today, leasing revenues are not sufficient to cover the operating costs of the warehouse. Based upon the market analysis provided to the Investor Developer by its real estate broker, the prospects for locating future tenants of the warehouse are not promising. According to the broker, the current abundance of unoccupied warehouse in the Clearfield County area is unprecedented in the past fifteen years.

Because we understand that the joint venturers of the Investor Developer and some or all of the holders of the Bonds have had long and mutually beneficial personal and business relationships, we have recommended to our client that all of the parties should review together the current situation and attempt to arrive at a satisfactory solution to the challenges presented by the current inability to generate positive cash flow from the Project.

Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425
412 394 7711
412 394 2555 Fax

THORP REED ARMSTRONG

One possibility which we have recommended exploring is a negotiated modification to the payment terms for the Bonds, whereby the holders of the Bonds would agree to (i) a change in the interest rate for the Bonds, e.g. Prime Rate plus two percent (2%) per annum and (ii) an arrangement whereby scheduled payments of interest at the revised rate would be made only to the extent of available positive cash flow, after payment of operating expenses. In such an event, it was our thought that any unpaid amounts of interest would accrue and be paid in future years following a favorable change in the cash flow situation for the warehouse.

A second alternative which we have proposed is a negotiated agreement that the Bonds may be immediately prepaid in full. In consideration for the agreement of the holders of the Bonds to permit such prepayment, the Investor Developer would agree that upon any sale of the warehouse, the holders of the Bonds would be entitled to share in any net sale proceeds which exceed $1,500,000. Although we recognize that this alternative requires the holders of the Bonds to forgo future payments which were anticipated at the time the Bonds were issued, based upon the information provided by the real estate broker attempting to market the warehouse space, the prospects for those future payments do not appear to be realistic, especially in light of another possibility which we have raised for review.

If the parties are unable to promptly agree upon either (i) a change in interest rate and payment terms or (ii) a prepayment of the Bonds, another solution which we have reviewed with the Investor Developer is a default in payment of any amounts payable in respect of the Project or the Bonds. Obviously, given the relationship among the parties, the Investor Developer does not regard this alternative with enthusiasm. Nonetheless, the economic analysis of the current status of the Project and the legal (not personal) consequences of a default compel consideration of this possibility if the parties cannot agree on a revised interest rate and payment terms or prepayment of the Bonds. In the event of a default, the remedy of the holders of the Bonds would be foreclosure under the Second Mortgage made as of April 15, 1985, but actually dated, signed and notarized on May 7, 1985, between Clearfield County Industrial Development Authority, as Mortgagor, and The Savings & Trust Company of Pennsylvania, as Mortgagee (the "Mortgage"). If a foreclosure proceeding were initiated, the Investor Developer would have no personal liability inasmuch as the liability of the Investor Developer, pursuant to Section 6.5 of the Mortgage Loan Agreement dated as of April 15, 1985, but actually dated, signed and effective on May 7, 1985, is limited to the interest of the Investor Developer in the Premises, the Project Facilities, the Lease and all subsequent Leases (all as defined in such Mortgage Loan Agreement). The practical effect of a default would be to cause a prepayment of the Bonds, without any prospect for an additional return in the event of a future sale of the warehouse. Not only are the economic consequences of this

THORP REED & ARMSTRONG

scenario less favorable to the holders of the Bonds but also, this scenario risks injury to the personal relationships among the parties.

One other matter should be mentioned in connection with the default/mortgage foreclosure alternative discussed above. From our review of the financing documents, we note that the Deed pursuant to which Clearfield County Industrial Development Authority conveyed the Project premises to the Investor Developer was dated, signed and notarized on May 6, 1985. The Mortgage, as mentioned above, was signed by the Clearfield County Industrial Development Authority and notarized on May 7, 1985. Although we have not explored the ramifications of this inconsistency, it could become an issue in any mortgage foreclosure proceeding.

A final issue which we have raised regarding the Bonds is whether the contingent interest payments with respect to the Bonds, since they are calculated by reference to the economic returns on the Project, might be deemed to constitute an equity participation in the Project. At this point, we have not been asked to research this question thoroughly, but if the Internal Revenue Service were to make such a determination, the tax free status of interest on the Bonds could be called into question.

We have discussed at length with our client the obvious advantages of arriving at a negotiated solution to the current problem which preserves the personal relationships among the parties. Our client has no desire to jeopardize those relationships. The economic realities of the situation, however, compel a dispassionate review of all possible alternatives. In the absence of a negotiated solution, we have advised our client that default under the Bonds may present the least undesirable economic consequences to the Investor Developer.

To the extent that you or your counsel may have other suggestions which avoid damage to the personal relationships of the parties, while not adverse to the economic interests of the Investor Developer, we would be pleased to discuss them. If we are unable to promptly address and resolve the problem mutually, however, we are prepared to recommend that the Investor Developer cease any further payments in connection with the Project.

THORP REED & ARMSTRONG

Please have your counsel contact me as soon as possible to discuss.

Very truly yours,

James K. Goldberg

JKG/rsm

ALL-STATE® LEGAL 800-222-0510 EDH11 RECYCLED

MARC KATZEN

147 S. Interlachen #400
Winter Park, Florida 32789
Ph 407 686 8835
Fax 407 5686 8836
Cell 407 492 2554
Email marckatzen@aol.com

September 9, 2004

John W. Bean
4957 Peregrine Point Way
Sarasota, Florida 34231

Re: B Warehouse

Dear John:

As they say when playing bridge—let's review the bidding. The Joint Venturers invested $500,000. Of that, 50% from day one was invested in safe assets called a reserve. The Joint Venturers, prior to January 1, 2004, have drawn over $2,265,859, and they had a book value of assets remaining of $1,688,003. With earnings to date, the original investment at book was worth over $4,000,000. Just the way Bert planned it.

You have had the power of attorney to manage B Warehouse. I have no knowledge of you ever revoking that document, nor was George ever given those powers. The bank could not default without your approval.

You have been in a lot of deals with me over the last twenty years. We worked together to protect minority owners' and lenders' rights so everyone wins when they deal with us. For example, on Reynoldsville Casket, you invested $50,000 and wanted to sell some or all of your shares. No buyer was available to buy the company. Those who showed interest were offering less than book and attaching conditions.

By working with me, not against me, we took steps to get you cash. First, we made tax-free distributions to all shareholders in which you received $315,481. Next, other shareholders, Rusty and Judy, used their distributions and borrowed funds to pay you $108,619. Next, the company borrowed money to buy some of your shares for treasury and paid $241,958. In addition you got a note for $137,500, payable over ten years.

John, you paid very little in capital gains. You retained 750 shares at my urging and sold 25% of those this year to RCC for cash. The company agreed to buy the remainder of your shares when you reach 65, 70 and 75.

This is a case where there was no market for your shares, but we created one so you could get close to $1,000,000 out over two years without hurting any employees or destroying the company. You were treated fairly by all shareholders and you were fair to them. No one got greedy, and everyone was happy.

John, at Symmco we worked together to permit minority shareholders to get their money out at fair prices. You, George and I also sold shares at a fair price, and the company did not have to be sold. No employees or management suffered by the buyouts. You pocketed probably over $1,000,000. Each time, I believe, 10 to 25 shareholders sold all their shares, many large shareholders sold 20% of their holdings. No one hurt other investors in Symmco or defaulted on any agreements.

I have helped others besides John Bean get out of closely held companies. Bert's mother wanted to sell her interest in a deal, and we worked out a good plan that other minority investors purchase her interest pro-rata at five times face. Everyone remained friends, and no one got adversarial. My sons borrowed money to buy Susie out of a single tenant building partnership.

I realize that a fair price is subjective. But having someone working with you to make a market in closely-held assets is something I think you should value as being in your interest over the long-run.

John, transferring a 1/6 interest in B Warehouse, owned by Ideal, and transferring 1/6 interest in George's IRA to the Joint Venture this year by a combination of the tools we used in RCC is smart. If less than 50% is retired while the building is empty, you will maximize your long run earnings.

My request is that you instruct the Bank to pay July, August and September interest payments of $3750 each. Fax me the financial report to August first. Meet with me following the Delaware Board meeting for a couple of hours.

Very truly yours,

Exhibit J

-----Original Message-----
From: Hank Katzen [mailto:hankkatzen@pobox.com]
Sent: Thursday, October 07, 2004 3:09 PM
To: Brobson, P. Kevin
Cc: Malpezzi, Daniel
Subject: PA: John Bean's Acknowledgment (BW)

From: "John Bean" <jwb735@verizon.net>

Date: September 10, 2004 3:16:56 PM EDT

To: "Marc Katzen" <marckatzen@AOL.COM>

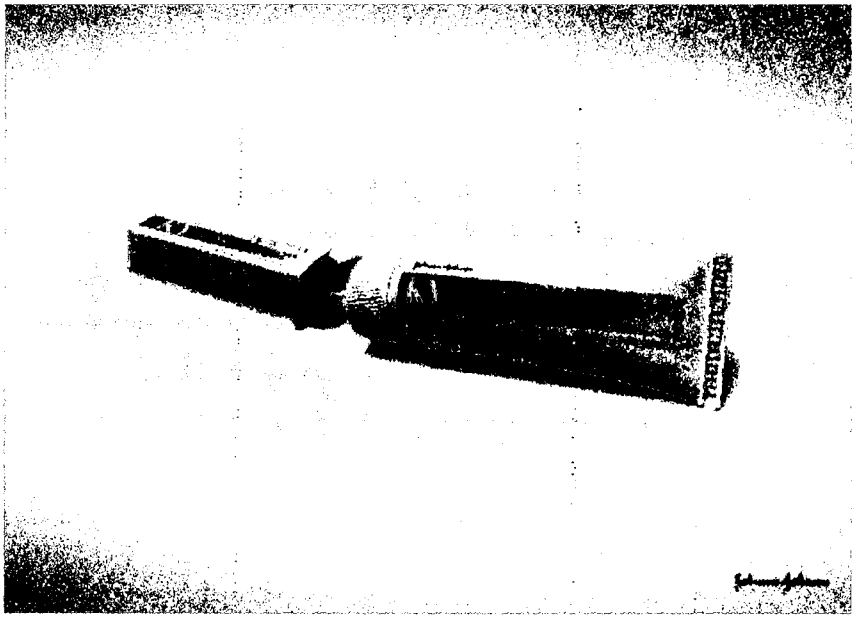
Subject: Acknowledgement

Marc,

Received two page letter – also received a copy by FAX.

See attached.

John



B WAREHOUSE COMPANY

DuBois, Pennsylvania

FINANCIAL STATEMENTS

December 31, 2003

MAUTHE, YUTZEY & GABLER

Certified Public Accountants

TELEPHONE: (814) 371-1760
FAX: (814) 375-1003

liam L. Mauthe, CPA
gory L. Yutzey, CPA
y A. Gabler, CPA

R.D. #3
Oklahoma-Salem Road
P.O. Box 1029
DuBois, PA 15801

B Warehouse Company
PO Box 1066
DuBois, PA 15801

Gentlemen:

We have compiled the accompanying balance sheet of B Warehouse Company (a partnership) as of December 31, 2003, and the related statements of income and expense and cash flows for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Mauthe, Yutzey & Gabler

Mauthe, Yutzey & Gabler
Certified Public Accountants
February 24, 2004

B WAREHOUSE COMPANY

STATEMENT OF CASH FLOWS

INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS

For The Year Ended December 31, 2003

Cash Flows from Operating Activities:		
Net income		$ 8,044
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	77,060	
Amortization	529	
		77,589
Net Cash Provided by Operating Activities		85,633
Cash Flows from Investing Activities:		
Increase in partnership interest		(6,233)
Cash Flows from Financing Activities:		
Partners' withdrawals		(30,000)
Net Increase (Decrease) in Cash and Cash Equivalents		49,400
Cash and Cash Equivalents - beginning of year		53,629
Cash and Cash Equivalents - end of year		$ 103,029
Supplemental Disclosures of Cash Flow Information:		
Interest paid during the year		$ 45,000

See Accompanying Notes and Accountant's Report

B WAREHOUSE COMPANY

STATEMENT OF INCOME AND EXPENSE

For The Year Ended December 31, 2003

Rental income - B Warehouse	$ 190,974	
Net rental income - D Warehouse	6,771	
Total Rental Income		197,745
Rental Expense		
Repairs and maintenance	6,592	
Real estate taxes	54,031	
Depreciation	77,060	
Insurance	6,406	
Professional fees	985	
Administrative expense	2,000	
Commissions	11,459	
Total Rental Expense		158,533
		39,212
Other Income and (Expense)		
Interest income	912	
Dividend income	14,048	
Loss on sale of investments	(599)	
Interest expense	(45,000)	
Amortization	(529)	
Total Other Income and (Expense)		(31,168)
Net Profit for the year ended December 31, 2003		$ 8,044

See Accompanying Notes and Accountant's Report

BALANCE SHEET

LIABILITIES AND CAPITAL

Long-Term Debt		
Bonds payable (Note 5)		$ 300,000
Capital		
Capital - January 1, 2003	1,409,959	
Add: Net Profit	8,044	
	1,418,003	
Less: Withdrawals	30,000	
Capital - December 31, 2003		1,388,003
Total Liabilities and Capital		$ 1,688,003

B WAREHOUSE COMPANY

BALANCE SHEET

December 31, 2003

ASSETS

Current Assets		
Cash		$ 103,029
Investments		
Securities (Note 2)	521,045	
Partnership - D Warehouse	482,437	
Total Investments		1,003,482
Land, Building and Equipment (Note 3)		
Land	500,000	
Building	1,428,039	
Equipment	76,000	
Paving	150,000	
	2,154,039	
Less: Accumulated Depreciation	1,581,260	
Total Land, Building and Equipment		572,779
Intangible Assets (Note 4)		
Bond fees	18,500	
Less: Accumulated Amortization	9,787	
Total Intangible Assets		8,713
Total Assets		$ 1,688,003

See Accompanying Notes and Accountant's Report

B WAREHOUSE COMPANY

NOTES TO FINANCIAL STATEMENTS

December 31, 2003

Note 1 Summary of Significant Accounting Policies

The accounts are maintained on the accrual basis of accounting.

Note 2 Investments

Following is a summary of investment securities classified as available for sale.

	Cost	Market
Brandywine Fund	$ 50,000	$ 42,429
Third Ave. Small Cap Value Fund	35,000	56,506
Fidelity High Income Fund	41,045	29,994
Oakmark Fund	75,000	89,191
Loomis Sayles Bond Fund	75,000	81,312
Third Avenue Value Fund	35,000	46,072
Oppenheimer Convertible Sec. Fund	60,000	54,564
Federated Ultrashort Bond Fund #838	150,000	146,891
Total	$ 521,045	$ 546,959

The unrealized gain of $25,913 on securities available for sale has not been included in the partners' capital accounts at December 31, 2003.

Note 3 The cost of buildings, equipment and paving is depreciated over the estimated useful lives of the related assets. Depreciation is computed on the straight-line method for financial reporting purposes and income tax purposes.

The useful lives of buildings, equipment and paving for the purpose of computing depreciation are:

Buildings	19 years
Equipment	10 to 12 years
Paving	12 years

Note 4 The useful life of bond fees for the purpose of computing amortization is 35 years.

Note 5 Bonds are payable to individuals in connection with the purchase of land. The bonds mature February 1, 2020, and bear interest at the rate of 15%, plus additional contingent interest computed to be equal to a total of 50% of the rental income paid in each calendar year to the investor developer in excess of $337,500.00 during the first ten years, and in excess of $227,500.00 during the next five years and in excess of $157,500.00 during the last twenty years.

FILED

NOV 05 2004

William A. Shaw
Prothonotary

In the Superior Court of Pennsylvania

Sitting at Pittsburgh

FILED
MAY 11 2006
William A. Shaw
Prothonotary/Clerk of Courts

No. **986 WDA 2005**

Marc Katzen, Marshall Katzen, M.D., and Harry Kellar, as Trustee for the Harry Katzen Trust , the Hirsh Katzen Trust , the Britt Katzen Trust and the Brook Katzen Trust ,
Appellants

v.

John W. Bean and George V. Cohen

Appeal from the Order entered in this matter by the Hon. Fredric J. Ammerman, dated May 6, 2005, Court of Common Pleas, Civil Div. of the County of Clearfield At NO. 2004-1759

CERTIFIED FROM THE RECORD

April 21, 2006 – Application for Leave to withdraw appeal filed.

ORDER OF COURT

"AND NOW, to-wit, this 8th day of May, 2006, upon consideration of Appellant's Unopposed Application for Leave to Withdraw Appeal, filed in the above matter, the same be and is hereby GRANTED.

PER CURIAM"

APPEAL WITHDRAWN

Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh Pa. this 9TH Day of May 2006

Eleanor R. Valecko
DEPUTY PROTHONOTARY

12:01 P.M.

2004-1759-CD

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 986 WDA 2005

June 10, 2005

Marc Katzen, Marshall Katzen, M.D. and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Britt Katzen Trust and the Brook Katzen Trust, Appellant

v.

John W. Bean and George V. Cohen

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: June 8, 2005 Awaiting Original Record

Journal Number:

Case Category: Civil CaseType: Assumpsit and Trespass

Consolidated Docket Nos.: **Related Docket Nos.:**

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement Next Event Due Date: June 24, 2005

Next Event Type: Original Record Received Next Event Due Date: July 18, 2005

RECORD

PITTSBURGH OFFICE OF SUPERIOR COURT

Record - 2 Parts

986 WDA 2005

FILED 10 cc

m/ 1:33 BA

JUN 13 2005

William A. Shaw
Prothonotary/Clerk of Courts

6/10/

3023

JH34

COUNSEL INFORMATION

Appellant Katzen, Marshall
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:
Attorney: Brobson, Paul Kevin
Bar No.: 76693 Law Firm:
Address: One Market Square
213 Market Street, 3rd Floor
Harrisburg, PA 17101
Phone No.: (717)237-4800 Fax No.: (717)233-0852
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellant Kellar, Harry
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:
Attorney: Brobson, Paul Kevin
Bar No.: 76693 Law Firm:
Address: One Market Square
213 Market Street, 3rd Floor
Harrisburg, PA 17101
Phone No.: (717)237-4800 Fax No.: (717)233-0852
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellant Katzen, Marc
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:
Attorney: Brobson, Paul Kevin
Bar No.: 76693 Law Firm:
Address: One Market Square
213 Market Street, 3rd Floor
Harrisburg, PA 17101
Phone No.: (717)237-4800 Fax No.: (717)233-0852
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellee Bean, John W.
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Allen, Kevin P.

Bar No.: 76426 Law Firm: Thorp Reed & Armstrong, LLP

Address: 301 Grant St 14th Fl
Pittsburgh, PA 15219-1425

Phone No.: (412)394-2374 Fax No.: (412)394-2555

Receive Mail: Yes

E-Mail Address: |0

Receive E-Mail: No

Appellee Cohen, George V.

Pro Se: Appoint Counsel Status:

IFP Status:

Appellee Attorney Information:

Attorney: Allen, Kevin P.

Bar No.: 76426 Law Firm: Thorp Reed & Armstrong, LLP

Address: 301 Grant St 14th Fl
Pittsburgh, PA 15219-1425

Phone No.: (412)394-2374 Fax No.: (412)394-2555

Receive Mail: No

E-Mail Address: |0

Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
6/8/05	Notice of Appeal	60.00	60.00	2005SPRWD000722

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield Division: Civil

Date of Order Appealed From: May 6, 2005 Judicial District: 46

Date Documents Received: June 8, 2005 Date Notice of Appeal Filed: June 3, 2005

Order Type: Order Entered OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: NO. 2004-1759

ORIGINAL RECORD CONTENTS

Original Record Item **Filed Date** **Content/Description**

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
June 8, 2005	Notice of Appeal Filed		
		Appellant	Katzen, Marc
		Appellant	Katzen, Marshall
		Appellant	Kellar, Harry
June 10, 2005	Docketing Statement Exited (Civil)		
			Western District Filing Office

COMMONWEALTH OF PENNSYLVANIA

Superior Court of Pennsylvania

Western District

David A. Szewczak, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
www.superior.court.state.pa.us

June 10, 2005

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: 986 WDA 2005
Marc Katzen, Marshall Katzen, M.D. and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Britt Katzen Trust and the Brook Katzen Trust, Appellant
v.
John W. Bean and
George V. Cohen

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

KMS

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

04-1759-CD

Marc Katzen, Marshall Katzen, M.D. and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust
VS.
John W. Bean and George V. Cohen

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No.** 26, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is July 15, 2005.

Prothonotary/Clerk of Courts

(seal)

Clearfield County Court of Common Pleas

ROA Report

Case: 2004-01759-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date		Judge
11/05/2004	Filing: Civil Complaint Paid by: Buchanan Ingersoll Receipt number: 1889923 Dated: 11/5/2004 Amount: $85.00 (Check) 2 Cert. copies to Sheriff and 3 Cert. to Atty.	No Judge
12/01/2004	Affidavit of Service, Complaint upon John W. Bean by certified Mail, return receipt attached. Filed by s/ Nicole L. Borda. No CC	No Judge
12/02/2004	Preliminary Objections, filed by s/Kevin P. Allen No CC	No Judge
12/03/2004	Praecipe to Amend Caption, filed by s/ P. Kevin Brobson, Esquire. No CC	No Judge
12/06/2004	Filing: Reissue Complaint for an additional thirty days. Paid by: Brobson, P. Kevin (attorney for Katzen, Marc) Receipt number: 1891647 Dated: 12/06/2004 Amount: $7.00 (Cashiers Check). filed by s/ P. Kevin Brobson, Esquire. 1 Compl. reinstated to Shff.	No Judge
12/16/2004	Acceptance of Service of Complaint on behalf of George V. Cohen. Filed by s/ Kevin P. Allen, Esquire. 1CC To Atty	No Judge
12/20/2004	Objections to Subpoena Pursuant to Pa. R. CIV. P. 4009.21(c). Filed by s/ Kevin P. Allen, Esquire. 1CC Atty Allen	No Judge
12/27/2004	Order, AND NOW, this 27th day of Dec., 2004, it is the Order of the Court that argument on Defendant's Preliminary Objections filed in the above-captioned matter has been scheduled for the 9th day of Feb. 2005, at 2:00 p.m. in Courtroom no. 1, Clfd. Co. Courthouse. BY THE COURT: Fredric J. Ammerman, President Judge. 3CC & Memo Re: Service to Atty Allen.	Fredric Joseph Ammerman
12/28/2004	Preliminary Objections, filed by s/ Kevin P. Allen, Esquire. no cc	Fredric Joseph Ammerman
12/30/2004	Affidavit of Service filed by s/ Kevin P. Allen, Esquire. No CC	Fredric Joseph Ammerman
01/11/2005	Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ Nicole L. Borda, Esquire. No CC	Fredric Joseph Ammerman
01/12/2005	Plaintiff's Motion To Compel Defendant John W. Bean To Respond Fully to Plaintiffs' First Request For Production of Documents, filed by s/ Nicole L. Borda, Esquire. 1CC Atty	Fredric Joseph Ammerman
	Plaintiffs Motion To Compel Defendant George V. Cohen To Respond Fully To Plaintiffs' First Request For Production of Documents, filed by s/ Nicole L. Borda, Esquire. 1CC Atty Borda	Fredric Joseph Ammerman
01/17/2005	ORDER, filed. 1 cert. to Atty. Borda NOW, this 14th day of January, 2005, Defendant John W. Bean is hereby directed to produce full and complete discovery responses withing 30 days of the date of this Order.	Fredric Joseph Ammerman
	ORDER, filed. 1 cert. to Atty. Borda NOW, this 14th day of January, 2005, Defendant George V. Cohen is hereby directed to produce full and complete discovery responses within 30 days of the date of this Order.	Fredric Joseph Ammerman
01/18/2005	Defendant's Response In Opposition To Plaintiffs' Motions to Compel, filed by s/ Kevin P. Allen, Esquire. No CC	Fredric Joseph Ammerman
01/19/2005	Sheriff Return, Papers served on George Cohen. Not Served as to John W. Bean. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm $95.00 Sheriff Hawkins paid by Attorney $21.50 Lycoming Co. Sheriff paid by Attorney	Fredric Joseph Ammerman
01/20/2005	Order, AND NOW, this 20th day of Jan., 2005 it is the Order of the Court that argument on Defendant's Preliminary Objections filed in the above-captioned matter has been scheduled for the 9th day of Feb., 2005 at 2:00 p.m. in Courtroom No. 1, Clfd. Co. courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC & Memo to Atty Allen	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2004-01759-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date		Judge
01/25/2005	Affidavits of Service filed. 1. Jan 21, 2005 served counsel for Plaintiffs the Court's Jan. 20, 2005 Order scheduling argument on the Defendants' Preliminary Objections for Feb. 9, 2005 at 2:00 2. Dec. 1, 2004 served Plaintiffs' counsel with copy of Defendant Bean's Preliminary Objections. 3. Dec. 27, 2004, served Plaintiffs' counsel with copy of Defendant Cohen's Preliminary Objections. Filed by s/ Kevin P. Allen, Esquire. 1CC to Atty	Fredric Joseph Ammerman
02/02/2005	Plaintiffs Response to Defendant George V. Cohen's Preliminary Objections, filed by Atty. Brobson 1 cert. to Atty.	Fredric Joseph Ammerman
	Order, NOW, this 1st day of February, 2005, the Court's Order of January 14, 2005 requiring the Defendants to proceed with discovery; the Defendant's Response to the Plaintiff's Motion to Compel having been filed January 18, 2005; Defendants believing that their preliminary objections in the nature of a demurrer to Plaintiff's complaint should be resolved prior to conducting discovery and in consideration of the circumstances it is the Order of this Court that the provisions of the Court's Order of January 14, 2005 by stayed pending further Order. Argument on the Motion to Compel is hereby scheduled for February 9, 2005, at 2:00 p.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys: Brobson, Allen One CC Def. Cohen-2618 Waldman Drive, Williamsport, PA 17701	Fredric Joseph Ammerman
	Plaintiffs Response to Defendant John W. Bean's Preliminary Objections, filed by Atty. Brobson 1 Cert. to Atty.	Fredric Joseph Ammerman
05/06/2005	Opinion And Order: NOW, this 6th day of may, 2005, consistent with the provisions of the foregoing Opininon, it is the Order of this Court that the Defendants' Preliminary Objections be granted and the Plaintiffs' Complaint is hereby dismissed, with prejudice. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Attys: R. Brobson, K. Allen, and D. Mikesell	Fredric Joseph Ammerman
06/03/2005	Filing: Appeal to High Court Paid by: Brobson, P. Kevin (attorney for Katzen, Marc) Receipt number: 1902214 Dated: 06/03/2005 Amount: $45.00 (Check) 1 Cert. with $60.00 check to Superior Court & 2 Cert. to Atty.	Fredric Joseph Ammerman
06/13/2005	Appeal Docket Sheet filed. No CC	Fredric Joseph Ammerman
06/16/2005	Order, NOW, this 15th day of June, 2005, the court having been notified of Appeal to the Superior court of Pennsylvania, it is the ORDER of this Court that Marc Katzen, et al, Appellants, file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys. K. Allen & P. Keving Brobson	Fredric Joseph Ammerman
06/27/2005	Statement of Matters Complained of on Appeal, Filed by s/ P. Kevin Brobson, Esquire. No CC	Fredric Joseph Ammerman

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JUL 13 2005

Attest.

Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 04-1759-CD

Marc Katzen, Marshall Katzen, M.D. and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust

VS.

John W. Bean and George V. Cohen

ITEM NO.	*DATE OF FILING*	*NAME OF DOCUMENT*	*NO. OF PAGES*
01	11/05/04	Civil Complaint	145
02	12/01/04	Affidavit of Service, Complaint upon John W. Bean	04
03	12/02/04	Preliminary Objections	11
04	12/03/04	Praecipe to Amend Caption	03
05	12/06/04	Praecipe to Reissue Complaint	02
06	12/16/04	Acceptance of Service of Complaint of behalf of George Cohen	02
07	12/20/04	Objections to Subpoena Pursuant to Pa.R.Civ.P. 4009.21(c)	14
08	12/27/04	Order, Re: argument on Defendant's Preliminary Objections scheduled	02
09	12/28/04	Preliminary Objections	11
10	12/30/04	Affidavit of Service	02
11	01/11/05	Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22	20
12	01/12/05	Plaintiff's Motion to Compel Defendant John W. Bean to Respond Fully to Plaintiffs' First Request for Production of Documents	45
13	01/12/05	Plaintiff's Motion to Compel Defendant George V. Cohen to Respond Fully to Plaintiffs' First Request for Production of Documents	45
14	01/17/05	Order, Re: completion of discovery responses by Bean (with Motion to Compel, #12)	01
15	01/17/05	Order, Re: completion of discovery responses by Cohen (with Motion to Compel, #13)	01
16	01/18/05	Defendants Response in Opposition to Plaintiffs' Motions to Compel	05
17	01/19/05	Sheriff Return, Re: papers served on Cohen; not served as to Bean	151
18	01/20/05	Order, Re: argument on Defendant's Preliminary Objections scheduled	02
19	01/25/05	Affidavit of Service, Re: scheduling order, Bean and Cohen Preliminary Objections	02
20a	02/02/05	Plaintiffs' Response to Defendant Cohen's Preliminary Objections	60
20b	02/02/05	Plaintiff's Response to Defendant John W. Bean's Preliminary Objections	69
21	02/02/05	Order, Re: Argument on Motion to Compel scheduled	01
22	05/06/05	Opinion and Order	16
23	06/03/05	Appeal to High Court	21
24	06/13/05	Appeal Docket Sheet, Superior Court Number 986 WDA 2005	05
25	06/16/05	Order, Re: concise statement	01
26	06/27/05	Statement of Matters Complained of on Appeal	04

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

Marc Katzen, Marshall Katzen, M.D. and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust
VS.
John W. Bean and George V. Cohen
04-1759-CD

So full and entire as the same remains of record before the said Court, at **No. 04-1759-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 13th Day of July, 2005.

Prothonotary/Clerk of Courts

I, **Fredric J. Ammerman**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 15th day of July, 2005

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	NO.: 2004-1759
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

FILED NO CC
m/1:18/BA
JUN 27 2005
William A. Shaw
Prothonotary/Clerk of Courts

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

Plaintiffs/Appellants Marc Katzen; Marshall Katzen, M.D.; and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust ("Plaintiffs"), by and through their undersigned counsel Buchanan Ingersoll PC, hereby file this Statement of Matters Complained of on Appeal pursuant to Pa. R.A.P. 1925(b) and this Court's June 15, 2005 Order.

With respect to this Court's May 6, 2005 Opinion and Order, the matters complained of by Plaintiffs on appeal to the Pennsylvania Superior Court are as follows:

1. The trial court erred in concluding that the nonrecourse/exculpatory provisions of Section 6.5 of the Mortgage Loan Agreement barred Appellants' tort claims against Appellees because (a) it failed to strictly construe the language against Appellees and (b) application of the nonrecourse/exculpatory provisions in this case is contrary to public policy.

#20

2. The trial court erred in concluding that the "gist of the action" doctrine barred Appellants' tort claims against Appellees because the agreements and other documentation merely provide the context for and are thus collateral to Appellants' tort claims arising from Appellees' scheme to scheme to defraud, deceive, and steal from Appellants.

3. The trial court erred in finding Count I of the Complaint (tortious interference) legally insufficient as to the claim that Appellees tortiously interfered with the contractual obligations of a third-party, S&T Bank.

4. The trial court erred in finding Count I of the Complaint (tortious interference) legally insufficient as to the claim that Appellees tortiously interfered with the contractual obligations of B Warehouse Co. where there was a genuine issue of material fact as to whether Appellees acted, at all times relevant to Appellants' claims, within the course and scope of their authority with respect to the affairs of B Warehouse Co.

5. The trial court erred in failing to read the allegations with respect to Count II of the Complaint (fraud) in the light most favorable to Appellants, where it concluded that Appellants alleged only "mere silence" as the basis for their fraud claim and thus dismissed Count II of the Complaint as legally insufficient.

6. The trial court erred in finding Count III of the Complaint (conversion) legally insufficient in the presence of a genuine issue of material fact over the ownership of the funds held by S&T Bank in the single account of B Warehouse Co.

7. The trial court erred in finding Count IV of the Complaint (fraudulent transfer) legally insufficient because it failed to analyze Appellants' claim properly under the Pennsylvania Uniform Fraudulent Transfer Act, 12 Pa. C.S. § 5102(b).

8. The trial court erred in finding Count V of the Complaint (civil conspiracy) legally insufficient because Appellants stated claims against Appellees for one or more of their claims in Counts I through IV of the Complaint.

9. The trial court abused its discretion or committed and error of law by dismissing the Complaint with prejudice instead of either permitting Appellants to amend their Complaint to address the alleged lack of specificity with respect to the claims in Counts II, III, and IV or dismissing the Complaint without prejudice for Plaintiffs to re-file.

Respectfully submitted,

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
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Attorneys for Plaintiffs/Appellants

DATE: June 23, 2005

CERTIFICATE OF SERVICE

I, P. Kevin Brobson, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

Kevin P. Allen, Esquire
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

By: _____
P. Kevin Brobson

DATE: June 23, 2005

FILED

JUN 27 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST, Plaintiffs	:	
vs.	:	NO. 04-1759-CD
JOHN W. BEAN and GEORGE V. COHEN, Defendants	:	

ORDER

NOW, this 15th day of June, 2005, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Marc Katzen, et al, Appellants, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT:

Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

JUN 16 2005
0/10:30/cc
William A. Shaw
Prothonotary/Clerk of Courts

CERT TO ATTY K. ALLEN
&
P. KEVIN BOBSON

(25)

2004-1759-CD

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 986 WDA 2005

June 10, 2005

Marc Katzen, Marshall Katzen, M.D. and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Britt Katzen Trust and the Brook Katzen Trust, Appellant

v.

John W. Bean and George V. Cohen

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: June 8, 2005 Awaiting Original Record

Journal Number:

Case Category: Civil CaseType: Assumpsit and Trespass

Consolidated Docket Nos.: **Related Docket Nos.:**

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement Next Event Due Date: June 24, 2005

Next Event Type: Original Record Received Next Event Due Date: July 18, 2005

FILED
JUN 13 2005
William A. Shaw
Prothonotary/Clerk of Courts

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IFP Status: No

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FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
6/8/05	Notice of Appeal	60.00	60.00	2005SPRWD000722

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield Division: Civil

Date of Order Appealed From: May 6, 2005 Judicial District: 46

Date Documents Received: June 8, 2005 Date Notice of Appeal Filed: June 3, 2005

Order Type: Order Entered OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: NO. 2004-1759

ORIGINAL RECORD CONTENTS

Original Record Item **Filed Date** **Content/Description**

Date of Remand of Record:

BRIEFS

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 986 WDA 2005

June 10, 2005

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
June 8, 2005	Notice of Appeal Filed		
		Appellant	Katzen, Marc
		Appellant	Katzen, Marshall
		Appellant	Kellar, Harry
June 10, 2005	Docketing Statement Exited (Civil)		
			Western District Filing Office

COMMONWEALTH OF PENNSYLVANIA

Superior Court of Pennsylvania

David A. Szewczak, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

Western District

June 10, 2005

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
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Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: 986 WDA 2005
Marc Katzen, Marshall Katzen, M.D. and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Britt Katzen Trust and the Brook Katzen Trust, Appellant
v.
John W. Bean and
George V. Cohen

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

KMS

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	CIVIL ACTION
v.	:	NO.: 2004-1759
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

FILED
JUN 03 2005
m/12:30/lm
William A. Shaw
Prothonotary/Clerk of Courts
1 CERT W/ 60. - CK.
TO SUPERIOR CT.

NOTICE OF APPEAL

Notice is hereby given that Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust hereby appeal to the Superior Court of Pennsylvania from the Opinion and Order entered in this matter on May 6, 2005, granting Defendants' Preliminary Objections and dismissing Plaintiffs' Complaint, with prejudice. The Opinion and Order are attached hereto as Exhibit "A." This Order has been entered in the docket as evidenced by the copy of the docket entry attached hereto as Exhibit "B." Pursuant to Pa. R.A.P. 904(c) and 1911(c), there is no verbatim record of the proceedings in this matter.

#23

BUCHANAN INGERSOLL PC

By: _____

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Attorneys for Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust

DATE: June 2, 2005

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 0 6 2005

Attest. Prothonotary/ Clerk of Courts

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,
Plaintiffs

vs.

JOHN W. BEAN and GEORGE V. COHEN,
Defendants

NO. 04-1759-CD

OPINION

On November 5, 2004 the Plaintiffs, Marc Katzen, et al, filed a Complaint against John W. Bean and George V. Cohen (Defendants). Generally speaking the Complaint sounds in tort against the Defendants and sets forth the following claims: Count I: Tortious interference with contractual obligations; Count II: Fraud; Count III: Conversion; Count IV: Fraudulent transfers and Count V: Civil conspiracy. The Complaint then requests relief in the form of an injunction, damages in an amount in excess of One Million Five Hundred Thousand dollars ($1,500,000.00), punitive damages and attorney's fees. On December 2, 2004 Preliminary Objections were filed on behalf of Defendant John W. Bean, while on December 28, 2004 the same Preliminary Objections were filed on behalf of Defendant George V. Cohen. The Preliminary Objections are in the nature of a demurrer to all counts and to each count individually of the Plaintiffs' Complaint. The questions framed by the Preliminary Objections can be described as follows:

1. Whether the Plaintiffs' Complaint is legally insufficient because the Plaintiffs' claims are in conflict with the provisions of the contracts entered into among the

parties, particularly the provisions of the contract prohibiting recourse against the B Warehouse Joint Venturers as individuals;

2. Whether the gist of the action doctrine bars the Plaintiffs' attempt to proceed against the Defendants individually through a tort action;

3. Whether the Plaintiffs' claim of tortious interference with contract is legally insufficient because B Warehouse was a party to the contracts;

4. Whether the Plaintiffs' fraud claim is legally insufficient as the Plaintiffs' Complaint fails to allege facts that would give rise to any duty to speak;

5. Whether the Plaintiffs' claim for conversion is legally insufficient due to the absence of any allegations that would provide the Plaintiffs with a claim to the unspecified "accounts" referenced in Count III of the Complaint;

6. Whether the Plaintiffs' claim for fraudulent conveyance is legally insufficient as the Plaintiffs are secured creditors and do not allege that the security available is insufficient to satisfy the debt at issue, and also because of the absence of any allegation of insolvency and/or because of the Plaintiffs' failure to reduce the debt at issue to a judgment; and

7. Whether the Plaintiffs' conspiracy claim fails because of the absence of any valid underlying claim.

Argument was held before the Court and the parties' briefs have now been received. The matter is set for the Court's decision. A summary of the history of the matter based upon the Plaintiffs' Complaint and attachments thereto is in order.

In 1985, the Plaintiffs purchased certain Second Mortgage Revenue Bonds in the aggregate principal amount of $300,000 ("Bonds") from the Clearfield County Industrial Development Authority ("Authority") related to the financing and construction of a commercial

warehouse ("Project") in Clearfield County. B Warehouse Company ("B Warehouse"), a joint venture, was the "Investor Developer" of the Project. B Warehouse obtained financing for the construction of the Project, a portion of which was derived from the Plaintiffs' purchase of the Bonds.

The Project's financing, including the Plaintiffs' purchase of the Bonds, is governed by a series of financing documents (collectively, the "Contracts") between or among the Plaintiffs, the Authority, B Warehouse, and the Savings & Trust Company of Pennsylvania, now know as S&T Bank ("S&T").

The Contracts, which are all interrelated and cross-reference each other, include detailed provisions regarding security for the Bonds and the remedies available in the event of a default by B Warehouse in its obligations under the Contracts. The contracts specifically provide that the debt issued in connection with the Project, including the Bonds, "is payable solely from the receipts and revenues derived from the Project . . ." The debt related to the Project was also secured by a First Mortgage (now satisfied) on the Project and a Second Mortgage.

The Contracts also place strict limits on any liability of B Warehouse, or any of its constituent members. Specifically, section 6.5 of the Mortgage Loan Agreement for the Project provides:

> 6.5. DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited . . . [subject to certain

> specified conditions] to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives, successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding.

See Exhibit E, Section 6.5, page 14, as attached to Plaintiffs' Complaint.

In 2002, the Project's warehouse lost its longtime tenant, and, as a result, B Warehouse has not made scheduled interest payments under the Contracts. The Mortgage Loan Agreement provides that the Plaintiffs have recourse under the Contracts as a result of the non-payments, but that recourse is limited to the security set forth in the Contracts, and does not extend to the personal assets of the Defendants.

When the Plaintiffs purchased the Bonds, the Plaintiffs agreed to the provisions of the Contracts which expressly, and in detail, set forth the remedies available to them in the event of a default. Here, the Plaintiffs allege that a default of their contractual rights has occurred (Complaint ¶¶ 30, 39, 46, 51, 55-56); however, the Plaintiffs have not proceeded pursuant to the contractual remedies available to them. Instead, the Plaintiffs' Complaint seeks to impose individual tort liability on the Defendants, who are joint venturers in, and representative of, B Warehouse.

The Plaintiffs' rights and remedies are contained in the documents attached to the Plaintiffs' Complaint. Exhibit A to the Complaint is the form of the Bonds at issue. The Bonds obligate the Authority to make specified payments to the Plaintiffs, "but solely from the receipts and revenues hereinafter mentioned," specifically those "derived from the mortgage loan financing" for the Project. The Bonds further state that they are "secured by the Debt Resolution of the Authority . . . and by the pledge of the income installments, receipts and revenues payable under" the Mortgage Loan Agreement. Id.

Importantly, the Bonds expressly state that "[r]eference is made to the Debt Resolution . . . and to the Mortgage Loan Agreement . . . for . . . a statement of the income, installments, receipts, revenues, and monies of the Authority to pledge for the payment of the principal of premiums and other charges, if any, and interest on the Bonds, the nature, extent and manner of enforcement of the security, the rights of the holders of the Bonds and of the Paying Agent with respect to such security, and the terms under which the Bonds are issued." Id. The Bonds also expressly state that the Bondholders "assent" to the security provisions of the Debt Resolution and the Mortgage Loan Agreement.

The Plaintiffs' rights under the Bonds depend on the provisions of the Debt Resolution and the Mortgage Loan Agreement. The Debt Resolution is attached to the Plaintiffs' Complaint as Exhibit B; the Mortgage Loan Agreement is attached at Exhibit E. In the Debt Resolution, the Authority assigns to the Bondholders "the Mortgage Loan Agreement . . . and the rights (but not the obligations) of the Authority under and pursuant thereto . . ." Complaint, Exhibit B. The Mortgage Loan Agreement expressly provides security for the Bondholders, but also, in the event of a default, expressly limits the Bondholders' remedies to that same security. Complaint, Exhibit E. The security for the Bonds is set forth in detail in § 2.4 of the Mortgage Loan Agreement. Section 3.1 states the liability of the Authority under the Bonds "shall be enforceable only to the extent of its rights and duties hereunder and under the Debt Resolution of the Authority . . ." Id.

Article IV of the Mortgage Loan Agreement details the parties' rights and remedies in the event of a default. Section 6.2, for instance, gives the Authority (and by assignment the Bondholders) the right to accelerate the amount due and take possession of and/or sell the premises and Project facilities if a default occurs. Section 6.5, as noted, places limitations on the remedies available with respect to the Investment Developer. Section 6.5 expressly states that the liability of B Warehouse, including its individual joint venturers, "to any person or entity, including . . . the Bondholders . . . shall be limited . . . to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases . . . and such persons and/or entity(s) shall look exclusively thereto . . ." Id. Section 6.5 also precludes the Plaintiffs from doing precisely what they are attempting to do in this action - attach individual liability to the Defendants due to a default on the Bonds.

Thus, the Plaintiffs' own Complaint, which includes the Bonds, the Debt Resolution, and the Mortgage Loan Agreement, demonstrates that the Plaintiffs agreed that their remedies in the event of a default were limited to the pledged security and certainly, under the documents, did not extend to the Defendants personally.

Pennsylvania's "gist of the action" doctrine "preclude[s] a plaintiff from recasting ordinary breach of contract claims into tort claims." Pittsburgh Const. Co. v. Griffith, 834 A.2d 572, 581 (Pa. Super. Ct. 2003); accord eToll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa. Super. Ct. 2002); see also Williams v. Hilton Group, PLC, 93 Fed. Appx. 384, 2004 WL 516165 (3d Cir. March 17, 2004); Witco Corp. v. Ruthrauff, Inc., 152 P.L.J. 300 (Allegh. Co. 2004); Atchison Casting Corp. v. Deloitte & Touche, LLP, 2003 WL 1847665 (Pa. Com. Pl. March 14, 2003).

The rationale for the gist of the action doctrine is clearly set forth in Witco:

> The essence of this rule is a recognition that, in contractual relationships, the parties themselves have undertaken to define their respective rights and responsibilities, and thus when things go wrong in performance of the contract, their legal remedies should be shaped by the rights and duties as they have chosen to articulate them. Where parties attempt to cast contractual disagreements as tort claims, on the other hand, they invite courts to disregard the relationship the parties have negotiated and, instead, to impose the often very different rights, duties and remedies of the law of torts. In most circumstances, justice requires that we decline that invitation and give effect to the parties' agreement.

Witco, 152 P.L.J. at 300-01.

This Court believes the gist of the action doctrine precludes the Plaintiffs from proceeding in tort against the Defendants. The parties here "have undertaken to define their respective rights and responsibilities" in the Contracts. The Contracts "articulate" the parties' "rights and duties" and "legal remedies." By suing B Warehouse's representatives individually in tort, this action represents the Plaintiffs in essence asking this Court "to disregard the relationship the parties have negotiated." "Justice requires" that the Court sustain the Defendants' Preliminary Objections, and "give effect to the parties' agreement."

In Atchison, the court employed the gist of the action doctrine to sustain preliminary objections and dismiss tort claims. 2003 WL 1847665 at *1-2. There, Deloitte alleged that Atchison Corp. and its employees were liable for fraud and other torts for failing to provide information to Deloitte while Deloitte was performing contractual services for Atchison. Id. at *1. The court dismissed Deloitte's tort claims with prejudice, without leave to amend, because of the gist of the action doctrine. Id. at *2-4. According to the court, Deloitte's tort claims:

> are really claims that Atchison, through its agents, intentionally and negligently breached the contract with Deloitte. It does not matter in what manner Atchison committed the alleged breach; it is simply a breach of contract, and the gist of Deloitte's action clearly sounds in contract.

Id. at *2, citing eToll, 811 A.2d 10; Flynn Co. v. Peerless Door & Glass, Inc., 2002 WL 1018937 (Pa. Com. Pl. May 15, 2002) (sustaining preliminary objections, based on gist of the action doctrine, to tort claims against corporate defendant and its officer/agent); Flynn Co. v. Cytometrics, 2000 WL 33711055 (Pa. Com. Pl. Nov 17, 2000).

Pittsburgh Construction also demonstrates how the gist of the action doctrine bars a plaintiff from recasting a breach of contract claim into a tort claim. 834 A.2d 572. There, the Griffiths entered into a contract with PCC that called for PCC to build a house. Id. at 577. The Griffiths placed funds into an escrow account that was to be drawn down according to an agreed upon schedule. Id. at 583. Dissatisfied with PCC's performance, the Griffiths instructed the bank to withhold further payments from the escrow account. Id. PCC filed suit for breach of contract and for conversion. Id. at 577.

The Superior Court held that the gist of the action doctrine barred PCC's conversion claim, even though the Court concluded that the Griffiths' action were wrongful. Id. at 583-84.

According to the Court:

> the basis of the duty allegedly breached by the Griffiths, their duty to pay PCC according to the draw schedule, was created by and defined by the contract itself . . . [H]ere, PCC's tort and breach of contract claims are inextricably intertwined, the success of the conversion claim depending entirely on the obligations as defined by the contract . . . Thus, in this instance, we will not permit PCC to interject a claim for tortious conversion into an action that is decidedly contractual. The contractual remedies available to PCC are sufficient to compensate it for the losses it suffered from the Griffiths['] refusal to release the scheduled draw payments.

Id. at 584.

eToll is the leading Pennsylvania case applying the gist of the action doctrine.

811 A.2d 10. eToll had contracted with ESA to have ESA market an eToll product. eToll claimed that ESA and its officers and employees were liable in tort for alleged wrongful conduct that occurred in connection with the contract. eToll brought a fraud claim against the defendants alleging that the defendants, *inter alia*, "took undisclosed kickbacks and commissions," overbilled, and lied to eToll. Id. at 20.

The Superior Court held that the gist of the action barred eToll's fraud claim. Id. at 20-21. According to the Court:

> [a]ll of these alleged acts of fraud arose in the course of the parties' contractual relationship. Moreover, the Appellees' duties regarding billing and performance were created and grounded in the parties' contract. Finally, these are the types of damages which would be compensable in an ordinary contract action; thus, the claim would essentially duplicate a breach of contract action to recover the allegedly-overbilled charges. The fraud at issue was not so tangential to the parties' relationship so as to make fraud the gist of the action. Rather, we conclude that the fraud claims are inextricably intertwined with the contract claims.

Id. at 21. Consequently, the Superior Court affirmed the summary dismissal of eToll's fraud claim.

Williams, like Atchison and eToll, also demonstrates that the Plaintiffs cannot elude the gist of the action doctrine by suing the Defendants individually. 2004 WL 516165 In Williams, the Third Circuit rejected the plaintiff's tort claims against Ross, an individual representative of Ladbrokes, the corporate defendant. According to the Court:

> [a]lthough Williams did not have a contractual relationship with Ross, Williams cannot detach

> Ross from his status as an agent for Ladbrokes . . . As the Pennsylvania courts have spelled out, the gist of the action bars tort claims against an individual defendant where the contract between the plaintiff and the officer's company created the duties that the individual allegedly breached.

Id. at *2.

Here, the Plaintiffs, like the plaintiffs in Atchison, Pittsburgh Construction, Williams, and eToll, are attempting to recast breach of contract claims into tort claims. The Plaintiffs' right to payments on the Bonds are contractual rights arising from the Contracts. Like the plaintiffs in Atchison, eToll, and Williams, the Plaintiffs here have attempted to assert fraud claims against individual representatives of the contracting corporate parties, and, like the Pittsburgh Construction plaintiff, the Plaintiffs here have asserted a conversion claim based on the Defendants' alleged handling of a bank account established in connection with the parties' contract. In those earlier cases, the Courts applied the gist of the action doctrine to preliminarily or summarily dismiss the plaintiffs' tort claims.

A tortious interference with contract "necessarily involves three parties" - the plaintiff, the defendant, and a separate "third person" with whom the plaintiff contracted. Daniel Adams Assocs., Inc. v. Rumbach Publishing, Inc., 519 A.2d 997, 1000 (Pa. Super. Ct. 1987); accord Abel v. American Art Analog, Inc., 838 F.2d 691, 698 (3d Cir. 1988); Puchalski v. School Dist. of Springfield, 161 F. Supp. 2d 395, 411 (E.D. Pa. 2001); Cosmas v. Bloomingdale Bros., Inc., 660 A.2d 83, 89 (Pa. Super. Ct. 1995); Raab v. Keystone Ins. Co., 412 A.2d 638, 639 (Pa. Super. Ct. 1980); see also Williams, 2004 WL 516165.

When the contract at issue is between the plaintiff and a corporate entity, the plaintiff cannot maintain a tortious interference with contract claim against an individual representative of the corporate party. In such cases, "there are not three parties." Puchalski, 161 F. Supp. 2d at 411. For instance, in Puchalski, the court rejected a terminated high school football coach's tortious interference with contract claim against the school's principal and other employees because "[w]hen an employee, acting within the scope of employment, interferes with a contractual relationship between his employer and another, there are not three parties." Id.

Here, the Plaintiffs expressly allege that the Defendants, "at all relevant times," were acting as representatives of B Warehouse, one of the parties to the Contracts. See Complaint, ¶¶ 18-19, 21-23, ("At all times relevant, the Defendants have exerted control over B Warehouse."), see also Raab, 412 A.2d at 639 (affirming trial court's decision to sustain demurrer and dismiss tortious interference claim against individual representative of corporate contracting party because of allegation that individual "at all relevant times" was agent of corporate party). Thus, in the case at bar, as in the cases cited above, there is no non-contracting third party necessary for the survival of the tortious interference with contract claim that the Plaintiffs assert in Count I. Therefore the Court must sustain the Defendants' Preliminary Objections and dismiss Count I of the Complaint.

In Court II, an attempted cause of action for fraud, the Plaintiffs claim that the Defendants concealed information from the Plaintiffs. See Complaint, ¶ 46. The Plaintiffs claim that this alleged concealment caused the Plaintiffs harm and constitutes fraud. The Plaintiffs fail to specify the "information" that the Defendants allegedly "concealed."

Count II is legally insufficient because "mere silence without a duty to speak will not constitute fraud." Viguers v. Phillip Morris USA, Inc., 837 A.2d 534, 540 (Pa. Super. Ct.

2003); accord Jeter v. Brown & Williamson Tobacco Corp., 294 F. Supp. 2d 681, 688 (W.D. Pa. 2003), aff'd on other grounds, No. 03-4839, 2004 WL 2402815 (3d Cir. October 26, 2004). "Under Pennsylvania law, a duty to speak or disclose information normally only arises when there is a fiduciary or confidential relationship between the parties." Jeter, 294 F. Supp. 2d at 688. The Plaintiffs do not allege the existence of any duty between the Plaintiffs and the Defendants that would obligate the Defendants to disclose information to the Plaintiffs. There is no allegation of any fiduciary or confidential relationship between the parties. The Plaintiffs allege only the existence of a contractual relationship among the Plaintiffs, B Warehouse, and others pursuant to the Contracts. Due to the absence of any allegations that would establish a "duty to speak," Count II is legally insufficient and subject to dismissal pursuant to Pa. R. Civ. P. 1028(a)(4).

As set forth earlier, and as clearly required by Pittsburgh Construction, the gist of the action doctrine bars the Plaintiffs' claim for conversion in Court III of their Complaint. However, Count III fails for reasons independent from those already described.

"Conversion is a tort by which the defendant deprives the plaintiff of his right to a chattel. . . without plaintiff's consent and without lawful jurisdiction." Pittsburgh Construction, 834 A.2d at 581. Although money may be the subject of conversion, "[b]efore money can be converted, it must belong to the plaintiff." Philadelphia Factors, Inc. v. Working Data Group, Inc., 849 A.2d 1261, 1263 (Pa. Super. Ct. 2004). Moreover, and perhaps most importantly, "the failure to pay a debt is not conversion." Pittsburgh Construction, 834 A.2d at 581.

In their Complaint, the Plaintiffs allege that they "had a current possessory interest in the funds held in the B Warehouse accounts . . ." Complaint, ¶ 51. The Plaintiffs fail to identify the "accounts" referenced in Count III. Do the Plaintiffs claim entitlement to any funds held in

any B Warehouse "account," or do they claim entitlement to certain funds in certain B Warehouse accounts but not others? If so, how did the Plaintiffs obtain the alleged "current possessory interest" in those unnamed and unspecified accounts? The Plaintiffs' Complaint leaves those questions wholly unanswered.

The Contracts make reference to certain bank accounts or funds. The Debt Resolution makes reference to a "Clearing Fund" and a "Bond Fund." See Complaint, Exhibit B. The Mortgage Loan Agreement references an "Acquisition and Construction Fund" and a "Reserve Fund." Id. at Exhibit E. The Plaintiffs, however, fail to state in their Complaint whether one or more of those funds or accounts are the "accounts" that are the subject of Count III. If one or more of those accounts are the Count III "accounts" at issue, the Plaintiffs also fail to allege the basis for their claim of some right to the funds in such account(s).

The Mortgage Loan Agreement, for instance, bestows on the Plaintiffs no rights to the Reserve Fund. Exhibit E. § 4.1. The Mortgage Loan Agreement specifies and limits the uses to which monies from the Reserve Fund can be applied. Those specified uses do not include payments to the Bondholders.

Count III is a "failure to pay a debt" claim in the form of a conversion claim. See Pittsburgh Construction. The Plaintiffs have not pled facts sufficient to establish the existence of any rights to the unspecified "accounts" referenced in Count III. Accordingly, Count III is legally insufficient, and the Court, must dismisses it pursuant to Pa. R. Civ. P. 1028(a)(4).

In Count IV, the Plaintiffs claim entitlement to injunctive relief under the law of fraudulent conveyances. The law of fraudulent conveyances is designed to protect creditors, where appropriate, from the loss of assets that could satisfy outstanding debts. See 37 C.J.S. *Fraudulent Conveyances* § 2 (1997). Here, however, the Plaintiffs are secured creditors and

the Plaintiffs do not allege that the security pledged to secure the debt owed to them is not available or sufficient.

A "secured creditor may maintain a suit to set aside a fraudulent conveyance if the security is insufficient for his debt; but a secured creditor is barred from using fraudulent conveyance action as a means to expand its interests in property." 37 C.J.S. *Fraudulent Conveyances* § 47 (1997) (emphasis added) (footnotes omitted); accord id. at § 50 (" a mortgagee whose debt remains wholly or partly unpaid after his security has been exhausted or a foreclosure sale of the mortgaged property is not precluded from attacking a gift or other conveyance . . . ") (emphasis added).

> Before a secured creditor may maintain an action to set aside a fraudulent conveyance of his debtor, he must show that at the time such conveyance was executed, the security was inadequate to satisfy the indebtedness. The view has also been taken that a creditor must exhaust any security held by him as a condition precedent to the maintenance of an action to set aside as fraudulent a conveyance or transfer by his debtor of other property.

37 Am. Jur. 2d *Fraudulent Conveyances* § 121 (2001) (footnotes omitted); accord id. at § 157 ("It cannot be said that a creditor has been delayed, hindered, or defrauded until some property out of which he has a specific right to be satisfied is withdrawn from his reach.") Pursuant to the Contracts, the Plaintiffs only have a "specific right to be satisfied" from the Premises and Project facilities. The Plaintiffs fail to allege that the security has been withdrawn from their reach.

Also, the Plaintiffs have no common law claim against the Defendants for a fraudulent conveyance. "It is established that a plaintiff does not have standing to bring a fraudulent conveyance action against third parties until he becomes a judgment creditor." Martin v.

Brown, 758 F. Supp. 313, 321 (W.D. Pa. 1990). Here, the Plaintiffs do not allege the existence of any judgment against B Warehouse. Indeed, the Plaintiffs appear to be avoiding obtaining such a judgment because then the Plaintiffs would even more clearly need to resort to the security available. In the absence of a judgment against B Warehouse, the Plaintiffs have no common law fraudulent conveyance claim against the Defendants.

A civil conspiracy claim is invalid unless the plaintiff sets forth some valid underlying claim. See McKeeman v. Corestates Bank, N.A., 751 A.2d 655, 660 (Pa. Super. Ct. 2000) ("absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act"); GMH Assocs., Inc. v. Prudential Realty Group, 752 A.2d 889, 905 (Pa. Super. Ct. 2000). As set forth herein, the Plaintiffs have no valid underlying tort claims against the Defendants. Consequently, the Plaintiffs likewise cannot maintain any civil conspiracy claim against the Defendants.

ORDER

NOW, this 6th day of May, 2005, consistent with the provisions of the foregoing Opinion, it is the Order of this Court that the Defendants' Preliminary Objections be granted and the Plaintiffs' Complaint is hereby dismissed, with prejudice.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

B

Time: 03:53 PM

Complete Case History

Case: 2004-01759-CD

Marc Katzen, etal. vs. John W. Bean, etal.

Filed: 11/5/2004
Subtype: Civil Other

Physical File: Y Appealed: N

Comment:

Register of Actions

11/5/2004	Filing: Civil Complaint Paid by: Buchanan Ingersoll Receipt number: 1889923 Dated: 11/5/2004 Amount: $85.00 (Check) 2 Cert. copies to Sheriff and 3 Cert. to Atty.	No Judge,
12/1/2004	Affidavit of Service, Complaint upon John W. Bean by certified Mail, return receipt attached. Filed by s/ Nicole L. Borda. No CC	No Judge,
12/2/2004	Preliminary Objections, filed by s/Kevin P. Allen No CC	No Judge,
12/3/2004	Praecipe to Amend Caption, filed by s/ P. Kevin Brobson, Esquire. No CC	No Judge,
12/6/2004	Filing: ReissueComplaint for an additional thirty days. Paid by: Brobson, P. Kevin (attorney for Katzen, Marc) Receipt number: 1891647 Dated: 12/06/2004 Amount: $7.00 (Cashiers Check), filed by s/ P. Kevin Brobson, Esquire. 1 Compl. reinstated to Shff.	No Judge,
12/16/2004	Acceptance of Service of Complaint on behalf of George V. Cohen. Filed by s/ Kevin P. Allen, Esquire. 1CC To Atty	No Judge,
12/20/2004	Objections to Subpoena Pursuant to Pa. R. CIV. P. 4009.21(c). Filed by s/ Kevin P. Allen, Esquire. 1CC Atty Allen	No Judge,
12/27/2004	Order, AND NOW, this 27th day of Dec., 2004, it is the Order of the Court that argument on Defendant's Preliminary Objections filed in the above-captioned matter has been scheduled for the 9th day of Feb. 2005, at 2:00 p.m. in Courtroom no. 1, Clfd. Co. Courthouse. BY THE COURT: Fredric J. Ammerman, President Judge. 3CC & Memo Re: Service to Atty Allen.	Ammerman, Fredric Joseph
12/28/2004	Preliminary Objections, filed by s/ Kevin P. Allen, Esquire. no cc	Ammerman, Fredric Joseph
12/30/2004	Affidavit of Service filed by s/ Kevin P. Allen, Esquire. No CC	Ammerman, Fredric Joseph
1/11/2005	Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ Nicole L. Borda, Esquire. No CC	Ammerman, Fredric Joseph
1/12/2005	Plaintiff's Motion To Compel Defendant John W. Bean To Respond Fully to Plaintiffs' First Request For Production of Documents, filed by s/ Nicole L. Borda, Esquire. 1CC Atty	Ammerman, Fredric Joseph

Complete Case History
Case: 2004-01759-CD

Marc Katzen, etal. vs. John W. Bean, etal.

Register of Actions

2/2/2005	Order, NOW, this 1st day of February, 2005, the Court's Order of January 14, 2005 requiring the Defendants to proceed with discovery; the Defendant's Response to the Plaintiff's Motion to Compel having been filed January 18, 2005; Defendants believing that their preliminary objections in the nature of a demurrer to Plaintiff's complaint should be resolved prior to conducting discovery and in consideration of the circumstances it is the Order of this Court that the provisions of the Court's Order of January 14, 2005 by stayed pending further Order. Argument on the Motion to Compel is hereby scheduled for February 9, 2005, at 2:00 p.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys: Brobson, Allen One CC Def. Cohen-2618 Waldman Drive, Williamsport, PA 17701	Ammerman, Fredric Joseph
5/6/2005	Opinion And Order: NOW, this 6th day of may, 2005, consistent with the provisions of the foregoing Opininon, it is the Order of this Court that the Defendants' Preliminary Objections be granted and the Plaintiffs' Complaint is hereby dismissed, with prejudice. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Attys: R. Brobson, K. Allen, and D. Mikesell	Ammerman, Fredric Joseph

I hereby certify this to be a true and attested copy of the original statement filed in this case.

CERTIFICATE OF SERVICE

Pursuant to Pa. R.A.P. 906, I hereby certify that I am this day serving the foregoing Notice of Appeal upon the persons identified below by United States First Class Mail, postage pre-paid, which services satisfies the requirements of Pa. R.A.P. 121(c):

Kevin P. Allen, Esquire (412) 394-2374
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

The Honorable Fredric J. Ammerman (814) 765-2641
Clearfield County Court of Common Pleas
230 East Market Street
Clearfield, PA 16830

Cathy Provost (814) 765-2641
Tom Snyder (814) 765-2641
Clearfield County Court Reporter
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

By: _____
P. Kevin Brobson

DATE: June 2, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FILED (GP) ICC Attys:
01:00 BN
MAY 06 2005 R. Brobson
K. Allen
William A. Shaw D. Mikesell
Prothonotary/Clerk of Courts

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,
Plaintiffs

vs.

JOHN W. BEAN and GEORGE V. COHEN,
Defendants

NO. 04-1759-CD

OPINION

On November 5, 2004 the Plaintiffs, Marc Katzen, et al, filed a Complaint against John W. Bean and George V. Cohen (Defendants). Generally speaking the Complaint sounds in tort against the Defendants and sets forth the following claims: Count I: Tortious interference with contractual obligations; Count II: Fraud; Count III: Conversion; Count IV: Fraudulent transfers and Count V: Civil conspiracy. The Complaint then requests relief in the form of an injunction, damages in an amount in excess of One Million Five Hundred Thousand dollars ($1,500,000.00), punitive damages and attorney's fees. On December 2, 2004 Preliminary Objections were filed on behalf of Defendant John W. Bean, while on December 28, 2004 the same Preliminary Objections were filed on behalf of Defendant George V. Cohen. The Preliminary Objections are in the nature of a demurrer to all counts and to each count individually of the Plaintiffs' Complaint. The questions framed by the Preliminary Objections can be described as follows:

1. Whether the Plaintiffs' Complaint is legally insufficient because the Plaintiffs' claims are in conflict with the provisions of the contracts entered into among the

parties, particularly the provisions of the contract prohibiting recourse against the B Warehouse Joint Venturers as individuals;

2. Whether the gist of the action doctrine bars the Plaintiffs' attempt to proceed against the Defendants individually through a tort action;

3. Whether the Plaintiffs' claim of tortious interference with contract is legally insufficient because B Warehouse was a party to the contracts;

4. Whether the Plaintiffs' fraud claim is legally insufficient as the Plaintiffs' Complaint fails to allege facts that would give rise to any duty to speak;

5. Whether the Plaintiffs' claim for conversion is legally insufficient due to the absence of any allegations that would provide the Plaintiffs with a claim to the unspecified "accounts" referenced in Count III of the Complaint;

6. Whether the Plaintiffs' claim for fraudulent conveyance is legally insufficient as the Plaintiffs are secured creditors and do not allege that the security available is insufficient to satisfy the debt at issue, and also because of the absence of any allegation of insolvency and/or because of the Plaintiffs' failure to reduce the debt at issue to a judgment; and

7. Whether the Plaintiffs' conspiracy claim fails because of the absence of any valid underlying claim.

Argument was held before the Court and the parties' briefs have now been received. The matter is set for the Court's decision. A summary of the history of the matter based upon the Plaintiffs' Complaint and attachments thereto is in order.

In 1985, the Plaintiffs purchased certain Second Mortgage Revenue Bonds in the aggregate principal amount of $300,000 ("Bonds") from the Clearfield County Industrial Development Authority ("Authority") related to the financing and construction of a commercial

warehouse ("Project") in Clearfield County. B Warehouse Company ("B Warehouse"), a joint venture, was the "Investor Developer" of the Project. B Warehouse obtained financing for the construction of the Project, a portion of which was derived from the Plaintiffs' purchase of the Bonds.

The Project's financing, including the Plaintiffs' purchase of the Bonds, is governed by a series of financing documents (collectively, the "Contracts") between or among the Plaintiffs, the Authority, B Warehouse, and the Savings & Trust Company of Pennsylvania, now know as S&T Bank ("S&T").

The Contracts, which are all interrelated and cross-reference each other, include detailed provisions regarding security for the Bonds and the remedies available in the event of a default by B Warehouse in its obligations under the Contracts. The contracts specifically provide that the debt issued in connection with the Project, including the Bonds, "is payable solely from the receipts and revenues derived from the Project . . ." The debt related to the Project was also secured by a First Mortgage (now satisfied) on the Project and a Second Mortgage.

The Contracts also place strict limits on any liability of B Warehouse, or any of its constituent members. Specifically, section 6.5 of the Mortgage Loan Agreement for the Project provides:

> 6.5. DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited . . . [subject to certain

> specified conditions] to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives, successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding.

See Exhibit E, Section 6.5, page 14, as attached to Plaintiffs' Complaint.

In 2002, the Project's warehouse lost its longtime tenant, and, as a result, B Warehouse has not made scheduled interest payments under the Contracts. The Mortgage Loan Agreement provides that the Plaintiffs have recourse under the Contracts as a result of the non-payments, but that recourse is limited to the security set forth in the Contracts, and does not extend to the personal assets of the Defendants.

When the Plaintiffs purchased the Bonds, the Plaintiffs agreed to the provisions of the Contracts which expressly, and in detail, set forth the remedies available to them in the event of a default. Here, the Plaintiffs allege that a default of their contractual rights has occurred (Complaint ¶¶ 30, 39, 46, 51, 55-56); however, the Plaintiffs have not proceeded pursuant to the contractual remedies available to them. Instead, the Plaintiffs' Complaint seeks to impose individual tort liability on the Defendants, who are joint venturers in, and representative of, B Warehouse.

The Plaintiffs' rights and remedies are contained in the documents attached to the Plaintiffs' Complaint. Exhibit A to the Complaint is the form of the Bonds at issue. The Bonds obligate the Authority to make specified payments to the Plaintiffs, "but solely from the receipts and revenues hereinafter mentioned," specifically those "derived from the mortgage loan financing" for the Project. The Bonds further state that they are "secured by the Debt Resolution of the Authority . . . and by the pledge of the income installments, receipts and revenues payable under" the Mortgage Loan Agreement. Id.

Importantly, the Bonds expressly state that "[r]eference is made to the Debt Resolution . . . and to the Mortgage Loan Agreement . . . for . . . a statement of the income, installments, receipts, revenues, and monies of the Authority to pledge for the payment of the principal of premiums and other charges, if any, and interest on the Bonds, the nature, extent and manner of enforcement of the security, the rights of the holders of the Bonds and of the Paying Agent with respect to such security, and the terms under which the Bonds are issued." Id. The Bonds also expressly state that the Bondholders "assent" to the security provisions of the Debt Resolution and the Mortgage Loan Agreement.

The Plaintiffs' rights under the Bonds depend on the provisions of the Debt Resolution and the Mortgage Loan Agreement. The Debt Resolution is attached to the Plaintiffs' Complaint as Exhibit B; the Mortgage Loan Agreement is attached at Exhibit E. In the Debt Resolution, the Authority assigns to the Bondholders "the Mortgage Loan Agreement . . . and the rights (but not the obligations) of the Authority under and pursuant thereto . . ." Complaint, Exhibit B. The Mortgage Loan Agreement expressly provides security for the Bondholders, but also, in the event of a default, expressly limits the Bondholders' remedies to that same security. Complaint, Exhibit E. The security for the Bonds is set forth in detail in § 2.4 of the Mortgage Loan Agreement. Section 3.1 states the liability of the Authority under the Bonds "shall be enforceable only to the extent of its rights and duties hereunder and under the Debt Resolution of the Authority . . ." Id.

Article IV of the Mortgage Loan Agreement details the parties' rights and remedies in the event of a default. Section 6.2, for instance, gives the Authority (and by assignment the Bondholders) the right to accelerate the amount due and take possession of and/or sell the premises and Project facilities if a default occurs. Section 6.5, as noted, places limitations on the remedies available with respect to the Investment Developer. Section 6.5 expressly states that the liability of B Warehouse, including its individual joint venturers, "to any person or entity, including . . . the Bondholders . . . shall be limited . . . to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases . . . and such persons and/or entity(s) shall look exclusively thereto . . ." Id. Section 6.5 also precludes the Plaintiffs from doing precisely what they are attempting to do in this action - attach individual liability to the Defendants due to a default on the Bonds.

Thus, the Plaintiffs' own Complaint, which includes the Bonds, the Debt Resolution, and the Mortgage Loan Agreement, demonstrates that the Plaintiffs agreed that their remedies in the event of a default were limited to the pledged security and certainly, under the documents, did not extend to the Defendants personally.

Pennsylvania's "gist of the action" doctrine "preclude[s] a plaintiff from recasting ordinary breach of contract claims into tort claims." Pittsburgh Const. Co. v. Griffith, 834 A.2d 572, 581 (Pa. Super. Ct. 2003); accord eToll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa. Super. Ct. 2002); see also Williams v. Hilton Group, PLC, 93 Fed. Appx. 384, 2004 WL 516165 (3d Cir. March 17, 2004); Witco Corp. v. Ruthrauff, Inc., 152 P.L.J. 300 (Allegh. Co. 2004); Atchison Casting Corp. v. Deloitte & Touche, LLP, 2003 WL 1847665 (Pa. Com. Pl. March 14, 2003).

The rationale for the gist of the action doctrine is clearly set forth in Witco:

> The essence of this rule is a recognition that, in contractual relationships, the parties themselves have undertaken to define their respective rights and responsibilities, and thus when things go wrong in performance of the contract, their legal remedies should be shaped by the rights and duties as they have chosen to articulate them. Where parties attempt to cast contractual disagreements as tort claims, on the other hand, they invite courts to disregard the relationship the parties have negotiated and, instead, to impose the often very different rights, duties and remedies of the law of torts. In most circumstances, justice requires that we decline that invitation and give effect to the parties' agreement.

Witco, 152 P.L.J. at 300-01.

This Court believes the gist of the action doctrine precludes the Plaintiffs from proceeding in tort against the Defendants. The parties here "have undertaken to define their respective rights and responsibilities" in the Contracts. The Contracts "articulate" the parties' "rights and duties" and "legal remedies." By suing B Warehouse's representatives individually in tort, this action represents the Plaintiffs in essence asking this Court "to disregard the relationship the parties have negotiated." "Justice requires" that the Court sustain the Defendants' Preliminary Objections, and "give effect to the parties' agreement."

In Atchison, the court employed the gist of the action doctrine to sustain preliminary objections and dismiss tort claims. 2003 WL 1847665 at *1-2. There, Deloitte alleged that Atchison Corp. and its employees were liable for fraud and other torts for failing to provide information to Deloitte while Deloitte was performing contractual services for Atchison. Id. at *1. The court dismissed Deloitte's tort claims with prejudice, without leave to amend, because of the gist of the action doctrine. Id. at *2-4. According to the court, Deloitte's tort claims:

> are really claims that Atchison, through its agents, intentionally and negligently breached the contract with Deloitte. It does not matter in what manner Atchison committed the alleged breach; it is simply a breach of contract, and the gist of Deloitte's action clearly sounds in contract.

Id. at *2, citing eToll, 811 A.2d 10; Flynn Co. v. Peerless Door & Glass, Inc., 2002 WL 1018937 (Pa. Com. Pl. May 15, 2002) (sustaining preliminary objections, based on gist of the action doctrine, to tort claims against corporate defendant and its officer/agent); Flynn Co. v. Cytometrics, 2000 WL 33711055 (Pa. Com. Pl. Nov 17, 2000).

Pittsburgh Construction also demonstrates how the gist of the action doctrine bars a plaintiff from recasting a breach of contract claim into a tort claim. 834 A.2d 572. There, the Griffiths entered into a contract with PCC that called for PCC to build a house. Id. at 577. The Griffiths placed funds into an escrow account that was to be drawn down according to an agreed upon schedule. Id. at 583. Dissatisfied with PCC's performance, the Griffiths instructed the bank to withhold further payments from the escrow account. Id. PCC filed suit for breach of contract and for conversion. Id. at 577.

The Superior Court held that the gist of the action doctrine barred PCC's conversion claim, even though the Court concluded that the Griffiths' action were wrongful. Id. at 583-84.

According to the Court:

> the basis of the duty allegedly breached by the Griffiths, their duty to pay PCC according to the draw schedule, was created by and defined by the contract itself . . . [H]ere, PCC's tort and breach of contract claims are inextricably intertwined, the success of the conversion claim depending entirely on the obligations as defined by the contract . . . Thus, in this instance, we will not permit PCC to interject a claim for tortious conversion into an action that is decidedly contractual. The contractual remedies available to PCC are sufficient to compensate it for the losses it suffered from the Griffiths[']refusal to release the scheduled draw payments.

Id. at 584.

eToll is the leading Pennsylvania case applying the gist of the action doctrine.

811 A.2d 10. eToll had contracted with ESA to have ESA market an eToll product. eToll claimed that ESA and its officers and employees were liable in tort for alleged wrongful conduct that occurred in connection with the contract. eToll brought a fraud claim against the defendants alleging that the defendants, *inter alia*, "took undisclosed kickbacks and commissions," overbilled, and lied to eToll. Id. at 20.

The Superior Court held that the gist of the action barred eToll's fraud claim. Id. at 20-21. According to the Court:

> [a]ll of these alleged acts of fraud arose in the course of the parties' contractual relationship. Moreover, the Appellees' duties regarding billing and performance were created and grounded in the parties' contract. Finally, these are the types of damages which would be compensable in an ordinary contract action; thus, the claim would essentially duplicate a breach of contract action to recover the allegedly-overbilled charges. The fraud at issue was not so tangential to the parties' relationship so as to make fraud the gist of the action. Rather, we conclude that the fraud claims are inextricably intertwined with the contract claims.

Id. at 21. Consequently, the Superior Court affirmed the summary dismissal of eToll's fraud claim.

Williams, like Atchison and eToll, also demonstrates that the Plaintiffs cannot elude the gist of the action doctrine by suing the Defendants individually. 2004 WL 516165 In Williams, the Third Circuit rejected the plaintiff's tort claims against Ross, an individual representative of Ladbrokes, the corporate defendant. According to the Court:

> [a]lthough Williams did not have a contractual relationship with Ross, Williams cannot detach

> Ross from his status as an agent for Ladbrokes . . . As the Pennsylvania courts have spelled out, the gist of the action bars tort claims against an individual defendant where the contract between the plaintiff and the officer's company created the duties that the individual allegedly breached.

Id. at *2.

Here, the Plaintiffs, like the plaintiffs in Atchison, Pittsburgh Construction, Williams, and eToll, are attempting to recast breach of contract claims into tort claims. The Plaintiffs' right to payments on the Bonds are contractual rights arising from the Contracts. Like the plaintiffs in Atchison, eToll, and Williams, the Plaintiffs here have attempted to assert fraud claims against individual representatives of the contracting corporate parties, and, like the Pittsburgh Construction plaintiff, the Plaintiffs here have asserted a conversion claim based on the Defendants' alleged handling of a bank account established in connection with the parties' contract. In those earlier cases, the Courts applied the gist of the action doctrine to preliminarily or summarily dismiss the plaintiffs' tort claims.

A tortious interference with contract "necessarily involves three parties" - the plaintiff, the defendant, and a separate "third person" with whom the plaintiff contracted. Daniel Adams Assocs., Inc. v. Rumbach Publishing, Inc., 519 A.2d 997, 1000 (Pa. Super. Ct. 1987); accord Abel v. American Art Analog, Inc., 838 F.2d 691, 698 (3d Cir. 1988); Puchalski v. School Dist. of Springfield, 161 F. Supp. 2d 395, 411 (E.D. Pa. 2001); Cosmas v. Bloomingdale Bros., Inc., 660 A.2d 83, 89 (Pa. Super. Ct. 1995); Raab v. Keystone Ins. Co., 412 A.2d 638, 639 (Pa. Super. Ct. 1980); see also Williams, 2004 WL 516165.

When the contract at issue is between the plaintiff and a corporate entity, the plaintiff cannot maintain a tortious interference with contract claim against an individual representative of the corporate party. In such cases, "there are not three parties." Puchalski, 161 F. Supp. 2d at 411. For instance, in Puchalski, the court rejected a terminated high school football coach's tortious interference with contract claim against the school's principal and other employees because "[w]hen an employee, acting within the scope of employment, interferes with a contractual relationship between his employer and another, there are not three parties." Id.

Here, the Plaintiffs expressly allege that the Defendants, "at all relevant times," were acting as representatives of B Warehouse, one of the parties to the Contracts. See Complaint, ¶¶ 18-19, 21-23, ("At all times relevant, the Defendants have exerted control over B Warehouse."), see also Raab, 412 A.2d at 639 (affirming trial court's decision to sustain demurrer and dismiss tortious interference claim against individual representative of corporate contracting party because of allegation that individual "at all relevant times" was agent of corporate party). Thus, in the case at bar, as in the cases cited above, there is no non-contracting third party necessary for the survival of the tortious interference with contract claim that the Plaintiffs assert in Count I. Therefore the Court must sustain the Defendants' Preliminary Objections and dismiss Count I of the Complaint.

In Court II, an attempted cause of action for fraud, the Plaintiffs claim that the Defendants concealed information from the Plaintiffs. See Complaint, ¶ 46. The Plaintiffs claim that this alleged concealment caused the Plaintiffs harm and constitutes fraud. The Plaintiffs fail to specify the "information" that the Defendants allegedly "concealed."

Count II is legally insufficient because "mere silence without a duty to speak will not constitute fraud." Viguers v. Phillip Morris USA, Inc., 837 A.2d 534, 540 (Pa. Super. Ct.

2003); accord Jeter v. Brown & Williamson Tobacco Corp., 294 F. Supp. 2d 681, 688 (W.D. Pa. 2003), aff'd on other grounds, No. 03-4839, 2004 WL 2402815 (3d Cir. October 26, 2004). "Under Pennsylvania law, a duty to speak or disclose information normally only arises when there is a fiduciary or confidential relationship between the parties." Jeter, 294 F. Supp. 2d at 688. The Plaintiffs do not allege the existence of any duty between the Plaintiffs and the Defendants that would obligate the Defendants to disclose information to the Plaintiffs. There is no allegation of any fiduciary or confidential relationship between the parties. The Plaintiffs allege only the existence of a contractual relationship among the Plaintiffs, B Warehouse, and others pursuant to the Contracts. Due to the absence of any allegations that would establish a "duty to speak," Count II is legally insufficient and subject to dismissal pursuant to Pa. R. Civ. P. 1028(a)(4).

As set forth earlier, and as clearly required by Pittsburgh Construction, the gist of the action doctrine bars the Plaintiffs' claim for conversion in Court III of their Complaint. However, Count III fails for reasons independent from those already described.

"Conversion is a tort by which the defendant deprives the plaintiff of his right to a chattel. . . without plaintiff's consent and without lawful jurisdiction." Pittsburgh Construction, 834 A.2d at 581. Although money may be the subject of conversion, "[b]efore money can be converted, it must belong to the plaintiff." Philadelphia Factors, Inc. v. Working Data Group, Inc., 849 A.2d 1261, 1263 (Pa. Super. Ct. 2004). Moreover, and perhaps most importantly, "the failure to pay a debt is not conversion." Pittsburgh Construction, 834 A.2d at 581.

In their Complaint, the Plaintiffs allege that they "had a current possessory interest in the funds held in the B Warehouse accounts . . ." Complaint, ¶ 51. The Plaintiffs fail to identify the "accounts" referenced in Count III. Do the Plaintiffs claim entitlement to any funds held in

any B Warehouse "account," or do they claim entitlement to certain funds in certain B Warehouse accounts but not others? If so, how did the Plaintiffs obtain the alleged "current possessory interest" in those unnamed and unspecified accounts? The Plaintiffs' Complaint leaves those questions wholly unanswered.

The Contracts make reference to certain bank accounts or funds. The Debt Resolution makes reference to a "Clearing Fund" and a "Bond Fund." See Complaint, Exhibit B. The Mortgage Loan Agreement references an "Acquisition and Construction Fund" and a "Reserve Fund." Id. at Exhibit E. The Plaintiffs, however, fail to state in their Complaint whether one or more of those funds or accounts are the "accounts" that are the subject of Count III. If one or more of those accounts are the Count III "accounts" at issue, the Plaintiffs also fail to allege the basis for their claim of some right to the funds in such account(s).

The Mortgage Loan Agreement, for instance, bestows on the Plaintiffs no rights to the Reserve Fund. Exhibit E. § 4.1. The Mortgage Loan Agreement specifies and limits the uses to which monies from the Reserve Fund can be applied. Those specified uses do not include payments to the Bondholders.

Count III is a "failure to pay a debt" claim in the form of a conversion claim. See Pittsburgh Construction. The Plaintiffs have not pled facts sufficient to establish the existence of any rights to the unspecified "accounts" referenced in Count III. Accordingly, Count III is legally insufficient, and the Court, must dismisses it pursuant to Pa. R. Civ. P. 1028(a)(4).

In Count IV, the Plaintiffs claim entitlement to injunctive relief under the law of fraudulent conveyances. The law of fraudulent conveyances is designed to protect creditors, where appropriate, from the loss of assets that could satisfy outstanding debts. See 37 C.J.S. *Fraudulent Conveyances* § 2 (1997). Here, however, the Plaintiffs are secured creditors and

the Plaintiffs do not allege that the security pledged to secure the debt owed to them is not available or sufficient.

A "secured creditor may maintain a suit to set aside a fraudulent conveyance if the security is insufficient for his debt; but a secured creditor is barred from using fraudulent conveyance action as a means to expand its interests in property." 37 C.J.S. *Fraudulent Conveyances* § 47 (1997) (emphasis added) (footnotes omitted); accord id. at § 50 (" a mortgagee whose debt remains wholly or partly unpaid after his security has been exhausted or a foreclosure sale of the mortgaged property is not precluded from attacking a gift or other conveyance . . . ") (emphasis added).

> Before a secured creditor may maintain an action to set aside a fraudulent conveyance of his debtor, he must show that at the time such conveyance was executed, the security was inadequate to satisfy the indebtedness. The view has also been taken that a creditor must exhaust any security held by him as a condition precedent to the maintenance of an action to set aside as fraudulent a conveyance or transfer by his debtor of other property.

37 Am. Jur. 2d *Fraudulent Conveyances* § 121 (2001) (footnotes omitted); accord id. at § 157 ("It cannot be said that a creditor has been delayed, hindered, or defrauded until some property out of which he has a specific right to be satisfied is withdrawn from his reach.") Pursuant to the Contracts, the Plaintiffs only have a "specific right to be satisfied" from the Premises and Project facilities. The Plaintiffs fail to allege that the security has been withdrawn from their reach.

Also, the Plaintiffs have no common law claim against the Defendants for a fraudulent conveyance. "It is established that a plaintiff does not have standing to bring a fraudulent conveyance action against third parties until he becomes a judgment creditor." Martin v.

Brown, 758 F. Supp. 313, 321 (W.D. Pa. 1990). Here, the Plaintiffs do not allege the existence of any judgment against B Warehouse. Indeed, the Plaintiffs appear to be avoiding obtaining such a judgment because then the Plaintiffs would even more clearly need to resort to the security available. In the absence of a judgment against B Warehouse, the Plaintiffs have no common law fraudulent conveyance claim against the Defendants.

A civil conspiracy claim is invalid unless the plaintiff sets forth some valid underlying claim. See McKeeman v. Corestates Bank, N.A., 751 A.2d 655, 660 (Pa. Super. Ct. 2000) ("absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act"); GMH Assocs., Inc. v. Prudential Realty Group, 752 A.2d 889, 905 (Pa. Super. Ct. 2000). As set forth herein, the Plaintiffs have no valid underlying tort claims against the Defendants. Consequently, the Plaintiffs likewise cannot maintain any civil conspiracy claim against the Defendants.

ORDER

NOW, this 6th day of May, 2005, consistent with the provisions of the foregoing Opinion, it is the Order of this Court that the Defendants' Preliminary Objections be granted and the Plaintiffs' Complaint is hereby dismissed, with prejudice.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED

MAY 06 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSCH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST, Plaintiffs	*	
vs.	*	NO. 04-1759-CD
JOHN W. BEAN and GEORGE V. COHEN, Defendants	*	

ORDER

NOW, this 1st day of February, 2005, the Court's Order of January 14, 2005 requiring the Defendants to proceed with discovery; the Defendant's Response to the Plaintiff's Motion to Compel having been filed January 18, 2005; Defendant's believing that their preliminary objections in the nature of a demurrer to Plaintiff's complaint should be resolved prior to conducting discovery and in consideration of the circumstances it is the Order of this Court that the provisions of the Court's Order of January 14, 2005 be stayed pending further Order. Argument on the Motion to Compel is hereby scheduled for February 9, 2005, at 2:00 p.m., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

FILED
01947
FEB 02 2005
William A. Shaw
Prothonotary/Clerk of Courts

1cc Atys: Brobson
Allen
1cc Def. Cohen
2018 Waldman Drive
Williamsport, PA 17701

BY THE COURT

FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

I hereby certify this to be a true and attested copy of the original document in file of this case.

FEB 02 2005

Attest:

Prothonotary/
Clerk of Courts

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	CIVIL ACTION
v.	:	NO.: 2004-1759
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

FILED

FEB 02 2005

William A. Shaw
Prothonotary

PLAINTIFFS RESPONSE TO DEFENDANT JOHN W. BEAN'S PRELIMINARY OBJECTIONS

Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust ("Plaintiffs") file this Response to Defendant John W. Bean's preliminary objections to the Complaint ("Bean POs"). A true and correct copy of the Bean POs are attached hereto as Exhibit "A". For the reasons set forth below, the preliminary objections should be denied.

INTRODUCTION

By filing his preliminary objections, Defendant John W. Bean ("Bean") seeks the earliest possible dismissal of Plaintiffs' claims in this lawsuit. Bean seeks to avoid this Court's and Plaintiffs' scrutiny of his and his co-Defendant's scheme to defraud and deprive Plaintiffs of the benefit of their investment in a project backed by the Clearfield County Industrial Redevelopment Authority ("Authority"). Hiding behind language in project financing

documents that he has willfully and intentionally disregarded in the past, Bean asks this Court to dismiss summarily the lawsuit.

By contrast, Plaintiffs respectfully suggest that they have pled a case against Defendants sufficient to withstand summary dismissal, especially in light of the high standard that Bean must meet in support of his preliminary objections. The Pennsylvania Supreme Court has held that the standard of review of preliminary objections in the nature of a demurrer is as follows:

> Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. The test on preliminary objections is whether it is clear and free from doubt from all of the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his right to relief.

Bower v. Bower, 531 Pa. 54, 57, 611 A.2d 181, 182 (1992) (citations omitted). In addition, it is improper for Bean to rely, as he does, on facts not found in Plaintiffs' Complaint. "[P]reliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer." *Mellon Bank N.A. v. Fabinyi*, 650 A.2d 895, 899 (Pa. Super. 1994).

In filing his preliminary objections, Bean seeks endorsement from this Court of his and his co-Defendant's scheme to force Plaintiffs to either (1) declare a default under the Authority bonds at issue ("Bonds"), or (2) renegotiate the terms of the Bonds to provide for new terms more favorable to Defendants and the "Investor Developer" of the project, B Warehouse Co. Remove Defendants' tortious conduct from the equation, however, and there is no reason to declare a "default." As alleged in the Complaint, B Warehouse Co. and S&T Bank ("S&T"), as paying agent under the Bonds, had more than sufficient funds available to satisfy their

obligations under the Authority-backed project finance documents. Defendants, however, prevented that from happening and, in fact, have taken steps to convert/distribute nearly $300,000 in pledged collateral funds to ensure that S&T and B Warehouse Co. could not satisfy their contractual obligations.[1] In addition, Defendants have instructed S&T to refrain from paying the real estate taxes on the project facility, further impairing Plaintiffs' collateral.[2]

As the Plaintiffs' response to the preliminary objections shows, this lawsuit relates to a complex public finance project facilitated by the Authority. It requires the examination of several complicated and lengthy legal documents and the consideration of additional facts beyond the documents and pleadings. Plaintiffs respectfully suggest that the seriousness of their claims and the egregiousness of Defendants' conduct demand more than the cursory review and summary dismissal that Bean desires. Accordingly, Plaintiffs respectfully request that the Court overrule Bean's preliminary objections.

Plaintiffs respond to the specific paragraph averments in Bean's preliminary objections as follows:

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[1] By correspondence dated June 29, 2004 and obtained by Plaintiffs from S&T, Defendant George V. Cohen ("Cohen") instructed S&T to cease all payments on the Bonds and to liquidate and distribute all assets held in the B Warehouse Co. account in excess of $300,0000 pro-rata to the joint venturers. A true and correct copy of the June 29, 2004 letter from Cohen to S&T is attached hereto as Exhibit "B." A true and correct copy of a "Statement of Transactions" that Plaintiffs obtained from S&T is attached hereto as Exhibit "C". This document shows that the monthly interest payments to Plaintiffs under the Bonds ceased as of July 1, 2004. On July 16, 2004, Cohen again contacted S&T demanding the distribution from the B Warehouse Co. account be "issued immediately" and further instructing S&T to not respond to the concerns of Plaintiffs, as bondholders. A true and correct copy of the July 16, 2004 correspondence from Cohen to S&T is attached hereto as Exhibit "D". A short time thereafter, as demonstrated in the Statement of Transactions and at the direction of Cohen, S&T disbursed nearly $300,000 from the monies that S&T held and that it previously had used to fund the minimum monthly payments to Plaintiffs under the Bonds.

[2] A true and correct copy of a July 13, 2004 letter from Cohen to Susan Ansin, a joint venturer in B Warehouse Co., is attached hereto as Exhibit "E". In the letter, Cohen reveals Defendants' scheme—particularly, Defendants' intention to stop paying the real estate taxes and the minimum monthly interest on the Bonds to force Plaintiffs to renegotiate the terms. By letter dated August 16, 2004, Cohen specifically instructed S&T to not make any further payments of the real estate taxes. A true and correct copy of the August 16, 2004 letter from Cohen to S&T is attached hereto as Exhibit "F." A true and correct copy of a statement reflecting unpaid taxes owed by B Warehouse Co. totaling $45,486.68 is attached hereto as Exhibit "G."

RESPONSE

1. Admitted.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that the commercial economic development warehouse project that is the subject of this action ("Project") was funded partially with the Bonds. It is further admitted that various documents, some of which are attached to the Complaint, evidence the terms of the financing for the Project. It is denied that Plaintiffs were "parties" to all of the Project finance documents. Portions of the Project finance documents, however, convey or bestow upon Plaintiffs, as holders of the Bonds, certain legally protected rights and interests in addition to those conferred by the laws of this Commonwealth. The Project finance documents are writings that speak for themselves, and Bean's characterization of the nature or content thereof is denied.

4. Admitted in part and denied in part. It is admitted that the Project finance documents provide for certain security and collateral to secure performance under the Bonds. The Project finance documents are writings that speak for themselves, and Bean's characterization of the nature or content thereof is denied. It is further admitted that the Project finance documents also provide certain remedies in the event B Warehouse Co., the "Investor Developer" on the Project and a nonparty in this proceeding, "defaults" in addition to other remedies available to Plaintiffs under the laws of this Commonwealth. The remaining averments of this paragraph are denied. By way of further response, Plaintiffs deny Bean's implication that this lawsuit is about a default by B Warehouse Co. and that the terms in the Project finance documents relating to "default" are relevant or applicable in this case. To the contrary, this case

is about an unlawful scheme that two individuals—the named Defendants—came up with to force Plaintiffs, as bondholders, into a corner and do one of two things, either of which would benefit Defendants and be detrimental to Plaintiffs: (1) declare a default by B Warehouse Co. and foreclose on the Project facility, or (2) give into Defendants and renegotiate the Bonds to provide for terms more favorable to Defendants and B Warehouse Co. To accomplish this scheme, Defendants engaged in the following conduct that Plaintiffs know of:

(a) They instructed the paying agent on the Bonds—S&T—to cease paying Plaintiffs the required monthly interest on the Bonds (a minimum of $3,750 per month) as of July 2004, notwithstanding S&T's contractual obligation under the Project finance documents to do so. (Compl. ¶¶ 29, 30, 33, 37, 40, 41-43.)

(b) They unlawfully and unjustifiably exerted control over B Warehouse Co., preventing B Warehouse Co. from performing its obligations under the Project finance documents with respect to payment of the minimum monthly interest on the Bonds. (Compl. ¶¶ 29, 30, 42, 43.)

(c) While claiming, *inter alia*, that B Warehouse Co. lacked the funds to continue to honor the Bonds, they concealed from Plaintiffs the distribution of nearly $300,000 in collateral funds held by S&T that could and should have been used to satisfy B Warehouse Co.'s and S&T's obligations under the Bonds. (Compl. ¶¶ 46, 52, 57.)

(d) They have instructed S&T to refrain from paying real estate taxes on the Project facility, further endangering and impairing the value of collateral securing performance of the Bonds. (Exs. "E" and "F" hereto.)

Plaintiffs have brought this action, asking the Court to put a stop to Defendants' scheme to defraud, deceive, and steal from Plaintiffs. To rule on Plaintiffs' claims, this Court must consider not only the many lengthy and complex Project finance documents, but also the conduct of S&T and B Warehouse Co. over the past two decades and the more recent actions of Defendants. This cannot be done in the summary fashion Bean urges in his preliminary objections.

5. Admitted in part and denied in part. It is admitted that a First Mortgage (now satisfied) and a Second Mortgage secured the debt related to the Project. The Project finance documents are writings that speak for themselves, and Bean's characterization of the nature or content thereof is denied. Plaintiffs deny that the carefully chosen quoted excerpt from an unidentified document accurately reflects the exclusive source of funds made available and pledged as collateral to protect Plaintiffs' rights as holders of the Bonds. To the contrary, the financing for the Project is incredibly complex. Deciphering the intent, arrangements, and relations of the parties thirty years since the documents became effective has been made more difficult by the lack of separate, segregated accounts required under the Project finance documents. *See* Authority Debt Resolution § 15, Compl. Ex. "B" (regarding "Bond Fund"); Mortgage Loan Agreement § 4.1, Compl. Ex. "E" (regarding "Reserve Fund"). Incredibly, in defense of this lawsuit Bean is relying on provisions in documents with which he and B Warehouse Co. failed or refused to comply for the past two decades. Plaintiffs respectfully suggest that the documents and relation of the parties are not as clear-cut as Bean would have this Court believe. This Court must take the time to sort out the events of the past two decades that have led the parties to this point. A summary dismissal at this early stage in litigation under these circumstances is simply not appropriate.

6. Denied. The Mortgage Loan Agreement is a writing that speaks for itself, and Bean's characterization of the nature or content thereof is denied. By way of further response, Section 6.5 of the Mortgage Loan Agreement does not apply in this case. In his preliminary objections, Bean is asking this Court to ignore the tort claims asserted in the Complaint and, more specifically, Defendants' scheme to deceive, defraud, and steal from Plaintiffs. Rather, contrary to the governing standard of review, Bean would have this Court read the Complaint in the light most favorable *to Defendants*. In that light, Section 6.5 of the Mortgage Loan Agreement is an impenetrable shield that gives Defendants the freedom under the law to scheme, deceive, defraud, and steal from Plaintiffs so long as they *allege* to be doing so in the name of B Warehouse Co. They seek to avoid this Court's and Plaintiffs' scrutiny of their wrongful conduct through summary dismissal of this lawsuit. In short, they ask this Court to condone their scheme without examining fully the facts and circumstances relevant to Plaintiffs' claims. As much as Plaintiffs are refusing, by this lawsuit, to give into Defendants' scheme, Plaintiffs respectfully request that this Court refuse Bean's request in his preliminary objections to deny Plaintiffs the opportunity to conduct discovery and present their full case to this Court for a ruling on the merits.

7. Admitted in part and denied in part. Plaintiffs admit, upon information and belief, that from January 1, 1986 through June 30, 2002, a single tenant ("Tenant") continuously occupied the Project facility. (Compl. ¶¶ 24, 28.) The remaining averments of this paragraph are denied. Specifically, it is denied that the loss of the Tenant was the reason why the minimum monthly payments to Plaintiffs under the Bonds ceased. This is not a fact found in the Complaint and, thus, cannot be considered by the Court in ruling on Bean's preliminary objections. By even asserting this additional fact in support of his preliminary objections, Bean

fails to accept as true all well-pleaded facts set forth in the Complaint. Had he done so, he would accept as true the fact that even after the Tenant's lease expired in June 2002, B Warehouse Co. and S&T continued to make the minimum monthly payments under the Bonds to Plaintiffs for two years, or until July 2004. (Compl. ¶ 29.) Accordingly, it was not the loss of the Tenant that caused the payments to stop, as Bean alleges. Rather, as alleged in the Complaint, the payments stopped because "Defendants wantonly, intentionally, maliciously, and without cause took action to prevent B Warehouse Co., as obligor on the Bonds, and S&T, as Paying Agent, from making the regularly scheduled monthly payments to Plaintiffs." (Compl. ¶ 30.) By way of further response, since filing the Complaint Plaintiffs have learned that B Warehouse Co. has obtained a substitute tenant for the Project facility and has received rental income.[3] Nonetheless, Defendants continue to prevent S&T and B Warehouse Co. from using that rental income to make the required monthly payments under the Bonds. The fact that B Warehouse Co. continues to receive rental income from the Project facility while Plaintiffs go unpaid only proves Plaintiffs' claim—that it is not the loss of rental income, but the tortious conduct of Defendants that have prevented S&T and B Warehouse Co. from making the mandatory monthly interest payments to Plaintiffs on the Bonds.

8. Admitted in part and denied in part. It is admitted that Plaintiffs have certain remedies available to them under the Project finance documents in the event of a "default" by B Warehouse Co. in addition to those available under the laws of the Commonwealth. It is denied, however, that the remedies in the Project finance documents were either intended to or even could compensate Plaintiffs for the harm they have and will continue to suffer as a result of the

[3] A November account statement from S&T for the B Warehouse Co. account shows rental income in November 2004 of $12,500. A true and correct copy of the account statement is attached hereto as Exhibit "H".

tortious conduct of Defendants that is the subject of this action. For reasons set forth more thoroughly in paragraph 6 above, this case is not about a "default" by B Warehouse Co. The facts, as alleged in the Complaint, are that B Warehouse Co. and S&T had and continue to have funds available to them to pay Plaintiffs the required minimum monthly amounts due under the Bonds and to pay the real estate taxes on the Project facility. (Compl. ¶ 36.) As part of their scheme to defraud, deceive, and steal from Plaintiffs, Defendants unlawfully interfered with B Warehouse Co.'s and S&T's performance and converted nearly $300,000 in collateral funds that could have and should have been used by S&T and B Warehouse Co. to honor their obligations under the Project finance documents. Defendants have also instructed S&T not to pay the real estate taxes on the Project facility. Defendants want Plaintiffs to declare a "default" in furtherance of their scheme. Rather than give in to Defendants' scheme, Plaintiffs initiated this action to hold Defendants accountable for it. Nothing in the Project finance documents shields Defendants from personal liability for their tortious conduct. Defendants' conduct is actionable and should be scrutinized through discovery and a full evidentiary presentation to the Court.

9. Denied. It is denied that Plaintiffs are circumventing the Project finance documents. To the contrary, through their scheme to defraud, deceive, and steal from Plaintiffs, as set forth more thoroughly in paragraph 4 above and in the Complaint, *Defendants* have attempted to circumvent the terms of the Project finance documents. They have attempted to create unilaterally and unlawfully a circumstance of "default" where none would have existed but for their interference (Compl. ¶¶ 30, 36) for the sole purpose of trying to avoid compliance with the terms of the Bonds and the Project finance documents. (Compl. ¶¶ 32, 41, 47, 55, 63.) At the same time, they have deprived S&T and B Warehouse Co. of nearly $300,000 in collateral funds that could and should have been used to satisfy their obligations under the Project finance

documents and risk further impairment of the Project facility by their unjustified decision to instruct S&T to not pay real estate taxes. Through this lawsuit, Plaintiffs seek to hold Defendants accountable for their tortious conduct.

10. Denied. Plaintiffs have sufficiently stated claims against Defendants for tortious interference, fraud, conversion, violations of the Uniform Fraudulent Transfers Act, and civil conspiracy. Moreover, Bean's preliminary objections improperly raise and rely on facts not found in and contradicted by the Complaint. Accordingly, the preliminary objections show that there are material factual issues in this case that must be resolved through discovery and an evidentiary presentation to the Court. It would, thus, be improper to dismiss summarily the Complaint at this early stage of the case.

DEMURRER - ALL COUNTS

11. Admitted in part and denied in part. It is admitted that Plaintiffs have certain rights under the Project finance documents in addition to those conferred by the laws of this Commonwealth. It is denied, however, that these rights under the Project finance documents permit or authorize Defendants to engage in unlawful tortious schemes to defraud, deceive, and steal from Plaintiffs without consequence in a court of law. The Project finance document are writings that speak for themselves, and Bean's characterization of the nature or content thereof is denied.

12. Denied. The Project finance document are writings that speak for themselves, and Bean's characterization of the nature or content thereof is denied. By way of further response, the Project finance documents do not shield Defendants from tort liability, particularly with

respect to their scheme to deceive, defraud, and steal from Plaintiffs, which is the subject of this lawsuit.

13. Denied. The Project finance documents are writings that speak for themselves, and Bean's characterization of the nature or content thereof is denied. By way of further response, Plaintiffs deny that the carefully chosen quoted excerpt from an unidentified document accurately reflects the exclusive source of funds made available and pledged as collateral to protect Plaintiffs' rights as holders of the Bonds. Plaintiffs incorporate by reference as if expressly set forth herein their response to paragraph 5 above. It is further denied that the provisions from the Project documents that Bean cites include specific language to release Defendants from liability for the commission of future torts—*i.e.*, torts committed after the documents became effective in or around April 1985 (Compl. ¶¶ 9, 10, 17). At issue in this litigation is a scheme to create a "default" by B Warehouse Co. where none would have arisen but for Defendants' tortious conduct. The provisions of the Project finance documents do not authorize such schemes and do not expressly excuse Defendants from liability for engaging in such schemes.

Under Pennsylvania law, such exculpatory provisions are generally disfavored and must be strictly construed against the party seeking their protection. *See Soxman v. Goodge*, 539 A.2d 826, 828 (Pa. Super.), *appeal denied*, 520 Pa. 575, 549 A.2d 136, *and appeal denied*, 520 Pa. 577, 548 A.2d 137 (1988). In addition, the Court should not apply the exculpatory language in this case because doing so would be against public policy. "Contracts against liability . . . violate public policy when they involve a matter of interest to the public or the state." *Seaton v. East Windsor Speedway, Inc.*, 582 A.2d 1380, 1382 (Pa. Super. 1990). The Project finance documents on which Bean relies are not private agreements between two individuals. To the

contrary, they represent an exercise of authority conferred by the Commonwealth on the Authority pursuant to the Economic Development Finance Law, 73 P.S. §§ 371-386 ("Finance Law"). The Authority is identified in the Mortgage Loan Agreement as a "non-profit public corporate and political instrumentality of the Commonwealth of Pennsylvania." *See* Mortgage Loan Agreement at 1 (Compl. Ex. "E"). In addition, the Finance Law describes the Authority as a "public instrumentality of the Commonwealth and a body politic and corporate." 73 P.S. § 373. The Authority was created and empowered to further the express public policy of the Commonwealth: "[I]t is hereby declared to be the policy of this Commonwealth to promote the health, safety, morals, employment, business opportunities, economic activity and general welfare of the people thereof by providing for the creation of industrial or commercial development authorities which shall exist and operate as public instrumentalities of the Commonwealth . . . ." *Id.* § 372. Accordingly, the Project is clearly a matter of public concern. Future investment in bonds of the Authority will be stifled and the public policy under the Finance Law harmed if conduct of the type alleged in the Complaint is permitted to occur without consequence in a court of law. Accordingly, for this additional reason, Bean should not be permitted to rely on the exculpatory language found in the Project finance documents to avoid personal liability for his tortious conduct.

14. Denied. By way of further response, the allegations in this paragraph are virtually identical to those raised by Bean in paragraph 9 of his preliminary objections. Plaintiffs incorporate their response to paragraph 9 above as if expressly set forth herein.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

DEMURRER - ALL COUNTS - GIST OF THE ACTION

15. Denied. By way of further response, Plaintiffs incorporate by reference as if expressly set forth herein their responses to paragraphs 4-9 above. Indeed, the assertions in this paragraph are illustrative of Defendants' scheme to deceive, defraud, and steal from Plaintiffs. Defendants are attempting to create a "default" because of their perception that they will benefit from it. (Compl. ¶¶ 32, 41, 47, 63.). By analogy, this case is no different than a circumstance where the owner of a perfectly fine building sets fire to it because he perceives he will be better off with the insurance proceeds than the actual building. Defendants' conduct is no more lawful than that of the hypothetical pyromaniac.

16. Denied. Bean's oversimplification of the complex issues in this case is fatal to his preliminary objections. Plaintiffs' lawsuit is not about Bean or his co-Defendant breaching a contract. To the contrary, Defendants intentionally misrepresented the financial status of B Warehouse Co., fraudulently converted funds in S&T's possession pledged as collateral and security for performance under the Bonds, unlawfully interfered with the contractual obligations of B Warehouse Co. and S&T to Plaintiffs, and have taken further steps to impair Plaintiffs' collateral under the Bonds by instructing S&T to refrain from paying required real estate taxes for the Project facility. As alleged in the Complaint, and which this Court and Defendants must accept as true for purposes of ruling on Bean's preliminary objections, Defendants committed these acts wantonly, willfully, and maliciously with the intent to force Plaintiffs to renegotiate the terms of the Bonds to further benefit Defendants at Plaintiffs' expense. (Compl. ¶¶ 30, 32, 41, 47, 63.) "Defendants actions were neither lawful, justified, nor privileged." (Compl. ¶ 42.) It is this conduct that gives rise to the tort claims. In short, in this lawsuit, the gist of the action is Defendants' wrongful conduct—the related Project finance documents on which Bean relies are

merely collateral. *See Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 582 (Pa. Super. 2003) (finding that a breach of contract can also give rise to an actionable tort where the "wrong ascribed defendant [is] the gist of the action, the contract being collateral").

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

DEMURRER - COUNT I

17. Admitted. By way of further response, Plaintiffs have pled all required elements of tortious interference with contract: (1) an exiting contractual relationship between Plaintiffs and third parties—S&T (Compl. ¶¶ 27, 39) and B Warehouse Co. (Compl. ¶ 43); (2) Defendants' interference with S&T's performance of its obligations (Compl. ¶¶ 40, 41, 43) and B Warehouse Co.'s performance (Compl. ¶ 43) by inducing a breach or otherwise causing these third parties not to perform; (3) lack of any privilege of Defendants to do so (Compl. ¶ 42); and (4) pecuniary loss to Plaintiffs as a result (Compl. ¶ 44). *Al Hamilton Contracting Co. v. Cowder*, 644 A.2d 188, 191 (Pa. Super. 1994). Accordingly, this Court should overrule Bean's demurrer as to Count I.

18. Admitted in part and denied in part. It is admitted that "[e]ssential to recovery on the theory of tortious interference with contract is the existence of three parties." *Maier v. Maretti*, 671 A.2d 701, 707 (Pa. Super. 1996). It is denied, however, that Plaintiffs have failed to plead the required facts to satisfy this requirement, as explained further in paragraph 17 above.

19. Admitted in part and denied in part. Plaintiffs admit that Count I of their Complaint is based on Defendants' tortious interference with B Warehouse Co.'s *and S&T's*

obligations under the various, many, and lengthy Project finance documents. The remaining averments of this paragraph are denied.

20. Denied. Plaintiffs have not alleged any facts in the Complaint to support the contention in this paragraph. By way of further response, Plaintiffs allege in the Complaint, upon information and belief, that Bean is currently a joint venturer of B Warehouse Co. (Compl. ¶ 19.) Plaintiffs further allege that B Warehouse Co. appointed Bean as its attorney in 1992. (Compl. ¶ 21.) Plaintiffs, however, *do not allege* that when Bean committed the wrongful acts set forth in the Complaint that he did so in his capacity as a joint venturer or under lawful authority as attorney for B Warehouse Co. To the contrary, Plaintiffs allege only that Defendants "exerted control over B Warehouse Co.'s affairs" (Compl. ¶ 23) in a manner that was "wanton, intentional, and malicious" as well as unlawful, unjustified, and nonprivileged (Compl. ¶¶ 41, 42.) Reading these allegations in the light most favorable to Plaintiffs, not Defendants, a genuine issue of material fact exists as to whether, in the course of committing the alleged tortious conduct, Bean acted unlawfully and unjustifiably, as alleged in the Complaint (Compl. ¶ 42), or acted lawfully and justifiably on account of B Warehouse Co. or as a joint venturer, as alleged in Bean's preliminary objections (Bean POs ¶ 20). The time to resolve this issue is not at the preliminary objection stage. Rather, Bean should deny Plaintiffs' allegations and raise any additional facts he wishes in new matter. Moreover, Bean does not claim to be an agent of S&T, another third-party with contractual obligations to Plaintiffs. Accordingly, Bean's argument does not and cannot justify dismissal of Count I as to Defendants' interference with S&T's performance under the Project finance documents merely because Bean alleges he was acting as a joint venture or on account of B Warehouse Co.

21. Denied. By way of further response, Plaintiffs incorporate by reference as if expressly set forth herein their response to paragraph 17 above.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

DEMURRER - COUNT II

22. Admitted. By way of further response, Plaintiffs allege "that Defendants wantonly, intentionally, and maliciously concealed information *regarding the distribution of the assets of B Warehouse Co.* to avoid the regularly scheduled interest payments on the Bonds to Plaintiffs." (Compl. ¶ 46 (emphasis added).)

23. Denied. Bean's statement of law is incomplete and, thus, misleading. As a general statement, it is true that under Pennsylvania law "mere silence without a duty to speak will not constitute fraud." *Debbs v. Chrysler Corp.*, 810 A.2d 137, 155 (Pa. Super. 2002), *appeal denied*, 574 Pa. 744, 829 A.2d 311 (2003). The Pennsylvania Supreme Court, however, has generally defined "fraud" as follows:

> Fraud consists of anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or silence, word of mouth, or look or gesture.

Moser v. DeSetta, 527 Pa. 157, 163, 589 A.2d 679, 682 (1991) (emphasis added); *see Debbs*, 810 A.2d at 155 (quoting *Moser*). Accordingly, the Court must consider the totality of the circumstances alleged in the Complaint (Compl. ¶ 45) to determine whether Plaintiffs' fraud claim is based on "mere silence" or something more. Plaintiffs' respectfully suggest, and Bean's preliminary objections confirm, it is something more than mere silence. Indeed, Defendants'

concealed from Plaintiffs their conversion and distribution of nearly $300,000 in funds held by S&T while at the same time maintaining that B Warehouse Co. lacked funds to pay the mandatory monthly interest payments because of the loss of the Tenant. (Compl. ¶¶ 31, 32 and Ex. "H" thereto; Bean POs ¶ 7 (wherein Bean continues to claim fraudulently that payments stopped because of the loss of the Tenant).) In short, the concealment was in furtherance of the overall scheme to defraud, deceive, and steal from Plaintiffs, the totality of which constitutes the actionable fraud. (Compl. ¶ 47.)

24. Denied. By way of further response, as set forth in paragraph 23 above, this case is not about "mere concealment" and, thus, Plaintiffs are not required to establish an actual duty to disclose to succeed in Count II of the Complaint. Even if they were, however, Plaintiffs respectfully suggest that Bean's duty to be forthright with respect to the financial condition of B Warehouse Co. was triggered when he misrepresented, through B Warehouse Co.'s counsel, the financial demise of B Warehouse Co. and alleged resultant inability of both S&T and B Warehouse Co. to make good on their contractual obligations to Plaintiffs' under the Project finance documents. At that point, he had a duty to also make sure Plaintiffs were aware that S&T and the Bank possessed nearly $300,000 to satisfy those obligations, but that he and his co-Defendant intended to convert those funds as part of their scheme to fabricate a crisis.

25. Denied. For reasons set forth in paragraphs 22 through 24 above, the Complaint clearly sets forth facts sufficient to show Defendants' fraud—*i.e.*, concealment in furtherance of a scheme to defraud, deceive, and steal from Plaintiffs in an effort to force Plaintiffs to take certain actions favorable to Defendants that would be detrimental to Plaintiffs' interests. This conduct has resulted in harm to Plaintiffs in the form of a significant and substantial decrease in

the market value of the Bonds. Thus, Plaintiffs have sufficiently stated a claim for fraud against Defendants, and the Bean preliminary objection to Count II should be overruled.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

LACK OF SPECIFICITY - COUNT II

26. Admitted.

27. Denied. By way of further response, after incorporating by reference paragraphs 1 through 44 of the Complaint, Plaintiffs allege in paragraph 46 of the Complaint "that Defendants wantonly, intentionally, and maliciously concealed information *regarding the distribution of the assets of B Warehouse Co.* to avoid the regularly scheduled interest payments on the Bonds to Plaintiffs." (Emphasis added.) Though Plaintiffs have made certain efforts to conduct formal discovery in this case to confirm this averment, Defendants have refused to cooperate. On or about December 18, 2004, Defendants filed objections to a third-party subpoena Plaintiffs intended to serve on S&T. In addition, Defendants have refused to respond to requests for documents pursuant to Pa. R.C.P. 4009.1 and 4009.11, forcing Plaintiffs to file motions to compel with this Court.[4] Despite Defendants' efforts to block the discovery process, however, Plaintiffs have been able to obtain informally additional information since filing their Complaint to support the allegations in paragraph 46. Specifically, so far Plaintiffs have learned that, despite claiming that S&T and B Warehouse Co. lacked the funds necessary to perform under the Bonds due to the loss of the Tenant, Cohen instructed S&T in June and July

[4] On January 14, 2005, this Court granted Plaintiffs' motions to compel and ordered Bean and Cohen to produce full and complete discovery responses within thirty (30) days of the date of the Order, or by February 14, 2005.

2004—*i.e.*, the same month payments under the Bonds stopped—to distribute nearly $300,000 in collateral funds held by S&T that obviously could and should have been used to pay the money due to Plaintiffs under the Project finance documents. (*See* Exs. "B", "C" and "D" hereto.) Defendants' alleged ignorance as to the nature of Plaintiffs' allegations in Count II in light of the foregoing deserves little attention. Indeed, Plaintiffs expect that further discovery (which Defendants hope to avoid) will further substantiate Plaintiffs' claims in paragraph 46 of the Complaint.

28. Denied. Plaintiffs have pled fraud with particularity pursuant to Pa. R.C.P. 1019(b) and have alleged facts sufficient to maintain their claim for fraud against Defendants. Amendment of the pleading to include the additional information Plaintiffs have discovered since filing the Complaint outlined in paragraph 27 is unnecessary, as Plaintiffs expect even more information of Defendants' misconduct will surface through discovery. Nonetheless, if more specificity is required in advance of discovery, Plaintiffs respectfully request leave to amend the Complaint rather than outright dismissal of Count II of the Complaint. *See* Pa. R.C.P. 126, 1033; *Nichols v. Southeastern Pa. Transp. Auth.*, 550 A.2d 283, 287-87 (Pa. Cmwlth. 1988) (reversing and remanding trial court decision with respect to preliminary objection on lack of specificity with directive that trial court grant leave to amend).

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

DEMURRER - COUNT III

29. Admitted in part and denied in part. Plaintiffs admit that, after incorporating paragraphs 1 through 49 of the Complaint, Plaintiffs allege in Count II that they had a "current

possessory interest in the funds held in *the B Warehouse accounts* at the time that Defendants *depleted those accounts*." (Compl. ¶ 51 (emphasis added).) Accordingly, it is denied that the accounts are unspecified, as Bean contends. Clearly, the accounts in question are "B Warehouse accounts" that held the monies Defendants fraudulently converted/distributed as alleged in Count II of the Complaint.

30. Denied. By way of further response, the allegation contained in paragraph 51 of the Complaint is an allegation of fact, which Bean and the Court must accept as true in ruling on Bean's preliminary objections. Bean may contest the allegation, but preliminary objections in the nature of a demurrer is not the appropriate time or place to do so. Plaintiffs intend to prove through discovery that all funds held in the B Warehouse Co. accounts constitute Plaintiffs' collateral and security for performance under the Bonds.

31. Denied. The Project finance documents are writings that speak for themselves, and Bean's characterization of the nature or content thereof is denied. By way of further response, Plaintiffs deny that the Bonds are secured "only" by the interest of B Warehouse Co. in the Project, and Plaintiffs incorporate by reference as if expressly set forth herein its response to paragraph 5 above. Indeed, the Project finance documents have numerous provisions relating to security and collateral. *See, e.g.*, Mortgage Loan Agreement §§ 2.4 (relating to pledge of personal property and fixtures), 3.1 (relating to pledge of "other monies" in the possession of S&T; 4.1 (relating to pledge of Project "gross revenues"), 4.5 (relating to pledge of leases, rentals, and "other monies" paid under leases).

32. Admitted in part and denied in part. The Project finance documents are writings that speak for themselves, and Bean's characterization of the nature or content thereof is denied.

By way of further response, it is admitted that Section 4.1 of the Mortgage Loan Agreement (Compl. Ex. "E") calls for a "Reserve Fund," which shall be drawn upon for only certain itemized purposes. However, the Authority Debt Resolution (Compl. Ex. "B") further requires the creation and maintenance of another separation fund—*i.e.*, the "Bond Fund," from which Plaintiffs were to be paid. All gross revenues from the Project were to be deposited into the Bond Fund for payments to Plaintiffs. *See* Debt Resolution § 15, Compl. Ex. "B". Once Plaintiffs and, pursuant to Section 4.1 of the Mortgage Loan Agreement, "all Project operating, maintenance and debt service costs on the First Mortgage Loan Note and . . . Bonds" were paid, the gross revenues could be deposited into the "Reserve Account." That was how it was *supposed* to work; it is not reality. To avail himself of these portions of the Project finance documents, Bean will have to prove at trial that the account from which he and his co-Defendant converted nearly $300,000 was, in fact, the "Reserve Fund" provided for in the Mortgage Loan Agreement. Indeed, as documents made available to Plaintiffs only after the Complaint was filed show, S&T maintained only *one* account for B Warehouse Co.[5] and has paid Plaintiffs their monthly interest payments on the Bonds from that one account (*See* Ex. "I" hereto). Whether this single account was the "Reserve Fund," the "Bond Fund," or some commingled fund is a material factual question for the Court to decide after discovery and an evidentiary presentation by the parties. It cannot be resolved by preliminary objection.

33. Denied. The averments in this paragraph are nothing more than a short-form assertion of Bean's first preliminary objection in the nature of a demurrer to the entire

[5] A true and correct copy of a December 22, 2004 letter from S&T's counsel is attached hereto as Exhibit "I". In that letter, S&T's counsel discloses that S&T maintained only one account for the Project since its inception.

Complaint. For that reason, Plaintiffs incorporate by reference as if expressly set forth herein paragraphs 11 through 14 above.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

DEMURRER - COUNT IV

34. Admitted in part and denied in part. It is admitted that Plaintiffs seek injunctive relief based upon the fraudulent transfer of B Warehouse Co. assets *to Defendants and others.* (Compl. ¶ 56.) This transfer is described in paragraph 27 above, which is incorporated by reference as if expressly set forth herein. It is denied that Plaintiffs' allegation lacks the required specificity to put Defendants on notice of Plaintiffs' claim.

35. Admitted in part and denied in part. It is admitted that Plaintiffs purchased the Bonds from the Authority. It is denied, however, that B Warehouse Co. is not a "debtor" in relation to Plaintiffs. To the contrary, although Plaintiffs purchased the Bonds from the Authority, B Warehouse Co. and the Project are the source for payment of the Bonds.

36. Denied. The Pennsylvania Uniform Fraudulent Transfers Act ("UFTA" or "Act") provides that "[a] debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent" for purposes of the UFTA. 12 Pa. C.S. § 5102(b). Plaintiffs allege that B Warehouse Co. and S&T ceased making the required minimum monthly interest payments on the Bonds in July 2004. (Compl. ¶ 29.) Bean admits in his preliminary objections that "B Warehouse has not made scheduled interest payments under the Contracts." (Bean POs ¶ 7.) Moreover, as indicated in Cohen's August 16, 2004 letter to S&T (Ex. "F" hereto), Defendants

have prohibited S&T from paying the real estate taxes for the Project facility. Thus, because B Warehouse Co. has not been paying its debts as they become due, B Warehouse Co. is presumed insolvent for purposes of the UFTA.

37. Denied. By way of further response, it is denied that Plaintiffs are violating any of the Project finance documents by seeking to hold Defendants accountable in this lawsuit for their tortious conduct. In addition, as set forth above in paragraph 36, "insolvency" of B Warehouse Co. for purposes of the UFTA is presumed as a matter of law by virtue of the facts alleged in the Complaint, the facts Bean acknowledges in his preliminary objections, and additional information Plaintiffs have discovered since filing the Complaint.

38. Denied. For purposes of these preliminary objections, Plaintiffs deny Bean's factual assertion that "the security for the Bonds provided by the Contracts remains available." This is an improper assertion of an additional fact not included in the Complaint and, thus, should not be considered by the Court in ruling on Bean's preliminary objections. By way of further response, the averments in this paragraph further illustrate Defendants' scheme to defraud, deceive, and steal from Plaintiffs. There is nothing improper about Plaintiffs refusing to sit back and allow Defendants to act in a fashion that creates a false crisis to force Plaintiffs to exercise certain remedies outlined in the Project finance documents. Instead, Plaintiffs have properly decided to seek this Court's assistance in stopping the unlawful scheme and holding Defendants accountable for it.

39. Denied. The UFTA does not require Plaintiffs to exhaust all other available remedies or reduce their claim to a judgment prior to brining a claim under the Act. Defendants' tortious conduct has seriously and irreparably impaired the value of Plaintiffs' investment in the

Authority Bonds by reducing the collateral and security available to ensure performance under those Bonds.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

LACK OF SPECIFICITY - COUNT IV

40. Admitted.

41. Denied. By way of further response, after incorporating by reference paragraphs 1 through 53 of the Complaint, Plaintiffs allege in paragraph 56 of the Complaint "that Defendants wantonly, intentionally, and maliciously divested the *B Warehouse Co. of its assets* through disbursements to themselves and others, thereby preventing B Warehouse Co. from satisfying its obligations to Plaintiffs under the Bonds." (Emphasis added.) Plaintiffs incorporate by reference as if expressly set forth herein paragraph 27 above, which details (1) the various steps Defendants have taken to thwart Plaintiffs' efforts to conduct formal discovery with respect to this and other claims in the Complaint, and (2) the additional information Plaintiffs have been able to obtain since filing the Complaint to bolster their claim in paragraph 56. In short, the "fraudulent transfer" in Count IV arises from the same "fraud" alleged in Count II and the "conversion" alleged in Count III. Defendants are on notice of Plaintiffs' claims.

42. Denied. By way of further response, Plaintiffs respond to this claim as they did with respect to Bean's preliminary objection for lack of specificity with respect to Count II. Plaintiffs have pled fraud with particularity pursuant to Pa. R.C.P. 1019(b) and have alleged facts sufficient to maintain their claim for fraudulent transfer under the UFTA against Defendants in

Count IV of the Complaint. Amendment of the pleading to include the additional information Plaintiffs have discovered since filing the Complaint outlined in paragraph 27 is unnecessary, as Plaintiffs expect even more information of Defendants' misconduct will surface through discovery. Nonetheless, if more specificity is required in advance of discovery, Plaintiffs respectfully request leave to amend the Complaint rather than outright dismissal of Count II of the Complaint. *See* Pa. R.C.P. 126, 1033; *Nichols*, 550 A.2d at 286-87 (reversing and remanding trial court decision with respect to preliminary objection on lack of specificity with directive that trial court grant leave to amend).

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

DEMURRER - COUNT V

43. Admitted.

44. Denied. By way of further response, for the reasons set forth above, Plaintiffs have sufficiently stated claims against Bean and his co-Defendant for tortious interference, fraud, conversion, and violations of the UFTA.

45. Denied. By way of further response, to state a claim for civil conspiracy, Plaintiffs must show that the Defendants "combined or agreed with intent to do an unlawful act or to do an otherwise lawful act by unlawful means" with the additional intent to injure. *Reading Radio, Inc. v. Fink*, 833 A.2d 199, 212 (Pa. Super. 2003). As provided above, Plaintiffs have sufficiently stated claims against Defendants for tortious interference, fraud, conversion, and violations of the UFTA. These underlying intentional and unlawful acts, which Defendants

combined to commit, were committed with the intent to cause harm to Plaintiffs and to force Plaintiffs to renegotiate the terms of the Bonds to further benefit Defendants. (Compl. ¶¶ 30, 32, 41, 47, 63.) Thus, Plaintiffs have stated a claim for civil conspiracy.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

COMPLAINT EX. J - PA. R.C.P. 1028(a)(2)

46. Denied. By way of further response, Plaintiffs attached Exhibit "J" to the Complaint to show Defendants' bad faith and malice. (Compl. ¶¶ 30, 32, 41, 47, 63.) Although Plaintiffs attempted in good faith to resolve the dispute between the parties, which is evidenced by the September 9, 2004 letter from Plaintiff Marc Katzen to Bean attached to the Complaint as Exhibit "I," Bean's response demonstrates Defendants' disregard for the concerns, rights, and interests of Plaintiffs. Plaintiffs seek punitive damages in this case. "Punitive damages are awarded to punish a defendant for certain outrageous acts and to deter him or others from engaging in similar conduct." *Reading Radio, Inc.*, 833 A.2d at 214. Inclusion of paragraphs 34 and 35 and Exhibit "J" with the Complaint illustrates the outrageousness of Defendants' conduct.

47. Denied. By way of further response, paragraphs 35 and Exhibit "J" should not be stricken from the Complaint because they do not qualify as "scandalous or impertinent matter" under Pa. R.C.P. 1028(a)(2), for reasons explained in paragraph 46 above.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

CLAIM FOR ATTORNEYS' FEES

48. Admitted.

49. Denied. To the contrary, there are two exceptions to the American Rule recognized in Pennsylvania. The first is a general exception that allows courts to award attorneys' fees "'when overriding considerations of justice compel such a result.'" *Bata v. Central-Penn Nat'l Bank of Phila.*, 448 Pa. 355, 379 n.29, 293 A.2d 343, 356 n.29 (1972) (quoting *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 (1967)); *see also Pennsylvania Ass'n of State Mental Hosp. Physicians v. State Employees' Retirement Bd.*, 483 A.2d 1003, 1007 (Pa. Cmwlth. 1984) (observing that "our Supreme Court in *Bata* recognized that equity permits the imposition of counsel fees when justice compels such a result"). Based on the allegations of malice, bad faith, willfulness, and wantonness on the part of Defendants in the Complaint as well as the scope and extent of the scheme Defendants have attempted to perpetrate on Plaintiffs, Plaintiffs respectfully suggest that justice compels the entry of an award of attorneys' fees in this case if Plaintiffs are ultimately successful. In addition, because Plaintiffs' lawsuit, in part, seeks the preservation, protection, and administration of security and collateral funds in S&T's possession for the benefit of all holders of the Bonds, not just Plaintiffs, Plaintiffs respectfully suggest that this Court could award attorneys' fees to Plaintiffs out of those monies under the "common fund" doctrine. *See Pennsylvania Ass'n of State Mental Hosp. Physicians*, 483 A.2d at 1007-08.

50. Denied. Because there are valid legal theories under which the Court could award Plaintiffs attorneys' fees in this case if Plaintiffs prevail, it would be improper for the Court to strike that request from the Complaint, as Bean demands in his preliminary objections.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

FAILURE TO JOIN AN INDISPENSABLE PARTY

51. Admitted in part and denied in part. By way of further response, Plaintiffs admit that the Project finance documents are relevant to Plaintiffs' claims in this lawsuit. It is denied that Plaintiffs' tort claims are "inextricably interwoven with" the Project finance documents, because Plaintiffs are unsure of Bean's intent in the use of that phrase.

52. Admitted. It is admitted that Plaintiffs seek injunctive relief in the Complaint to prevent further action that would diminish the value of the Bonds any more than Defendants, through their tortious conduct, have thus far. It is further admitted that Plaintiffs preserve in their Complaint the opportunity to seek that relief from unidentified individuals and entities that are not currently parties to this proceeding. It is denied, however, that there are any indispensable parties that must be joined for the Court to adjudicate Plaintiffs' claims.

53. Denied. By way of further response, Plaintiffs are unaware of an "indispensable party" at this point that must be joined, and Bean fails to identify one in his preliminary objections. Obviously, the Court cannot apply the four prong test to determine whether a party is "indispensable" without first knowing the identity of the party in question. *See CRY, Inc. v. Mill Serv., Inc.*, 536 Pa. 462, 640 A.2d 372 (1994) (stating indispensable party considerations);

Hubert v. Greenwald, 743 A.2d 977 (Pa. Super. 1999) (same).[6] In any event, even if the Court finds that there is an indispensable party that must be joined, the Court should not dismiss the case. Rather, the Court should grant Plaintiffs leave to amend their Complaint pursuant to Pa. R.C.P. 1033 to add the additional party. Alternatively, the Court could order the joinder of the person or entity pursuant to Pa. R.C.P. 2232(c). By way of further response, Bean does not appear to allege that there is an unnamed party indispensable to the resolution of Plaintiffs' *claims*; rather, he appears to aver only that the injunctive relief sought in the Complaint extends to nonparties. The reason for the broadly worded injunctive prayer for relief is explained in paragraph 52 above. Plaintiffs, however, are well-aware of the limits of this courts *in personam* and *in rem* jurisdiction and plan to keep both in mind when moving for injunctive relief, if they ultimately elect to do so. It may be that they only need an injunction against Defendants or against property in the Commonwealth, over which this Court can exercise *in rem* jurisdiction. Until discovery occurs, however, Plaintiffs cannot determine the type of injunctive relief they will require to protect their interests.

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[6] A court must consider the following factors to determine if a party is "indispensable":

(1) Do absent parties have a right or interest related to the claim?

(2) If so, what is the nature of that right or interest?

(3) Is that right or interest essential to the merits of the issue?

(4) Can justice be afforded without violating the due process rights of absent parties?

Hubert, 743 A.2d at 980.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant John W. Bean's preliminary objection.

Respectfully submitted,

BUCHANAN INGERSOLL PC

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DATE: February 1, 2005

Exhibit A

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

PRELIMINARY OBJECTIONS

John W. Bean submits the following Preliminary Objections to the Plaintiffs' Complaint.

Introduction

1. In 1985, the Plaintiffs purchased certain Second Mortgage Revenue Bonds in the aggregate principal amount of $300,000 ("Bonds") from the Clearfield County Industrial Development Authority ("Authority") related to the financing and construction of a commercial warehouse ("Project") in Clearfield County. Complaint, ¶ 26.

2. B Warehouse Company ("B Warehouse"), a joint venture, was the "Investor Developer" of the Project. B Warehouse obtained financing for the construction of the Project, a portion of which was derived from the Plaintiffs' purchase of the Bonds. Id. at ¶ 14.

3. The Project's financing, including the Plaintiffs' purchase of the Bonds, is governed by a series of financing documents (collectively, the "Contracts") between or among the Plaintiffs, the Authority, B Warehouse, and the Savings & Trust Company of Pennsylvania, now known as S&T Bank ("S&T"). Id. at Exs. A through C, E.

4. The Contracts, which are all interrelated and cross-reference each other, include detailed provisions regarding security for the Bonds and the remedies available in the event of a default by B Warehouse in its obligations under the Contracts. Id.

5. The Contracts specifically and repeatedly provide, that the debt issued in connection with the Project, including the Bonds, "is payable solely from the receipts and revenues derived from the Project . . . ." The debt related to the Project is also secured by a First Mortgage (now satisfied) on the Project and a Second Mortgage. Id.

6. Critically, for purposes of this action, the Contracts also place strict limits on any liability of B Warehouse, or any of its constituent members. Specifically, section 6.5 of the Mortgage Loan Agreement for the Project provides:

> 6.5. DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited . . . [subject to certain specified conditions] to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives,

> successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding.

Id. at Ex. E.

7. In 2002, the Project's warehouse lost its longtime tenant, and, as a result, B Warehouse has not made scheduled interest payments under the Contracts. Id. at ¶¶ 28, 30 and 33.

8. The Plaintiffs have recourse under the Contracts as a result of the non-payments, but that recourse is limited to the security set forth in the Contracts, and does not extend to the personal assets of the Defendants. Id. at Ex. E § 6.5.

9. This tort action represents an improper attempt by the Plaintiffs to circumvent the detailed Contracts, and the remedies set forth therein, to which the Plaintiffs agreed in 1985.

10. For the multiple reasons set forth below, the Plaintiffs' Complaint is legally insufficient in its entirety, and also violates the Pennsylvania Rules of Civil Procedure in other fundamental respects as well. As a result, Bean requests that the Court dismiss the Plaintiffs' Complaint with prejudice.

DEMURRER – ALL COUNTS

11. The Plaintiffs' rights regarding the Bonds are governed by the Contracts. See Complaint, Ex. A through C, E and G.

12. The Contracts specify and limit the rights of the contracting parties in the event of non-payment or other default by B Warehouse. See, e.g., id. at Ex. C, § 6.5.

13. The Bonds are "payable solely from the receipts and revenues derived from the Project . . ." and are secured by the land and building. The Contracts provide that, beyond the security specified in the Contracts, the obligation of the Investor Developer is unsecured, with no recourse to the joint venturers of B Warehouse. Id. at Ex. A, p. 3 and Ex. E, § 6.5.

14. The Plaintiffs' Complaint constitutes an improper attempt to circumvent the Contracts to which the Plaintiffs agreed.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – ALL COUNTS – GIST OF THE ACTION

15. The Plaintiffs' Complaint constitutes an improper attempt to recast an ordinary breach of contract claim into tort claims because of the Plaintiffs' apparent dissatisfaction with the contractual remedies contained in the written agreements governing the Project's financing.

16. Pennsylvania's gist of the action doctrine bars the Plaintiffs' claims.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT I

17. In Count I, the Plaintiffs purport to set forth a claim against Bean for tortious interference with contract.

18. However, under Pennsylvania law, a party cannot tortiously interfere with a contract to which he or his principal is a party.

19. Here, the Plaintiffs' allegations in Count I are based on Bean's alleged interference with the Contracts, a series of agreements to which B Warehouse is one of the parties. Complaint, ¶¶ 15 and 17.

20. Bean's alleged improper interference occurred while he was acting in his role as a joint venturer in, or agent for, B Warehouse. Id. at ¶¶ 19, 21 through 23.

21. Consequently, under Pennsylvania law, the Plaintiffs' claim for tortious interference with contract is legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count I of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT II

22. In Count II, the Plaintiffs allege that Bean "concealed information" from the Plaintiffs concerning B Warehouse. Complaint, ¶ 46.

23. Under Pennsylvania law, silence cannot amount to fraud absent a duty to speak.

24. The Plaintiffs' Complaint fails to establish any duty on the part of Bean to disclose to Plaintiffs the unspecified information he allegedly concealed.

25. Accordingly, Count II is legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count II of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT II

26. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

27. In Count II, the Plaintiffs allege evasively and vaguely that they "believe[] and, therefore, aver[]" that Bean concealed unspecified information regarding an unspecified distribution of unspecified assets of B Warehouse.

28. Count II lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count II of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) – (4).

DEMURRER – COUNT III

29. In Count III, an alleged claim for conversion, the Plaintiffs contend that they had a "current possessory interest" in funds held in unspecified accounts.

30. The Plaintiffs' Complaint sets forth no basis for the conclusory allegation that the Plaintiffs held such an interest in the alleged accounts, or that Plaintiffs had any right or interest in the alleged accounts.

31. To the contrary, the Plaintiffs' Complaint and the Contracts attached thereto established that the Bonds are secured only by the interest of B Warehouse in the Project, i.e., by the land and warehouse and leases related thereto.

32. For example, the Mortgage Loan Agreement, a copy of which is attached to the Complaint as Ex. E, calls for the creation of a "Reserve Fund." Under the Mortgage Loan Agreement, payments from that fund are strictly limited to specified uses. Payments from the Reserve Fund for debt service on the Bonds are not permissible under the Mortgage Loan Agreement. Complaint, Ex. E, § 4.1.

33. Moreover, the Contracts specifically preclude the Plaintiffs from pursuing any claim against Bean individually. Id. at Ex. E, § 6.5.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count III of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT IV

34. In Count IV, the Plaintiffs seek injunctive relief based on an alleged - albeit unspecified - fraudulent transfer from B Warehouse to the Defendants.

35. Count IV is legally insufficient because B Warehouse is not a debtor in relation to Plaintiffs. To the contrary, the Plaintiffs purchased the Bonds from the Authority, not B Warehouse.

36. Count IV is also legally insufficient because the Plaintiffs failed to allege that B Warehouse is "insolvent."

37. The absence of any allegation of insolvency on the part of B Warehouse is highlighted by the fact that the Plaintiffs are attempting to circumvent the security provisions contained in the Contracts in the event of non-payment by B Warehouse.

38. The security for the Bonds provided by the Contracts remains available; the Plaintiffs have simply – but improperly – chosen not to pursue it.

39. Count IV is also legally insufficient because of the Plaintiffs' failure to resort to the security available and because the Plaintiffs have not exhausted their remedies at law or reduced any claim related to the Bonds to a judgment.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count IV of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT IV

40. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

41. In Count IV, the Plaintiffs allege evasively and vaguely "upon information and belief" that the Defendants "divested" B Warehouse of unspecified "assets" through unspecified "disbursements."

42. Count IV lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count IV with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) and (3).

DEMURRER – COUNT V

43. Count V, an alleged cause of action for civil conspiracy, is dependent on the existence of some valid underlying claim.

44. As set forth above, the Plaintiffs have failed to allege any valid claim against Bean.

45. Consequently, Count V is legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss Count V with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

COMPLAINT EX. J - PA. R. CIV. P. 1028(a)(2).

46. Plaintiffs attached Exhibit J to the Complaint for no material reason.

47. Bean requests that, in the event the Court does not dismiss the Complaint in its entirety, the Court strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

CLAIM FOR ATTORNEY FEES

48. In the Complaint, the Plaintiffs assert claims to recover attorney fees.

49. The Complaint includes no valid basis for the recovery of attorney fees by the Plaintiffs, even if the Plaintiffs could otherwise sustain any of their claims.

50. In the event that any of Plaintiffs' claims survive these Preliminary Objections, Bean requests that the Court strike Plaintiffs' request to recover attorney fees.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss and/or strike Plaintiffs' claims to recover attorney fees.

FAILURE TO JOIN INDISPENSABLE PARTIES

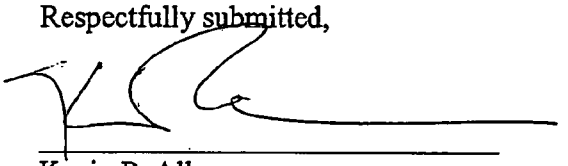
51. Plaintiffs' claims are inextricably interwoven with the Contracts.

52. In the Complaint, the Plaintiffs seek, *inter alia*, injunctive relief against entities that are not parties to this action. See Complaint and pp. 9, 10 and 12 through 14.

53. The Plaintiffs' failure to join indispensable parties deprives this Court of jurisdiction over this action and renders the Plaintiffs' Complaint legally insufficient.

WHEREFORE, Bean requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint pursuant to Pa. R. Civ. P. 1028(a)(1) and (4).

Respectfully submitted,



Kevin P. Allen
Pa. I.D. 76426
THORP REED & ARMSTRONG, LLP
One Oxford Centre, 14th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 394-2374
(412) 394-2555
Counsel for John W. Bean

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRELIMINARY OBJECTIONS** has been served this 1st day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



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Joseph M. McNerney
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Allen P. Page, Jr.
1949-1975
O. William Vanderlin
1950-1999
Charles J. McKelvey
1969-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mnewvine@mcnerneypage.com

June 29, 2004

CERTIFIED MAIL &
FAX: 1-814-849-0164
S&T Wealth Management Group
256 Main Street
Brookville, PA 15825
ATT: Bonnie Confer
Trust Officer

RE: B Warehouse Reserve DTD 41585
Account No.: 620007451P4

Dear Ms. Confer:

I am one of the joint venturers in B Warehouse by way of my IRA and by way of being Trustee of the Raldo E. Shipman Testamentary Trust which acquired the joint venturer interest of Creekside Farms. Will you please mark your files to include me on future statement mailings on the above account. My mailing address is 433 Market Street, PO Box 7, Williamsport, Pennsylvania, 17703.

If you will review the language of the various Industrial Development Bond documents, you will see that payment out of the reserve fund is limited to specific items which do not include payment of interest on the Industrial Development Bonds. Henceforth, please make no payments out of the reserve account until you have sent a notice of checks you intend to issue to John W. Bean and me so one of us may give you prior approval before payment. Specifically, you are instructed to make no further payments on the Industrial Development Bonds unless you are authorized to do so by the B Warehouse joint venturers.

The bond documents limit our reserve obligation to $300,000. You are hereby instructed to promptly liquidate such assets in the reserve account as you may select in

order to make distribution of all assets in excess of $300,000 pro-rata to the joint venturers. It is requested that you carry out this action immediately.

Please bear in mind that information pertaining to this account is confidential and a duty of confidentiality is owed to all of the joint venturers as well as the joint venture, B Warehouse, itself.

We continue to greatly appreciate the many courtesies you and the staff of S&T have given B Warehouse and we look forward to a continuing relationship with S&T in the future.

Very truly yours

George V. Cohen

GVC/mcn
cc: John W. Bean
James K. Goldberg, Esquire

RECEIVED NOV 2 9 2004

S & T BANK

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
05/17/2004	S&T MONEY MARKET INCOME REDEEM	179.52	0.00	-179.52
05/19/2004	S&T MONEY MARKET INCOME REDEEM	16,737.00	0.00	-16,737.00
06/01/2004	S&T MONEY MARKET INCOME REDEEM	3,750.00	0.00	-3,750.00
06/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
06/22/2004	S&T MONEY MARKET INCOME REDEEM	161.38	0.00	-161.38
07/01/2004	S&T MONEY MARKET INCOME REDEEM	3,750.00	0.00	-3,750.00
07/09/2004	S&T MONEY MARKET INCOME REDEEM	503.50	0.00	-503.50
07/12/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
07/19/2004	S&T MONEY MARKET INCOME REDEEM	341.49	0.00	-341.49
07/19/2004	S&T MONEY MARKET INCOME REDEEM	0.00	296,199.31	-296,199.31
08/02/2004	S&T MONEY MARKET REDEEM	0.00	12,695.45	-12,695.45
08/05/2004	S&T MONEY MARKET REDEEM	402.80	0.00	-402.80
08/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
08/20/2004	S&T MONEY MARKET INCOME REDEEM	0.00	2,873.35	-2,873.35
09/13/2004	S&T MONEY MARKET REDEEM	670.17	0.00	-670.17
09/17/2004	S&T MONEY MARKET INCOME REDEEM	0.00	250.12	-250.12
09/22/2004	S&T MONEY MARKET REDEEM	278.49	0.00	-278.49
09/22/2004	S&T MONEY MARKET INCOME REDEEM	0.00	15,000.00	-15,000.00
10/06/2004	S&T MONEY MARKET REDEEM	175.84	0.00	-175.84
10/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
10/12/2004	S&T MONEY MARKET INCOME REDEEM	0.00	2,873.39	-2,873.39
10/21/2004	S&T MONEY MARKET REDEEM	302.28	0.00	-302.28
11/03/2004	S&T MONEY MARKET INCOME REDEEM	100.00	0.00	-100.00
11/10/2004	S&T MONEY MARKET INCOME REDEEM	115.00	0.00	-115.00
11/11/2004	S&T MONEY MARKET INCOME REDEEM	1,266.75	0.00	-1,266.75
11/17/2004	S&T MONEY MARKET INCOME REDEEM	459.85	0.00	-459.85
	Total PROCEEDS FROM THE WITHDRAWAL OF ASSETS	**59,379.33**	**343,398.21**	**-402,777.54**
	DISBURSEMENTS TO OR FOR BENEFICIARIES			
01/02/2004	RICHARD GORDON	-750.00	0.00	0.00

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
01/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254439 MARC KATZEN	-1,687.50	0.00	0.00
01/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254440 MARSHALL KATZEN	-562.50	0.00	0.00
01/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254441 H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
01/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254442 H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
01/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254443 H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00
01/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254444 H KELLER TRSTEE FOR BROOK KATZEN	-187.50	0.00	0.00
02/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254445 RICHARD GORDON	-750.00	0.00	0.00
02/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255687 MARC KATZEN	-1,687.50	0.00	0.00
02/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255688 MARSHALL KATZEN	-562.50	0.00	0.00
02/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255689 H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
02/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255690 H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
02/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255691 H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00
02/02/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255692 H KELLER TRSTEE FOR BROOK KATZEN	-187.50	0.00	0.00
03/01/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255693 RICHARD GORDON	-750.00	0.00	0.00
03/01/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256888 MARC KATZEN	-1,687.50	0.00	0.00
03/01/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256889 MARSHALL KATZEN	-562.50	0.00	0.00
03/01/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256890 H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
03/01/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256891 H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
03/01/2004	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256892 H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256893			
03/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256894	-187.50	0.00	0.00
03/08/2004	MAUTHE YUTZEY & GABLER SERVICES RENDERED FINANCIAL STATEMENT 12/31/03 PREPARATION OF TAX RETURNS CHECK NUMBER 257324	-915.00	0.00	0.00
03/29/2004	EASLEY, MCCALEB & ASSOCIATES, INC. PER JOHN BEAN CHECK NUMBER 258340	-300.00	0.00	0.00
04/01/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258464	-750.00	0.00	0.00
04/01/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258465	-1,687.50	0.00	0.00
04/01/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258466	-562.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258467	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258468	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258469	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258470	-187.50	0.00	0.00
05/03/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260204	-750.00	0.00	0.00
05/03/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260205	-1,687.50	0.00	0.00
05/03/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260206	-562.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260207	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260208	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260209	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260210	-187.50	0.00	0.00
05/19/2004	MARC KATZEN ADDITIONAL INTEREST DUE FOR 2003	-7,531.65	0.00	0.00

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	CHECK NUMBER 260948			
05/19/2004	RICHARD GORDON ADDITIONAL INTEREST DUE FOR 2003	-3,347.40	0.00	0.00
	CHECK NUMBER 260949			
05/19/2004	H KELLER TRSTEE FOR HARRY KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260950			
05/19/2004	H KELLER TRSTEE FOR HIRSH KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260951			
05/19/2004	H KELLER TRSTEE FOR BRIT KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260952			
05/19/2004	H KELLER TRSTEE FOR BROOK KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
	CHECK NUMBER 260953			
05/19/2004	MARSHALL KATZEN ADDITIONAL INTEREST DUE FOR 2003	-2,510.55	0.00	0.00
	CHECK NUMBER 260954			
06/01/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15%	-750.00	0.00	0.00
	CHECK NUMBER 261410			
06/01/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15%	-1,687.50	0.00	0.00
	CHECK NUMBER 261411			
06/01/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15%	-562.50	0.00	0.00
	CHECK NUMBER 261412			
06/01/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261413			
06/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261414			
06/01/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261415			
06/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
	CHECK NUMBER 261416			
07/19/2004	RALDO E SHIPMAN TESTAMENTARY TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
	CHECK NUMBER 263745			
07/19/2004	GEORGE L COHEN IRA C/O WOODLANDS BANK DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
	CHECK NUMBER 263746			
07/19/2004	IDEAL RETIREMENT TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
	CHECK NUMBER 263747			
07/19/2004	BERTRAM B LEOPOLD RESIDUARY TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-65,163.85	0.00
	CHECK NUMBER 263748			
07/19/2004	SUSAN ANSIN DISTRIBUTION PER GEORGE COHEN	0.00	-33,569.26	0.00
	CHECK NUMBER 263749			
07/19/2004	JOHN BEAN	0.00	-49,366.55	0.00

Exhibit D

McNERNEY, PAGE, VANDERLIN & HALL
ATTORNEYS AND COUNSELLORS AT LAW

COPY

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Garth D. Everett
Peter G. Facey
Brett O. Feese*
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Matthew F. Golden
T. Max Hall
Benjamin E. Landon
Joy Reynolds McCoy
Thomas C. Marshall
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Joseph M. McNerney
1939-1967
Allen P. Page, Jr.
1949-1975
O. William Vanderlin
1950-1999
Charles J. McKelvey
1969-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mnewvine@mcnerneypage.com

July 16, 2004

FAX: 814-849-0164

S&T Wealth Management Group
256 Main Street
Brookville, PA 15825
ATT: Bonnie Confer
Trust Officer

Dear Bonnie:

These distributions should have been made at least a week ago. Please look at the most recent distributions for the correct names and mailing addresses. The names on your memo are 15 years out of date. My distributions should be to George V. Cohen IRA which is at Woodlands Bank, 2450 East Third Street, Williamsport, Pennsylvania, 17701, ATT: , Thomas B. Burkholder. Creekside Farms is now Raldo E. Shipman Testamentary Trust and can be mailed to me at the office.

It appears to me the percentages you listed are correct.

The Bond documents permit the $300,000 reserve to fall below that level. If you want more guidance you may want your counsel to speak with attorney Tim Slavish at Thorp Reed at 412-394-2559. You have no obligation to respond to Hirsh Katzen or Richard Gordon. Marc Katzen has received a letter from our counsel making our position clear.

It is absolutely imperative that the distribution checks be issued immediately!

Very truly yours,

McNERNEY, PAGE, VANDERLIN & HALL

George V. Cohen

GVC/mcn
cc: John W. Bean
Timothy M. Slavish, Esquire

Exhibit E

407-566-8836

McNERNEY, PAGE, VANDERLIN & HALL
ATTORNEYS AND COUNSELLORS AT LAW

George V. Cohen
Michael H. Collins
Garth D. Everett
Peter G. Facey
Brett O. Feese*
Jason K. Fetter
Matthew F. Golden
T. Max Hall
Benjamin E. Landon
Joy Reynolds McCoy
Thomas C. Marshall
Arin S. Pepperman
Cynthia R. Person
Robin A. Read
Kyle W. Rude
Ryan M. Tira
E. Eugene Yaw
* PA House of Representatives

433 Market Street
P.O. Box 7
Williamsport, PA 17703
Telephone: 570-326-5555
FAX: 570-326-3170
Office e-mail: mnvlaw@mcnameypage.com
Hall's Station Office
21 Kristi Road, Suite 1
Pennsdale, PA 17756
Telephone: 570-546-5111
FAX: 570-546-7581
www.mcnerneypage.com

Joseph M. McNerney
1939-1967
Allen P. Page, Jr.
1943-1978
O. William Vanderlin
1950-1999
Charles J. McKelvey
1959-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mnevins@mcnerneypage.com

July 13, 2004

Ms. Susan Ansin
61 Possum Lane
Weston, MA 02193-2317

Dear Susie:

Now that B Warehouse no longer has an ongoing net lease for its space, the Katzen Bonds (which are secured by a mortgage on the B Warehouse real estate and which I will collectively refer to as the "Bonds") have become onerous. Even when we succeeded in renting the space, since B Warehouse had to pay all the expenses of ownership (i.e. it was a "gross" lease), by having to pay part of the rents to the bondholders, we actually suffered a net loss. Our leasing agent has advised us there is no demand for warehouse space in Dubois, regardless of the rent requested.

As you know, B Warehouse has retained the law firm of Thorp Reed & Armstrong, LLP in the person of Attorney James Goldberg to advise and represent us in our efforts to renegotiate the Bonds. Your representative, Raymond Hess, of M&T Investment Group was present at that meeting. While we did not want to default, to remain in compliance with the Bond terms would assure the bankruptcy of B Warehouse under the current economic circumstances. Thus we have caused our counsel to send a letter to Marc Katzen and have asked them to fax you a copy.

The Bonds prohibit us from drawing down our reserve below $300,000 but impose no personal obligation to re-instate the reserve if it falls below that level. Thus, we have instructed S&T Bank to distribute the reserve in excess of $300,000 to the joint venturers and you will soon receive your pro-rata share. We may in the future need to replenish the

reserve to B Warehouse but for the moment we believe it is better to remove the excess reserve from the account.

John Bean has asked me to step up to the position of managing the joint venture and I reluctantly do so. By my letter to the bank you will see we have prohibited payment of any B Warehouse expenses without the prior approval of John Bean or me. It is our plan to make no further payments on the Bonds nor to pay the real estate taxes until we have renegotiated the bonds. If negotiations are unsuccessful, our counsel advises the bondholders sole remedy is to foreclose on the property. This would enable us to pay off the bonds (which we are otherwise precluded from doing) and to then hopefully lease the warehouse on a profitable basis. Our non-payment of real estate taxes may force a foreclosure sale on the premises even if the bondholders do not elect to renegotiate or foreclose.

John and I would like to meet with you and your representative to more fully apprise you of our activities. John has promised to set time aside the next time he comes north and hopefully you will be available.

I hope all is going well with you and your family. Janice and I are having a great time enjoying our semi-retired status. I look forward to seeing you. With fondest regards, I remain

Very truly yours,

George V. Cohen

GVC/mcn
cc: John W. Bean
Timothy M. Slavish, Esquire
Raymond C. Hess

PS. Susie, will you please get me your email address for future use.

Exhibit F

McNERNEY, PAGE, VANDERLIN & HALL
ATTORNEYS AND COUNSELLORS AT LAW

George V. Cohen
Michael H. Collins
Garth D. Everett
Peter G. Facey
Brett O. Feese*
Jason K. Fetter
Matthew F. Golden
T. Max Hall
Benjamin E. Landon
Joy Reynolds McCoy
Thomas C. Marshall
Ann S. Pepperman
Cynthia R. Person
Robin A. Road
Kyle W. Rude
Ryan M. Tira
E. Eugene Yaw
* PA House of Representatives

433 Market Street
P.O. Box 7
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Telephone: 570-326-6555
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Office e-mail: mpvh@mcnerneypage.com
◄◄◄►►►
Hall's Station Office
21 Kristi Road, Suite 1
Pennsdale, PA 17756
Telephone: 570-546-5111
FAX: 570-546-7561
www.mcnerneypage.com

Joseph M. McNerney
1939-1967
Allen P. Page, Jr.
1949-1975
O. William Vanderlin
1950-1999
Charles J. McKelvey
1969-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mnewvine@mcnerneypage.com

August 16, 2004

FAX: 814-849-0164

S&T Wealth Management Group
256 Main Street
Brookville, PA 15825
ATT: Bonnie Confer
Trust Officer

Dear Bonnie:

Thank you for forwarding to me the tax notice you received with respect to B Warehouse. John Bean and I, as the majority owners of B Warehouse, have determined not to make payment of the taxes at the present time. Therefore, S&T Bank is not authorized to issue any checks in payment of the real estate taxes owing on B Warehouse until further notice.

Very truly yours,

McNERNEY, PAGE, VANDERLIN & HALL

George V. Cohen

GVC/mcn
cc: John W. Bean (Fax: 941-925-2470)
Timothy M. Slavish, Esquire (Fax: 412-394-2555)

ALL-STATE® LEGAL 800-222-0510 EDR11 RECYCLED

Bill# 356 Mail Date: 8/5/2004 COUNTY OF CLEARFIELD / DUBOIS AREA SCHOOL DISTRICT / SANDY TOWNSHIP Control # 1280-42841

Description of Taxable: BLDG. & 10.49 A
Map #
C04-000-071.1

Payable To: LEE ANN COLLINS, TAX COLLECTOR
P O BOX 252
DUBOIS PA 15801
Office-625 3/4 S. Brady St PHONE/FAX 814-371-1901
MON-TUES-FRI 9 AM-3 PM, WED 9 AM-NOON
CLOSED THURSDAY, ADDITIONAL HOURS DURING
DISCOUNT PERIOD - TUES 6-8 PM, SAT 9AM-NOON

Taxes Are Due and Payable and Payment is Requested From:
B WAREHOUSE CO.
C/O TRUST DEPT.
256 MAIN ST
BROOKVILLE PA 15825

al Estate Tax
For 2004

Assessed Value	Tax Desc	Tax Rate	Discount	Face	Penalty
Land 14,925 Bldg. 468,662 Total 483,587	School	85.51	40,524.49	41,351.52	45,486.68
		Total	40,524.49	41,351.52	45,486.68

Payment Schedule

Received By	10/6/2004	@	2.00 % Discount Pay -->	40,524.49
Between	10/7/2004	AND	12/6/2004 Pay -->	41,351.52
Beginning	12/7/2004	@	10.00 % Penalty Pay -->	45,486.68

Last Day To Pay Tax Collector 1/7/2005
Unpaid Taxes Returned To Tax Claim On 1/14/2005 At 8:30 AM

Tax Collectors Copy

Date Paid

Entire Statement Must Be Presented With Payment. Self Addressed Stamped Envelope Must Be Enclosed When A Return Receipt Is Requested.

Bill# 356 Mail Date: 8/5/2004 COUNTY OF CLEARFIELD / DUBOIS AREA SCHOOL DISTRICT / SANDY TOWNSHIP Control # 1280 - 42841

Description of Taxable: BLDG. & 10.49 A
Map #
C04-000-071.1

Payable To: LEE ANN COLLINS, TAX COLLE
P O BOX 252
DUBOIS PA 15801
Office-625 3/4 S. Brady St PHONE/FAX 814-3
MON-TUES-FRI 9 AM-3 PM, WED 9 AM-NOC
CLOSED THURSDAY, ADDITIONAL HOURS
DISCOUNT PERIOD - TUES 6-8 PM, SAT 9A

Taxes Are Due and Payable and Payment is Requested From:
B WAREHOUSE CO.
C/O TRUST DEPT.
256 MAIN ST
BROOKVILLE PA 15825

NOT PAID

lue	Tax Desc	Tax Rate	Discount	Face	Penalty
nd 325 lg. 362 tal 587	School	85.51	40,524.49	41,351.52	45,486.68
		Total	40,524.49	41,351.52	45,486.68

Payment Schedule

	10/6/2004	@	2.00 % Discount Pay -->	40,524.49
Between	10/7/2004	AND	12/6/2004 Pay -->	41,351.52
Beginning	12/7/2004	@	10.00 % Penalty Pay -->	45,486.68

Last Day To Pay Tax Collector 1/7/2005
Unpaid Taxes Returned To Tax Claim On 1/14/2005 At 8:30 AM

Tax Payers Receipt

Signature of Tax Collector

Date Paid

Circle Amount Paid Above

Entire Statement Must Be Presented With Payment. Self Addressed Stamped Envelope Must Be Enclosed When A Return Receipt Is Requested.

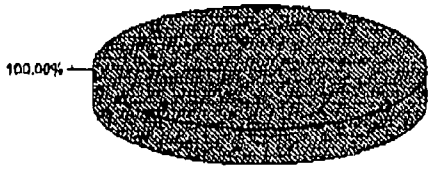
For the Account of:
B WAREHOUSE RESERVE DTD 04/15/85
Account Number:
62 00 0745 1P 4
Date:
NOVEMBER 01, 2004 - NOVEMBER 30, 2004

S&T WEALTH MANAGEMENT GROUP

SUSAN ANSIN
61 POSSUM LANE
WESTON MA 02193-2317

THE S&T WEALTH MANAGEMENT GROUP MAY RECEIVE A FEE OF AMOUNTS INVESTED IN CERTAIN MUTUAL FUNDS AND PAID BY THE ADVISOR OR DISTRIBUTOR OF THE FUND IN RECOGNITION OF ACCOUNT AND SHAREHOLDER SERVICING SERVICES PROVIDED BY AGENT.

Asset Allocation



Investment Summary

Asset Class	Market Value	%
CASH & EQUIVALENTS	278,022.64	100.00
MISCELLANEOUS ASSETS	1.00	0.00
Total Investments	**279,023.64**	**100.00**
Accrued Income	289.21	
Total Account	**279,312.85**	

Activity Summary

	Current Period	Year-To-Date
Beginning Value at Market	**268,204.84**	**649,988.74**
Income and Other Receipts	12,760.30	22,195.15
Expenses and Other Disbursements	-1,941.80	-399,421.17
Investment Purchases / Deposits / Withdrawals	0.00	0.00
Account Appreciation / Depreciation	0.00	6,260.92
Ending Value at Market	**279,023.64**	**279,023.64**

For the Account of:
B WAREHOUSE RESERVE DTD 04/15/85
Account Number:
62 00 0745 1P 4
Date:
NOVEMBER 01, 2004 - NOVEMBER 30, 2004

S&T WEALTH MANAGEMENT GROUP

INVESTMENTS

Quantity	Description	Unit Price	Cost	Market
CASH & EQUIVALENTS				
0.0000	CASH		3,750.00	3,750.00
39,732.65	S&T MONEY MARKET INCOME	1.000	39,732.65	39,732.65
235,539.99	S&T MONEY MARKET	1.000	235,539.99	235,539.99
			279,022.64	279,022.64
MISCELLANEOUS ASSETS				
1	B WAREHOUSE BUILDING DUBOIS	1.000	1.00	1.00
			1.00	1.00
	Total Investments		279,023.64	279,023.64

ACTIVITY REVIEW

Date	Description	Quantity	Cash Change	Investments Change
Income and Other Receipts				
11/11/2004	DEVELOPAC INC #17951 10/15 TO 12/14/04 RENT FOR WEYEHAEUSER		12,500.00	
S&T MONEY MARKET INCOME				
11/05/2004	INTEREST RECEIVED		26.97	
S&T MONEY MARKET				
11/05/2004	INTEREST RECEIVED		233.33	
			12,760.30	0.00
Expenses and Other Disbursements				
11/03/2004	SANDY TOWNSHIP VOLUNTEER FIRE DEPT. 2004 CONTRIBUTION CHECK NUMBER 268842		-100.00	
11/10/2004	MAUTHE YUTZEY & GABLER ADDITIONAL BALANCE DUE FOR INCOME TAX PREPARATION CHECK NUMBER 269054		-115.00	
11/11/2004	ALVETRO LANDSCAPING MOW GRASS AND TRIM AT B WAREHOUSE CHECK NUMBER 269056		-302.10	
11/11/2004	COLDWELL BANKER COMMERCIAL DEVELOPAC		-750.00	

For the Account of:
D WARCHOUSE RESERVE DTD 04/15/85
Account Number:
62 00 0745 1P 4
Date:
NOVEMBER 01, 2004 - NOVEMBER 30, 2004

S&T WEALTH MANAGEMENT GROUP

ACTIVITY REVIEW

Date	Description	Quantity	Cash Change	Investments Change
	REALTY			
	6% OF THE SCHEDULED GROSS RENT			
	RECEIVED $12,500.00.			
	CHECK NUMBER 269057			
11/11/2004	INVESTMENT MGMT FEE FOR MONTH ENDED 10/31/04		-214.85	
11/17/2004	PENELEC		-459.85	
	ACCT#10-00-50-0808-0-1			
	MONTHLY PAYMENT ON ACCOUNT			
	CHECK NUMBER 269273			
			-1,941.60	0.00

Investment Purchases / Deposits / Withdrawals

Settlement/ Posting Date	Trade Date	Quantity	Action	Cash Change	Investments Change
S&T MONEY MARKET INCOME		(Net activity this period)			
11/30/2004		10,818.7	Purchase	-10,818.70	10,818.70
				-10,818.70	10,818.70

Sales (Realized Gains & Losses)

Settlement	Trade Date	Quantity	Cost	Proceeds	ST Gain	LT Gain
					0.00	0.00

For the Account of:
B WAREHOUSE RESERVE DTD 04/15/85
Account Number:
62 00 0745 1P 4
Date:
NOVEMBER 01, 2004 - NOVEMBER 30, 2004

S&T WEALTH MANAGEMENT GROUP

Features of Your Statement

Investment Summary: A snapshot of your account's current value grouped by Asset Class, aided by a graphical representation.

Activity Summary: A summary of activity in your account for the current reporting period, and year-to-date.

Investments: A current listing of cash and investments in your account, grouped in the same order as your Investment Summary. The Market Value of investments is based on the most recent prices available from independent vendors. For certain securities, prices may not be current as of the statement date.

Activity Review: A list of transactions occurring in your account during the statement period. Activity is grouped and totaled in separate categories for Income and Other Receipts, Expenses and Other Distributions, Other Activity, Investment Purchases / Deposits / Withdrawals, and Sales (Realized Gains and Losses).

Glossary

Accrued Income: The approximate total of dividends and/or interest due but not yet paid on securities held in your account. Due to certain accounting procedures and vendor supplied information, this total may not be entirely accurate.

Action: This is a brief indication of the general type of activity within the Activity Review category for Investment Purchases / Deposits / Withdrawals.

Asset Class: Cash and securities in your account are grouped into various classes to reflect the diversification of your portfolio. The diversification is again reflected in the associated graph.

Cash Change: The dollar amount received or disbursed for this transaction.

Cost: The cost is usually the value of a security when it was acquired. The initial cost may have been revised for certain types of activity such as dividend reinvestments, bond amortization, or other miscellaneous adjustments.

Date, Settlement or Settlement/Posting Date: The date the transaction was recorded on your account. For accounts with Money Market and Savings Accounts, deposit and withdrawal activity is combined and reported as a single transaction on the last day of the reporting period.

Description: For securities, the name of the security. For transactions under Activity Review, there are two possibilities. One is a brief description of the type of activity. The other is a full description of the activity as recorded on your account's activity history file.

Investments Change: For most transactions such as purchases and dividend reinvestments, this is the cost control change for a security. For deposits and distributions of securities, it is usually the approximate market value of the security on the date the transaction was recorded.

L/T Gain: The amount of long-term gain or loss realized on a sale, redemption, maturity or distribution.

Market: The value of a security position in your account based on the Quantity and Unit Price.

Market Value: On the Investment Summary, this is the sum of current values for all securities and cash in your account.

Proceeds: The net dollar amount received from a sale, redemption or maturity after deductions for commissions and miscellaneous fees, if any.

Quantity: The number of shares, face value or units.

S/T Gain: The amount of short-term gain or loss realized on a sale, redemption, maturity or distribution.

Trade Date: The date on which a security was purchased or sold.

Unit Price: The most recent trading price available for the security. Most prices are obtained from independent vendors and are not necessarily the price at which the security could have been sold on the last day of the reporting period.

% (percent): The percentage of your Total Investments currently invested in the associated Asset Class.

Exhibit I

ALL-STATE® LEGAL 800-222-0510 EDR11 RECYCLED

cc: Kevin Brobson 12/28/(

DENNISON, DENNISON & HARPER

Attorneys at Law

Donald J. Dennison (1917-2002)
John C. Dennison, II
Troy J. Harper

293 Main Street
Brookville, PA 15825-1291
Telephone (814) 849-8316
Fax (814) 849-4656
E-Mail ddhjohn@usachoice.net

December 22, 2004

Daniel J. Malpezzi, Esq.
Buchanan Ingersoll
P.O. Box 12023
Harrisburg, PA 17108-2023

Timothy M. Slavish, Esq.
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425

RE: B Warehouse Joint Venture; S&T Bank

Gentlemen:

As you know, I have been asked by S&T Bank to represent it in the ongoing discussions in regard to the above entitled matter. I am enclosing a Statement of Transactions to Tim which were sent directly by Bonnie Confer to Dan. In the future, I will make certain that all information is sent by me to both of you.

The Reserve Fund presently has a balance of Two Hundred Seventy-nine Thousand Three Hundred Twelve and 00/100 Dollars ($279,312.00). The Reserve Fund is the only account which S&T has maintained since the beginning of the loans. Therefore, it has also served as a "Bond Fund" which has accepted payments from the Tenant and has then made payments to the Bondholders, etc.

As you can see in the Statement of Transactions, routine payments have also been made for electric, water and sewer, landscaping maintenance, etc. The last activity was payment of an electric bill in the amount of $459.00 on November 17, 2004.

In reviewing Article IV of the Reserve Fund, the Investor Developer "will not draw any moneys from the Project if the reserves in the Reserve Fund are less than $300,000.00." Presently, the only outstanding invoice is a bill for legal fees in the amount of $2,710.82. Can ordinary expenses such as the electric bill and lawn maintenance be paid now that the Reserve Fund is under $300,000.00? In addition, it is my opinion that any legal fees that are to be paid by the Reserve Fund must be directly related to the Project itself and not to problems between the

Investor Developers and the Bondholders. Are you in agreement with this interpretation?

However, the real issue is determining the purpose of the Reserve Fund especially since the Bonds are in default and the Reserve Fund has a balance of less than $300,000.00. Dan has indicated that the balance in the Reserve Fund is being held for the benefit of the Bondholders to secure payment of the money due them. The overall language of the loan documents would certainly make it appear that the Reserve Fund was created for this purpose.

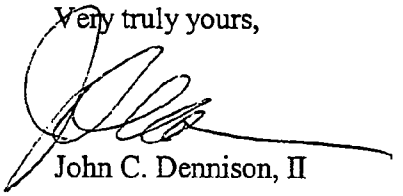
However, as Tim has pointed out, the actual language of the Reserve Fund authorizes payment on the "First Mortgage Loan Note," but fails to mention that payments are authorized to pay on the "Second Mortgage Revenue Bonds." Therefore, a literal interpretation of the provisions of the Reserve Fund do not authorize payment on the Second Mortgage Revenue Bonds.

Who is correct? S&T Bank is obviously not in a position to make this decision.

Therefore, S&T Bank would like to work out an interim agreement with your clients on what can be paid by the Reserve Fund pending either an court order or agreement of the parties as to its disposition.

Please advise me of your thoughts. I would appreciate it if you would send copies of any letters written to me to each other. Likewise, I will address all of my correspondence to both of you.

Very truly yours,



John C. Dennison, II

pc: Gregor T. Young, Esq.
Mrs. Bonnie S. Confer

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

Kevin P. Allen, Esquire
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

By: _____
Nicole L. Borda, Esquire

DATE: February 1, 2005

FILED

FEB 02 2005

William A. Shaw
Prothonotary

ENTER ON DOCKET
ON 6-24-02

ORIGINAL

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLAR as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	CIVIL ACTION
v.	:	NO.: 2004-1759
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

FILED 3cc
m/ 1:45 BH Atty Borda
FEB 02 2005
William A. Shaw
Prothonotary/Clerk of Courts

PLAINTIFFS RESPONSE TO DEFENDANT GEORGE V. COHEN'S PRELIMINARY OBJECTIONS

Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Kellar as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust ("Plaintiffs") file this Response to Defendant George V. Cohen's preliminary objections to the Complaint ("Cohen POs"). A true and correct copy of the Cohen POs are attached hereto as Exhibit "A". For the reasons set forth below, the preliminary objections should be denied.

INTRODUCTION

By filing his preliminary objections, Defendant George V. Cohen ("Cohen") seeks the earliest possible dismissal of Plaintiffs' claims in this lawsuit. Cohen seeks to avoid this Court's and Plaintiffs' scrutiny of his and his co-Defendant's scheme to defraud and deprive Plaintiffs of the benefit of their investment in a project backed by the Clearfield County Industrial Redevelopment Authority ("Authority"). Hiding behind language in project financing

documents that he has willfully and intentionally disregarded in the past, Cohen asks this Court to dismiss summarily the lawsuit.

By contrast, Plaintiffs respectfully suggest that they have pled a case against Defendants sufficient to withstand summary dismissal, especially in light of the high standard that Cohen must meet in support of his preliminary objections. The Pennsylvania Supreme Court has held that the standard of review of preliminary objections in the nature of a demurrer is as follows:

> Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. The test on preliminary objections is whether it is clear and free from doubt from all of the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his right to relief.

Bower v. Bower, 531 Pa. 54, 57, 611 A.2d 181, 182 (1992) (citations omitted). In addition, it is improper for Cohen to rely, as he does, on facts not found in Plaintiffs' Complaint. "[P]reliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer." *Mellon Bank N.A. v. Fabinyi*, 650 A.2d 895, 899 (Pa. Super. 1994).

In filing his preliminary objections, Cohen seeks endorsement from this Court of his and his co-Defendant's scheme to force Plaintiffs to either (1) declare a default under the Authority bonds at issue ("Bonds"), or (2) renegotiate the terms of the Bonds to provide for new terms more favorable to Defendants and the "Investor Developer" of the project, B Warehouse Co. Remove Defendants' tortious conduct from the equation, however, and there is no reason to declare a "default." As alleged in the Complaint, B Warehouse Co. and S&T Bank ("S&T"), as paying agent under the Bonds, had more than sufficient funds available to satisfy their

obligations under the Authority-backed project finance documents. Defendants, however, prevented that from happening and, in fact, have taken steps to convert/distribute nearly $300,000 in pledged collateral funds to ensure that S&T and B Warehouse Co. could not satisfy their contractual obligations.[1] In addition, Defendants have instructed S&T to refrain from paying the real estate taxes on the project facility, further impairing Plaintiffs' collateral.[2]

As the Plaintiffs' response to the preliminary objections shows, this lawsuit relates to a complex public finance project facilitated by the Authority. It requires the examination of several complicated and lengthy legal documents and the consideration of additional facts beyond the documents and pleadings. Plaintiffs respectfully suggest that the seriousness of their claims and the egregiousness of Defendants' conduct demand more than the cursory review and summary dismissal that Cohen desires. Accordingly, Plaintiffs respectfully request that the Court overrule Cohen's preliminary objections.

Plaintiffs respond to the specific paragraph averments in Cohen's preliminary objections as follows:

---

[1] By correspondence dated June 29, 2004 and obtained by Plaintiffs from S&T, Cohen instructed S&T to cease all payments on the Bonds and to liquitdate and distribute all assets held in the B Wareshouse Co. account in excess of $300,000 pro-rata to the joint venturers. A true and correct copy of the June 29, 2004 letter from Cohen to S&T is attached hereto as Exhibit "B". A true and correct copy of a "Statement of Transactions" that Plaintiffs obtained from S&T is attached hereto as Exhibit "C". This document shows that the monthly interest payments to Plaintiffs under the Bonds ceased as of July 1, 2004. On July 16, 2004, Cohen again contacted S&T, demanding the distribution from the B Warehouse Co. account be "issued immediately" and further instructin S&T to not respond to the concerns of Plaintiffs, as bondholders. A true and correct copy of the July 16, 2004 correspondence from Cohen to S&T is attached hereto as Exhibit "D". A short time thereafter, as demonstrated in the Statement of Transactions and at the direction of Cohen, S&T disbursed nearly $300,000 from the monies that S&T held and that it previously had used to fund the minimum monthly payments to Plaintiffs under the Bonds.

[2] A true and correct copy of a July 13, 2004 letter from Cohen to Susan Ansin, a joint venturer in B Warehouse Co., is attached hereto as Exhibit "E". In the letter, Cohen reveals Defendants' scheme—particularly, Defendants' intention to stop paying the real estate taxes and the minimum monthly interest on the Bonds to force Plaintiffs to renegotiate the terms. By letter dated August 16, 2004, Cohen specifically instructed S&T to not make any further payments of the real estate taxes. A true and correct copy of the August 16, 2004 letter form Cohen to S&T is attached hereto as Exhibit "F". A true and correct copy of a statement reflecting unpaid taxes owed by B Warehouse Co. totaling $45,486.68 is attached hereto as Exhibit "G".

RESPONSE

1. Admitted.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that the commercial economic development warehouse project that is the subject of this action ("Project") was funded partially with the Bonds. It is further admitted that various documents, some of which are attached to the Complaint, evidence the terms of the financing for the Project. It is denied that Plaintiffs were "parties" to all of the Project finance documents. Portions of the Project finance documents, however, convey or bestow upon Plaintiffs, as holders of the Bonds, certain legally protected rights and interests in addition to those conferred by the laws of this Commonwealth. The Project finance documents are writings that speak for themselves, and Cohen's characterization of the nature or content thereof is denied.

4. Admitted in part and denied in part. It is admitted that the Project finance documents provide for certain security and collateral to secure performance under the Bonds. The Project finance documents are writings that speak for themselves, and Cohen's characterization of the nature or content thereof is denied. It is further admitted that the Project finance documents also provide certain remedies in the event B Warehouse Co., the "Investor Developer" on the Project and a nonparty in this proceeding, "defaults" in addition to other remedies available to Plaintiffs under the laws of this Commonwealth. The remaining averments of this paragraph are denied. By way of further response, Plaintiffs deny Cohen's implication that this lawsuit is about a default by B Warehouse Co. and that the terms in the Project finance documents relating to "default" are relevant or applicable in this case. To the contrary, this case

is about an unlawful scheme that two individuals—the named Defendants—came up with to force Plaintiffs, as bondholders, into a corner and do one of two things, either of which would benefit Defendants and be detrimental to Plaintiffs: (1) declare a default by B Warehouse Co. and foreclose on the Project facility, or (2) give into Defendants and renegotiate the Bonds to provide for terms more favorable to Defendants and B Warehouse Co. To accomplish this scheme, Defendants engaged in the following conduct that Plaintiffs know of:

(a) They instructed the paying agent on the Bonds—S&T—to cease paying Plaintiffs the required monthly interest on the Bonds (a minimum of $3,750 per month) as of July 2004, notwithstanding S&T's contractual obligation under the Project finance documents to do so. (Compl. ¶¶ 29, 30, 33, 37, 40, 41-43.)

(b) They unlawfully and unjustifiably exerted control over B Warehouse Co., preventing B Warehouse Co. from performing its obligations under the Project finance documents with respect to payment of the minimum monthly interest on the Bonds. (Compl. ¶¶ 29, 30, 42, 43.)

(c) While claiming, *inter alia*, that B Warehouse Co. lacked the funds to continue to honor the Bonds, they concealed from Plaintiffs the distribution of nearly $300,000 in collateral funds held by S&T that could and should have been used to satisfy B Warehouse Co.'s and S&T's obligations under the Bonds. (Compl. ¶¶ 46, 52, 57.)

(d) They have instructed S&T to refrain from paying real estate taxes on the Project facility, further endangering and impairing the value of collateral securing performance of the Bonds. (Exs. "E" and "F" hereto.)

Plaintiffs have brought this action, asking the Court to put a stop to Defendants' scheme to defraud, deceive, and steal from Plaintiffs. To rule on Plaintiffs' claims, this Court must consider not only the many lengthy and complex Project finance documents, but also the conduct of S&T and B Warehouse Co. over the past two decades and the more recent actions of Defendants. This cannot be done in the summary fashion Cohen urges in his preliminary objections.

5. Admitted in part and denied in part. It is admitted that a First Mortgage (now satisfied) and a Second Mortgage secured the debt related to the Project. The Project finance documents are writings that speak for themselves, and Cohen's characterization of the nature or content thereof is denied. Plaintiffs deny that the carefully chosen quoted excerpt from an unidentified document accurately reflects the exclusive source of funds made available and pledged as collateral to protect Plaintiffs' rights as holders of the Bonds. To the contrary, the financing for the Project is incredibly complex. Deciphering the intent, arrangements, and relations of the parties thirty years since the documents became effective has been made more difficult by the lack of separate, segregated accounts required under the Project finance documents. *See* Authority Debt Resolution § 15, Compl. Ex. "B" (regarding "Bond Fund"); Mortgage Loan Agreement § 4.1, Compl. Ex. "E" (regarding "Reserve Fund"). Incredibly, in defense of this lawsuit Cohen is relying on provisions in documents with which he and B Warehouse Co. failed or refused to comply for the past two decades. Plaintiffs respectfully suggest that the documents and relation of the parties are not as clear-cut as Cohen would have this Court believe. This Court must take the time to sort out the events of the past two decades that have led the parties to this point. A summary dismissal at this early stage in litigation under these circumstances is simply not appropriate.

6. Denied. The Mortgage Loan Agreement is a writing that speaks for itself, and Cohen's characterization of the nature or content thereof is denied. By way of further response, Section 6.5 of the Mortgage Loan Agreement does not apply in this case. In his preliminary objections, Cohen is asking this Court to ignore the tort claims asserted in the Complaint and, more specifically, Defendants' scheme to deceive, defraud, and steal from Plaintiffs. Rather, contrary to the governing standard of review, Cohen would have this Court read the Complaint in the light most favorable *to Defendants.* In that light, Section 6.5 of the Mortgage Loan Agreement is an impenetrable shield that gives Defendants the freedom under the law to scheme, deceive, defraud, and steal from Plaintiffs so long as they *allege* to be doing so in the name of B Warehouse Co. They seek to avoid this Court's and Plaintiffs' scrutiny of their wrongful conduct through summary dismissal of this lawsuit. In short, they ask this Court to condone their scheme without examining fully the facts and circumstances relevant to Plaintiffs' claims. As much as Plaintiffs are refusing, by this lawsuit, to give into Defendants' scheme, Plaintiffs respectfully request that this Court refuse Cohen's request in his preliminary objections to deny Plaintiffs the opportunity to conduct discovery and present their full case to this Court for a ruling on the merits.

7. Admitted in part and denied in part. Plaintiffs admit, upon information and belief, that from January 1, 1986 through June 30, 2002, a single tenant ("Tenant") continuously occupied the Project facility. (Compl. ¶¶ 24, 28.) The remaining averments of this paragraph are denied. Specifically, it is denied that the loss of the Tenant was the reason why the minimum monthly payments to Plaintiffs under the Bonds ceased. This is not a fact found in the Complaint and, thus, cannot be considered by the Court in ruling on Cohen's preliminary objections. By even asserting this additional fact in support of his preliminary objections, Cohen

fails to accept as true all well-pleaded facts set forth in the Complaint. Had he done so, he would accept as true the fact that even after the Tenant's lease expired in June 2002, B Warehouse Co. and S&T continued to make the minimum monthly payments under the Bonds to Plaintiffs for two years, or until July 2004. (Compl. ¶ 29.) Accordingly, it was not the loss of the Tenant that caused the payments to stop, as Cohen alleges. Rather, as alleged in the Complaint, the payments stopped because "Defendants wantonly, intentionally, maliciously, and without cause took action to prevent B Warehouse Co., as obligor on the Bonds, and S&T, as Paying Agent, from making the regularly scheduled monthly payments to Plaintiffs." (Compl. ¶ 30.) By way of further response, since filing the Complaint Plaintiffs have learned that B Warehouse Co. has obtained a substitute tenant for the Project facility and has received rental income.[3] Nonetheless, Defendants continue to prevent S&T and B Warehouse Co. from using that rental income to make the required monthly payments under the Bonds. The fact that B Warehouse Co. continues to receive rental income from the Project facility while Plaintiffs go unpaid only proves Plaintiffs' claim—that it is not the loss of rental income, but the tortious conduct of Defendants that have prevented S&T and B Warehouse Co. from making the mandatory monthly interest payments to Plaintiffs on the Bonds.

8. Admitted in part and denied in part. It is admitted that Plaintiffs have certain remedies available to them under the Project finance documents in the event of a "default" by B Warehouse Co. in addition to those available under the laws of the Commonwealth. It is denied, however, that the remedies in the Project finance documents were either intended to or even could compensate Plaintiffs for the harm they have and will continue to suffer as a result of the

[3] A November account statement from S&T for the B Warehouse Co. account shows rental income in November 2004 of $12,500. A true and correct copy of the account statement is attached hereto as Exhibit "H".

tortious conduct of Defendants that is the subject of this action. For reasons set forth more thoroughly in paragraph 6 above, this case is not about a "default" by B Warehouse Co. The facts, as alleged in the Complaint, are that B Warehouse Co. and S&T had and continue to have funds available to them to pay Plaintiffs the required minimum monthly amounts due under the Bonds and to pay the real estate taxes on the Project facility. (Compl. ¶ 36.) As part of their scheme to defraud, deceive, and steal from Plaintiffs, Defendants unlawfully interfered with B Warehouse Co.'s and S&T's performance and converted nearly $300,000 in collateral funds that could have and should have been used by S&T and B Warehouse Co. to honor their obligations under the Project finance documents. Defendants have also instructed S&T not to pay the real estate taxes on the Project facility. Defendants want Plaintiffs to declare a "default" in furtherance of their scheme. Rather than give in to Defendants' scheme, Plaintiffs initiated this action to hold Defendants accountable for it. Nothing in the Project finance documents shields Defendants from personal liability for their tortious conduct. Defendants' conduct is actionable and should be scrutinized through discovery and a full evidentiary presentation to the Court.

9. Denied. It is denied that Plaintiffs are circumventing the Project finance documents. To the contrary, through their scheme to defraud, deceive, and steal from Plaintiffs, as set forth more thoroughly in paragraph 4 above and in the Complaint, *Defendants* have attempted to circumvent the terms of the Project finance documents. They have attempted to create unilaterally and unlawfully a circumstance of "default" where none would have existed but for their interference (Compl. ¶¶ 30, 36) for the sole purpose of trying to avoid compliance with the terms of the Bonds and the Project finance documents. (Compl. ¶¶ 32, 41, 47, 55, 63.) At the same time, they have deprived S&T and B Warehouse Co. of nearly $300,000 in collateral funds that could and should have been used to satisfy their obligations under the Project finance

documents and risk further impairment of the Project facility by their unjustified decision to instruct S&T to not pay real estate taxes. Through this lawsuit, Plaintiffs seek to hold Defendants accountable for their tortious conduct.

10. Denied. Plaintiffs have sufficiently stated claims against Defendants for tortious interference, fraud, conversion, violations of the Uniform Fraudulent Transfers Act, and civil conspiracy. Moreover, Cohen's preliminary objections improperly raise and rely on facts not found in and contradicted by the Complaint. Accordingly, the preliminary objections show that there are material factual issues in this case that must be resolved through discovery and an evidentiary presentation to the Court. It would, thus, be improper to dismiss summarily the Complaint at this early stage of the case.

DEMURRER - ALL COUNTS

11. Admitted in part and denied in part. It is admitted that Plaintiffs have certain rights under the Project finance documents in addition to those conferred by the laws of this Commonwealth. It is denied, however, that these rights under the Project finance documents permit or authorize Defendants to engage in unlawful tortious schemes to defraud, deceive, and steal from Plaintiffs without consequence in a court of law. The Project finance documents are writings that speak for themselves, and Cohen's characterization of the nature or content thereof is denied.

12. Denied. The Project finance documents are writings that speak for themselves, and Cohen's characterization of the nature or content thereof is denied. By way of further response, the Project finance documents do not shield Defendants from tort liability, particularly

with respect to their scheme to deceive, defraud, and steal from Plaintiffs, which is the subject of this lawsuit.

13. Denied. The Project finance documents are writings that speak for themselves, and Cohen's characterization of the nature or content thereof is denied. By way of further response, Plaintiffs deny that the carefully chosen quoted excerpt from an unidentified document accurately reflects the exclusive source of funds made available and pledged as collateral to protect Plaintiffs' rights as holders of the Bonds. Plaintiffs incorporate by reference as if expressly set forth herein their response to paragraph 5 above. It is further denied that the provisions from the Project documents that Cohen cites include specific language to release Defendants from liability for the commission of future torts—*i.e.*, torts committed after the documents became effective in or around April 1985 (Compl. ¶¶ 9, 10, 17). At issue in this litigation is a scheme to create a "default" by B Warehouse Co. where none would have arisen but for Defendants' tortious conduct. The provisions of the Project finance documents do not authorize such schemes and do not expressly excuse individual Defendants from liability for engaging in such schemes.

Under Pennsylvania law, such exculpatory provisions are generally disfavored and must be strictly construed against the party seeking their protection. *See Soxman v. Goodge*, 539 A.2d 826, 828 (Pa. Super.), *appeal denied*, 520 Pa. 575, 549 A.2d 136, *and appeal denied*, 520 Pa. 577, 548 A.2d 137 (1988). In addition, the Court should not apply the exculpatory language in this case because doing so would be against public policy. "Contracts against liability . . . violate public policy when they involve a matter of interest to the public or the state." *Seaton v. East Windsor Speedway, Inc.*, 582 A.2d 1380, 1382 (Pa. Super. 1990). The Project finance documents on which Cohen relies are not private agreements between two individuals. To the

contrary, they represent an exercise of authority conferred by the Commonwealth on the Authority pursuant to the Economic Development Finance Law, 73 P.S. §§ 371-386 ("Finance Law"). The Authority is identified in the Mortgage Loan Agreement as a "non-profit public corporate and political instrumentality of the Commonwealth of Pennsylvania." *See* Mortgage Loan Agreement at 1 (Compl. Ex. "E"). In addition, the Finance Law describes the Authority as a "public instrumentality of the Commonwealth and a body politic and corporate." 73 P.S. § 373. The Authority was created and empowered to further the express public policy of the Commonwealth: "[I]t is hereby declared to be the policy of this Commonwealth to promote the health, safety, morals, employment, business opportunities, economic activity and general welfare of the people thereof by providing for the creation of industrial or commercial development authorities which shall exist and operate as public instrumentalities of the Commonwealth . . . ." *Id.* § 372. Accordingly, the Project is clearly a matter of public concern. Future investment in bonds of the Authority will be stifled and the public policy under the Finance Law harmed if conduct of the type alleged in the Complaint is permitted to occur without consequence in a court of law. Accordingly, for this additional reason, Cohen should not be permitted to rely on the exculpatory language found in the Project finance documents to avoid personal liability for his tortious conduct.

14. Denied. By way of further response, the allegations in this paragraph are virtually identical to those raised by Cohen in paragraph 9 of his preliminary objections. Plaintiffs incorporate their response to paragraph 9 above as if expressly set forth herein.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

DEMURRER - ALL COUNTS - GIST OF THE ACTION

15. Denied. By way of further response, Plaintiffs incorporate by reference as if expressly set forth herein their responses to paragraphs 4-9 above. Indeed, the assertions in this paragraph are illustrative of Defendants' scheme to deceive, defraud, and steal from Plaintiffs. Defendants are attempting to create a "default" because of their perception that they will benefit from it. (Compl. ¶¶ 32, 41, 47, 63.). By analogy, this case is no different than a circumstance where the owner of a perfectly fine building sets fire to it because he perceives he will be better off with the insurance proceeds than the actual building. Defendants' conduct is no more lawful than that of the hypothetical pyromaniac.

16. Denied. Cohen's oversimplification of the complex issues in this case is fatal to his preliminary objections. Plaintiffs' lawsuit is not about Cohen or his co-Defendant breaching a contract. To the contrary, Defendants intentionally misrepresented the financial status of B Warehouse Co., fraudulently converted funds in S&T's possession pledged as collateral and security for performance under the Bonds, unlawfully interfered with the contractual obligations of B Warehouse Co. and S&T to Plaintiffs, and have taken further steps to impair Plaintiffs' collateral under the Bonds by instructing S&T to refrain from paying required real estate taxes for the Project facility. As alleged in the Complaint, and which this Court and Defendants must accept as true for purposes of ruling on Cohen's preliminary objections, Defendants committed these acts wantonly, willfully, and maliciously with the intent to force Plaintiffs to renegotiate the terms of the Bonds to further benefit Defendants at Plaintiffs' expense. (Compl. ¶¶ 30, 32, 41, 47, 63.) "Defendants actions were neither lawful, justified, nor privileged." (Compl. ¶ 42.) It is this conduct that gives rise to the tort claims. In short, in this lawsuit, the gist of the action is Defendants' wrongful conduct—the related Project finance documents on which Cohen relies are

merely collateral. *See Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 582 (Pa. Super. 2003) (finding that a breach of contract can also give rise to an actionable tort where the "wrong ascribed defendant [is] the gist of the action, the contract being collateral").

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

DEMURRER - COUNT I

17. Admitted. By way of further response, Plaintiffs have pled all required elements of tortious interference with contract: (1) an exiting contractual relationship between Plaintiffs and third parties—S&T (Compl. ¶¶ 27, 39) and B Warehouse Co. (Compl. ¶ 43); (2) Defendants' interference with S&T's performance of its obligations (Compl. ¶¶ 40, 41, 43) and B Warehouse Co.'s performance (Compl. ¶ 43) by inducing a breach or otherwise causing these third parties not to perform; (3) lack of any privilege of Defendants to do so (Compl. ¶ 42); and (4) pecuniary loss to Plaintiffs as a result (Compl. ¶ 44). *Al Hamilton Contracting Co. v. Cowder*, 644 A.2d 188, 191 (Pa. Super. 1994). Accordingly, this Court should overrule Cohen's demurrer as to Count I.

18. Admitted in part and denied in part. It is admitted that "[e]ssential to recovery on the theory of tortious interference with contract is the existence of three parties." *Maier v. Maretti*, 671 A.2d 701, 707 (Pa. Super. 1996). It is denied, however, that Plaintiffs have failed to plead the required facts to satisfy this requirement, as explained further in paragraph 17 above.

19. Admitted in part and denied in part. Plaintiffs admit that Count I of their Complaint is based on Defendants' tortious interference with B Warehouse Co.'s *and S&T's*

obligations under the various, many, and lengthy Project finance documents. The remaining averments of this paragraph are denied.

20. Denied. Plaintiffs have not alleged any facts in the Complaint to support the contention in this paragraph. By way of further response, Plaintiffs allege in the Complaint, upon information and belief, that Cohen's Co-Defendant, John W. Bean ("Bean"), is currently a joint venturer of B Warehouse Co. (Compl. ¶ 19.) Plaintiffs further allege that B Warehouse Co. appointed Bean as its attorney in 1992. (Compl. ¶ 21.) Plaintiffs, however, *do not allege* that Cohen is a joint venturer or agent of B Warehouse Co. Moreover, Plaintiffs do not allege that when Cohen committed the wrongful acts set forth in the Complaint that he did so in the capacity of a joint venturer or agent of B Warehouse Co. To the contrary, Plaintiffs allege only that Defendants "exerted control over B Warehouse Co.'s affairs" (Compl. ¶ 23) in a manner that was "wanton, intentional, and malicious" as well as unlawful, unjustified, and nonprivileged (Compl. ¶¶ 41, 42.) Reading these allegations in the light most favorable to Plaintiffs, not Defendants, a genuine issue of material fact exists as to whether, in the course of committing the alleged tortious conduct, Cohen acted unlawfully and unjustifiably, as alleged in the Complaint (Compl. ¶ 42), or acted lawfully and justifiably on account of B Warehouse Co. or as a joint venturer, as alleged in Cohen's preliminary objections (Cohen POs ¶ 20). The time to resolve this issue is not at the preliminary objection stage. Rather, Cohen should deny Plaintiffs' allegations and raise any additional facts he wishes in new matter. Moreover, Cohen does not claim to be an agent of S&T, another third-party with contractual obligations to Plaintiffs. Accordingly, Cohen's argument does not and cannot justify dismissal of Count I as to Defendants' interference with S&T's performance under the Project finance documents merely because Cohen alleges he was acting as a joint venture or on account of B Warehouse Co.

21. Denied. By way of further response, Plaintiffs incorporate by reference as if expressly set forth herein their response to paragraph 17 above.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

DEMURRER - COUNT II

22. Admitted. By way of further response, Plaintiffs allege "that Defendants wantonly, intentionally, and maliciously concealed information *regarding the distribution of the assets of B Warehouse Co.* to avoid the regularly scheduled interest payments on the Bonds to Plaintiffs." (Compl. ¶ 46 (emphasis added).)

23. Denied. Cohen's statement of law is incomplete and, thus, misleading. As a general statement, it is true that under Pennsylvania law "mere silence without a duty to speak will not constitute fraud." *Debbs v. Chrysler Corp.*, 810 A.2d 137, 155 (Pa. Super. 2002), *appeal denied*, 574 Pa. 744, 829 A.2d 311 (2003). The Pennsylvania Supreme Court, however, has generally defined "fraud" as follows:

> Fraud consists of anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or silence, word of mouth, or look or gesture.

Moser v. DeSetta, 527 Pa. 157, 163, 589 A.2d 679, 682 (1991) (emphasis added); *see Debbs*, 810 A.2d at 155 (quoting *Moser*). Accordingly, the Court must consider the totality of the circumstances alleged in the Complaint (Compl. ¶ 45) to determine whether Plaintiffs' fraud claim is based on "mere silence" or something more. Plaintiffs' respectfully suggest, and Cohen's preliminary objections confirm, it is something more than mere silence. Indeed,

Defendants' concealed from Plaintiffs their conversion and distribution of nearly $300,000 in funds held by S&T while at the same time maintaining that B Warehouse Co. lacked funds to pay the mandatory monthly interest payments because of the loss of the Tenant. (Compl. ¶¶ 31, 32 and Ex. "H" thereto; Cohen POs ¶ 7 (wherein Cohen continues to claim fraudulently that payments stopped because of the loss of the Tenant).) In short, the concealment was in furtherance of the overall scheme to defraud, deceive, and steal from Plaintiffs, the totality of which constitutes the actionable fraud. (Compl. ¶ 47.)

24. Denied. By way of further response, as set forth in paragraph 23 above, this case is not about "mere concealment" and, thus, Plaintiffs are not required to establish an actual duty to disclose to succeed in Count II of the Complaint. Even if they were, however, Plaintiffs respectfully suggest that Cohen's duty to be forthright with respect to the financial condition of B Warehouse Co. was triggered when he misrepresented, through B Warehouse Co.'s counsel, the financial demise of B Warehouse Co. and alleged resultant inability of both S&T and B Warehouse Co. to make good on their contractual obligations to Plaintiffs' under the Project finance documents. At that point, he had a duty to also make sure Plaintiffs were aware that S&T and the Bank possessed nearly $300,000 to satisfy those obligations, but that he and his co-Defendant intended to convert those funds as part of their scheme to fabricate a crisis.

25. Denied. For reasons set forth in paragraphs 22 through 24 above, the Complaint clearly sets forth facts sufficient to show Defendants' fraud—*i.e.*, concealment in furtherance of a scheme to defraud, deceive, and steal from Plaintiffs in an effort to force Plaintiffs to take certain actions favorable to Defendants that would be detrimental to Plaintiffs' interests. This conduct has resulted in harm to Plaintiffs in the form of a significant and substantial decrease in

the market value of the Bonds. Thus, Plaintiffs have sufficiently stated a claim for fraud against Defendants, and the Cohen preliminary objection to Count II should be overruled.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

LACK OF SPECIFICITY - COUNT II

26. Admitted.

27. Denied. By way of further response, after incorporating by reference paragraphs 1 through 44 of the Complaint, Plaintiffs allege in paragraph 46 of the Complaint "that Defendants wantonly, intentionally, and maliciously concealed information *regarding the distribution of the assets of B Warehouse Co.* to avoid the regularly scheduled interest payments on the Bonds to Plaintiffs." (Emphasis added.) Though Plaintiffs have made certain efforts to conduct formal discovery in this case to confirm this averment, Defendants have refused to cooperate. On or about December 18, 2004, Defendants filed objections to a third-party subpoena Plaintiffs intended to serve on S&T. In addition, Defendants have refused to respond to requests for documents pursuant to Pa. R.C.P. 4009.1 and 4009.11, forcing Plaintiffs to file motions to compel with this Court.[4] Despite Defendants' efforts to block the discovery process, however, Plaintiffs have been able to obtain informally additional information since filing their Complaint to support the allegations in paragraph 46. Specifically, so far Plaintiffs have learned that, despite claiming that S&T and B Warehouse Co. lacked the funds necessary to perform under the Bonds due to the loss of the Tenant, Cohen instructed S&T in July 2004—*i.e.*, the

[4] On January 14, 2005, this Court granted Plaintiffs' motions to compel and ordered Bean and Cohen to produce full and complete discovery responses within thirty (30) days of the date of the Order, or by February 14, 2005.

same month payments under the Bonds stopped—to distribute nearly $300,000 in collateral funds held by S&T that obviously could and should have been used to pay the money due to Plaintiffs under the Project finance documents. (*See* Exs. "B", "C" and "D" hereto.) Defendants' alleged ignorance as to the nature of Plaintiffs' allegations in Count II in light of the foregoing deserves little attention. Indeed, Plaintiffs expect that further discovery (which Defendants hope to avoid) will further substantiate Plaintiffs' claims in paragraph 46 of the Complaint.

28. Denied. Plaintiffs have pled fraud with particularity pursuant to Pa. R.C.P. 1019(b) and have alleged facts sufficient to maintain their claim for fraud against Defendants. Amendment of the pleading to include the additional information Plaintiffs have discovered since filing the Complaint outlined in paragraph 27 is unnecessary, as Plaintiffs expect even more information of Defendants' misconduct will surface through discovery. Nonetheless, if more specificity is required in advance of discovery, Plaintiffs respectfully request leave to amend the Complaint rather than outright dismissal of Count II of the Complaint. *See* Pa. R.C.P. 126, 1033; *Nichols v. Southeastern Pa. Transp. Auth.*, 550 A.2d 283, 287-87 (Pa. Cmwlth. 1988) (reversing and remanding trial court decision with respect to preliminary objection on lack of specificity with directive that trial court grant leave to amend).

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

DEMURRER - COUNT III

29. Admitted in part and denied in part. Plaintiffs admit that, after incorporating paragraphs 1 through 49 of the Complaint, Plaintiffs allege in Count II that they had a "current possessory interest in the funds held in *the B Warehouse accounts* at the time that Defendants

depleted those accounts." (Compl. ¶ 51 (emphasis added).) Accordingly, it is denied that the accounts are unspecified, as Cohen contends. Clearly, the accounts in question are "B Warehouse accounts" that held the monies Defendants fraudulently converted/distributed as alleged in Count II of the Complaint.

30. Denied. By way of further response, the allegation contained in paragraph 51 of the Complaint is an allegation of fact, which Cohen and the Court must accept as true in ruling on Cohen's preliminary objections. Cohen may contest the allegation, but preliminary objections in the nature of a demurrer is not the appropriate time or place to do so. Plaintiffs intend to prove through discovery that all funds held in the B Warehouse Co. accounts constitute Plaintiffs' collateral and security for performance under the Bonds.

31. Denied. The Project finance documents are writings that speak for themselves, and Cohen's characterization of the nature or content thereof is denied. By way of further response, Plaintiffs deny that the Bonds are secured "only" by the interest of B Warehouse Co. in the Project, and Plaintiffs incorporate by reference as if expressly set forth herein its response to paragraph 5 above. Indeed, the Project finance documents have numerous provisions relating to security and collateral. *See, e.g.*, Mortgage Loan Agreement §§ 2.4 (relating to pledge of personal property and fixtures), 3.1 (relating to pledge of "other monies" in the possession of S&T; 4.1 (relating to pledge of Project "gross revenues"), 4.5 (relating to pledge of leases, rentals, and "other monies" paid under leases).

32. Admitted in part and denied in part. The Project finance documents are writings that speak for themselves, and Cohen's characterization of the nature or content thereof is denied. By way of further response, it is admitted that Section 4.1 of the Mortgage Loan

Agreement (Compl. Ex. "E") calls for a "Reserve Fund," which shall be drawn upon for only certain itemized purposes. However, the Authority Debt Resolution (Compl. Ex. "B") further requires the creation and maintenance of another separation fund—*i.e.*, the "Bond Fund," from which Plaintiffs were to be paid. All gross revenues from the Project were to be deposited into the Bond Fund for payments to Plaintiffs. *See* Debt Resolution § 15, Compl. Ex. "B". Once Plaintiffs and, pursuant to Section 4.1 of the Mortgage Loan Agreement, "all Project operating, maintenance and debt service costs on the First Mortgage Loan Note and . . . Bonds" were paid, the gross revenues could be deposited into the "Reserve Account." That was how it was *supposed* to work; it is not reality. To avail himself of these portions of the Project finance documents, Cohen will have to prove at trial that the account from which he and his co-Defendant converted nearly $300,000 was, in fact, the "Reserve Fund" provided for in the Mortgage Loan Agreement. Indeed, as documents made available to Plaintiffs only after the Complaint was filed show, S&T maintained only *one* account for B Warehouse Co.[5] and has paid Plaintiffs their monthly interest payments on the Bonds from that one account (*See* Ex. "I" hereto). Whether this single account was the "Reserve Fund," the "Bond Fund," or some commingled fund is a material factual question for the Court to decide after discovery and an evidentiary presentation by the parties. It cannot be resolved by preliminary objection.

33. Denied. The averments in this paragraph are nothing more than a short-form assertion of Cohen's first preliminary objection in the nature of a demurrer to the entire Complaint. For that reason, Plaintiffs incorporate by reference as if expressly set forth herein paragraphs 11 through 14 above.

[5] A true and correct copy of a December 22, 2004 letter from S&T's counsel is attached hereto as Exhibit "I". In that letter, S&T's counsel discloses that S&T maintained only one account for the Project since its inception.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

DEMURRER - COUNT IV

34. Admitted in part and denied in part. It is admitted that Plaintiffs seek injunctive relief based upon the fraudulent transfer of B Warehouse Co. assets *to Defendants and others.* (Compl. ¶ 56.) This transfer is described in paragraph 27 above, which is incorporated by reference as if expressly set forth herein. It is denied that Plaintiffs' allegation lacks the required specificity to put Defendants on notice of Plaintiffs' claim.

35. Admitted in part and denied in part. It is admitted that Plaintiffs purchased the Bonds from the Authority. It is denied, however, that B Warehouse Co. is not a "debtor" in relation to Plaintiffs. To the contrary, although Plaintiffs purchased the Bonds from the Authority, B Warehouse Co. and the Project are the source for payment of the Bonds.

36. Denied. The Pennsylvania Uniform Fraudulent Transfers Act ("UFTA" or "Act") provides that "[a] debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent" for purposes of the UFTA. 12 Pa. C.S. § 5102(b). Plaintiffs allege that B Warehouse Co. and S&T ceased making the required minimum monthly interest payments on the Bonds in July 2004. (Compl. ¶ 29.) Cohen admits in his preliminary objections that "B Warehouse has not made scheduled interest payments under the Contracts." (Cohen POs ¶ 7.) Moreover, as indicated in Cohen's July 13, 2004 letter to Susan Ansin (Ex. "F" hereto), Defendants have prohibited S&T from paying the real estate taxes for the Project facility. Thus, because B Warehouse Co. has not been paying its debts as they become due, B Warehouse Co. is presumed insolvent for purposes of the UFTA.

37. Denied. By way of further response, it is denied that Plaintiffs are violating any of the Project finance documents by seeking to hold Defendants accountable in this lawsuit for their tortious conduct. In addition, as set forth above in paragraph 36, "insolvency" of B Warehouse Co. for purposes of the UFTA is presumed as a matter of law by virtue of the facts alleged in the Complaint, the facts Cohen acknowledges in his preliminary objections, and additional information Plaintiffs have discovered since filing the Complaint.

38. Denied. For purposes of these preliminary objections, Plaintiffs deny Cohen's factual assertion that "the security for the Bonds provided by the Contracts remains available." This is an improper assertion of an additional fact not included in the Complaint and, thus, should not be considered by the Court in ruling on Cohen's preliminary objections. By way of further response, the averments in this paragraph further illustrate Defendants' scheme to defraud, deceive, and steal from Plaintiffs. There is nothing improper about Plaintiffs refusing to sit back and allow Defendants to act in a fashion that creates a false crisis to force Plaintiffs to exercise certain remedies outlined in the Project finance documents. Instead, Plaintiffs have properly decided to seek this Court's assistance in stopping the unlawful scheme and holding Defendants accountable for it.

39. Denied. The UFTA does not require Plaintiffs to exhaust all other available remedies or reduce their claim to a judgment prior to brining a claim under the Act. Defendants' tortious conduct has seriously and irreparably impaired the value of Plaintiffs' investment in the Authority Bonds by reducing the collateral and security available to ensure performance under those Bonds.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

LACK OF SPECIFICITY - COUNT IV

40. Admitted.

41. Denied. By way of further response, after incorporating by reference paragraphs 1 through 53 of the Complaint, Plaintiffs allege in paragraph 56 of the Complaint "that Defendants wantonly, intentionally, and maliciously divested the *B Warehouse Co. of its assets* through disbursements to themselves and others, thereby preventing B Warehouse Co. from satisfying its obligations to Plaintiffs under the Bonds." (Emphasis added.) Plaintiffs incorporate by reference as if expressly set forth herein paragraph 27 above, which details (1) the various steps Defendants have taken to thwart Plaintiffs' efforts to conduct formal discovery with respect to this and other claims in the Complaint, and (2) the additional information Plaintiffs have been able to obtain since filing the Complaint to bolster their claim in paragraph 56. In short, the "fraudulent transfer" in Count IV arises from the same "fraud" alleged in Count II and the "conversion" alleged in Count III. Defendants are on notice of Plaintiffs' claims.

42. Denied. By way of further response, Plaintiffs respond to this claim as they did with respect to Cohen's preliminary objection for lack of specificity with respect to Count II. Plaintiffs have pled fraud with particularity pursuant to Pa. R.C.P. 1019(b) and have alleged facts sufficient to maintain their claim for fraudulent transfer under the UFTA against Defendants in Count IV of the Complaint. Amendment of the pleading to include the additional information Plaintiffs have discovered since filing the Complaint outlined in paragraph 27 is unnecessary, as Plaintiffs expect even more information of Defendants' misconduct will surface through

discovery. Nonetheless, if more specificity is required in advance of discovery, Plaintiffs respectfully request leave to amend the Complaint rather than outright dismissal of Count II of the Complaint. *See* Pa. R.C.P. 126, 1033; *Nichols*, 550 A.2d at 286-87 (reversing and remanding trial court decision with respect to preliminary objection on lack of specificity with directive that trial court grant leave to amend).

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

DEMURRER - COUNT V

43. Admitted.

44. Denied. By way of further response, for the reasons set forth above, Plaintiffs have sufficiently stated claims against Cohen and his co-Defendant for tortious interference, fraud, conversion, and violations of the UFTA.

45. Denied. By way of further response, to state a claim for civil conspiracy, Plaintiffs must show that the Defendants "combined or agreed with intent to do an unlawful act or to do an otherwise lawful act by unlawful means" with the additional intent to injure. *Reading Radio, Inc. v. Fink*, 833 A.2d 199, 212 (Pa. Super. 2003). As provided above, Plaintiffs have sufficiently stated claims against Defendants for tortious interference, fraud, conversion, and violations of the UFTA. These underlying intentional and unlawful acts, which Defendants combined to commit, were committed with the intent to cause harm to Plaintiffs and to force Plaintiffs to renegotiate the terms of the Bonds to further benefit Defendants. (Compl. ¶¶ 30, 32, 41, 47, 63.) Thus, Plaintiffs have stated a claim for civil conspiracy.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

COMPLAINT EX. J - PA. R.C.P. 1028(a)(2)

46. Denied. By way of further response, Plaintiffs attached Exhibit "J" to the Complaint to show Defendants' bad faith and malice. (Compl. ¶¶ 30, 32, 41, 47, 63.) Although Plaintiffs attempted in good faith to resolve the dispute between the parties, which is evidenced by the September 9, 2004 letter from Plaintiff Marc Katzen to Bean attached to the Complaint as Exhibit "I," Bean's response demonstrates Defendants' disregard for the concerns, rights, and interests of Plaintiffs. Plaintiffs seek punitive damages in this case. "Punitive damages are awarded to punish a defendant for certain outrageous acts and to deter him or others from engaging in similar conduct." *Reading Radio, Inc.*, 833 A.2d at 214. Inclusion of paragraphs 34 and 35 and Exhibit "J" with the Complaint illustrates the outrageousness of Defendants' conduct.

47. Denied. By way of further response, paragraphs 35 and Exhibit "J" should not be stricken from the Complaint because they do not qualify as "scandalous or impertinent matter" under Pa. R.C.P. 1028(a)(2), for reasons explained in paragraph 46 above.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

CLAIM FOR ATTORNEYS' FEES

48. Admitted.

49. Denied. To the contrary, there are two exceptions to the American Rule recognized in Pennsylvania. The first is a general exception that allows courts to award attorneys' fees "'when overriding considerations of justice compel such a result.'" *Bata v. Central-Penn Nat'l Bank of Phila.*, 448 Pa. 355, 379 n.29, 293 A.2d 343, 356 n.29 (1972) (quoting *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 (1967)); *see also Pennsylvania Ass'n of State Mental Hosp. Physicians v. State Employees' Retirement Bd.*, 483 A.2d 1003, 1007 (Pa. Cmwlth. 1984) (observing that "our Supreme Court in *Bata* recognized that equity permits the imposition of counsel fees when justice compels such a result"). Based on the allegations of malice, bad faith, willfulness, and wantonness on the part of Defendants in the Complaint as well as the scope and extent of the scheme Defendants have attempted to perpetrate on Plaintiffs, Plaintiffs respectfully suggest that justice compels the entry of an award of attorneys' fees in this case if Plaintiffs are ultimately successful. In addition, because Plaintiffs' lawsuit, in part, seeks the preservation, protection, and administration of security and collateral funds in S&T's possession for the benefit of all holders of the Bonds, not just Plaintiffs, Plaintiffs respectfully suggest that this Court could award attorneys' fees to Plaintiffs out of those monies under the "common fund" doctrine. *See Pennsylvania Ass'n of State Mental Hosp. Physicians*, 483 A.2d at 1007-08.

50. Denied. Because there are valid legal theories under which the Court could award Plaintiffs attorneys' fees in this case if Plaintiffs prevail, it would be improper for the Court to strike that request from the Complaint, as Cohen demands in his preliminary objections.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

FAILURE TO JOIN AN INDISPENSABLE PARTY

51. Admitted in part and denied in part. By way of further response, Plaintiffs admit that the Project finance documents are relevant to Plaintiffs' claims in this lawsuit. It is denied that Plaintiffs' tort claims are "inextricably interwoven with" the Project finance documents, because Plaintiffs are unsure of Cohen's intent in the use of that phrase.

52. Admitted. It is admitted that Plaintiffs seek injunctive relief in the Complaint to prevent further action that would diminish the value of the Bonds any more than Defendants, through their tortious conduct, have thus far. It is further admitted that Plaintiffs preserve in their Complaint the opportunity to seek that relief from unidentified individuals and entities that are not currently parties to this proceeding. It is denied, however, that there are any indispensable parties that must be joined for the Court to adjudicate Plaintiffs' claims.

53. Denied. By way of further response, Plaintiffs are unaware of an "indispensable party" at this point that must be joined, and Cohen fails to identify one in his preliminary objections. Obviously, the Court cannot apply the four prong test to determine whether a party is "indispensable" without first knowing the identity of the party in question. *See CRY, Inc. v. Mill Serv., Inc.*, 536 Pa. 462, 640 A.2d 372 (1994) (stating indispensable party considerations); *Hubert v. Greenwald*, 743 A.2d 977 (Pa. Super. 1999) (same).[6] In any event, even if the Court

[6] A court must consider the following factors to determine if a party is "indispensable":

(1) Do absent parties have a right or interest related to the claim?

(2) If so, what is the nature of that right or interest?

(3) Is that right or interest essential to the merits of the issue?

(4) Can justice be afforded without violating the due process rights of absent parties?

Hubert, 743 A.2d at 980.

finds that there is an indispensable party that must be joined, the Court should not dismiss the case. Rather, the Court should grant Plaintiffs leave to amend their Complaint pursuant to Pa. R.C.P. 1033 to add the additional party. Alternatively, the Court could order the joinder of the person or entity pursuant to Pa. R.C.P. 2232(c). By way of further response, Cohen does not appear to allege that there is an unnamed party indispensable to the resolution of Plaintiffs' *claims*; rather, he appears to aver only that the injunctive relief sought in the Complaint extends to nonparties. The reason for the broadly worded injunctive prayer for relief is explained in paragraph 52 above. Plaintiffs, however, are well-aware of the limits of this courts *in personam* and *in rem* jurisdiction and plan to keep both in mind when moving for injunctive relief, if they ultimately elect to do so. It may be that they only need an injunction against Defendants or against property in the Commonwealth, over which this Court can exercise *in rem* jurisdiction. Until discovery occurs, however, Plaintiffs cannot determine the type of injunctive relief they will require to protect their interests.

WHEREFORE, Plaintiffs respectfully request that this Court overrule Defendant George V. Cohen's preliminary objection.

Respectfully submitted,

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street - 3rd Floor
Harrisburg, PA 17101
(717) 237-4800 (ph)
(717) 233-0852 (fax)

Attorneys for Plaintiffs

DATE: February 1, 2005

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

CLAIM FOR ATTORNEY FEES

48. In the Complaint, the Plaintiffs assert claims to recover attorney fees.

49. The Complaint includes no valid basis for the recovery of attorney fees by the Plaintiffs, even if the Plaintiffs could otherwise sustain any of their claims.

50. In the event that any of Plaintiffs' claims survive these Preliminary Objections, Cohen requests that the Court strike Plaintiffs' request to recover attorney fees.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss and/or strike Plaintiffs' claims to recover attorney fees.

FAILURE TO JOIN INDISPENSABLE PARTIES

51. Plaintiffs' claims are inextricably interwoven with the Contracts.

52. In the Complaint, the Plaintiffs seek, *inter alia*, injunctive relief against entities that are not parties to this action. See Complaint at pp. 9, 10 and 12 through 14.

53. The Plaintiffs' failure to join indispensable parties deprives this Court of jurisdiction over this action and renders the Plaintiffs' Complaint legally insufficient.

LACK OF SPECIFICITY – COUNT IV

40. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

41. In Count IV, the Plaintiffs allege evasively and vaguely "upon information and belief" that the Defendants "divested" B Warehouse of unspecified "assets" through unspecified "disbursements." Complaint, ¶ 56.

42. Count IV lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count IV with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) and (3).

DEMURRER – COUNT V

43. Count V, an alleged cause of action for civil conspiracy, is dependent on the existence of some valid underlying claim.

44. As set forth above, the Plaintiffs have failed to allege any valid claim against Cohen.

45. Consequently, Count V is legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count V with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

COMPLAINT EX. J - PA. R. CIV. P. 1028(a)(2).

46. Plaintiffs attached Exhibit J to the Complaint for no material reason.

47. Cohen requests that, in the event the Court does not dismiss the Complaint in its entirety, the Court strike Paragraph 35 of the Complaint and Complaint Exhibit J pursuant to Pa. R. Civ. P. 1028(a)(2).

33. Moreover, the Contracts specifically preclude the Plaintiffs from pursuing any claim against Cohen individually. Id. at Ex. E, § 6.5.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count III of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT IV

34. In Count IV, the Plaintiffs seek injunctive relief based on an alleged - albeit unspecified - fraudulent transfer from B Warehouse to the Defendants.

35. Count IV is legally insufficient because B Warehouse is not a debtor in relation to Plaintiffs. To the contrary, the Plaintiffs purchased the Bonds from the Authority, not B Warehouse.

36. Count IV is also legally insufficient because the Plaintiffs failed to allege that B Warehouse is "insolvent."

37. The absence of any allegation of insolvency on the part of B Warehouse is highlighted by the fact that the Plaintiffs are attempting to circumvent the security provisions contained in the Contracts in the event of non-payment by B Warehouse.

38. The security for the Bonds provided by the Contracts remains available; the Plaintiffs have simply – but improperly – chosen not to pursue it.

39. Count IV is also legally insufficient because of the Plaintiffs' failure to resort to the security available and because the Plaintiffs have not exhausted their remedies at law or reduced any claim related to the Bonds to a judgment.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count IV of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

LACK OF SPECIFICITY – COUNT II

26. Averments of fraud must be pled with particularity under Pa. R. Civ. P. 1019(b).

27. In Count II, the Plaintiffs allege evasively and vaguely that they "believe[] and, therefore, aver[]" that Cohen concealed unspecified information regarding an unspecified distribution of unspecified assets of B Warehouse. Complaint, ¶ 46.

28. Count II lacks the particularity required by Pa. R. Civ. P. 1019(b).

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count II of the Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(2) – (4).

DEMURRER – COUNT III

29. In Count III, an alleged claim for conversion, the Plaintiffs contend that they had a "current possessory interest" in funds held in unspecified accounts.

30. The Plaintiffs' Complaint sets forth no basis for the conclusory allegation that the Plaintiffs held such an interest in the alleged accounts, or that Plaintiffs had any right or interest in the alleged accounts.

31. To the contrary, the Plaintiffs' Complaint and the Contracts attached thereto established that the Bonds are secured only by the interest of B Warehouse in the Project, i.e., by the land and warehouse and leases related thereto.

32. For example, the Mortgage Loan Agreement, a copy of which is attached to the Complaint as Ex. E, calls for the creation of a "Reserve Fund." Under the Mortgage Loan Agreement, payments from that fund are strictly limited to specified uses. Payments from the Reserve Fund for debt service on the Bonds are not permissible under the Mortgage Loan Agreement. Complaint, Ex. E, § 4.1.

19. Here, the Plaintiffs' allegations in Count I are based on Cohen's alleged interference with the Contracts, a series of agreements to which B Warehouse is one of the parties. Complaint, ¶¶ 15 and 17.

20. Cohen's alleged improper interference occurred while he was acting in his role as a joint venturer in, or agent for, B Warehouse. Id. at ¶¶ 19, 22-23.

21. Consequently, under Pennsylvania law, the Plaintiffs' claim for tortious interference with contract is legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count I of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT II

22. In Count II, the Plaintiffs allege that Cohen "concealed information" from the Plaintiffs concerning B Warehouse. Complaint, ¶ 46.

23. Under Pennsylvania law, silence cannot amount to fraud absent a duty to speak.

24. The Plaintiffs' Complaint fails to establish any duty on the part of Cohen to disclose to Plaintiffs the unspecified information he allegedly concealed.

25. Accordingly, Count II is legally insufficient.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss Count II of the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

13. The Bonds are "payable solely from the receipts and revenues derived from the Project . . ." and are secured by the land and building. The Contracts provide that, beyond the security specified in the Contracts, the obligation of the Investor Developer is unsecured, with no recourse to the joint venturers of B Warehouse. Id. at Ex. A, p. 3 and Ex. E, § 6.5.

14. The Plaintiffs' Complaint constitutes an improper attempt to circumvent the Contracts to which the Plaintiffs agreed.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – ALL COUNTS – GIST OF THE ACTION

15. The Plaintiffs' Complaint constitutes an improper attempt to recast an ordinary breach of contract claim into tort claims because of the Plaintiffs' apparent dissatisfaction with the contractual remedies contained in the written agreements governing the Project's financing.

16. Pennsylvania's gist of the action doctrine bars the Plaintiffs' claims.

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint with prejudice pursuant to Pa. R. Civ. P. 1028(a)(4).

DEMURRER – COUNT I

17. In Count I, the Plaintiffs purport to set forth a claim against Cohen for tortious interference with contract.

18. However, under Pennsylvania law, a party cannot tortiously interfere with a contract to which he or his principal is a party.

> successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding.

Id. at Ex. E.

7. In 2002, the Project's warehouse lost its longtime tenant, and, as a result, B Warehouse has not made scheduled interest payments under the Contracts. Id. at ¶¶ 28, 30 and 33.

8. The Plaintiffs have recourse under the Contracts as a result of the non-payments, but that recourse is limited to the security set forth in the Contracts, and does not extend to the personal assets of the Defendants. Id. at Ex. E § 6.5.

9. This tort action represents an improper attempt by the Plaintiffs to circumvent the detailed Contracts, and the remedies set forth therein, to which the Plaintiffs agreed in 1985.

10. For the multiple reasons set forth below, the Plaintiffs' Complaint is legally insufficient in its entirety, and also violates the Pennsylvania Rules of Civil Procedure in other fundamental respects as well. As a result, Cohen requests that the Court dismiss the Plaintiffs' Complaint with prejudice.

DEMURRER – ALL COUNTS

11. The Plaintiffs' rights regarding the Bonds are governed by the Contracts. See Complaint, Ex. A through C, E and G.

12. The Contracts specify and limit the rights of the contracting parties in the event of non-payment or other default by B Warehouse. See, e.g., id. at Ex. C, § 6.5.

4. The Contracts, which are all interrelated and cross-reference each other, include detailed provisions regarding security for the Bonds and the remedies available in the event of a default by B Warehouse in its obligations under the Contracts. Id.

5. The Contracts specifically and repeatedly provide, that the debt issued in connection with the Project, including the Bonds, "is payable solely from the receipts and revenues derived from the Project . . . ." The debt related to the Project is also secured by a First Mortgage (now satisfied) on the Project and a Second Mortgage. Id.

6. Critically, for purposes of this action, the Contracts also place strict limits on any liability of B Warehouse, or any of its constituent members. Specifically, section 6.5 of the Mortgage Loan Agreement for the Project provides:

> 6.5. DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited . . . [subject to certain specified conditions] to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives,

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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

PRELIMINARY OBJECTIONS

George V. Cohen submits the following Preliminary Objections to the Plaintiffs' Complaint.

Introduction

1. In 1985, the Plaintiffs purchased certain Second Mortgage Revenue Bonds in the aggregate principal amount of $300,000 ("Bonds") from the Clearfield County Industrial Development Authority ("Authority") related to the financing and construction of a commercial warehouse ("Project") in Clearfield County. Complaint, ¶ 26.

2. B Warehouse Company ("B Warehouse"), a joint venture, was the "Investor Developer" of the Project. B Warehouse obtained financing for the construction of the Project, a portion of which was derived from the Plaintiffs' purchase of the Bonds. Id. at ¶ 14.

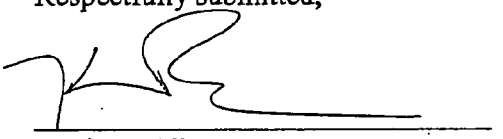
3. The Project's financing, including the Plaintiffs' purchase of the Bonds, is governed by a series of financing documents (collectively, the "Contracts") between or among the Plaintiffs, the Authority, B Warehouse, and the Savings & Trust Company of Pennsylvania, now known as S&T Bank ("S&T"). Id. at Exs. A through C, E.

Exhibit A

ALL STATE LEGAL 800-222-0510

WHEREFORE, Cohen requests that the Court sustain his Preliminary Objections and dismiss the Plaintiffs' Complaint pursuant to Pa. R. Civ. P. 1028(a)(1) and (4).

Respectfully submitted,

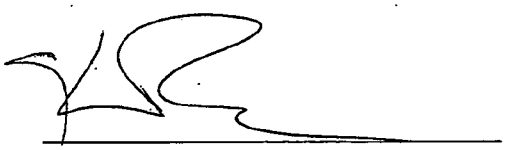


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Counsel for George V. Cohen

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PRELIMINARY OBJECTIONS** has been served this 27th day of December 2004, by U.S. Mail, first class, postage prepaid, on the following individuals

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



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Joseph M. McNerney
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Allen P. Page, Jr.
1949-1975
O. William Vanderlin
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1969-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mnewvine@mcnerneypage.com

June 29, 2004

CERTIFIED MAIL &
FAX: 1-814-849-0164
S&T Wealth Management Group
256 Main Street
Brookville, PA 15825
ATT: Bonnie Confer
Trust Officer

RE: B Warehouse Reserve DTD 41585
Account No.: 620007451P4

Dear Ms. Confer:

I am one of the joint venturers in B Warehouse by way of my IRA and by way of being Trustee of the Raldo E. Shipman Testamentary Trust which acquired the joint venturer interest of Creekside Farms. Will you please mark your files to include me on future statement mailings on the above account. My mailing address is 433 Market Street, PO Box 7, Williamsport, Pennsylvania, 17703.

If you will review the language of the various Industrial Development Bond documents, you will see that payment out of the reserve fund is limited to specific items which do not include payment of interest on the Industrial Development Bonds. Henceforth, please make no payments out of the reserve account until you have sent a notice of checks you intend to issue to John W. Bean and me so one of us may give you prior approval before payment. Specifically, you are instructed to make no further payments on the Industrial Development Bonds unless you are authorized to do so by the B Warehouse joint venturers.

The bond documents limit our reserve obligation to $300,000. You are hereby instructed to promptly liquidate such assets in the reserve account as you may select in

order to make distribution of all assets in excess of $300,000 pro-rata to the joint venturers. It is requested that you carry out this action immediately.

Please bear in mind that information pertaining to this account is confidential and a duty of confidentiality is owed to all of the joint venturers as well as the joint venture, B Warehouse, itself.

We continue to greatly appreciate the many courtesies you and the staff of S&T have given B Warehouse and we look forward to a continuing relationship with S&T in the future.

Very truly yours

George V. Cohen

GVC/mcn
cc: John W. Bean
James K. Goldberg, Esquire

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S & T BANK

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
05/17/2004	S&T MONEY MARKET INCOME REDEEM	179.52	0.00	-179.52
05/19/2004	S&T MONEY MARKET INCOME REDEEM	16,737.00	0.00	-16,737.00
06/01/2004	S&T MONEY MARKET INCOME REDEEM	3,750.00	0.00	-3,750.00
06/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
06/22/2004	S&T MONEY MARKET INCOME REDEEM	161.38	0.00	-161.38
07/01/2004	S&T MONEY MARKET INCOME REDEEM	3,750.00	0.00	-3,750.00
07/09/2004	S&T MONEY MARKET INCOME REDEEM	503.50	0.00	-503.50
07/12/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
07/19/2004	S&T MONEY MARKET INCOME REDEEM	341.49	0.00	-341.49
07/19/2004	S&T MONEY MARKET INCOME REDEEM	0.00	296,199.31	-296,199.31
08/02/2004	S&T MONEY MARKET REDEEM	0.00	12,695.45	-12,695.45
08/05/2004	S&T MONEY MARKET REDEEM	402.80	0.00	-402.80
08/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
08/20/2004	S&T MONEY MARKET INCOME REDEEM	0.00	2,873.35	-2,873.35
09/13/2004	S&T MONEY MARKET REDEEM	670.17	0.00	-670.17
09/17/2004	S&T MONEY MARKET INCOME REDEEM	0.00	250.12	-250.12
09/22/2004	S&T MONEY MARKET REDEEM	278.49	0.00	-278.49
09/22/2004	S&T MONEY MARKET INCOME REDEEM	0.00	15,000.00	-15,000.00
10/06/2004	S&T MONEY MARKET REDEEM	175.84	0.00	-175.84
10/11/2004	S&T MONEY MARKET INCOME REDEEM	166.67	0.00	-166.67
10/12/2004	S&T MONEY MARKET INCOME REDEEM	0.00	2,873.39	-2,873.39
10/21/2004	S&T MONEY MARKET REDEEM	302.28	0.00	-302.28
11/03/2004	S&T MONEY MARKET INCOME REDEEM	100.00	0.00	-100.00
11/10/2004	S&T MONEY MARKET INCOME REDEEM	115.00	0.00	-115.00
11/11/2004	S&T MONEY MARKET INCOME REDEEM	1,266.75	0.00	-1,266.75
11/17/2004	S&T MONEY MARKET INCOME REDEEM	459.85	0.00	-459.85
	S&T MONEY MARKET INCOME **Total PROCEEDS FROM THE WITHDRAWAL OF ASSETS**	**59,379.33**	**343,398.21**	**-402,777.54**
	DISBURSEMENTS TO OR FOR BENEFICIARIES			
01/02/2004	RICHARD GORDON	-750.00	0.00	0.00

S & T BANK

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254439			
01/02/2004	MARC KATZEN	-1,687.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254440			
01/02/2004	MARSHALL KATZEN	-562.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254441			
01/02/2004	H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254442			
01/02/2004	H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254443			
01/02/2004	H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254444			
01/02/2004	H KELLER TRSTEE FOR BROOK KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 254445			
02/02/2004	RICHARD GORDON	-750.00	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255687			
02/02/2004	MARC KATZEN	-1,687.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255688			
02/02/2004	MARSHALL KATZEN	-562.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255689			
02/02/2004	H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255690			
02/02/2004	H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255691			
02/02/2004	H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255692			
02/02/2004	H KELLER TRSTEE FOR BROOK KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 255693			
03/01/2004	RICHARD GORDON	-750.00	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256888			
03/01/2004	MARC KATZEN	-1,687.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256889			
03/01/2004	MARSHALL KATZEN	-562.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256890			
03/01/2004	H KELLER TRSTEE FOR HARRY KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256891			
03/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256892			
03/01/2004	H KELLER TRSTEE FOR BRIT KATZEN	-187.50	0.00	0.00

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256893			
03/01/2004	H KELLER TRSTEE FOR BROOK KATZEN	-187.50	0.00	0.00
	MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 256894			
03/08/2004	MAUTHE YUTZEY & GABLER SERVICES RENDERED FINANCIAL STATEMENT 12/31/03 PREPARATION OF TAX RETURNS CHECK NUMBER 257324	-915.00	0.00	0.00
03/29/2004	EASLEY, MCCALEB & ASSOCIATES, INC. PER JOHN BEAN CHECK NUMBER 258340	-300.00	0.00	0.00
04/01/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258464	-750.00	0.00	0.00
04/01/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258465	-1,687.50	0.00	0.00
04/01/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258466	-562.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258467	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258468	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258469	-187.50	0.00	0.00
04/01/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 258470	-187.50	0.00	0.00
05/03/2004	RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260204	-750.00	0.00	0.00
05/03/2004	MARC KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260205	-1,687.50	0.00	0.00
05/03/2004	MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260206	-562.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260207	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260208	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260209	-187.50	0.00	0.00
05/03/2004	H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15% CHECK NUMBER 260210	-187.50	0.00	0.00
05/19/2004	MARC KATZEN ADDITIONAL INTEREST DUE FOR 2003	-7,531.65	0.00	0.00

S & T BANK

For the Account of: *B WAREHOUSE RESERVE DTD 04/15/85*
Account Number: *62 00 0745 1P 4*
Period: *Calendar Year to Date*
Date Prepared: *November 23, 2004*

Statement of Transactions

Date	Description	Income Cash	Principal Cash	Investment Cost Basis
05/19/2004	CHECK NUMBER 260948 RICHARD GORDON ADDITIONAL INTEREST DUE FOR 2003	-3,347.40	0.00	0.00
05/19/2004	CHECK NUMBER 260949 H KELLER TRSTEE FOR HARRY KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
05/19/2004	CHECK NUMBER 260950 H KELLER TRSTEE FOR HIRSH KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
05/19/2004	CHECK NUMBER 260951 H KELLER TRSTEE FOR BRIT KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
05/19/2004	CHECK NUMBER 260952 H KELLER TRSTEE FOR BROOK KATZEN ADDITIONAL INTEREST DUE FOR 2003	-836.85	0.00	0.00
05/19/2004	CHECK NUMBER 260953 MARSHALL KATZEN ADDITIONAL INTEREST DUE FOR 2003	-2,510.55	0.00	0.00
06/01/2004	CHECK NUMBER 260954 RICHARD GORDON MONTHLY INTEREST ON BONDS AT 15%	-750.00	0.00	0.00
06/01/2004	CHECK NUMBER 261410 MARC KATZEN MONTHLY INTEREST ON BONDS AT 15%	-1,687.50	0.00	0.00
06/01/2004	CHECK NUMBER 261411 MARSHALL KATZEN MONTHLY INTEREST ON BONDS AT 15%	-562.50	0.00	0.00
06/01/2004	CHECK NUMBER 261412 H KELLER TRSTEE FOR HARRY KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
06/01/2004	CHECK NUMBER 261413 H KELLER TRSTEE FOR HIRSH KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
06/01/2004	CHECK NUMBER 261414 H KELLER TRSTEE FOR BRIT KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
06/01/2004	CHECK NUMBER 261415 H KELLER TRSTEE FOR BROOK KATZEN MONTHLY INTEREST ON BONDS AT 15%	-187.50	0.00	0.00
07/19/2004	CHECK NUMBER 261416 RALDO E SHIPMAN TESTAMENTARY TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
07/19/2004	CHECK NUMBER 263745 GEORGE L COHEN IRA C/O WOODLANDS BANK DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
07/19/2004	CHECK NUMBER 263746 IDEAL RETIREMENT TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-49,366.55	0.00
07/19/2004	CHECK NUMBER 263747 BERTRAM B LEOPOLD RESIDUARY TRUST DISTRIBUTION PER GEORGE COHEN	0.00	-65,163.85	0.00
07/19/2004	CHECK NUMBER 263748 SUSAN ANSIN DISTRIBUTION PER GEORGE COHEN	0.00	-33,569.26	0.00
07/19/2004	CHECK NUMBER 263749 JOHN BEAN	0.00	-49,366.55	0.00

Exhibit D

McNERNEY, PAGE, VANDERLIN & HALL
ATTORNEYS AND COUNSELLORS AT LAW

COPY

George V. Cohen
Michael H. Collins
Garth D. Everett
Peter G. Facey
Brett O. Feese*
Jason K. Fetter
Matthew F. Golden
T. Max Hall
Benjamin E. Landon
Joy Reynolds McCoy
Thomas C. Marshall
Ann S. Pepperman
Cynthia R. Person
Robin A. Read
Kyle W. Rude
Ryan M. Tira
E. Eugene Yaw
* PA House of Representatives

433 Market Street
P.O. Box 7
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Telephone: 570-326-5555
FAX: 570-326-3170
Office e-mail: mpvh@mcnerneypage.com
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Hall's Station Office
21 Kristi Road, Suite 1
Pennsdale, PA 17756
Telephone: 570-546-5111
FAX: 570-546-7561
www.mcnerneypage.com

Joseph M. McNerney
1939-1957
Allen P. Page, Jr.
1949-1975
O. William Vanderlin
1950-1999
Charles J. McKelvey
1969-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mnewvine@mcnerneypage.com

July 16, 2004

FAX: 814-849-0164

S&T Wealth Management Group
256 Main Street
Brookville, PA 15825
ATT: Bonnie Confer
Trust Officer

Dear Bonnie:

These distributions should have been made at least a week ago. Please look at the most recent distributions for the correct names and mailing addresses. The names on your memo are 15 years out of date. My distributions should be to George V. Cohen IRA which is at Woodlands Bank, 2450 East Third Street, Williamsport, Pennsylvania, 17701, ATT: , Thomas B. Burkholder. Creekside Farms is now Raldo E. Shipman Testamentary Trust and can be mailed to me at the office.

It appears to me the percentages you listed are correct.

The Bond documents permit the $300,000 reserve to fall below that level. If you want more guidance you may want your counsel to speak with attorney Tim Slavish at Thorp Reed at 412-394-2559. You have no obligation to respond to Hirsh Katzen or Richard Gordon. Marc Katzen has received a letter from our counsel making our position clear.

It is absolutely imperative that the distribution checks be issued immediately!

Very truly yours,

McNERNEY, PAGE, VANDERLIN & HALL

George V. Cohen

GVC/mcn
cc: John W. Bean
Timothy M. Slavish, Esquire

Exhibit E

407-566-8836

McNERNEY, PAGE, VANDERLIN & HALL
ATTORNEYS AND COUNSELLORS AT LAW

George V. Cohen
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Peter G. Facey
Brett O. Feese*
Jason K. Fetter
Matthew F. Golden
T. Max Hall
Benjamin E. Landon
Joy Reynolds McCoy
Thomas C. Marshall
Ann S. Pepperman
Cynthia R. Pernon
Robin A. Read
Kyle W. Rude
Ryan M. Tira
E. Eugene Yaw
* PA House of Representatives

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Joseph M. McNerney
1939-1967
Allen P. Page, Jr.
1949-1978
O. William Vanderlin
1950-1999
Charles J. McKelvey
1959-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mpvhlaw@mcnerneypage.com

July 13, 2004

Ms. Susan Anslin
61 Possum Lane
Weston, MA 02193-2317

Dear Susie:

Now that B Warehouse no longer has an ongoing net lease for its space, the Katzen Bonds (which are secured by a mortgage on the B Warehouse real estate and which I will collectively refer to as the "Bonds") have become onerous. Even when we succeeded in renting the space, since B Warehouse had to pay all the expenses of ownership (i.e. it was a "gross" lease), by having to pay part of the rents to the bondholders, we actually suffered a net loss. Our leasing agent has advised us there is no demand for warehouse space in Dubois, regardless of the rent requested.

As you know, B Warehouse has retained the law firm of Thorp Reed & Armstrong, LLP in the person of Attorney James Goldberg to advise and represent us in our efforts to renegotiate the Bonds. Your representative, Raymond Hess, of M&T Investment Group was present at that meeting. While we did not want to default, to remain in compliance with the Bond terms would assure the bankruptcy of B Warehouse under the current economic circumstances. Thus we have caused our counsel to send a letter to Marc Katzen and have asked them to fax you a copy.

The Bonds prohibit us from drawing down our reserve below $300,000 but impose no personal obligation to re-instate the reserve if it falls below that level. Thus, we have instructed S&T Bank to distribute the reserve in excess of $300,000 to the joint venturers and you will soon receive your pro-rata share. We may in the future need to replenish the

reserve to B Warehouse but for the moment we believe it is better to remove the excess reserve from the account.

John Bean has asked me to step up to the position of managing the joint venture and I reluctantly do so. By my letter to the bank you will see we have prohibited payment of any B Warehouse expenses without the prior approval of John Bean or me. It is our plan to make no further payments on the Bonds nor to pay the real estate taxes until we have renegotiated the bonds. If negotiations are unsuccessful, our counsel advises the bondholders sole remedy is to foreclose on the property. This would enable us to pay off the bonds (which we are otherwise precluded from doing) and to then hopefully lease the warehouse on a profitable basis. Our non-payment of real estate taxes may force a foreclosure sale on the premises even if the bondholders do not elect to renegotiate or foreclose.

John and I would like to meet with you and your representative to more fully apprise you of our activities. John has promised to set time aside the next time he comes north and hopefully you will be available.

I hope all is going well with you and your family. Janice and I are having a great time enjoying our semi-retired status. I look forward to seeing you. With fondest regards, I remain

Very truly yours,

George V. Cohen

GVC/mcn
cc: John W. Bean
Timothy M. Slavish, Esquire
Raymond C. Hess

PS. Susie, will you please get me your email address for future use.

McNERNEY, PAGE, VANDERLIN & HALL
ATTORNEYS AND COUNSELLORS AT LAW

George V. Cohen
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* PA House of Representatives

433 Market Street
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Joseph M. McNerney
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1949-1975
O. William Vanderlin
1950-1999
Charles J. McKelvey
1969-2000

REPLY TO:
WILLIAMSPORT

DIRECT E-MAIL ADDRESS:
mnewvine@mcnerneypage.com

August 16, 2004

FAX: 814-849-0164

S&T Wealth Management Group
256 Main Street
Brookville, PA 15825
ATT: Bonnie Confer
Trust Officer

Dear Bonnie:

Thank you for forwarding to me the tax notice you received with respect to B Warehouse. John Bean and I, as the majority owners of B Warehouse, have determined not to make payment of the taxes at the present time. Therefore, S&T Bank is not authorized to issue any checks in payment of the real estate taxes owing on B Warehouse until further notice.

Very truly yours,

McNERNEY, PAGE, VANDERLIN & HALL

George V. Cohen

GVC/mcn
cc: John W. Bean (Fax: 941-925-2470)
Timothy M. Slavish, Esquire (Fax: 412-394-2555)

ALL-STATE® LEGAL 800-222-0510 EDR11 RECYCLED

Bill# 356 Mail Date: 8/5/2004 COUNTY OF CLEARFIELD / DUBOIS AREA SCHOOL DISTRICT / SANDY TOWNSHIP Control # 1280-42841

Description of Taxable: BLDG. & 10.49 A
Map #
C04-000-071.1

Real Estate Tax
For 2004

Payable To: LEE ANN COLLINS, TAX COLLECTOR
P O BOX 252
DUBOIS PA 15801
Office-625 3/4 S. Brady St. PHONE/FAX 814-371-1901
MON-TUES-FRI 9 AM-3 PM, WED 9 AM-NOON
CLOSED THURSDAY, ADDITIONAL HOURS DURING
DISCOUNT PERIOD - TUES 6-8 PM, SAT 9AM-NOON

Taxes Are Due and Payable and Payment is Requested From:
B WAREHOUSE CO.
C/O TRUST DEPT.
256 MAIN ST
BROOKVILLE PA 15825

Assessed Value	Tax Desc	Tax Rate	Discount	Face	Penalty
Land 14,925	School	85.51	40,524.49	41,351.52	45,486.68
Bldg. 468,662					
Total 483,587		Total	40,524.49	41,351.52	45,486.68

Payment Schedule

Received By	10/6/2004	@	2.00 % Discount Pay —>	40,524.49
Between	10/7/2004	AND	12/6/2004 Pay —>	41,351.52
Beginning	12/7/2004	@	10.00 % Penalty Pay —>	45,486.68
Last Day To Pay Tax Collector			1/7/2005	
Unpaid Taxes Returned To Tax Claim On			1/14/2005	At 8:30 AM

Tax Collectors Copy

Date Paid

Entire Statement Must Be Presented With Payment. Self Addressed Stamped Envelope Must Be Enclosed When A Return Receipt Is Requested.

Bill# 356 Mail Date: 8/5/2004 COUNTY OF CLEARFIELD / DUBOIS AREA SCHOOL DISTRICT / SANDY TOWNSHIP Control # 1280 - 42841

Description of Taxable: BLDG. & 10.49 A
Map #
C04-000-071.1

NOT PAID

Payable To: LEE ANN COLLINS, TAX COLLE
P O BOX 252
DUBOIS PA 15801
Office-625 3/4 S. Brady St. PHONE/FAX 814-3
MON-TUES-FRI 9 AM-3 PM, WED 9 AM-NOC
CLOSED THURSDAY, ADDITIONAL HOURS
DISCOUNT PERIOD - TUES 6-8 PM, SAT 9A

Taxes Are Due and Payable and Payment is Requested From:
B WAREHOUSE CO.
C/O TRUST DEPT.
256 MAIN ST
BROOKVILLE PA 15825

ilue	Tax Desc	Tax Rate	Discount	Face	Penalty
nd 325	School	85.51	40,524.49	41,351.52	45,486.68
lg. 362					
tal 587		Total	40,524.49	41,351.52	45,486.68

Payment Schedule

	10/6/2004	@	2.00 % Discount Pay —>	40,524.49
Between	10/7/2004	AND	12/6/2004 Pay —>	41,351.52
Beginning	12/7/2004	@	10.00 % Penalty Pay —>	45,486.68
Last Day To Pay Tax Collector			1/7/2005	
Unpaid Taxes Returned To Tax Claim On			1/14/2005	At 8:30 AM

Circle Amount Paid Above

Tax Payers Receipt

Signature of Tax Collector

Date Paid

Entire Statement Must Be Presented With Payment. Self Addressed Stamped Envelope Must Be Enclosed When A Return Receipt Is Requested.

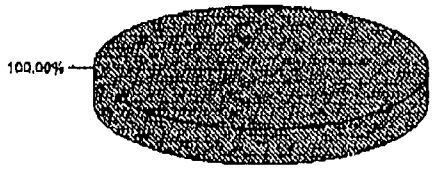
For the Account of:
B WAREHOUSE RESERVE DTD 04/15/85
Account Number:
62 00 0745 1P 4
Date:
NOVEMBER 01, 2004 - NOVEMBER 30, 2004

S&T WEALTH MANAGEMENT GROUP

SUSAN ANSIN
61 POSSUM LANE
WESTON MA 02193-2317

THE S&T WEALTH MANAGEMENT GROUP MAY RECEIVE A FEE OF AMOUNTS INVESTED IN CERTAIN MUTUAL FUNDS AND PAID BY THE ADVISOR OR DISTRIBUTOR OF THE FUND IN RECOGNITION OF ACCOUNT AND SHAREHOLDER SERVICING SERVICES PROVIDED BY AGENT.

Asset Allocation



Investment Summary

Asset Class	Market Value	%
CASH & EQUIVALENTS	270,022.64	100.00
MISCELLANEOUS ASSETS	1.00	0.00
Total Investments	**279,023.64**	**100.00**
Accrued Income	289.21	
Total Account	**279,312.85**	

Activity Summary

	Current Period	Year-To-Date
Beginning Value at Market	**268,204.64**	**649,966.74**
Income and Other Receipts	12,760.30	22,195.15
Expenses and Other Disbursements	-1,941.80	-399,421.17
Investment Purchases / Deposits / Withdrawals	0.00	0.00
Account Appreciation / Depreciation	0.00	6,260.92
Ending Value at Market	**279,023.64**	**279,023.64**

For the Account of:
B WAREHOUSE RESERVE DTD 04/15/85
Account Number:
62 00 0745 1P 4
Date:
NOVEMBER 01, 2004 - NOVEMBER 30, 2004

S&T WEALTH MANAGEMENT GROUP

INVESTMENTS

Quantity	Description	Unit Price	Cost	Market
CASH & EQUIVALENTS				
0.0000	CASH		3,750.00	3,750.00
39,732.65	S&T MONEY MARKET INCOME	1.000	39,732.65	39,732.65
235,539.99	S&T MONEY MARKET	1.000	235,539.99	235,539.99
			279,022.64	**279,022.64**
MISCELLANEOUS ASSETS				
1	B WAREHOUSE BUILDING DUBOIS	1.000	1.00	1.00
			1.00	**1.00**
	Total Investments		**279,023.64**	**279,023.64**

ACTIVITY REVIEW

Date	Description	Quantity	Cash Change	Investments Change
Income and Other Receipts				
11/11/2004	DEVELOPAC INC #17951 10/15 TO 12/14/04 RENT FOR WEYEHAEUSER		12,500.00	
S&T MONEY MARKET INCOME				
11/05/2004	INTEREST RECEIVED		26.97	
S&T MONEY MARKET				
11/05/2004	INTEREST RECEIVED		233.33	
			12,760.30	**0.00**
Expenses and Other Disbursements				
11/03/2004	SANDY TOWNSHIP VOLUNTEER FIRE DEPT. 2004 CONTRIBUTION CHECK NUMBER 268842		-100.00	
11/10/2004	MAUTHE YUTZEY & GABLER ADDITIONAL BALANCE DUE FOR INCOME TAX PREPARATION CHECK NUMBER 269054		-116.00	
11/11/2004	ALVETRO LANDSCAPING MOW GRASS AND TRIM AT B WAREHOUSE CHECK NUMBER 269056		-302.10	
11/11/2004	COLDWELL BANKER COMMERCIAL DEVELOPAC		-750.00	

For the Account of:
B WAREHOUSE RESERVE DTD 04/15/85
Account Number:
62 00 0745 1P 4
Date:
NOVEMBER 01, 2004 - NOVEMBER 30, 2004

S&T WEALTH MANAGEMENT GROUP

ACTIVITY REVIEW

Date	Description	Quantity	Cash Change	Investments Change
	REALTY 6% OF THE SCHEDULED GROSS RENT RECEIVED $12,500.00. CHECK NUMBER 269057			
11/11/2004	INVESTMENT MGMT FEE FOR MONTH ENDED 10/31/04		-214.85	
11/17/2004	PENELEC ACCT#10-00-50-0808-0-1 MONTHLY PAYMENT ON ACCOUNT CHECK NUMBER 269273		-459.85	
			-1,941.60	0.00

Investment Purchases / Deposits / Withdrawals

Settlement / Posting Date	Trade Date	Quantity	Action	Cash Change	Investments Change
S&T MONEY MARKET INCOME		(Net activity this period)			
11/30/2004		10,818.7	Purchase	-10,818.70	10,818.70
				-10,818.70	10,818.70

Sales (Realized Gains & Losses)

Settlement	Trade Date	Quantity	Cost	Proceeds	ST Gain	LT Gain
					0.00	0.00

For the Account of:
B WAREHOUSE RESERVE DTD 04/15/85
Account Number:
62 DD 0745 1P 4
Date:
NOVEMBER 01, 2004 - NOVEMBER 30, 2004

S&T WEALTH MANAGEMENT GROUP

Features of Your Statement

Investment Summary: A snapshot of your account's current value grouped by Asset Class, aided by a graphical representation.

Activity Summary: A summary of activity in your account for the current reporting period, and year-to-date.

Investments: A current listing of cash and investments in your account, grouped in the same order as your Investment Summary. The Market Value of investments is based on the most recent prices available from independent vendors. For certain securities, prices may not be current as of the statement date.

Activity Review: A list of transactions occurring in your account during the statement period. Activity is grouped and totaled in separate categories for Income and Other Receipts, Expenses and Other Distributions, Other Activity, Investment Purchases / Deposits / Withdrawals, and Sales (Realized Gains and Losses).

Glossary

Accrued Income: The approximate total of dividends and/or interest due but not yet paid on securities held in your account. Due to certain accounting procedures and vendor supplied information, this total may not be entirely accurate.

Action: This is a brief indication of the general type of activity within the Activity Review category for Investment Purchases / Deposits / Withdrawals.

Asset Class: Cash and securities in your account are grouped into various classes to reflect the diversification of your portfolio. The diversification is again reflected in the associated graph.

Cash Change: The dollar amount received or disbursed for this transaction.

Cost: The cost is usually the value of a security when it was acquired. The initial cost may have been revised for certain types of activity such as dividend reinvestments, bond amortization, or other miscellaneous adjustments.

Date, Settlement or Settlement/Posting Date: The date the transaction was recorded on your account. For accounts with Money Market and Savings Accounts, deposit and withdrawal activity is combined and reported as a single transaction on the last day of the reporting period.

Description: For securities, the name of the security. For transactions under Activity Review, there are two possibilities. One is a brief description of the type of activity. The other is a full description of the activity as recorded on your account's activity history file.

Investments Change: For most transactions such as purchases and dividend reinvestments, this is the cost control change for a security. For deposits and distributions of securities, it is usually the approximate market value of the security on the date the transaction was recorded.

L/T Gain: The amount of long-term gain or loss realized on a sale, redemption, maturity or distribution.

Market: The value of a security position in your account based on the Quantity and Unit Price.

Market Value: On the Investment Summary, this is the sum of current values for all securities and cash in your account.

Proceeds: The net dollar amount received from a sale, redemption or maturity after deductions for commissions and miscellaneous fees, if any.

Quantity: The number of shares, face value or units.

S/T Gain: The amount of short-term gain or loss realized on a sale, redemption, maturity or distribution.

Trade Date: The date on which a security was purchased or sold.

Unit Price: The most recent trading price available for the security. Most prices are obtained from independent vendors and are not necessarily the price at which the security could have been sold on the last day of the reporting period.

% (percent): The percentage of your Total Investments currently invested in the associated Asset Class.

Exhibit I

ALL-STATE® LEGAL 800.222-0510 EDR11 RECYCLED

cc: Kevin Brobson 12/28/(

DENNISON, DENNISON & HARPER

Attorneys at Law

Donald J. Dennison (1917-2002)
John C. Dennison, II
Troy J. Harper

293 Main Street
Brookville, PA 15825-1291
Telephone (814) 849-8316
Fax (814) 849-4656
E-Mail ddhjohn@usachoice.net

December 22, 2004

Daniel J. Malpezzi, Esq.
Buchanan Ingersoll
P.O. Box 12023
Harrisburg, PA 17108-2023

Timothy M. Slavish, Esq.
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425

RE: B Warehouse Joint Venture; S&T Bank

Gentlemen:

As you know, I have been asked by S&T Bank to represent it in the ongoing discussions in regard to the above entitled matter. I am enclosing a Statement of Transactions to Tim which were sent directly by Bonnie Confer to Dan. In the future, I will make certain that all information is sent by me to both of you.

The Reserve Fund presently has a balance of Two Hundred Seventy-nine Thousand Three Hundred Twelve and 00/100 Dollars ($279,312.00). The Reserve Fund is the only account which S&T has maintained since the beginning of the loans. Therefore, it has also served as a "Bond Fund" which has accepted payments from the Tenant and has then made payments to the Bondholders, etc.

As you can see in the Statement of Transactions, routine payments have also been made for electric, water and sewer, landscaping maintenance, etc. The last activity was payment of an electric bill in the amount of $459.00 on November 17, 2004.

In reviewing Article IV of the Reserve Fund, the Investor Developer "will not draw any moneys from the Project if the reserves in the Reserve Fund are less than $300,000.00." Presently, the only outstanding invoice is a bill for legal fees in the amount of $2,710.82. Can ordinary expenses such as the electric bill and lawn maintenance be paid now that the Reserve Fund is under $300,000.00? In addition, it is my opinion that any legal fees that are to be paid by the Reserve Fund must be directly related to the Project itself and not to problems between the

Investor Developers and the Bondholders. Are you in agreement with this interpretation?

However, the real issue is determining the purpose of the Reserve Fund especially since the Bonds are in default and the Reserve Fund has a balance of less than $300,000.00. Dan has indicated that the balance in the Reserve Fund is being held for the benefit of the Bondholders to secure payment of the money due them. The overall language of the loan documents would certainly make it appear that the Reserve Fund was created for this purpose.

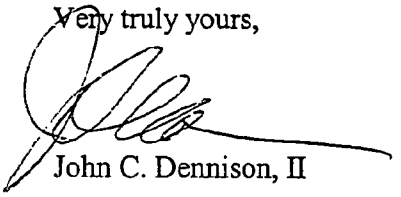
However, as Tim has pointed out, the actual language of the Reserve Fund authorizes payment on the "First Mortgage Loan Note," but fails to mention that payments are authorized to pay on the "Second Mortgage Revenue Bonds." Therefore, a literal interpretation of the provisions of the Reserve Fund do not authorize payment on the Second Mortgage Revenue Bonds.

Who is correct? S&T Bank is obviously not in a position to make this decision.

Therefore, S&T Bank would like to work out an interim agreement with your clients on what can be paid by the Reserve Fund pending either an court order or agreement of the parties as to its disposition.

Please advise me of your thoughts. I would appreciate it if you would send copies of any letters written to me to each other. Likewise, I will address all of my correspondence to both of you.

Very truly yours,



John C. Dennison, II

pc: Gregor T. Young, Esq.
Mrs. Bonnie S. Confer

CERTIFICATE OF SERVICE

I, Nicole L. Borda, hereby certify that I am this day serving a copy of the foregoing document upon the persons listed below by United States Mail, First Class, Postage Prepaid, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

Kevin P. Allen, Esquire
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

By: _____
Nicole L. Borda, Esquire

DATE: February 1, 2005

FILED

FEB 0 2 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,

Plaintiffs,

v.

JOHN W. BEAN and GEORGE V. COHEN,

Defendants.

CIVIL ACTION

No.: 2004-1759-CD

AFFIDAVIT OF SERVICE

1. On January 21, 2005, counsel for the Defendants served counsel for the Plaintiffs by facsimile and mail with the Court's January 20, 2005 Order scheduling argument on the Defendants' Preliminary Objections for February 9, 2005 at 2:00 P.M.

2. Counsel for Defendants served Plaintiffs' counsel with a copy of Defendant Bean's Preliminary Objections on December 1, 2004.

3. Counsel for Defendants served Plaintiffs' counsel with a copy of Defendant Cohen's Preliminary Objections on December 27, 2004.

The undersigned submits this Affidavit of Service pursuant to 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

Kevin P. Allen
Pa. I.D. 76426
THORP REED & ARMSTRONG, LLP
Counsel for Defendants

FILED
JAN 25 2005
William A. Shaw
Prothonotary

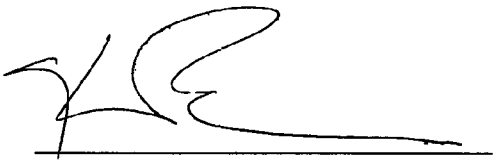
00589694.DOC

(19)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **AFFIDAVIT OF SERVICE** has been served this 21st day of January 2005, by U.S. Mail, first class, postage prepaid, on the following individuals

P. Kevin Brobson
Nicole L. Borda
Buchanan Ingersoll, P.C.
One South Market Square
213 Market Street – 3rd Floor
Harrisburg, PA 17101



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSCH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST	:	
vs.	:	No. 04-1759-CD
JOHN W. BEAN and GEORGE V. COHEN	:	

ORDER

AND NOW, this 20th day of January, 2005, it is the Order of the Court that argument on Defendant's Preliminary Objections filed in the above-captioned matter has been scheduled for the 9 day of February, 2005, at 2:00 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT,

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED 6K
2cc Memo
10:29 BP to Atty Gaben
JAN 20 2005

William A. Shaw
Prothonotary

OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
PHONE: (814) 765-2641
FAX: 1-814-765-7649

DAVID S. MEHOLICK
COURT ADMINISTRATOR

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

In The Court of Common Pleas of Clearfield County, Pennsylvania

MARC KATZEN, MARSHALL KATZEN, M.D. Sheriff Docket # 16581

VS. 04-1759-CD

BEAN, JOHN W. & GEORGE V. COHEN

COMPLAINT

SHERIFF RETURNS

NOW DECEMBER 4, 2004 RETURN THE WITHIN COMPLAINT "NOT SERVED" AS TO JOHN W. BEAN, DEFENDANT. SEVERAL ATTEMPTS. ATTORNEY STATED DO NOT SERVE.

NOW NOVEMBER 9, 2004 SHERIFF OF LYCOMING COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON GEORGE V. COHEN, DEFENDANT. SHERIFF OF LYCOMING COUNTY DID NOT SEND A SHERIFF RETURN OF NOT SERVED.

NOW DECEMBER 14, 2004, SHERIFF OF LYCOMING COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON GEORGE V. COHEN, DEFENDANT.

NOW DECEMBER 17, 2004 SERVED THE WITHIN COMPLAINT ON GEORGE V. COHEN, DEFENDANT BY DEPUTIZING THE SHERIFF OF LYCOMING COUNTY. THE RETURN OF LYCOMING COUNTY SHERIFF IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED MAXINE NEWVINE, SECRETARY.

Return Costs

Cost	Description
75.00	SHERIFF HAWKINS PAID BY: ATTY CK# 3022
20.00	SURCHARGE PAID BY: ATTY
21.50	LYCOMING COUNTY SHFF. PAID BY: ATTY

Sworn to Before Me This

____ Day Of _____ 2005

_____

So Answers,

Chester A. Hawkins by Marilyn Hall

Chester A. Hawkins
Sheriff

FILED
01/9:07 BOI
JAN 19 2005
William A. S.
Prothonotary/Clerk of Courts

17

Case No 2004-01759 T
MARC KATZEN, ET AL (VS) JOHN W. BEAN, ET AL

Date Filed	
11/05/04	COMPLAINT. FROM CLEARFIELD COUNTY. 50.00 DEPOSIT. SERVE GEORGE V. COHEN ONLY.
12/06/04	REINSTATED COMPLAINT (FROM CLEARFIELD COUNTY).
12/17/04	AT 9:07 A.M., SEVED THE WITHIN COMPLAINT UPON THE WITHIN NAMED DEFENDANT, GEORGE V. COHEN, BY HANDING A TRUE AND ATTESTED COPY OF SAME TO MAXINE NEWVINE, SECRETARY, AT 433 MARKET STREET, WILLIAMSPORT, PA., AND BY MAKING KNOWN TO HER THE CONTENTS THEREOF. SO ANSWERS, CHARLES T. BREWER, SHERIFF OF LYC. CO.; BY: MICHAEL L. SINGER, DEPUTY.

So Answers,

Charles T. Brewer,
SHERIFF OF LYCOMING COUNTY, PENNA.

BY: Michael L. Singer,
Deputy

SHERIFF'S COSTS: $21.50

PAID 12/28/04

Sworn and Subscribed before me
this 4th day of December, 2004.

WILLIAM J. BURD
Prothonotary & Clerk of Courts
Williamsport, Lycoming County
My Commission Expires Jan. 4, 2006

RECEIPT FOR PAYMENT

Lycoming County Pennsylvania

48 W 3rd Street
Williamsport PA 17701

Receipt Date 11/16/2004
Receipt Time 14:24:53

Receipt No. 5603

MARC KATZEN, ET AL (VS) JOHN W. BEAN, ET AL

Case Number 2004-01759 T
Service Info
Remarks PAYMENT FOR SERVICE

Total Check...	+	50.00
Total Cash....	+	.00
Cash Out.....	-	.00
Receipt total.	=	50.00

Check No. 3021

Distribution Of Payment

Transaction Description	Payment Amount	
ADVANCE PAYMENT	50.00	BUCHANAN INGERSOLL PROFESSI
	50.00	

RECEIPT FOR DISTRIBUTION OF ADVANCE PAYMENTS HELD In ESCROW

Lycoming County Pennsylvania

48 W 3rd Street
Williamsport PA 17701

Receipt Date 12/28/2004
Receipt Time 13:50:22

Receipt No. 6235

MARC KATZEN, ET AL (VS) JOHN W. BEAN, ET AL

Case Number 2004-01759 T
Service Info
Remarks Escrow Transfer Out

Advance Payment Balance	50.00	BUCHANAN INGERSOLL PROFESSIONA
Total Amount Distributed	21.50	
Balance RemaInIng	28.50	REFUND

---------- Distribution -----

Transaction Description	Amount	Payee
DOCKET/RETURN	9.00	LYCOMING COUNTY TREASURER
SERVICE	9.00	LYCOMING COUNTY TREASURER
MILEAGE	1.00	LYCOMING COUNTY TREASURER
AFFIDAVIT	2.50	LYCOMING COUNTY TREASURER
Total Amount Distributed	21.50	

Sheriff's Office
Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

CHESTER A. HAWKINS
SHERIFF

ROBERT SNYDER
CHIEF DEPUTY

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 16581

MARC KATZEN al

VS

JOHN W. BEAN al

TERM & NO. 04-1759-CD

DOCUMENT TO BE SERVED:

COMPLAINT

SERVE BY: 12/04/2004

MAKE REFUND PAYABLE TO: *BUCHANAN INGERSOLL, ESQ.*

SERVE: *GEORGE V. COHEN*

ADDRESS: *2618 WALDMAN DRIVE, WILLIAMSPORT, PA. 17701*

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF *LYCOMING* COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this *9th* Day of *NOVEMBER* 2004

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

Sheriff's Office
Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

CHESTER A. HAWKINS
SHERIFF

ROBERT SNYDER
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 16581

MARC KATZEN al

VS

JOHN W. BEAN & GEORGE V. COHEN

TERM & NO. 04-1759-CD

DOCUMENT TO BE SERVED:

COMPLAINT

SERVE BY: 01/05/2005
ATTY REQUESTS SERVICE MADE ASAP

MAKE REFUND PAYABLE TO: *ATTY STATED YOU WILL SERVE WITHOUT ADV.*

SERVE: *GEORGE V. COHEN*

ADDRESS: *2618 WALDMAN DRIVE, WILLIAMSPORT, PA. (OR ADDRESS PREVIOUSLY FURNISHED)*

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF *LYCOMING* COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this *14th* Day of *DECEMBER* 2004

Respectfully,

CHESTER A. HAWKINS
SHERIFF OF CLEARFIELD COUNTY

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.: 2004-1759-CD**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after the complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money, property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

I hereby certify this to be a true and attested copy of the original statement filed in this case.

NOV 05 2004

Attest.

Prothonotary/
Clerk of Courts

AVISO

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objecciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MARC KATZEN, MARSHALL KATZEN, M.D., and HARRY KELLER as Trustee for the HARRY KATZEN TRUST, the HIRSH KATZEN TRUST, the BRIT KATZEN TRUST, and the BROOK KATZEN TRUST,	:	
Plaintiffs	:	**CIVIL ACTION**
v.	:	**NO.:**
JOHN W. BEAN and GEORGE V. COHEN,	:	
Defendants	:	

COMPLAINT

Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust ("Plaintiffs"), by and through their undersigned counsel Buchanan Ingersoll, PC, hereby file the within Complaint, averring as follows:

PARTIES

1. Plaintiff Marc Katzen is an adult individual residing at 147 S. Interlachen, Unit 400, Winter Park, Florida.

2. Plaintiff Marshall Katzen, M.D., is an adult individual residing at 28 Aylesbury Road, Worcester, Massachusetts.

3. Plaintiff Harry Keller is and adult individual residing at 6 Scott Street, Sykesville, Jefferson County, Pennsylvania. Plaintiff Harry Keller brings this action in his capacity as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust.

4. Defendant John W. Bean is an adult individual. Defendant John W. Bean maintains residences at (1) 4957 Peregrine Point Way, Sarasota, Sarasota County, Florida, 34231; (2) 470 Park Avenue 7D, New York, New York, 10022; and (3) 735 Maple Avenue, DuBois, Clearfield County, Pennsylvania, 15801.

5. Defendant George V. Cohen is an adult individual residing at 2618 Waldman Drive, Williamsport, Lycoming County, Pennsylvania, 17701.

JURISDICTION AND VENUE

6. This action arises under the laws of the Commonwealth of Pennsylvania and is within the subject matter jurisdiction of this Court pursuant to 42 Pa. C.S. § 931.

7. This Court has personal jurisdiction over Defendants pursuant to 42 Pa. C.S. §§ 5301, 5322.

8. Venue in this Court is proper because, *inter alia*, the cause of action arose in Clearfield County, Pennsylvania. Pa. R.C.P. 1006.

BACKGROUND

9. On or about April 18, 1985, the Clearfield County Industrial Development Authority (the "Authority") issued and sold $300,000 of Commercial Development Second Mortgage Revenue Bonds, Series 1985 (the "Bonds") with a maturity date of February 1, 2020. A true and correct copy of the Form of the Bonds is attached hereto as Exhibit "A."

10. The Authority issued the Bonds pursuant to an April 18, 1985 Debt Resolution ("Debt Resolution"), authorizing the issuance of a First Mortgage Note in the amount of $1,700,000 ("First Mortgage") and the Bonds. A true and correct copy of the Debt Resolution is attached hereto as Exhibit "B."

11. The Debt Resolution provides that The Savings & Trust Company of Pennsylvania ("S&T") is the Paying Agent on the Bonds and the "Mortgagee" of the First Mortgage.

12. A Commercial Development Second Mortgage ("Second Mortgage") secures the Bonds and names the Authority as the Mortgagor and S&T as Mortgagee. A true and correct copy of the Second Mortgage is attached hereto as Exhibit "C."

13. The Authority issued the Bonds to provide a portion of the funds for the acquisition and construction of a commercial economic development warehouse project (the "B Warehouse Project") in Sandy Township, Clearfield County, Pennsylvania.

14. The developer of the B Warehouse Project is B Warehouse Company ("B Warehouse Co."), which was formed pursuant to a Joint Venture Agreement on April 25, 1985. A true and correct copy of the Joint Venture Agreement is attached hereto as Exhibit "D."

15. B Warehouse Co. is in the exclusive business of maintaining and operating the B Warehouse Project, which generates rental income to B Warehouse Co.

16. In addition to the Bonds, B Warehouse Co. obtained funding for the B Warehouse Project through the First Mortgage and an additional $500,000 investment by the parties to the Joint Venture Agreement (the "Joint Venturers").

17. All financing for the B Warehouse Project was subject to a certain Mortgage Loan Agreement dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, by and between the Authority, B Warehouse Co., and S&T. A true and correct copy of the Mortgage Loan Agreement is attached hereto as Exhibit "E."

18. The original Joint Venturers included Calvin Bean; The Retirement Plan for Employees of Ideal Products, Inc.; The George V. Cohen, P.C. Pension Plan; Creekside Farms; Bertram B. Leopold; and the Profit Sharing Plan for Leopold, Eberhardt & Goldstein.

19. Upon information and belief, the current Joint Venturers and their respective interests in B Warehouse Co. are as follows:

Susan Ansin	11.334%
Mid-State Bank – Bertram Leopold Trust	22%
Defendant John W. Bean	16.667%
Retirement Plan – Ideal Products, Inc.	16.666%
George V. Cohen Rollover IRA	16.666%
R.E. Shipman Trust	16.667%

20. With the exception of the Bonds, the original financing for the B Warehouse Project (*i.e.*, the First Mortgage and the initial $500,000 investment by the Joint Venturers) has been paid back in full.

21. On or about March 23, 1992, B Warehouse Co. appointed Defendant John W. Bean "the true and lawful attorney for B Warehouse Co." pursuant to a Durable Power of Attorney. A true and correct copy of the March 23, 1992 Durable Power of Attorney is attached hereto as Exhibit "F."

22. Upon information and belief and at all times relevant, Defendant John W. Bean has abdicated, delegated, and/or shared control and decision making authority with respect to the affairs of B Warehouse Co., in whole or in part, to Defendant George V. Cohen.

23. At all times relevant hereto, Defendants have exerted control over B Warehouse Co.'s affairs.

24. Upon information and belief, from January 1, 1986 through June 30, 2002, a single tenant (the "Tenant") continuously occupied the warehouse, which was constructed pursuant to the B Warehouse Project, subject to a "triple net" lease, *i.e.*, the tenant paid a market rental rate, plus all costs for utilities, insurance, maintenance and repairs and taxes (the "Lease").

25. Upon information and belief, B Warehouse Co. recognized additional rental income from the warehouse in 2003 of nearly $200,000.

THE DISPUTE

26. Plaintiffs purchased the Bonds on or about May 7, 1985. A true and correct copy of the Purchasers' Receipt is attached hereto as Exhibit "G."

27. The Bonds provide that the S&T, as Paying Agent, shall pay Plaintiffs interest at the minimum rate shown on the Bonds—*i.e.* fifteen percent, on the first day of each month plus an additional contingent interest equal to fifty percent of the rental income paid in each calendar year to the Investor Developer in excess of . . . $157,500 during the last twenty years." *See* Exhibit A.

28. Upon information and belief, on or about June 30, 2002, the Lease expired and the Tenant vacated the premises.

29. Plaintiffs, nonetheless, continued to receive their regularly scheduled interest payments until July 2004, when the payments stopped.

30. Upon information and belief, Defendants wantonly, intentionally, maliciously, and without cause took action to prevent B Warehouse Co., as the obligor on the Bonds, and S&T, as Paying Agent, from making the regularly scheduled monthly payments to Plaintiffs under the Bonds.

31. On or about July 8, 2004, counsel for B Warehouse Co. informed Plaintiffs that "the prospects for locating future tenants of the warehouse are not promising." A true and correct copy of the July 8, 2004 letter is attached hereto as Exhibit "H."

32. In the July 8, 2004 letter, counsel for B Warehouse Co. suggests that the parties (1) negotiate a "modification to the payment terms for the Bonds," (2) agree that the Bonds may be immediately repaid in full, thereby foregoing future payments on the Bonds, which were expected through the year 2020, or (3) declare a default on the Bonds.

33. By the time Plaintiffs received the July 8, 2004 letter from counsel for B Warehouse Co., however, S&T had already ceased making the regularly scheduled payments to Plaintiffs on the Bonds.

34. In an attempt to resolve the dispute, Plaintiff Marc Katzen sent a letter to Defendant John W. Bean on or about September 9, 2004, wherein Plaintiff Marc Katzen highlighted the parties' past business dealings and suggested a reasonable alternative to the course of action suggested by counsel for B Warehouse Co. A true and correct copy of the September 9, 2004 letter is attached hereto as Exhibit "I."

35. On or about September 10, 2004, Defendant John W. Bean sent Plaintiff Marc Katzen a terse and vulgar acknowledgment of receipt of Plaintiff Marc Katzen's letter. The e-mail correspondence attaches a photograph, demonstrating Defendants' improper behavior and unwillingness to respond in good faith to Plaintiffs' concerns. A true and correct copy of the September 10, 2004 email and attachment is attached hereto as Exhibit "J."

36. According to B Warehouse Co. financial statements dated December 31, 2003, the company possessed cash and investments valued in excess of $1,500,000. A true and correct copy of the December 31, 2003 Financial Statements is attached hereto as Exhibit "K."

37. Although the B Warehouse Co. financial statements suggest that B Warehouse Co. had funds as of December 31, 2003, that would be sufficient to pay the interest on the Bonds as required, Defendants prevented B Warehouse Co. and S&T, as the Paying Agent, from making the July 2004 payment and all subsequent interest payments as they became due.

COUNT I: TORTIOUS INTERFERENCE

38. The averments in paragraphs 1 through 37 above are incorporated by reference as if fully set forth herein.

39. As "Paying Agent" on the Bonds, S&T is required to make certain payments from the B Warehouse Co. accounts to Plaintiffs.

40. Upon information and belief, Defendants instructed S&T to cease any payments on the Bonds and/or prevented S&T from making payments through other unlawful conduct as alleged herein.

41. Defendants' actions in this regard were wanton, intentional, and malicious and specifically intended to coerce Plaintiffs to agree to renegotiate the terms of the Bonds and to establish terms more favorable to the Joint Venturers and Defendants.

42. Defendants' actions were neither lawful, justified, nor privileged.

43. Through their conduct, Defendants have interfered unlawfully with B Warehouse Co.'s contractual obligations, as obligor under the Bonds, to Plaintiffs and S&T's obligations, as Paying Agent for the Bonds, to Plaintiffs.

44. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds in an amount believed to be in excess of $1,500,000.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request judgment in their favor and against Defendants George V. Cohen and John W. Bean as follows:

(1) a preliminary and permanent injunction, which enjoins any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds;

(2) damages in an amount believed to be in excess of $1,500,000 and, in any event, to be proved at trial;

(3) punitive damages; and

(4) attorneys' fees, costs, interest and such other relief as this Court deems just and appropriate.

COUNT II: FRAUD

45. The averments in paragraphs 1 through 44 above are incorporated by reference as if fully set forth herein.

46. It is believed and, therefore, averred that Defendants wantonly, intentionally, and maliciously concealed information regarding the distribution of the assets of B Warehouse Co. to avoid the regularly scheduled interest payments on the Bonds to Plaintiffs.

47. It is further believed that Defendants' actions were intended to force Plaintiffs to agree to renegotiate the terms of the Bonds to establish new terms that are more favorable to the Joint Venturers and Defendants.

48. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds.

49. Defendants are, thus, liable to Plaintiffs for these intentional, fraudulent, and improper acts, which have caused harm to Plaintiffs in an amount believed to be in excess of $1,500,000.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request judgment in their favor and against Defendants George V. Cohen and John W. Bean as follows:

(1) a preliminary and permanent injunction, which enjoins any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds;

(2) damages in an amount believed to be in excess of $1,500,000 and, in any event, to be proved at trial;

(3) punitive damages; and

(4) attorneys' fees, costs, interest and such other relief as this Court deems just and appropriate.

COUNT III: CONVERSION

50. The averments in paragraphs 1 through 49 above are incorporated by reference as if fully set forth herein.

51. Plaintiffs had a current possessory interest in the funds held in the B Warehouse Co. accounts at the time that Defendants depleted those accounts.

52. Defendants wantonly, intentionally, and maliciously converted those assets for their own personal use and the use of others without justification or compensation to Plaintiffs.

53. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request judgment in their favor and against Defendants George V. Cohen and John W. Bean as follows:

(1) a preliminary and permanent injunction, which enjoins any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds;

(2) damages in an amount believed to be in excess of $1,500,000 and, in any event, to be proved at trial;

(3) punitive damages; and

(4) attorneys' fees, costs, interest and such other relief as this Court deems just and appropriate.

COUNT IV: FRAUDULENT TRANSFERS

54. The averments in paragraphs 1 through 53 above are incorporated by reference as if fully set forth herein.

55. Despite B Warehouse Co.'s obligation under the Bonds to pay Plaintiffs the regularly scheduled interest payments, B Warehouse Co.'s counsel notified Plaintiffs in a July 8, 2004 letter that B Warehouse Co. would cease further payments unless Plaintiffs agreed to renegotiate the terms of the Bonds.

56. Upon information and belief, Defendants wantonly, intentionally, and maliciously divested the B Warehouse Co. of its assets through disbursements to themselves and others, thereby preventing B Warehouse Co. from satisfying its obligations to Plaintiffs on the Bonds.

57. Defendants have concealed these disbursements from Plaintiffs.

58. The divestiture of assets from the accounts of B Warehouse Co. and resultant failure of B Warehouse Co. to pay amounts due on the Bonds has impaired the value of the Bonds.

59. The disbursements Defendants made violate common law and the Uniform Fraudulent Transfers Act, 12 Pa. C.S. §§ 5101-5110 .

60. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request that this Court preliminarily and permanently enjoin any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds, plus such other relief as this Court deems just and appropriate.

COUNT V: CIVIL CONSPIRACY

61. The averments in paragraphs 1 through 60 above are incorporated by reference as if fully set forth herein.

62. As described more fully above, Defendants acted in concert to defraud Plaintiffs and interfere with Plaintiffs' contractual rights.

63. Defendants actions were wanton, intentional, malicious, and without lawful purpose and, in fact, were intended to coerce Plaintiffs into renegotiating the terms of the Bonds to establish new terms that are more favorable to the Joint Venturers and Defendants.

64. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered substantial harm in the form of a significant and substantial decrease in the market value of the Bonds.

WHEREFORE, Plaintiffs Marc Katzen, Marshall Katzen, M.D., and Harry Keller as Trustee for the Harry Katzen Trust, the Hirsh Katzen Trust, the Brit Katzen Trust, and the Brook Katzen Trust respectfully request judgment in their favor and against Defendants George V. Cohen and John W. Bean as follows:

(1) a preliminary and permanent injunction, which enjoins any person—including but not limited to Defendants George V. Cohen and John W. Bean—or financial institution from taking any action, including but not limited to the disbursement of funds or distribution of proceeds of B Warehouse Co., which may further diminish the value of the Bonds;

(2) damages in an amount believed to be in excess of $1,500,000 and, in any event, to be proved at trial;

(3) punitive damages; and

(4) attorneys' fees, costs, interest and such other relief as this Court deems just and appropriate.

BUCHANAN INGERSOLL PC

By: _____

P. Kevin Brobson
Attorney I.D. # 76693
Nicole L. Borda
Attorney I.D. #89214
One South Market Square
213 Market Street - 3rd Floor
Harrisburg, PA 17101
(717) 237-4800 (ph)
(717) 233-0852 (fax)

Attorneys for Plaintiffs

DATE: November 4, 2004

VERIFICATION

I, Marc Katzen, have read the foregoing document and verify that the facts set forth are true and correct to the best of my knowledge, information and belief. To the extent that the foregoing document and/or its language is that of counsel, I have relied upon counsel in making this Verification.

I understand that any false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



Marc Katzen

Exhibit A

"EXHIBIT B"

(FORM OF DEFINITIVE FULLY REGISTERED SERIES OF 1985 BOND)

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BOND,
SERIES OF 1985
(B WAREHOUSE COMPANY PROJECT)

Registered Holder:
No. IR-
$_____
Maturity Date: February 1, 2020
Interest Rate: 15% Minimum

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (the "Authority"), a public instrumentality and body politic and corporate of the Commonwealth of Pennsylvania, duly organized and existing under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"), for value received, hereby promises to pay on this Commercial Development Second Mortgage Revenue Bond, Series of 1985 (B Warehouse Company Project) (the "Bond"), but solely from the receipts and revenues hereinafter mentioned, to the Registered Holder shown hereon, or registered assigns, on the Maturity Date shown hereon, unless this Bond shall be redeemable and before said date shall have been duly called for redemption in whole or in part and payment of the redemption price made or provided for, upon surrender hereof, the principal sum shown hereon, and to pay interest only monthly hereon from the first day of the month preceding the authentication date hereof, unless the date hereof is prior to May 1, 1985, then from April 15, 1985, at the minimum rate shown hereon, on the first day of each month thereafter, plus additional contingent interest computed to be equal to a total of fifty (50%) percent of the rental income paid in each calendar year to the Investor Developer in excess of $337,500 during the first ten (10) years, and in excess of $227,500 during the next five (5) years, and in excess of $157,500 during the last twenty (20) years, payable proportionately to the Registered Holder of this Bond in the same proportion as the principal amount of this Bond bears to the total of all Bonds then Outstanding over the period of approximately thirty-five (35) years (which is the term of this Bond) in monthly payments, and plus further additional contingent interest for Appreciated Value computed to be equal to a total of fifty (50%) percent of the amount (if any) by which (a) the Appreciated Value of the Project exceeds $2,500,000 if the Registered Holders of all of the Bonds approve the sale of the Project before the maturity of the Bonds, or (b) the Appraised Value of the Project exceeds $2,500,000 at maturity of the Bonds, or on Transfer, or on the borrowing of funds not used for Capital Additions on the Project exceeds the Base Amount (in accordance with each of the foregoing terms as hereinafter defined), payable at said time proportionately to the Registered Holder of this (Shared Appreciation) Bond in the same proportion as the principal amount of this Bond bears to the total of all (Shared Appreciation) Bonds then Outstanding (Note - the Investor Developer at its option may from time to time pay this additional contingent interest for Appreciated Value on this (Shared Appreciation) Bond in advance by having the Project appraised. Upon payment of additional contingent interest for Appreciated Value of said total of fifty (50%) percent of the Appreciated Value on all (Shared Appreciation) Bonds, including this Bond, over the Base Amount, the Base Amount will then thereafter be increased. If the Project is not sold or otherwise refinanced at maturity of the (Shared Appreciation) Bonds, the Registered Holder must refinance the outstanding obligation (up to the $300,000) of all of the (Shared Appreciation) Bonds (including this Bond), including the then due fifty (50%) percent of the Appreciated Value over the then Base Value. The aforesaid Registered Holder must refinance using a fully amortizing mortgage instrument with a term of thirty (30) years. Said mortgage instrument shall require interest at a minimum of fifteen (15%) percent or two (2%) percent above the highest interest rate on comparable commercial mortgages in the 180 days preceding said refinancing. The

mortgage shall be a first mortgage on the Project and shall contain the shared appreciation terms and the variable interest terms which apply the (Shared Appreciation) Bonds (including this Bond). Registered Holder holding in total seventy-five (75%) percent of the (Shared Appreciation) Bonds (including this Bond) may in writing elect to defer all or part of this additional contingent interest for Appreciated Value on Transfer. Prior to each Transfer (in sufficient time to permit the appraisal provided for to determine the Appreciated Value as hereinafter defined), the Investor Developer shall give the Registered Holder (including the Registered Holder of this Bond) written notice thereof, together with an executed copy of the transfer agreement. Upon each sale of the Project or Investor Developer's interest in the Project, the Investor Developer shall furnish to all Registered Holders (including the Registered Holder of this Bond) an executed copy of the closing statement signed by the Investor Developer and the purchaser and such other evidence of the sale price as any of the Registered Holders may reasonably request), upon the then surrender hereof, said interest and principal payments to be made either until the Authority's obligation with respect to the payment of such principal sum shall be discharged as provided hereinafter, or until maturity hereof, or if this Bond shall have been duly called for previous redemption and payment of the redemption price shall have been made or provided for, until the redemption date.

"Appreciated Value" shall mean in the case of a sale of the Project or the Investor Developer's interest therein (whether for cash or in installments), the gross sale price (including the then balance of the indebtedness whether or not assumed by the purchaser) or, if the gross sale price does not reasonably reflect the then current market conditions, the Fair Market Value of the Project and, in all other cases, the Fair Market Value of the Project. Whether the gross sale price reasonably reflects the then current market conditions and the Fair Market Value shall be determined by appraisal. The Fair Market Value shall be determined by an average of two appraisals. One appraiser shall be selected and paid for by the Investor Developer and one selected and paid for by the Paying Agent for the Bondholders, and both shall be M.I.A. appraisers. "Base Amount" shall mean at the time or each Transfer and at maturity the sum of $2,500,000 reduced by insurance proceeds and condemnation proceeds not used for Capital Additions and increased by any Capital Additions not paid for by insurance proceeds and condemnation proceeds. The Base Amount shall from time to time be increased to the Appreciated Value at the time that actual payment of contingent interest based on appreciation is paid to Bondholders. "Transfer" shall mean and includes a sale, installment sale contract, agreement for deed, refinancing, creation of a lien subordinate to the First and Second Mortgages, leasing, or a judicial sale on execution or other legal process; but does not include a transfer by devise, descent or by operation of law upon the death of any Joint Venturer of the Investor Developer or his descendants, a gift to a relative of any Joint Venturer of the Investor Developer by blood or marriage without consideration of any kind, or a transfer to a spouse of any Joint Venturer of the Investor Developer pursuant to divorce decree or property settlement.

The principal of, premium, if any, and interest on this Bond shall be payable at the Principal Corporate Trust Office of The Savings & Trust Company of Pennsylvania (the "Paying Agent"), in the Borough of Brookville, Pennsylvania, or of any successor paying agent under the Debt Resolution of the Authority hereinafter mentioned, in any coin or currency of the United States of America which, at time of payment, is legal tender for the payment of public and private debts. The interest hereon is payable by check or draft mailed by the Paying Agent to the Registered Holder of this Bond on the record date for payment of such interest and principal, namely the day which is the 10th day prior to said payment date. Payments of principal and interest shall be noted on the Payment Record maintained by the Paying Agent and such payments shall fully discharge the obligation of the Authority hereon to the extent of the payments so made. Upon final payment of principal and interest, this Bond shall be submitted to the Paying Agent for cancellation as to the Authority.

This Bond is issued in full compliance with the Constitution and statutes of the Commonwealth of Pennsylvania, including among others, the Act. Pursuant to law and the proceedings under which this Bond is issued, this Bond is payable solely out of the revenues and receipts derived from the mortgage loan financing by the Authority of a certain commercial economic development warehouse facility which is to be acquired and constructed and is located in the Township of Sandy, Clearfield County, Pennsylvania, to B Warehouse Company (the "Investor Developer"), a Joint

Venture. The installments to be paid by the Investor Developer under the mortgage loan financing of the facility hereinafter described have been assigned to the Paying Agent as security for the Bonds and such installments are sufficient to pay the principal of and interest on the Bonds as the same become due and payable.

This Bond and such other Bonds of the series of which it forms a part are issued pursuant to and in full compliance with the Constitution and statutes of the Commonwealth of Pennsylvania, particularly the Act, and pursuant to the Debt Resolution of the Authority, hereinafter mentioned. This Bond and the series of which it forms a part and the interest appertaining hereto are limited obligations of the Authority and are payable solely from the receipts and revenues derived from the Project hereinafter defined. This Bond and the interest and contingent interest appertaining hereto do not now and shall never in any respect be a general obligation of the Authority nor a general obligation of the Commonwealth of Pennsylvania or any political subdivision thereof, nor do they in any manner pledge the general credit nor taxing power of the Commonwealth of Pennsylvania or any political subdivision thereof, nor shall they be payable in any manner from funds raised by taxation.

Neither the County of Clearfield, Pennsylvania, nor the Commonwealth of Pennsylvania shall in any event be liable for the payment of the principal of or interest or contingent interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever of the Authority, and none of the Bonds, nor any of the Authority's agreements or obligations shall be construed to constitute an indebtedness of the County of Clearfield, Pennsylvania, or the Commonwealth of Pennsylvania, within the meaning of any constitutional or statutory provision whatsoever.

This Bond is one of an initially authorized series of $300,000, aggregate principal amount, of commercial development revenue bonds of the Authority, known as "Clearfield County Industrial Development Authority, Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project)" (the "Bonds"), all of like date and tenor, except as to amount, rate of interest, registration, maturity and provisions for redemption, and all issued under and secured by the Debt Resolution of the Authority, adopted on April 18, 1985 (the "Debt Resolution"), and by the pledge of the income, installments, receipts and revenues payable under a Mortgage Loan Agreement (the "Mortgage Loan Agreement"), dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, by and between the Investor Developer, the Paying Agent and the Authority, and by the pledge of certain other moneys of the Project financed, as set forth above, and further secured by the collateral assignment of a commercial lease and all subsequent commercial leases (the "Lease" and "Leases") of the facility, after completion of the acquisition and construction, from the Investor Developer, as the Landlord, to Brockway, Inc. (NY), as the Initial Tenant, or various subsequent commercial entities, as the subsequent Tenants, which Lease and Leases (if not extended in some cases as the Initial Tenant or subsequent Tenants have the option to do) may be terminated in certain years less than the terms of the Bonds, which if this occurs then the Bonds will thereafter be secured by the land and building only with the Investor Developer nevertheless remaining unconditionally obligated to make the mortgage loan installment payments under the Mortgage Loan Agreement (although that obligation will then be unsecured), all as provided in the Debt Resolution and in the Mortgage Loan Agreement. Reference is made to the Debt Resolution, a copy of which is on file at the Principal Corporate Trust Office of the Paying Agent, and to the Mortgage Loan Agreement and the Lease for, inter alia, a definition and description of the "Project", and a statement of the income, installments, receipts, revenues and moneys of the Authority pledged for the payment of the principal of, premiums and other charges, if any, and interest on the Bonds, the nature, extent and manner of enforcement of the security, the rights of holders of the Bonds and of the Paying Agent with respect to such security, and the terms under which the Bonds are issued. All of the Bonds issued under the Debt Resolution are subordinate to the First Mortgage Loan Note (the "First Mortgage Loan Note") issued by the Authority under the Debt Resolution to The Savings & Trust Company of Pennsylvania simultaneously herewith, but otherwise are equally and ratably secured as to principal, premium, if any, and interest (except said Bonds and the second lien of the Debt Resolution may be automatically released by operation of law and/or subordinated to any financing not under the Debt Resolution subsequently entered into

Registered Holders of the Bonds which the Investor Developer determines is necessary to finance an extention, enlargement, addition or improvement to the Project on any parcel of undeveloped ground which is so designated for release and/or subordination and is now a portion of the Premises), as provided in said Mortgage Loan Agreement, to all of the provisions of which any holder of this Bond by his acceptance hereof thereby assents, and to which Debt Resolution and Mortgage Loan Agreement reference is hereby made for a description of the nature and extent of the security, and a statement of the terms and conditions upon which the Bonds are issued and secured, the rights of the Registered Holders thereof and of the Paying Agent thereunder, and the bond indebtedness which is equally secured, and the other matters set forth therein.

This Bond is transferable by the Registered Holder hereof or his duly authorized attorney at the Principal Corporate Trust Office of the Paying Agent, upon surrender of this Bond, accompanied by a duly executed instrument of transfer, in form and with guarantee of signature satisfactory to the Paying Agent, subject to such reasonable regulations as the Authority or the Paying Agent may prescribe, and upon payment of any taxes or other governmental charges incident to such transfer. Upon any such transfer, a new registered Bond or Bonds in the same aggregate principal amount will be issued to the transferee. The person in whose name this Bond is registered shall be deemed to be the absolute owner hereof for all purposes, whether or not this Bond shall be overdue, and the Authority and the Paying Agent shall not be affected by any notice to the contrary.

The Bonds are issuable in fully registered form without coupons in requested denominations thereof. The Bonds, upon surrender thereof at the Principal Corporate Trust Office of the Paying Agent with, if required by the Paying Agent, a written instrument of transfer, in the form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Holder or his duly authorized attorney, may, at the option of the Registered Holder hereof, be exchanged for an equal aggregate principal amount of new Bonds of any other authorized denomination, upon payment of any tax, fee or other governmental charge required to be paid with respect to such exchange, and in the manner and subject to the conditions provided in the Debt Resolution.

Neither the Authority nor the Paying Agent shall be required to transfer or exchange any Bonds for a period of ten (10) days next preceding any interest payment date or any selection by lot of Bonds to be redeemed, nor to transfer or exchange any Bonds selected, called or being called for redemption.

As permitted by the Act, this Bond is issued with the intent that the laws of the Commonwealth of Pennsylvania shall govern its construction, and, as declared by the Act, the Authority shall not be required to pay any taxes upon any property acquired or used for its purposes, and this Bond, which is being issued for a proper public purpose by the Authority, its transfer and the income therefrom (including any profits made on the sale thereof), shall at all times be free from taxation within the Commonwealth of Pennsylvania.

This Bond is not subject to Optional Redemption (prepayment) prior to its maturity.

The Bonds, including this Bond, are subject to Mandatory Extraordinary Redemption (prepayment) in whole at 100% of the principal amount, plus accrued interest thereon to the redemption date, if, as a result of changes in the Constitution of the Commonwealth of Pennsylvania or in the Constitution of the United States of America, or of legislative or administrative action (whether State or Federal), or of a final decree, judgment or order of any court or administrative body having jurisdiction in the premises (after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate), the obligations of the Investor Developer under the Mortgage Loan Agreement shall become unenforceable or impossible of performance in any material respect in accordance with the intent and purpose of the parties as expressed in said Mortgage Loan Agreement.

The Bonds, including this Bond, are subject to Mandatory Extraordinary Redemption (prepayment) in whole or in part at 100% of the principal amount, plus accrued interest thereon to the redemption (prepayment) date, to the extent of those Bonds held to be illegal, unauthorized or unenforceable as a result of changes in the

Constitution of the Commonwealth of Pennsylvania or in the Constitution of the United States of America, or of legislative or administrative action (whether State or Federal), or of a final decree, judgment or order of any court or administrative body having jurisdiction in the premises (after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate).

The Bonds, including this Bond, are subject to an increase in the rate of interest payable hereon to an adjusted taxable rate at all times thereafter equal to a rate which renders an equivalent taxable return to the Registered Holders, which will occur in the event interest on the Bonds, including this Bond, shall be determined by the Internal Revenue Service or by the Federal courts (in each case, after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate) to have become subject to Federal income taxes by virtue of the applicable limitation imposed by Section 103 (b) of the Internal Revenue Code of 1954, as amended, (the "Code"), on bond issuance and/or capital expenditures having been exceeded, or in the event the interest on the Bonds shall become subject to taxation as the result of any other provision of Section 103 or the rules and regulations thereunder (except for interest on any Bond during the period it is held by a "substantial user" of the Project or a "related person" within the meaning of the Code). In such event, the Investor Developer will be obligated to pay this increased taxable rate on the Bonds, including this Bond, from the date interest on the Bonds, including this Bond, is determined to be taxable.

In any case where less than all the Bonds are to be redeemed and/or prepaid, such Bonds shall be called pro rata according to date of maturity by the Paying Agent as specified herein and in the manner provided for in the Debt Resolution.

Any redemption or prepayments, as hereinbefore authorized (except in the cases of Mandatory Extraordinary Redemption (prepayment) wherein notice shall be given and be effective immediately, shall be deemed to be the redemption (prepayment) date, and thereafter interest on the Bonds, including this Bond, shall cease to accrue), shall be made after timely notice by certified mail -return receipt requested shall be given by the Paying Agent to the Registered Holders of the affected Bonds.

In case an Event of Default, as defined in the Mortgage Loan Agreement, shall occur, the principal of all Bonds then Outstanding may be declared or may become due and payable upon the conditions, in the manner, and with the effect provided in the Debt Resolution.

No recourse under or upon any obligation, covenant or agreement contained in the Debt Resolution or the Mortgage Loan Agreement, or in any Bond or interest thereby secured or under any judgment obtained against the Authority or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances under or independent of the Debt Resolution or the Mortgage Loan Agreement, shall be had against any board member, officer, agent, attorney or employee, as such, past, present or future, of the Authority, either directly or through the Authority or otherwise, for the payment for or to the Authority or any receiver thereof, or for or to the Registered Holder of any Bond or otherwise, of any sum that may be due and unpaid by the Authority upon any such Bond. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such board member, officer, agent, attorney or employee, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for, or to the Authority or any receiver thereof, or for or to the Registered Holder of any Bond or otherwise, of any sum that may remain due and unpaid upon the Bonds and interest thereby secured or any of them, is hereby expressly waived and released as a condition of and consideration for the issuance of the Bonds.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Mortgage Loan Agreement and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; and the issuance of this Bond and the series of which it forms a part, together with all other obligations of the Authority, do not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any benefit under the Debt Resolution nor shall it be valid or obligatory for any purpose until this Bond shall have been manually authenticated by the Certificate of Authentication endorsed hereon being duly signed by the Paying Agent.

IN WITNESS WHEREOF, CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY has caused this Bond to be signed in its name and in its behalf by the manual or facsimile signature of its Chairman or Vice Chairman and a manual or facsimile of its corporate seal to be impressed or imprinted hereon, duly attested by the manual or facsimile signature of its Secretary or Assistant Secretary, all effective as of _____, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

By_____
Chairman

(AUTHORITY SEAL)

Attest:

_____
Secretary

* * * * * *

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds, of the series designated therein, described in the within-mentioned Debt Resolution.

The Text of Opinion attached to the reverse hereof is the text of the opinion of Messers. Lynch and Lynch, of Pittsburgh, Pennsylvania, an executed counterpart of which, dated the date of delivery of and payment for the series of Bonds of which this Bond is one, is on file at the Principal Corporate Trust Office of the Paying Agent.

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as Paying Agent

Authentication Date:_____ By_____
Authorized Person

* * * * * *

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

_____

_____

PLEASE INSERT SOCIAL SECURITY OR OTHER TAX IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

the within Bond issued by the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, and hereby irrevocably constitutes and appoints _____ as his Attorney to transfer said Bond on the books of said Authority with full power of substitution in the premises.

Dated _____

_____
(Sign here exactly as name(s) is (are) shown on the face of this Bond without any change or alteration whatever.)

SIGNATURE GUARANTEED: _____

* * * * * *

TEXT OF OPINION OF MESSRS. LYNCH AND LYNCH, BOND COUNSEL, OF PITTSBURGH, PENNSYLVANIA, ISSUED IN RESPECT OF THE CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS, SERIES OF 1985.

* * * * * *

PAYMENT RECORD

Page No. ____

Fully Registered
Bond No. IR - ____

Due Date	Principal Payment	Principal Balance Due	Interest Payment (15%)	Date Paid	Name of Paying Agent's Authorized Official and Title

CERTIFICATION

I, the undersigned, Secretary of Clearfield County Industrial Development Authority, do hereby certify that the foregoing Debt Resolution was duly adopted and passed by a majority vote of a quorum of members present at a special meeting of said Authority duly called and held on April 18, 1985, which meeting was at all times open to the public and at which meeting a quorum of said Authority was present and participating, and that the vote of the members of said Authority on said Debt Resolution was as follows:

Members of the Authority	Vote
Stanley E. Crum, Chairman	Yes
William Ginter, Vice Chairman	Yes
Robert E. Watson, Secretary and Treasurer and Executive Director	Yes
Francis E. Reed, Assistant Secretary-Treasurer	Yes
Samuel Mollica, Member	Yes
William R. Harkins, Member	Absent
Gerald Buzzard, Member	Yes

I hereby further certify that said Debt Resolution has not been amended, modified or rescinded and is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto placed my hand and the seal of Clearfield County Industrial Development Authority on this May 7, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

By Robert E. Watson
Secretary

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

No. IR-_____

$_____

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Maturity Date: FEBRUARY 1, 2020

Interest Rate: 15% MINIMUM

COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BOND, SERIES OF 1985 (B WAREHOUSE COMPANY PROJECT)

REGISTERED HOLDER: SAMPLE

_____ (DOLLARS)

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (the "Authority"), a public instrumentality and body politic and corporate of the Commonwealth of Pennsylvania, duly organized and existing under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"), for value received, hereby promises to pay on this Commercial Development Second Mortgage Revenue Bond, Series of 1985 (B Warehouse Company Project) (the "Bond"), but solely from the receipts and revenues hereinafter mentioned, to the Registered Holder shown hereon, or registered assigns, on the Maturity Date shown hereon, unless this Bond shall be redeemable and before said date shall have been duly called for redemption in whole or in part and payment of the redemption price made or provided for, upon surrender hereof, the principal sum shown hereon, and to pay interest only monthly hereon from the first day of the month preceding the authentication date hereof, unless the date hereof is prior to May 1, 1985, then from April 15, 1985, at the minimum rate shown hereon, on the first day of each month thereafter, plus additional contingent interest computed to be equal to a total of fifty (50%) percent of the rental income paid in each calendar year to the Investor Developer in excess of $237,500 during the first ten (10) years, and in excess of $237,500 during the next five (5) years, and in excess of $157,500 during the last twenty (20) years, payable proportionately to the Registered Holder of this Bond in the same proportion as the principal amount of this Bond bears to the total of all Bonds then Outstanding over the period of approximately thirty-five (35) years (which is the term of this Bond) in monthly payments, and plus further additional contingent interest for Appreciated Value computed to be equal to a total of fifty (50%) percent of the amount (if any) by which (a) the Appreciated Value of the Project exceeds $2,500,000 if the Registered Holders of all of the Bonds approve the sale of the Project before the maturity of the Bonds, or (b) the Appraised Value of the Project exceeds $2,500,000 at maturity of the Bonds, or on Transfer, or on the borrowing of funds not used for Capital Additions on the Project exceeds the Base Amount (in accordance with each of the foregoing terms as hereinafter defined), payable at said time proportionately to the Registered Holder of this (Shared Appreciation) Bond in the same proportion as the principal amount of this Bond bears to the total of all (Shared Appreciation) Bonds then Outstanding. Note - the Investor Developer at its option may from time to time pay this additional contingent interest for Appreciated Value on this (Shared Appreciation) Bond in advance by having the Project appraised. Upon payment of additional contingent interest for Appreciated Value of said total of fifty (50%) percent of the Appreciated Value on all (Shared Appreciation) Bonds, including this Bond, over the Base Amount, the Base Amount will then thereafter be increased. If the Project is not sold or otherwise refinanced at maturity of the (Shared Appreciation) Bonds, the Registered Holder must refinance the outstanding obligation (up to the $300,000) of all of the (Shared Appreciation) Bonds (including this Bond), including the then due fifty (50%) percent of the Appreciated Value over the then Base Value. The aforesaid Registered Holder must refinance using a fully amortizing mortgage instrument with a term of thirty (30) years. Said mortgage instrument shall require interest at a minimum of fifteen (15%) percent or two (2%) percent above the highest interest rate on comparable commercial mortgages in the 180 days preceding said refinancing. The mortgage shall be a first mortgage on the Project and shall contain the shared appreciation terms and the variable interest terms which apply the (Shared Appreciation) Bonds (including this Bond). Registered Holder holding in total seventy-five (75%) percent of the (Shared Appreciation) Bonds (including this Bond) may in writing elect to defer all or part of this additional contingent interest for Appreciated Value on Transfer. Prior to each Transfer (a sufficient time to permit the appraisal provided for to determine the Appreciated Value as hereinafter defined), the Investor Developer shall give the Registered Holder (including the Registered Holder of this Bond) written notice thereof, together with an executed copy of the transfer agreement. Upon each sale of the Project or Investor Developer's interest in the Project, the Investor Developer shall furnish to all Registered Holders (including the Registered Holder of this Bond) an executed copy of the closing statement signed by the Investor Developer and the purchaser and such other evidence of the sale price as any of the Registered Holders may reasonably request), upon the then surrender hereof, said interest and principal payments to be made either until the Authority's obligation with respect to the payment of such principal sum shall be discharged as provided hereinafter, or until maturity hereof, or if this Bond shall have been duly called for previous redemption and payment of the redemption price shall have been made or provided for, until the redemption date.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE SIDE HEREOF AND SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH ON THE FRONT SIDE HEREOF.

This Bond shall not be entitled to any benefit under the Debt Resolution nor shall it be valid or obligatory for any purpose until this Bond shall have been manually authenticated by the Certificate of Authentication endorsed hereon being duly signed by the Paying Agent.

IN WITNESS WHEREOF, CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY has caused this Bond to be signed in its name and in its behalf by the manual or facsimile signature of its Chairman or Vice Chairman and a manual or facsimile of its corporate seal to be impressed or imprinted hereon, duly attested by the manual or facsimile signature of its Secretary or Assistant Secretary, all effective as of May 7, 1985.

(AUTHORITY SEAL)

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Attest:

_____
Secretary

SAMPLE
Chairman

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

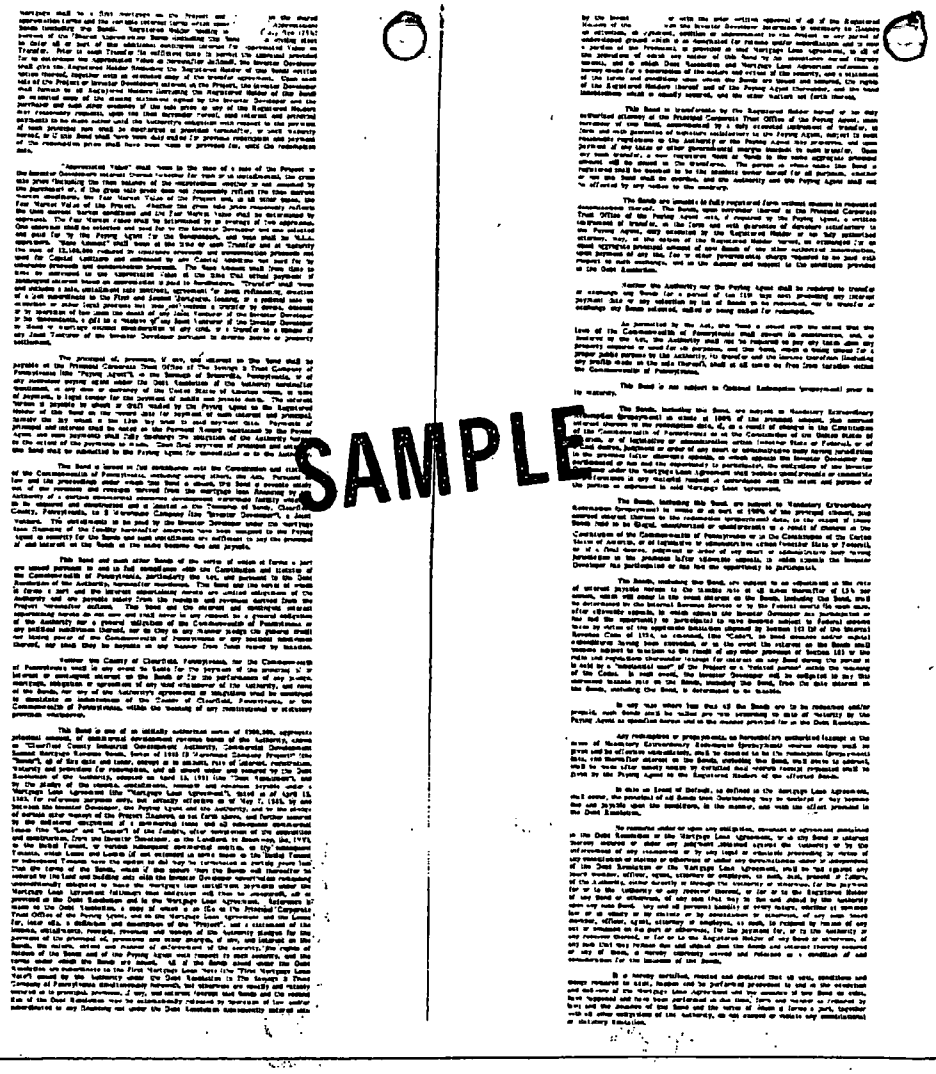
This Bond is one of the Bonds, of the series designated therein, described in the within-mentioned Debt Resolution.

The Text of Opinion attached to the reverse hereof is the text of the opinion of Messers. Lynch and Lynch, of Pittsburgh, Pennsylvania, an executed counterpart of which, dated the date of delivery of and payment for the series of Bonds of which this Bond is one, is on file at the Principal Corporate Trust Office of the Paying Agent.

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as Paying Agent

Authentication Date: _____

By _____
Authorized Person



SAMPLE

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

_____

_____

SAMPLE

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

the within Bond issued by the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, and hereby irrevocably constitutes and appoints _____ as his Attorney to transfer said Bond on the books of said Authority with full power of substitution in the premises.

Dated _____

_____
(Sign here exactly as name(s) is (are) shown on the face of this Bond without any change or alteration whatever.)

SIGNATURE GUARANTEED: _____

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
(Clearfield County, Pennsylvania)

DEBT RESOLUTION

A DEBT RESOLUTION OF THE CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY ACCEPTING AND APPROVING THE NOTE PURCHASE PROPOSAL AND THE BOND PURCHASE PROPOSALS OF THE VARIOUS PURCHASERS, AND AUTHORIZING AND DIRECTING PURSUANT THERETO THE ISSUANCE OF THE $1,700,000 COMMERCIAL DEVELOPMENT FIRST MORTGAGE LOAN NOTE (B WAREHOUSE COMPANY PROJECT) AND OF $300,000, AGGREGATE PRINCIPAL AMOUNT, OF COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS, SERIES OF 1985 (B WAREHOUSE COMPANY PROJECT), AND THE RELATED EXECUTION AND DELIVERY OF THE MORTGAGE LOAN AGREEMENT, THE FIRST MORTGAGE, THE SECOND MORTGAGE AND THE ASSIGNMENT, AND ACCEPTING THE COLLATERAL ASSIGNMENT OF THE LEASE IN CONNECTION THEREWITH; ESTABLISHING A CLEARING FUND, AN ACQUISITION AND CONSTRUCTION FUND AND A BOND FUND; AUTHORIZING ALL OTHER NECESSARY ACTION; AND REPEALING ALL INCONSISTENT RESOLUTIONS.

Adopted: April 18, 1985

WHEREAS, Clearfield County Industrial Development Authority (the "Authority") has been requested to finance a certain commercial development warehouse project (the "Project") for B Warehouse Company (the "Investor Developer" and "Lessor"), which is to be leased to Brockway, Inc. (NY) (the "Initial Tenant" and "Lessee"), and has determined that said Project will further the purposes for which the Authority was incorporated, namely to promote industry and develop trade by inducing manufacturing, industrial and commercial enterprises to locate in or remain within Clearfield County and the Commonwealth of Pennsylvania; and

WHEREAS, the Authority has determined to finance the Project and its related costs by the issuance of said $1,700,000 Commercial Development First Mortgage Loan Note (B Warehouse Company Project) (the "First Mortgage Loan Note" and "Note") to The Savings & Trust Company of Pennsylvania (in this capacity, the "Bank" and "Noteholder"), and said $300,000 in aggregate principal amount of its subordinated bonds to be designated as "Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project)" (the "Second Mortgage Revenue Bonds" and "Bonds"), both to be issued under and pursuant to this Debt Resolution, and as secured by a Mortgage Loan Agreement, dated as of April 15, 1985, for reference purposes only (the "Mortgage Loan Agreement"), with the Investor Developer and the Bank, and a Collateral Assignment of the Lease of the Project between the Investor Developer, as the Landlord, and Brockway, Inc. (NY), as the Initial Tenant; and

WHEREAS, certain purchasers have heretofore offered to purchase said Note and said Bonds and have heretofore or herewith presented to the Authority their respective Note and Bond Purchase Proposals (the "Note and Bond Purchase Proposals") relating thereto; and

WHEREAS, certain actions are required to be taken by the Authority as a prerequisite to the issuance and sale of said Note and Bonds.

NOW, THEREFORE, BE IT RESOLVED, AND IT HEREBY IS RESOLVED, by Clearfield County Industrial Development Authority, as follows:

SECTION 1. It is hereby found and determined that the financing of the commercial development warehouse facility herein referred to as the Project through the issuance of the $1,700,000 Commercial Development First Mortgage Loan Note (B Warehouse Company Project) and the issuance and sale of the $300,000 Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project), under and pursuant to this Debt Resolution; is a proper public purpose and will be of benefit to the health, prosperity, economic stability and general welfare of the Township of Sandy and the County of Clearfield and the Commonwealth of Pennsylvania, and their citizens.

SECTION 2. The Note Purchase Proposal from The Savings & Trust Company of Pennsylvania ($1,700,000) and the Bond Purchase Proposals from Marc Katzen ($135,000), Harry Kellar, Trustee ($75,000), Richard Gordon ($60,000), and Marshall Katzen ($30,000), which have heretofore been presented to this Authority are hereby accepted and approved.

SECTION 3. The Clearfield County Industrial Development Authority, Commercial Development First Mortgage Loan Note (B Warehouse Company Project), in the principal amount of $1,700,000, to be issued to The Savings & Trust Company of Pennsylvania, as the Noteholder, is hereby authorized and directed to be issued and delivered substantially in the form which is attached hereto and marked "Exhibit A". The manual signature of the Chairman or Vice Chairman is hereby authorized and directed to be affixed to said Note, and the corporate seal of the Authority is hereby authorized and directed to be affixed thereon by the Secretary or Assistant Secretary of the Authority. The Chairman or Vice Chairman or Secretary or Assistant Secretary is further hereby authorized and directed to deliver said Note to the Bank pursuant to the Note Purchase Proposal against receipt of the purchase price therefore, and to deposit the amount so received into the Acquisition and Construction Fund as provided herein and in the Mortgage Loan Agreement. The Clearfield County Industrial Development Authority, Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project), in the principal amount of $300,000, are hereby also authorized and directed to be issued and delivered in permanent form, pursuant to and in accordance with substantially the form attached hereto and marked "Exhibit B", and subject to and in compliance with the further provisions provided for herein. The manual or facsimile signature of the Chairman or Vice Chairman is hereby authorized and directed to be affixed to or printed on the face of said Bonds, and the manual or facsimile of the corporate seal of the Authority is hereby adopted and authorized to be affixed to or imprinted thereon. It is also hereby directed that said Bonds shall be executed manually or in facsimile by the Secretary or Assistant Secretary. The Chairman or Vice Chairman or Secretary or Assistant Secretary is further hereby authorized and directed to deliver said Bonds to the Paying Agent for manual authentication under the provisions of this Debt Resolution and, when said Bonds have been authenticated, to deliver them or cause them to be delivered to the respective Purchasers pursuant to the Bond Purchase Proposals against receipt of the purchase price therefor, and to deposit the amounts so received into the Acquisition and Construction Fund as provided herein and in the Mortgage Loan Agreement. The Mortgage Loan Agreement, dated as of April 15, 1985, for reference purposes only, the Assignment of the Mortgage Loan Agreement and the Pledged Revenues, dated as of April 15, 1985, for reference purposes only, and the Collateral Assignment of the Lease, dated as of April 15, 1985, for reference purposes only, and all of the necessary supporting documentation (including the Statement of Election and the Information Return for Private Activity Bonds, IRS Form 8038, to be filed with the Internal Revenue Service) are hereby approved in substantially the forms presented herewith and are directed to be in such final forms as the Authority Board's Attorney shall approve, and the Chairman or Vice Chairman is hereby authorized and directed to execute and deliver, and the Secretary or Assistant Secretary is hereby authorized and directed to execute and affix the corporate seal of the Authority to, and to attest, all of said documents in substantially said final approved forms and upon the terms and conditions therein set forth, with such changes therein as such officers and the Authority Board's Attorney shall approve, such approval to be conclusively evidenced by said officers' execution thereof.

SECTION 4. The Authority hereby appoints The Savings & Trust Company of Pennsylvania, located in Brookville, Pennsylvania, to be the Paying Agent for the Second Mortgage Revenue Bonds under this Debt Resolution.

SECTION 5. The Paying Agent is hereby requested to authenticate said Bonds and to deliver the same to or upon the order of the Secretary or Assistant Secretary of this Authority.

SECTION 6. The interest on the Bonds shall be payable by check or draft mailed by the Paying Agent to the Registered Holders of the Bonds on the record date for payment of such interest and principal, said record date being the day which is the 10th day prior to said payment date. Payments of principal and interest shall be noted on the Payment Record maintained by the Paying Agent and such payments shall fully discharge the obligations of the Authority thereon to the extent of the payments so made. Upon final payment of principal and interest, the Bonds shall be submitted to the Paying Agent for cancellation as to the Authority.

The Bonds shall have the qualities of negotiable instruments under the Pennsylvania Uniform Commercial Code, subject to the provisions for registration and transfer contained herein and in the Bonds.

SECTION 7. No Bonds shall become valid or obligatory for any purpose until such Bonds shall have been dated and manually authenticated by the Paying Agent, or by any successor paying agent, and such authentication by said Paying Agent or by any successor paying agent upon any Bond shall be conclusive and the only evidence that such Bond has been duly authenticated and delivered and that the Registered Holder thereof is entitled to the benefit of the trusts and liens hereby created.

All Bonds are exchangeable for other denominations or transferable by the Registered Holder thereof or his duly authorized attorney at the Principal Corporate Trust Office of the Paying Agent, upon surrender of said Bond, accompanied by a duly executed instrument of transfer, in form and with guarantee of signatures satisfactory to the Paying Agent, subject to such reasonable regulations as the Authority or the Paying Agent shall prescribe, and upon payment of any taxes or other governmental charges incident to such exchange or transfer. On any such exchange or transfer, a new fully registered Bond or Bonds of the same type and in the same aggregate principal amount will be issued to the Registered Holder or his transferee. The person in whose name said Bond is registered shall be deemed to be the absolute owner thereof for all purposes, whether or not said Bond shall be overdue, and the Authority and the Paying Agent shall not be affected by any notice to the contrary.

Neither the Authority nor the Paying Agent shall be required to transfer or exchange any Bond for a period of ten (10) days next preceding any interest payment date or any selection by lot of any Bonds to be redeemed, nor to transfer or exchange any Bonds selected, called or being called for redemption.

SECTION 8. The Authority shall cause to be kept, at the Principal Corporate Trust Office of the Paying Agent for the Bonds, a book for the registration and transfer of the Bonds in the manner provided herein and therein so long as any Bonds shall remain outstanding. Said Registration Book shall be the final and conclusive evidence of the true Registered Holder of each Bond issued hereunder. Such registrations and transfers shall be made without charge to Registered Holders of the Bonds, except for actual costs which shall be paid by the Registered Holder as a condition precedent, including postage, insurance and any taxes or other governmental charges required to be paid with respect to the same. The Authority and the Paying Agent may treat the Registered Holder of any Bond as the absolute owner of said Bond for all purposes, and neither the Authority nor the Paying Agent shall be affected by any contrary notice. Any consent, waiver or other action taken by the Registered Holder of any Bond pursuant to the provisions of this Debt Resolution shall be conclusive and binding upon said Registered Holder, his heirs, successors or assigns, and upon all transferees of said Bond, whether or not any notation of such consent, waiver or other action shall have been made on said Bond or on any Bond issued in exchange therefor.

SECTION 9. If any Bond shall become mutilated or shall be destroyed, lost or stolen, the Authority, in its discretion, may issue and thereupon the Paying Agent shall authenticate and deliver a new Bond of like date, tenor, amount and maturity, in exchange and in substitution for said mutilated Bond upon surrender thereof, or in lieu of and in substitution for said Bond destroyed, lost or stolen, upon the Registered Holder of the Bond: (1) filing with the Paying Agent evidence satisfactory to the Authority and the Paying Agent that said Bond has been destroyed, lost or stolen; (2) furnishing the Authority and the Paying Agent with indemnity (if any) satisfactory to them; and (3) complying with such other reasonable regulations as the Authority and the Paying Agent may require. A reasonable charge may be imposed upon the Registered Holder of the Bond to reimburse the Authority and the Paying Agent for the expenses of issuing each such new Bond, which cost shall be paid before delivery of such new Bond. If such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond, the Authority and the Paying Agent may pay the same, upon receiving evidence and being indemnified as aforesaid, and if such Bond shall be destroyed, lost or stolen, without surrender thereof.

Any Bond issued under this Section shall constitute an original additional contractual obligation on the part of the Authority, whether or not the Bond so alleged to have been destroyed, lost or stolen shall be found at any time; and any Bond issued under this Section shall be entitled to the benefits hereof, in the manner, to the extent, and subject to the conditions provided herein.

SECTION 10. All Bonds surrendered to the Paying Agent for the purpose of payment, exchange or substitution shall be destroyed by the Paying Agent, and the Paying Agent shall furnish the Authority with a certificate of destruction; provided, however, that the Paying Agent upon a written request of the Authority, in lieu of such destruction, may cancel such Bonds and deliver the same to the Authority.

SECTION 11. In the manner, at the times, and upon the terms and conditions provided in the Form of Bonds hereinafter in this Debt Resoluion set forth, the Bonds shall and may be redeemed prior to maturity at the option of the Authority or pursuant to the requirements of this Debt Resolution.

The Authority shall give written notice to the Paying Agent of its election to redeem Bonds and of the redemption date, which notice shall be given at least forty (40) days prior to the redemption date or at such later date as shall be acceptable to the Paying Agent, but no such notice shall be required in the case of mandatory redemptions (if any) pursuant hereto which shall be processed by the Paying Agent without notice from the Authority.

On the date so designated for redemption, notice having been given in the manner and under the conditions herein provided and funds for payment of the Bonds being held in accounts by the Paying Agent in trust for the Registered Holders of the Bonds, the Bonds so called for redemption shall become and be due and payable on such date; interest on the Bonds so called for redemption shall cease to accrue; the interest on any Bonds so called for redemption payable subsequent to the redemption date if the redemption date is an interest payment date or subsequent to the next succeeding interest payment date if the redemption date is not an interest payment date, shall be void; such Bonds shall cease to be entitled to any benefit or security under this Debt Resolution and the Registered Holders of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price plus interest accrued to the date fixed for redemption, and such Bonds shall no longer be deemed outstanding under the provisions of this Debt Resolution.

All unpaid interest which appertain to Bonds so called for redemption and which shall have become due and payable on or prior to the date of redemption designated in such notice shall continue to be payable to the Registered Holders severally and respectively.

Bonds so redeemed shall be cancelled and destroyed by the Paying Agent upon the surrender thereof.

SECTION 12. There is hereby assigned and pledged to the Noteholder and to the Paying Agent for and on behalf of the Registered Holders of the Bonds the Mortgage Loan Agreement and all documents related thereto and the rights (but not the obligations) of the Authority under and pursuant thereto, and all revenues and receipts receivable by the Authority from the Project thereunder, including, without limitation, all mortgage loan installments to be received by the Authority, from the mortgaging of the Project, but excluding the rights and remedies granted to the Authority pursuant to Section 6.2 (a) and 9.1 of the Mortgage Loan Agreement, and all right, title and interest of the Investor Developer, including in particular the rentals provided for therein, in the Lease and all subsequent Leases (if any), dated as of various dates (the "Lease" and "Leases", respectively), by and between the Investor Developer, as the Landlord, and Brockway, Inc. (NY), as the Initial Tenant, and various commercial entities, as the subsequent Tenants (if any), as heretofore assigned by the Collateral Assignment (the "Collateral Assignment"), dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, pursuant to the terms of which the aforementioned mortgage loan installments and aforementioned rentals are to be paid promptly to the Investor Developer and under certain circumstances directly to the Paying Agent at the Principal Corporate Trust Office of the Paying Agent for the account of the Authority.

SECTION 13. There is hereby created hereunder the "Clearing Fund", which is to be a corporate trust department account of the Paying Agent hereunder, held at its Principal Corporate Trust Office. The proceeds from the sale of said Note and said Bonds shall be deposited in said Clearing Fund and shall be used only for the purposes specifically approved heretofore in accordance with the provisions hereof and as hereafter approved by the Investor Developer. At the Note and Bonds Closing for the Note and Bonds, all required transfers to the Acquisition and Construction Fund and all fees due and payable at said Note and Bonds Closing are hereby approved, and

the proper officer or officers of the Paying Agent are hereby directed to execute and deliver to the appropriate payees the necessary checks to be drawn on the Clearing Fund in order to make said required transfers and to pay said fees and thereby complete said Note and Bonds Closing.

SECTION 14. There is hereby created hereunder the "Acquisition and Construction Fund", which is to be held by the Paying Agent hereunder, at the Office of the Paying Agent designated by the Investor Developer. The balance of the proceeds from the sale of the Note and Bonds remaining in the Clearing Fund after paying the required fees at the Note and Bonds Closing shall be transferred by the Paying Agent to this Acquisition and Construction Fund. The moneys in said Acquisition and Construction Fund shall be expended in the manner and for the purposes stated herein and in the Mortgage Loan Agreement, including the transfer from this Fund to the Bond Fund of all money which is necessary for the payment of interest during the construction and development period on the Note and Bonds. Said moneys in the interim may be invested at the direction of the Investor Developer at any time, all in accordance with applicable law and with the written approval of the Bank as the Noteholder and Paying Agent.

SECTION 15. There is hereby created hereunder a fund for the payment of the Note and Bonds hereby authorized, said fund to be known as the "Bond Fund", and which Fund is to be an account in the corporate trust department of the Paying Agent hereunder, held at its Principal Corporate Trust Office. All moneys realized from the Mortgage Loan Agreement shall be paid directly to the Paying Agent in the appropriate amounts on or before the last business day stipulated in the Mortgage Loan Agreement immediately preceeding each interest and principal payment date for said Note and Bonds into the Bond Fund hereby created as required, and shall be applied on each payment date exclusively to the payment of the principal and interest and taxes thereon of said Note and Bonds, to which purpose they are hereby irrevocably pledged. The Authority hereby authorizes and directs the Paying Agent to make payments out of said Bond Fund at such times and in such monthly amounts as are sufficient for the payment of the interest and taxes on said Note and Bonds as they become due.

SECTION 16. The Authority hereby covenants with the Noteholders and the Registered Holders from time to time of the Note and Bonds that it will make no use of the proceeds of the Note and Bonds which, if such use had been reasonably expected on the date of issuance of said Note and Bonds, would have caused said Note and Bonds to be "arbitrage bonds" within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended, and the regulations thereunder, and that it will comply with the requirements of said Section and said regulations throughout the term of said Note and Bonds.

SECTION 17. In the event the Authority shall default in the payment of the principal of, or interest on, the Note or any of the Bonds issued under this Debt Resolution after the same shall have become due and said default shall continue for a period of thirty (30) days, or in the event the Authority shall fail or refuse to comply with any agreement made with the Noteholder or the Bondholders in this Debt Resolution or in the Mortgage Loan Agreement, then the Noteholder or a Registered Holder shall have the right to recover the amount due in the manner, with the effect, and subject to the conditions provided under law. The Noteholder or Registered Holder of a Bond shall have no right to take any actions with respect to any Event of Default, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in under law.

SECTION 18. If the Authority, its successors or assigns, shall pay or cause to be paid unto the Registered Holders of all Bonds outstanding hereunder the principal and interest and premium (if any) to become due thereon at the times and in the manner stipulated therein, then the estate and rights hereby established shall thereafter cease, determine and be void.

Bonds for the payment or redemption of which moneys in the full amount required therefor shall have been deposited in the Bond Fund or in a special redemption fund established for such purpose, whether upon or prior to the maturity or the redemption date of such Bonds, shall be deemed to be paid within the meaning hereof and under law; provided, however, that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or provisions shall have been properly made therefor.

If any Bond shall not be presented for payment when the principal thereof shall become due, either at maturity or otherwise, or at the date fixed for the redemption thereof, and if the Authority shall have deposited in the Bond Fund or any special redemption fund, as the case may be, for the purpose, moneys sufficient to pay the principal of such Bond and the premium (if any) payable upon the redemption thereof, together with all interest due thereon to the date of maturity thereof or to the date fixed for the redemption thereof, for the benefit of the Registered Holder or Registered Holders thereof, respectively, all liability of the Authority to the Registered Holder of such Bond for the payment of the principal thereof and the interest thereon, and all liability of the Authority to the Registered Holder of such Bond for the premium (if any), as the case may be, shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold said moneys, without liability for interest thereon, for the benefit of the Registered Holder of such Bond, as the case may be, for a period of two (2) years thereafter, who shall thereafter be restricted exclusively to said moneys for any claim of whatsoever nature on his part under this Debt Resolution or on, or with respect to, said Bond. At the end of said two (2) year period, the Paying Agent shall return all such unclaimed moneys to the Investor Developer.

SECTION 19. In consideration of the purchase and acceptance of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Debt Resolution shall be deemed to be and shall constitute a contract between the Authority and the Registered Holders from time to time of said Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal benefit, protection and security of the Registered Holders of any and all of the Bonds, all of which, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided herein and under law.

SECTION 20. Nothing in this Debt Resolution, expressed or implied, is intended or shall be construed to confer upon, or to give to, any person, other than the Noteholder or the Registered Holders of the Bonds outstanding hereunder, any right, remedy or claim under or by reason of this Debt Resolution or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Debt Resolution contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Noteholder and the Registered Holders of the Bonds Outstanding hereunder.

SECTION 21. If any one or more of the covenants or agreements provided in this Debt Resolution on the part of the Authority to be performed should be contrary to any express provisions of law or contrary to the policy of express law or against public policy, then such covenant or covenants or agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements, and shall in no way affect the validity of this Debt Resolution.

SECTION 22. Any consent or other instrument herein required to be executed by the Registered Holders of the Bonds may be in any number of concurrent writings of similar tenor and may be executed by such Registered Holders in person or by an agent duly appointed in writing. Proof of execution of such instrument or of the writing appointing such agent, if made in the following manner, shall be sufficient for purposes hereof and shall be conclusive in favor of the Authority with regard to action taken thereunder:

A. The fact and date of execution by any person of such instrument may be proved: (1) by a certificate of an officer in any jurisdiction, who by the laws thereof has power to take acknowledgments within such jurisdiction, to the effect that the person executing such instrument acknowledged before him the execution thereof; or (2) by affidavit of a witness to such execution.

B. Ownership of Bonds shall be proved only by the Registration Book maintained by the Paying Agent.

Nothing contained in this Section shall be construed as limiting the Authority to the proof hereinabove specified, it being intended that the Authority may accept other evidence of matters herein stated which it deems sufficient.

Any consent or other instrument executed by the Registered Holder of any Bond shall bind every future Registered Holder of such Bond with respect to anything done by the Authority in pursuance thereof.

SECTION 23. Recourse under or upon any obligation, covenant or agreement contained herein or in the Note or in any Bond issued hereunder or because of any indebtedness hereby secured, shall not be had against any past, present or future board member, officer, agent, attorney or employee of the Authority or of any successors to them, under any rule of law, statute or constitutional provision, or by enforcement of any assessment, or by legal or equitable proceeding or otherwise, it being expressly understood and agreed that obligations hereby secured shall be solely corporate obligations of the Authority and that no personal liability whatsoever shall attach to or be incurred by such board members, officers, agents, attorneys or employees of the Authority or of any successors to them because of the incurring of the indebtedness hereby authorized or by reason of the obligations, covenants or agreements contained herein or in the Note or in the Bonds hereby secured or implied herefrom.

SECTION 24. The appropriate officers of the Authority are hereby further authorized and directed to execute and deliver all such other documents and to take all such other actions as may be necessary or appropriate in order to effectuate the issuance of said Note and the issuance and sale of said Bonds.

THIS DEBT RESOLUTION shall be in full force and effect immediately from and after its passage.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

By Stanley E Lamm
Chairman

Attest:

Robert E Watson
Secretary

EXHIBIT "A"

COMMERCIAL DEVELOPMENT
FIRST MORTGAGE LOAN NOTE
(B WAREHOUSE COMPANY PROJECT)

$1,700,000.00

Clearfield, Pennsylvania

Dated as of April 15, 1985, for reference purposes only, but actually on May 7, 1985.

FOR VALUE RECEIVED,

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, a non-profit corporation, organized under the laws of the Commonwealth of Pennsylvania, having its principal place of business in the Borough of Clearfield, County of Clearfield, and State of Pennsylvania, hereinafter called the "OBLIGOR",

promises to pay to the order of

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, a state banking corporation, with its principal office in Brookville, Pennsylvania, hereinafter referred to as the "OBLIGEE",

in lawful money of the United States of America, the sum of ONE MILLION SEVEN HUNDRED THOUSAND ($1,700,000.00) DOLLARS, and any additional moneys loaned or advanced by any Holder hereof as hereinafter provided:

ONE MILLION SEVEN HUNDRED THOUSAND ($1,700,000.00) DOLLARS payable and owing to THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, due and payable in full ten (10) years from the date hereof, together with interest thereon at the rate of interest equal from time to time to 85% of Mellon Bank, N.A. Prime as announced from time to time with a minimum rate of 8% per annum and a maximum rate of 11% per annum, and with a fixed rate of 9% per annum for the first three (3) years hereof; said principal to be amortized commencing January 1, 1986, for the first three (3) years hereof on a seven (7) year pay back period by successive monthly installments of Twenty Seven Thousand Three Hundred Fifty One Dollars and Forty Three Cents ($27,351.43) DOLLARS each applied first to interest and then to principal, with said monthly payments to be reset at the end of said first three (3) year period for the remaining seven (7) year period, until said principal and all interest accrued thereon shall be fully paid and discharged; with the right to the Undersigned to anticipate maturity of any or all of the said deferred payments on any payment due date. In the payment of the monthly payments of interest and principal on this indebtedness, the Undersigned shall make all payments on account of both principal and interest in the principal office of The Savings & Trust Company of Pennsylvania, in Brookville, Pennsylvania. In the event the Federal Government and/or the Internal Revenue Service, during the term of this First Mortgage Loan Note, shall deem the interest payment hereunder to be taxable, then the interest rate herein set forth shall be increased immediately to an adjusted taxable rate at all times thereafter equal to the taxable Prime Rate as announced from time to time of Mellon Bank, N.A., and the above payments shall be adjusted accordingly.

This First Mortgage Loan Note shall evidence and the First Mortgage given to secure its payments shall cover and be security for any future loans or advances for this Project (said Project being the purchase of the land and the erection thereon of a 135,000 square foot warehouse facility by B Warehouse Company, as the Investor Developer, and the leasing thereof to Brockway, Inc. (NY), as the initial

Tenant) that may be made to or on behalf of the Undersigned by any Holder hereof at any time or times hereafter and intended by the Undersigned and the then Holder to be so evidenced and secured, as well as any sums paid by any Holder pursuant to the terms of said First Mortgage, and any such loans, advances or payments shall be added to and shall bear interest at the same rate as the principal debt.

In case a default be made for the period of thirty (30) days in the payment of any installment of principal or interest, or in the performance by the Undersigned of any of the other obligations of this First Mortgage Loan Note, or said First Mortgage, the entire unpaid balance of the principal debt, additional loans or advances, and all other sums paid by any Holder hereof to or on behalf of the Undersigned pursuant to the terms of this First Mortgage Loan Note or said First Mortgage, together with unpaid interest thereon, shall at the option of the Holder and without notice become immediately due and payable, and one or more executions may forthwith issue on any judgment or judgments obtained by virtue hereof; and no failure on the part of any Holder hereof to exercise any of the rights hereunder shall be deemed a wavier of any such right or of any default hereunder.

The Undersigned hereby empowers any attorney of any court of record within the United States of America or elsewhere to appear for the Undersigned, and with or without complaint filed, confess judgment or a series of judgments, against the Undersigned in favor of any Holder hereof, as of any term, for the unpaid balance of the principal debt, additional loans or advances, and all other sums paid by the Holder hereof, to or on behalf of the Undersigned pursuant to the terms of this First Mortgage Loan Note or said First Mortgage, together with unpaid interest thereon, costs of suit and an attorney's commission for collection of five (5%) per cent of the total indebtedness, or $500.00, whichever is the larger amount, on which judgment or judgments one or more executions may issue forthwith upon failure to comply with any of the terms and conditions of this First Mortgage Loan Note or said First Mortgage. The Undersigned hereby forever waives and releases all errors in said proceedings, waives stay of execution, the right or inquisition and extension of time of payment, agrees to condemnation of any property levied upon by virtue of any such execution, and waives all exemptions from levy and sale of any property that now is or hereafter may be exempted by law.

EXHIBIT "A"

This obligation shall bind the Undersigned and the Undersigned's successors and assigns, and the benefits hereof shall inure to the payees hereof and their successors and assigns. If this First Mortgage Loan Note is executed by more than one person, the undertakings and liabilities of each shall be joint and several.

This First Mortgage Loan Note is secured by a First Mortgage of even date herewith upon real estate described therein.

WITNESS due execution hereof the day and year first above written.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

Attest:

By_____
Chairman

_____
Secretary

"EXHIBIT B"

(FORM OF DEFINITIVE FULLY REGISTERED SERIES OF 1985 BOND)

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BOND,
SERIES OF 1985
(B WAREHOUSE COMPANY PROJECT)

Registered Holder:
No. IR-
$_____
Maturity Date: February 1, 2020
Interest Rate: 15% Minimum

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (the "Authority"), a public instrumentality and body politic and corporate of the Commonwealth of Pennsylvania, duly organized and existing under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"), for value received, hereby promises to pay on this Commercial Development Second Mortgage Revenue Bond, Series of 1985 (B Warehouse Company Project) (the "Bond"), but solely from the receipts and revenues hereinafter mentioned, to the Registered Holder shown hereon, or registered assigns, on the Maturity Date shown hereon, unless this Bond shall be redeemable and before said date shall have been duly called for redemption in whole or in part and payment of the redemption price made or provided for, upon surrender hereof, the principal sum shown hereon, and to pay interest only monthly hereon from the first day of the month preceding the authentication date hereof, unless the date hereof is prior to May 1, 1985, then from April 15, 1985, at the minimum rate shown hereon, on the first day of each month thereafter, plus additional contingent interest computed to be equal to a total of fifty (50%) percent of the rental income paid in each calendar year to the Investor Developer in excess of $337,500 during the first ten (10) years, and in excess of $227,500 during the next five (5) years, and in excess of $157,500 during the last twenty (20) years, payable proportionately to the Registered Holder of this Bond in the same proportion as the principal amount of this Bond bears to the total of all Bonds then Outstanding over the period of approximately thirty-five (35) years (which is the term of this Bond) in monthly payments, and plus further additional contingent interest for Appreciated Value computed to be equal to a total of fifty (50%) percent of the amount (if any) by which (a) the Appreciated Value of the Project exceeds $2,500,000 if the Registered Holders of all of the Bonds approve the sale of the Project before the maturity of the Bonds, or (b) the Appraised Value of the Project exceeds $2,500,000 at maturity of the Bonds, or on Transfer, or on the borrowing of funds not used for Capital Additions on the Project exceeds the Base Amount (in accordance with each of the foregoing terms as hereinafter defined), payable at said time proportionately to the Registered Holder of this (Shared Appreciation) Bond in the same proportion as the principal amount of this Bond bears to the total of all (Shared Appreciation) Bonds then Outstanding (Note - the Investor Developer at its option may from time to time pay this additional contingent interest for Appreciated Value on this (Shared Appreciation) Bond in advance by having the Project appraised. Upon payment of additional contingent interest for Appreciated Value of said total of fifty (50%) percent of the Appreciated Value on all (Shared Appreciation) Bonds, including this Bond, over the Base Amount, the Base Amount will then thereafter be increased. If the Project is not sold or otherwise refinanced at maturity of the (Shared Appreciation) Bonds, the Registered Holder must refinance the outstanding obligation (up to the $300,000) of all of the (Shared Appreciation) Bonds (including this Bond), including the then due fifty (50%) percent of the Appreciated Value over the then Base Value. The aforesaid Registered Holder must refinance using a fully amortizing mortgage instrument with a term of thirty (30) years. Said mortgage instrument shall require interest at a minimum of fifteen (15%) percent or two (2%) percent above the highest interest rate on comparable commercial mortgages in the 180 days preceding said refinancing. The

mortgage shall be a first mortgage on the Project and shall contain the shared appreciation terms and the variable interest terms which apply the (Shared Appreciation) Bonds (including this Bond). Registered Holder holding in total seventy-five (75%) percent of the (Shared Appreciation) Bonds (including this Bond) may in writing elect to defer all or part of this additional contingent interest for Appreciated Value on Transfer. Prior to each Transfer (in sufficient time to permit the appraisal provided for to determine the Appreciated Value as hereinafter defined), the Investor Developer shall give the Registered Holder (including the Registered Holder of this Bond) written notice thereof, together with an executed copy of the transfer agreement. Upon each sale of the Project or Investor Developer's interest in the Project, the Investor Developer shall furnish to all Registered Holders (including the Registered Holder of this Bond) an executed copy of the closing statement signed by the Investor Developer and the purchaser and such other evidence of the sale price as any of the Registered Holders may reasonably request), upon the then surrender hereof, said interest and principal payments to be made either until the Authority's obligation with respect to the payment of such principal sum shall be discharged as provided hereinafter, or until maturity hereof, or if this Bond shall have been duly called for previous redemption and payment of the redemption price shall have been made or provided for, until the redemption date.

"Appreciated Value" shall mean in the case of a sale of the Project or the Investor Developer's interest therein (whether for cash or in installments), the gross sale price (including the then balance of the indebtedness whether or not assumed by the purchaser) or, if the gross sale price does not reasonably reflect the then current market conditions, the Fair Market Value of the Project and, in all other cases, the Fair Market Value of the Project. Whether the gross sale price reasonably reflects the then current market conditions and the Fair Market Value shall be determined by appraisal. The Fair Market Value shall be determined by an average of two appraisals. One appraiser shall be selected and paid for by the Investor Developer and one selected and paid for by the Paying Agent for the Bondholders, and both shall be M.I.A. appraisers. "Base Amount" shall mean at the time or each Transfer and at maturity the sum of $2,500,000 reduced by insurance proceeds and condemnation proceeds not used for Capital Additions and increased by any Capital Additions not paid for by insurance proceeds and condemnation proceeds. The Base Amount shall from time to time be increased to the Appreciated Value at the time that actual payment of contingent interest based on appreciation is paid to Bondholders. "Transfer" shall mean and includes a sale, installment sale contract, agreement for deed, refinancing, creation of a lien subordinate to the First and Second Mortgages, leasing, or a judicial sale on execution or other legal process; but does not include a transfer by devise, descent or by operation of law upon the death of any Joint Venturer of the Investor Developer or his descendants, a gift to a relative of any Joint Venturer of the Investor Developer by blood or marriage without consideration of any kind, or a transfer to a spouse of any Joint Venturer of the Investor Developer pursuant to divorce decree or property settlement.

The principal of, premium, if any, and interest on this Bond shall be payable at the Principal Corporate Trust Office of The Savings & Trust Company of Pennsylvania (the "Paying Agent"), in the Borough of Brookville, Pennsylvania, or of any successor paying agent under the Debt Resolution of the Authority hereinafter mentioned, in any coin or currency of the United States of America which, at time of payment, is legal tender for the payment of public and private debts. The interest hereon is payable by check or draft mailed by the Paying Agent to the Registered Holder of this Bond on the record date for payment of such interest and principal, namely the day which is the 10th day prior to said payment date. Payments of principal and interest shall be noted on the Payment Record maintained by the Paying Agent and such payments shall fully discharge the obligation of the Authority hereon to the extent of the payments so made. Upon final payment of principal and interest, this Bond shall be submitted to the Paying Agent for cancellation as to the Authority.

This Bond is issued in full compliance with the Constitution and statutes of the Commonwealth of Pennsylvania, including among others, the Act. Pursuant to law and the proceedings under which this Bond is issued, this Bond is payable solely out of the revenues and receipts derived from the mortgage loan financing by the Authority of a certain commercial economic development warehouse facility which is to be acquired and constructed and is located in the Township of Sandy, Clearfield County, Pennsylvania, to B Warehouse Company (the "Investor Developer"), a Joint

Venture. The installments to be paid by the Investor Developer under the mortgage loan financing of the facility hereinafter described have been assigned to the Paying Agent as security for the Bonds and such installments are sufficient to pay the principal of and interest on the Bonds as the same become due and payable.

This Bond and such other Bonds of the series of which it forms a part are issued pursuant to and in full compliance with the Constitution and statutes of the Commonwealth of Pennsylvania, particularly the Act, and pursuant to the Debt Resolution of the Authority, hereinafter mentioned. This Bond and the series of which it forms a part and the interest appertaining hereto are limited obligations of the Authority and are payable solely from the receipts and revenues derived from the Project hereinafter defined. This Bond and the interest and contingent interest appertaining hereto do not now and shall never in any respect be a general obligation of the Authority nor a general obligation of the Commonwealth of Pennsylvania or any political subdivision thereof, nor do they in any manner pledge the general credit nor taxing power of the Commonwealth of Pennsylvania or any political subdivision thereof, nor shall they be payable in any manner from funds raised by taxation.

Neither the County of Clearfield, Pennsylvania, nor the Commonwealth of Pennsylvania shall in any event be liable for the payment of the principal of or interest or contingent interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever of the Authority, and none of the Bonds, nor any of the Authority's agreements or obligations shall be construed to constitute an indebtedness of the County of Clearfield, Pennsylvania, or the Commonwealth of Pennsylvania, within the meaning of any constitutional or statutory provision whatsoever.

This Bond is one of an initially authorized series of $300,000, aggregate principal amount, of commercial development revenue bonds of the Authority, known as "Clearfield County Industrial Development Authority, Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project)" (the "Bonds"), all of like date and tenor, except as to amount, rate of interest, registration, maturity and provisions for redemption, and all issued under and secured by the Debt Resolution of the Authority, adopted on April 18, 1985 (the "Debt Resolution"), and by the pledge of the income, installments, receipts and revenues payable under a Mortgage Loan Agreement (the "Mortgage Loan Agreement"), dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, by and between the Investor Developer, the Paying Agent and the Authority, and by the pledge of certain other moneys of the Project financed, as set forth above, and further secured by the collateral assignment of a commercial lease and all subsequent commercial leases (the "Lease" and "Leases") of the facility, after completion of the acquisition and construction, from the Investor Developer, as the Landlord, to Brockway, Inc. (NY), as the Initial Tenant, or various subsequent commercial entities, as the subsequent Tenants, which Lease and Leases (if not extended in some cases as the Initial Tenant or subsequent Tenants have the option to do) may be terminated in certain years less than the terms of the Bonds, which if this occurs then the Bonds will thereafter be secured by the land and building only with the Investor Developer nevertheless remaining unconditionally obligated to make the mortgage loan installment payments under the Mortgage Loan Agreement (although that obligation will then be unsecured), all as provided in the Debt Resolution and in the Mortgage Loan Agreement. Reference is made to the Debt Resolution, a copy of which is on file at the Principal Corporate Trust Office of the Paying Agent, and to the Mortgage Loan Agreement and the Lease for, inter alia, a definition and description of the "Project", and a statement of the income, installments, receipts, revenues and moneys of the Authority pledged for the payment of the principal of, premiums and other charges, if any, and interest on the Bonds, the nature, extent and manner of enforcement of the security, the rights of holders of the Bonds and of the Paying Agent with respect to such security, and the terms under which the Bonds are issued. All of the Bonds issued under the Debt Resolution are subordinate to the First Mortgage Loan Note (the "First Mortgage Loan Note") issued by the Authority under the Debt Resolution to The Savings & Trust Company of Pennsylvania simultaneously herewith, but otherwise are equally and ratably secured as to principal, premium, if any, and interest (except said Bonds and the second lien of the Debt Resolution may be automatically released by operation of law and/or subordinated to any financing not under the Debt Resolution subsequently entered into

Registered Holders of the Bonds which the Investor Developer determines is necessary to finance an extention, enlargement, addition or improvement to the Project on any parcel of undeveloped ground which is so designated for release and/or subordination and is now a portion of the Premises), as provided in said Mortgage Loan Agreement, to all of the provisions of which any holder of this Bond by his acceptance hereof thereby assents, and to which Debt Resolution and Mortgage Loan Agreement reference is hereby made for a description of the nature and extent of the security, and a statement of the terms and conditions upon which the Bonds are issued and secured, the rights of the Registered Holders thereof and of the Paying Agent thereunder, and the bond indebtedness which is equally secured, and the other matters set forth therein.

This Bond is transferable by the Registered Holder hereof or his duly authorized attorney at the Principal Corporate Trust Office of the Paying Agent, upon surrender of this Bond, accompanied by a duly executed instrument of transfer, in form and with guarantee of signature satisfactory to the Paying Agent, subject to such reasonable regulations as the Authority or the Paying Agent may prescribe, and upon payment of any taxes or other governmental charges incident to such transfer. Upon any such transfer, a new registered Bond or Bonds in the same aggregate principal amount will be issued to the transferee. The person in whose name this Bond is registered shall be deemed to be the absolute owner hereof for all purposes, whether or not this Bond shall be overdue, and the Authority and the Paying Agent shall not be affected by any notice to the contrary.

The Bonds are issuable in fully registered form without coupons in requested denominations thereof. The Bonds, upon surrender thereof at the Principal Corporate Trust Office of the Paying Agent with, if required by the Paying Agent, a written instrument of transfer, in the form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Holder or his duly authorized attorney, may, at the option of the Registered Holder hereof, be exchanged for an equal aggregate principal amount of new Bonds of any other authorized denomination, upon payment of any tax, fee or other governmental charge required to be paid with respect to such exchange, and in the manner and subject to the conditions provided in the Debt Resolution.

Neither the Authority nor the Paying Agent shall be required to transfer or exchange any Bonds for a period of ten (10) days next preceding any interest payment date or any selection by lot of Bonds to be redeemed, nor to transfer or exchange any Bonds selected, called or being called for redemption.

As permitted by the Act, this Bond is issued with the intent that the laws of the Commonwealth of Pennsylvania shall govern its construction, and, as declared by the Act, the Authority shall not be required to pay any taxes upon any property acquired or used for its purposes, and this Bond, which is being issued for a proper public purpose by the Authority, its transfer and the income therefrom (including any profits made on the sale thereof), shall at all times be free from taxation within the Commonwealth of Pennsylvania.

This Bond is not subject to Optional Redemption (prepayment) prior to its maturity.

The Bonds, including this Bond, are subject to Mandatory Extraordinary Redemption (prepayment) in whole at 100% of the principal amount, plus accrued interest thereon to the redemption date, if, as a result of changes in the Constitution of the Commonwealth of Pennsylvania or in the Constitution of the United States of America, or of legislative or administrative action (whether State or Federal), or of a final decree, judgment or order of any court or administrative body having jurisdiction in the premises (after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate), the obligations of the Investor Developer under the Mortgage Loan Agreement shall become unenforceable or impossible of performance in any material respect in accordance with the intent and purpose of the parties as expressed in said Mortgage Loan Agreement.

The Bonds, including this Bond, are subject to Mandatory Extraordinary Redemption (prepayment) in whole or in part at 100% of the principal amount, plus accrued interest thereon to the redemption (prepayment) date, to the extent of those Bonds held to be illegal, unauthorized or unenforceable as a result of changes in the

Constitution of the Commonwealth of Pennsylvania or in the Constitution of the United States of America, or of legislative or administrative action (whether State or Federal), or of a final decree, judgment or order of any court or administrative body having jurisdiction in the premises (after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate).

The Bonds, including this Bond, are subject to an increase in the rate of interest payable hereon to an adjusted taxable rate at all times thereafter equal to a rate which renders an equivalent taxable return to the Registered Holders, which will occur in the event interest on the Bonds, including this Bond, shall be determined by the Internal Revenue Service or by the Federal courts (in each case, after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate) to have become subject to Federal income taxes by virtue of the applicable limitation imposed by Section 103 (b) of the Internal Revenue Code of 1954, as amended, (the "Code"), on bond issuance and/or capital expenditures having been exceeded, or in the event the interest on the Bonds shall become subject to taxation as the result of any other provision of Section 103 or the rules and regulations thereunder (except for interest on any Bond during the period it is held by a "substantial user" of the Project or a "related person" within the meaning of the Code). In such event, the Investor Developer will be obligated to pay this increased taxable rate on the Bonds, including this Bond, from the date interest on the Bonds, including this Bond, is determined to be taxable.

In any case where less than all the Bonds are to be redeemed and/or prepaid, such Bonds shall be called pro rata according to date of maturity by the Paying Agent as specified herein and in the manner provided for in the Debt Resolution.

Any redemption or prepayments, as hereinbefore authorized (except in the cases of Mandatory Extraordinary Redemption (prepayment) wherein notice shall be given and be effective immediately, shall be deemed to be the redemption (prepayment) date, and thereafter interest on the Bonds, including this Bond, shall cease to accrue), shall be made after timely notice by certified mail -return receipt requested shall be given by the Paying Agent to the Registered Holders of the affected Bonds.

In case an Event of Default, as defined in the Mortgage Loan Agreement, shall occur, the principal of all Bonds then Outstanding may be declared or may become due and payable upon the conditions, in the manner, and with the effect provided in the Debt Resolution.

No recourse under or upon any obligation, covenant or agreement contained in the Debt Resolution or the Mortgage Loan Agreement, or in any Bond or interest thereby secured or under any judgment obtained against the Authority or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances under or independent of the Debt Resolution or the Mortgage Loan Agreement, shall be had against any board member, officer, agent, attorney or employee, as such, past, present or future, of the Authority, either directly or through the Authority or otherwise, for the payment for or to the Authority or any receiver thereof, or for or to the Registered Holder of any Bond or otherwise, of any sum that may be due and unpaid by the Authority upon any such Bond. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such board member, officer, agent, attorney or employee, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for, or to the Authority or any receiver thereof, or for or to the Registered Holder of any Bond or otherwise, of any sum that may remain due and unpaid upon the Bonds and interest thereby secured or any of them, is hereby expressly waived and released as a condition of and consideration for the issuance of the Bonds.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Mortgage Loan Agreement and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; and the issuance of this Bond and the series of which it forms a part, together with all other obligations of the Authority, do not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any benefit under the Debt Resolution nor shall it be valid or obligatory for any purpose until this Bond shall have been manually authenticated by the Certificate of Authentication endorsed hereon being duly signed by the Paying Agent.

IN WITNESS WHEREOF, CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY has caused this Bond to be signed in its name and in its behalf by the manual or facsimile signature of its Chairman or Vice Chairman and a manual or facsimile of its corporate seal to be impressed or imprinted hereon, duly attested by the manual or facsimile signature of its Secretary or Assistant Secretary, all effective as of _____, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

By_____
Chairman

(AUTHORITY SEAL)

Attest:

_____
Secretary

* * * * * *

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds, of the series designated therein, described in the within-mentioned Debt Resolution.

The Text of Opinion attached to the reverse hereof is the text of the opinion of Messers. Lynch and Lynch, of Pittsburgh, Pennsylvania, an executed counterpart of which, dated the date of delivery of and payment for the series of Bonds of which this Bond is one, is on file at the Principal Corporate Trust Office of the Paying Agent.

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as Paying Agent

Authentication Date:_____ By_____
Authorized Person

* * * * * *

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

_____

_____

PLEASE INSERT SOCIAL SECURITY OR OTHER TAX IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

the within Bond issued by the **CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY**, and hereby irrevocably constitutes and appoints _____ as his Attorney to transfer said Bond on the books of said Authority with full power of substitution in the premises.

Dated _____

_____
(Sign here exactly as name(s) is (are) shown on the face of this Bond without any change or alteration whatever.)

SIGNATURE GUARANTEED: _____

* * * * * *

TEXT OF OPINION OF MESSRS. LYNCH AND LYNCH, BOND COUNSEL, OF PITTSBURGH, PENNSYLVANIA, ISSUED IN RESPECT OF THE CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS, SERIES OF 1985.

* * * * * *

PAYMENT RECORD

Page No. ____

Fully Registered
Bond No. IR - ____

Due Date	Principal Payment	Principal Balance Due	Interest Payment (15%)	Date Paid	Name of Paying Agent's Authorized Official and Title

CERTIFICATION

I, the undersigned, Secretary of Clearfield County Industrial Development Authority, do hereby certify that the foregoing Debt Resolution was duly adopted and passed by a majority vote of a quorum of members present at a special meeting of said Authority duly called and held on April 18, 1985, which meeting was at all times open to the public and at which meeting a quorum of said Authority was present and participating, and that the vote of the members of said Authority on said Debt Resolution was as follows:

Members of the Authority	Vote
Stanley E. Crum, Chairman	Yes
William Ginter, Vice Chairman	Yes
Robert E. Watson, Secretary and Treasurer and Executive Director	Yes
Francis E. Reed, Assistant Secretary-Treasurer	Yes
Samuel Mollica, Member	Yes
William R. Harkins, Member	Absent
Gerald Buzzard, Member	Yes

I hereby further certify that said Debt Resolution has not been amended, modified or rescinded and is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto placed my hand and the seal of Clearfield County Industrial Development Authority on this May 7, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

By Robert E. Watson
Secretary

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

No. IR-_____

$_____

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Maturity Date: FEBRUARY 1, 2020

Interest Rate: 15% MINIMUM

COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BOND, SERIES OF 1985 (B WAREHOUSE COMPANY PROJECT)

REGISTERED HOLDER: SAMPLE

_____ (DOLLARS)

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (the "Authority"), a public instrumentality and body politic and corporate of the Commonwealth of Pennsylvania, duly organized and existing under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"), for value received, hereby promises to pay on this Commercial Development Second Mortgage Revenue Bond, Series of 1985 (B Warehouse Company Project) (the "Bond"), but solely from the receipts and revenues hereinafter mentioned, to the Registered Holder shown hereon, or registered assigns, on the Maturity Date shown hereon, unless this Bond shall be redeemable and before said date shall have been duly called for redemption in whole or in part and payment of the redemption price made or provided for, upon surrender hereof, the principal sum shown hereon, and to pay interest only monthly hereon from the first day of the month preceding the authentication date hereof, unless the date hereof is prior to May 1, 1985, then from April 15, 1985, at the minimum rate shown hereon, on the first day of each month thereafter, plus additional contingent interest computed to be equal to a total of fifty (50%) percent of the rental income paid in each calendar year to the Investor Developer in excess of $337,500 during the first ten (10) years, and in excess of $227,500 during the next five (5) years, and in excess of $157,500 during the last twenty (20) years, payable proportionately to the Registered Holder of this Bond in the same proportion as the principal amount of this Bond bears to the total of all Bonds then Outstanding over the period of approximately thirty-five (35) years (which is the term of this Bond) in monthly payments, and plus further additional contingent interest for Appreciated Value computed to be equal to a total of fifty (50%) percent of the amount (if any) by which (a) the Appreciated Value of the Project exceeds $2,500,000 if the Registered Holders of all of the Bonds approve the sale of the Project before the maturity of the Bonds, or (b) the Appraised Value of the Project exceeds $2,500,000 at maturity of the Bonds, or on Transfer, or on the borrowing of funds not used for Capital Additions on the Project exceeds the Base Amount (in accordance with each of the foregoing terms as hereinafter defined), payable at said time proportionately to the Registered Holder of this (Shared Appreciation) Bond in the same proportion as the principal amount of this Bond bears to the total of all (Shared Appreciation) Bonds then Outstanding (Note - the Investor Developer at its option may from time to time pay this additional contingent interest for Appreciated Value on this (Shared Appreciation) Bond in advance by having the Project appraised. Upon payment of additional contingent interest for Appreciated Value of said total of fifty (50%) percent of the Appreciated Value on all (Shared Appreciation) Bonds, including this Bond, over the Base Amount, the Base Amount will then thereafter be increased. If the Project is not sold or otherwise refinanced at maturity of the (Shared Appreciation) Bonds, the Registered Holder must refinance the outstanding obligation (up to the $308,000) of all of the (Shared Appreciation) Bonds (including this Bond), including the then due fifty (50%) percent of the Appreciated Value over the then Base Value. The aforesaid Registered Holder must refinance using a fully amortizing mortgage instrument with a term of thirty (30) years. Said mortgage instrument shall require interest at a minimum of fifteen (15%) percent or two (2%) percent above the highest interest rate on comparable commercial mortgages in the 180 days preceding said refinancing. The mortgage shall be a first mortgage on the Project and shall contain the shared appreciation terms and the variable interest terms which apply the (Shared Appreciation) Bonds (including this Bond). Registered Holder holding in total seventy-five (75%) percent of the (Shared Appreciation) Bonds (including this Bond) may in writing elect to defer all or part of this additional contingent interest for Appreciated Value on Transfer. Prior to each Transfer (in sufficient time to permit the appraisal provided for to determine the Appreciated Value as hereinafter defined), the Investor Developer shall give the Registered Holder (including the Registered Holder of this Bond) written notice thereof, together with an executed copy of the transfer agreement. Upon each sale of the Project or Investor Developer's interest in the Project, the Investor Developer shall furnish to all Registered Holders (including the Registered Holder of this Bond) an executed copy of the closing statement signed by the Investor Developer and the purchaser and such other evidence of the sale price as any of the Registered Holders may reasonably request), upon the then surrender hereof, said interest and principal payments to be made either until the Authority's obligation with respect to the payment of such principal sum shall be discharged as provided hereinafter, or until maturity hereof, or if this Bond shall have been duly called for previous redemption and payment of the redemption price shall have been made or provided for, until the redemption date.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE SIDE HEREOF AND SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH ON THE FRONT SIDE HEREOF.

This Bond shall not be entitled to any benefit under the Debt Resolution nor shall it be valid or obligatory for any purpose until this Bond shall have been manually authenticated by the Certificate of Authentication endorsed hereon being duly signed by the Paying Agent.

IN WITNESS WHEREOF, CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY has caused this Bond to be signed in its name and in its behalf by the manual or facsimile signature of its Chairman or Vice Chairman and a manual or facsimile of its corporate seal to be impressed or imprinted hereon, duly attested by the manual or facsimile signature of its Secretary or Assistant Secretary, all effective as of May 7, 1985.

(AUTHORITY SEAL)

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Attest:

_____
Secretary

SAMPLE
_____
Chairman

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

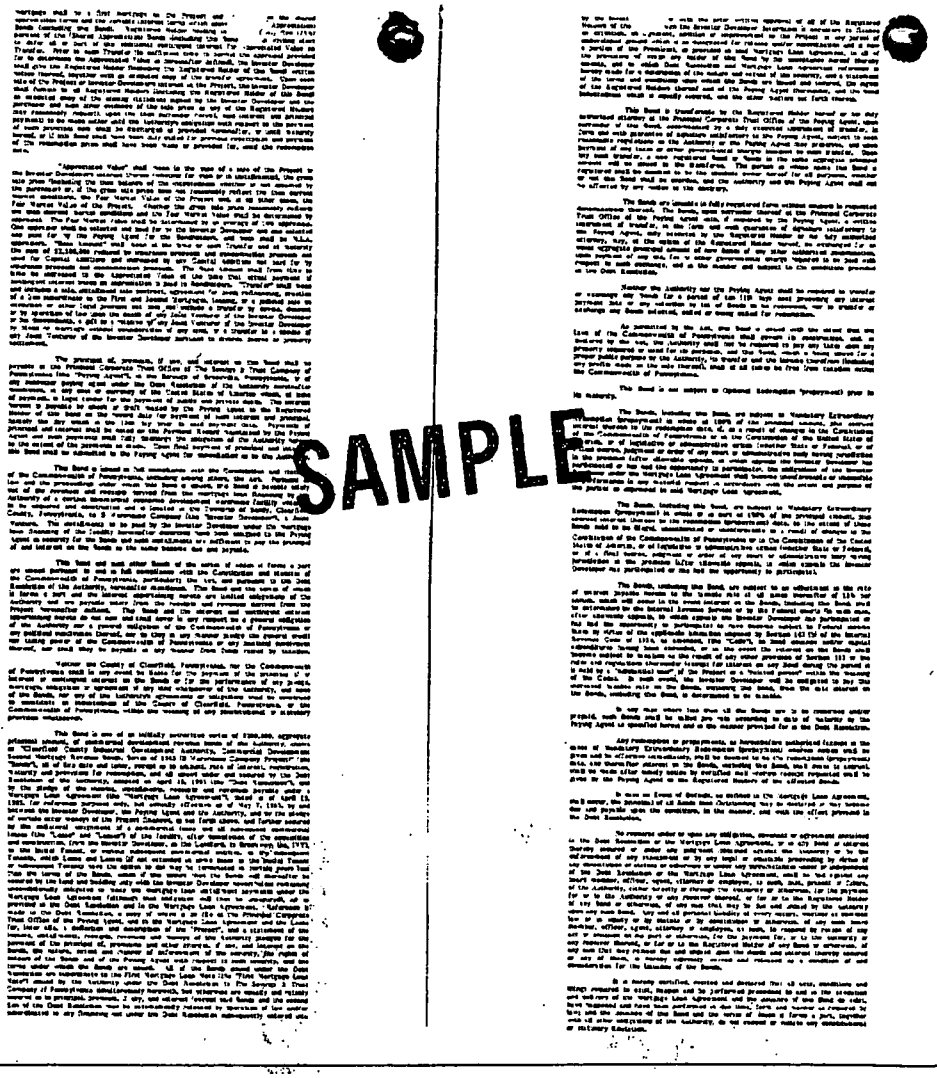
This Bond is one of the Bonds, of the series designated therein, described in the within-mentioned Debt Resolution.

The Text of Opinion attached to the reverse hereof is the text of the opinion of Messers. Lynch and Lynch, of Pittsburgh, Pennsylvania, an executed counterpart of which, dated the date of delivery of and payment for the series of Bonds of which this Bond is one, is on file at the Principal Corporate Trust Office of the Paying Agent.

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as Paying Agent

Authentication Date: _____

By _____
Authorized Person



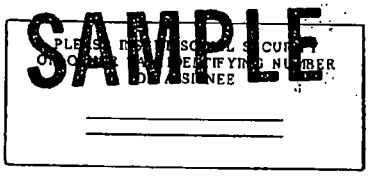
SAMPLE

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

_____

_____



the within Bond issued by the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, and hereby irrevocably constitutes and appoints _____ as his Attorney to transfer said Bond on the books of said Authority with full power of substitution in the premises.

Dated _____

(Sign here exactly as name(s) is (are) shown on the face of this Bond without any change or alteration whatever.)

SIGNATURE GUARANTEED: _____

SECOND MORTGAGE

MADE as of April 15, 1985, for reference purposes only, but actually on this 7th day of May, 1985, between:

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, a non-profit corporation, organized under the laws of the Commonwealth of Pennsylvania, having its principal place of business in the Borough of Clearfield, County of Clearfield, and State of Pennsylvania, hereinafter called the "MORTGAGOR",

A
N
D

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as the Paying Agent under the Debt Resolution, a state banking corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, and having its principal place of business in the Borough of Brookville, County of Jefferson, State of Pennsylvania, hereinafter referred to as the "MORTGAGEE".

WHEREAS, the Mortgagor has executed and delivered to the certain Bond Purchasers with the Mortgagee as the Paying Agent under the Debt Resolution of the Mortgagor, adopted on April 18, 1985 (the "Debt Resolution"), certain Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project) (hereinafter called the "Second Mortgage Revenue Bonds"), of even date herewith, payable to the order of said Bond Purchasers in the total principal sum of THREE HUNDRED THOUSAND ($300,000.00) DOLLARS, lawful money of the United States of America, and has provided in the Debt Resolution for the payment of the debt service on the Second Mortgage Revenue Bonds issued thereunder by the Mortgagor for this Project (said Project being the purchase of the land and the erection thereon of a 135,000 square foot warehouse facility by B Warehouse Company, as the Investor Developer, and the leasing thereof to Brockway, Inc. (NY), as the Initial Tenant), together with interest thereon at the rate provided in said Second Mortgage Revenue Bonds and Debt Resolution in the manner and at the times therein set forth, and containing certain other terms and conditions, all of which are specifically incorporated herein by reference.

NOW, THEREFORE, the Mortgagor in consideration of said debt or principal sum and as security for the payment of the same and interest as aforesaid, together with all other sums payable hereunder or under the terms of the Second Mortgage Revenue Bonds and the Mortgage Loan Agreement, dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, between the Mortgagor, the Investor Developer and the Mortgagee (the "Mortgage Loan Agreement"), does grant and convey unto the Mortgagee, as the Paying Agent under the Debt Resolution for and on behalf of the Bond Purchasers, and its and their successors and assigns:

ALL that certain piece, parcel or tract of land situate in the Township of Sandy, County of Clearfield, State of Pennsylvania, more particularly bounded and described as follows:

PARCEL ONE: BEGINNING at the Southeast corner of herein described 9.13 Acres on the West side of a 50 foot right of way for a road; thence by land of General Warehousing of DuBois, Inc., North 66 degrees 50 minutes West a distance of 500.0 feet and North 23 degrees 10 minutes East a distance of 700.0 feet; thence along said right of way for a road the following courses and distances: North 89 degrees 45 minutes East a distance of 386.0 feet, South 71 degrees 55 minutes East a distance of 80.0 feet, South 31 degrees 55 minutes East a distance of 80.0 feet, and South 23 degrees 10 minutes West a distance of 814.0 feet to the place of beginning. CONTAINING 9.13 Acres.

EXCEPTING AND RESERVING from the above described Parcel One the right of ingress and egress to, along, over and from the same, together with the right to make installations, repairs, and replacements of a railroad track and utility lines.

PARCEL TWO: BEGINNING at the center line of LR 402 (Shaffer Road) 55 feet Southwest of the intersection with the center of the Chessie System track right of way; thence along the Chessie System right of way the following courses and distances: South 48 degrees 22 minutes East 100.0 feet, South 62 degrees 45 minutes East 228.7 feet, and by a curve to the left with a radius of 816 feet, the chord of which is South 76 degrees 27 minutes East, 388.7 feet; thence continuing along the Chessie System right of way North 89 degrees 45 minutes East a distance of 641.0 feet; thence by land of General Warehousing of DuBois, Inc., the following courses and distances: South 40 degrees 20 minutes East 90.0 feet, South 23 degrees 10 minutes West 917.0 feet, and North 66 degrees 50 minutes West 50.0 feet; thence along land of B Warehouse Company, a Joint Venture, the following courses and distances: North 23 degrees 10 minutes East 814.0 feet, North 31 degrees 55 minutes West 80.0 feet, North 71 degrees 55 minutes West 80.0 feet; thence still along land of B Warehouse Company, a Joint Venture, and General Warehousing of DuBois, Inc., South 89 degrees 45 minutes West a distance of 495.0 feet; thence still by land of General Warehousing of DuBois, Inc., by a curve to the right with a radius of 866.0 feet, the chord of which is North 76 degrees 27 minutes West, 412.3 feet; thence North 62 degrees 45 minutes West a distance of 225.3 feet; and thence North 77 degrees 12 minutes West a distance of 100.0 feet; thence along the center line of LR 402 North 25 degrees 35 minutes East a distance of 100.0 feet to the place of beginning.

EXCEPTING AND RESERVING from the above described Parcel Two the right of ingress and egress to, along, over and from the same, together with the right to make installations, repairs, and replacements of roads, sidewalks, utility lines, railroad tracks, signs, guardrails, and landscaping.

ALSO EXCEPTING AND RESERVING from the above described Parcels One and Two the right to construct, reconstruct and perpetually maintain any and all utility services, including water, sewage, and gas or any other necessary utilities, together with all necessary laterals in, upon and accross the said premises, the said utility lines to follow any feasible course through the said premises, together with the right and privilege at any and all times to enter the said premises or any part thereof for the purpose of constructing, reconstructing and maintaining any and all of the aforesaid utility lines and also for making connections

with any such utility lines as are now or hereafter constructed on the said premises or which may serve the same; all upon the condition that the Clearfield County Industrial Development Authority, its successors or assigns, will, after doing any work in connection with the foregoing, restore the premises to the condition in which the same were found before such work was undertaken. The foregoing reservations shall be perpetual and inure to the benefit of the Clearfield County Industrial Development Authority, its successors and assigns.

BEING parts of the same premises which became vested in the Clearfield County Industrial Development Authority by Deed dated July 11, 1977, of the DuBois Area Chamber of Commerce, fictitious registered name for the DuBois Area Board of Trade.

* **PROVIDED, HOWEVER,** that if the Mortgagor shall pay to the Mortgagee for payment to the Bond Purchasers the aforesaid debt or principal sum, including the debt service and all other sums payable by the Mortgagor to the Mortgagee hereunder for payment to the Bond Purchasers and under the terms of the Second Mortgage Revenue Bonds, together with interest thereon, and under the Mortgage Loan Agreement, and shall keep and perform each of the other covenants, conditions and agreements hereinafter set forth, then this Second Mortgage and the estate hereby granted and conveyed shall become void.

THIS SECOND MORTGAGE is executed and delivered subject and subordinate to the First Mortgage, dated of even date herewith, from the Mortgagor hereunder to the Mortgagee hereunder which secures the $1,700,000 Clearfield County Industrial Development Authority, Commercial Development First Mortgage Loan Note (B Warehouse Company Project) issued immediately prior hereto, and further subject to the following covenants, conditions and agreements:

(1) The Second Mortgage Revenue Bonds secured hereby shall evidence and this Second Mortgage shall cover and be security for any future additional bonds for this Project that may be issued by the Mortgagor at any time or times hereafter and intended by the Mortgagor and the Mortgagee to be so evidenced and secured, and said additional bonds shall be added to the total principal sum.

(2) From time to time until said debt and interest are fully paid, the Mortgagor shall: (a) pay and discharge, when and as the same shall become due and payable, all taxes, assessments, sewer and water rents, and all other charges and claims assessed or levied from time to time by any lawful authority upon any part of the

* This deed is not intended to convey Parcel Two in fee, but rather is a conveyance of a permanent easement for roadway purposes over and across said Parcel Two for ingress and egress to and from Parcel One.

mortgaged premises and which shall or might have priority in lien or payment to the debt secured hereby, (b) pay all ground rents (if any) reserved from the mortgaged premises and pay and discharge all mechanic's liens which may be filed against said premises and which shall or might have priority in lien or payment to the debt secured hereby, (c) pay and discharge any documentary stamp or other tax, including interest and penalties thereon (if any) now or hereafter becoming payable on the Second Mortgage Revenue Bonds evidencing the debt secured hereby, (d) provide, renew and keep alive by paying the necessary premiums and charges thereon such policies of hazard and liability insurance as the Mortgagee on behalf of the Bond Purchasers may from time to time require upon the buildings and improvements now or hereafter erected upon the mortgaged premises, with loss payable clauses in favor of the Mortgagor and the Mortgagee on behalf of the Bond Purchasers and the Investor Developer and the Tenant as their respective interests may appear, and (e) promptly submit to the Mortgagee on behalf of the Bond Purchasers evidence of the due and punctual payment of all the foregoing charges; provided, however, that the Mortgagee on behalf of the Bond Purchasers may at its option require that sums sufficient to discharge the foregoing charges be paid in installments to the Mortgagee.

(3) The Mortgagor shall maintain or cause to be maintained all buildings and improvements subject to this Second Mortgage in good and substantial repair, as determined by the Mortgagee on behalf of the Bond Purchasers. The Mortgagee on behalf of the Bond Purchasers shall have the right to enter upon the mortgaged premises at any reasonable hour for the purpose of inspecting the order, condition and repair of the buildings and improvements erected thereon.

(4) In the event the Mortgagor neglects or refuses to pay the charges mentioned at (2) above, or fails to maintain or cause to be maintained the buildings and improvements as aforesaid, the Mortgagee on behalf of the Bond Purchasers may do so, add the cost thereof to the principal debt secured hereby, and collect the same as a part of said principal debt.

(5) The Mortgagor covenants and agrees not to create, not permit to accrue, upon all or any part of the mortgaged premises, any debt, lien, or charge which would be prior to, or on a parity with, the lien of this Second Mortgage, although

it is hereby specifically agreed that the aforementioned First Mortgage, to which this Second Mortgage is subordinate, shall be entered prior hereto against the mortgaged premises as security for its $1,700,000 of Clearfield County Industrial Development Authority, Commercial Development First Mortgage Loan Note (B Warehouse Company Project), being issued immediately prior hereto.

(6) In case a default be made for the period of thirty (30) days in the payment of any installment of principal or interest pursuant to the terms of the Second Mortgage Revenue Bonds, or in the performance by the Mortgagor of any of the other obligations of the Second Mortgage Revenue Bonds or this Second Mortgage, the entire unpaid balance of said principal sum, additional bonds and all other sums paid pursuant to the terms of the Second Mortgage Revenue Bonds or this Second Mortgage, together with unpaid interest thereon, shall at the option of the Mortgagee on behalf of the Bond Purchasers and without notice, become immediately due and payable, and foreclosure proceedings may be brought forthwith on this Second Mortgage and prosecuted to judgment, execution and sale for the collection of the same, together with costs of suit and attorneys' commission for collection of five per cent (5%) of the total indebtedness or $500.00, whichever is the larger amount. The Mortgagor hereby forever waives and releases all errors in said proceedings, waives stay of execution, the right of inquisition and extension of time of payment, agrees to condemnation of any property levied upon by virtue of any such execution, and waives all exemptions, from levy and sale of any property that is now or hereafter may be exempted by law.

The covenants, conditions and agreements contained in this Second Mortgage shall bind, and the benefits thereof shall inure to, the respective parties hereto and their respective heirs, executors, administrators, successors and assigns, and if this Second Mortgage is executed by more than one person, the undertakings and liability of each shall be jointly and several.

AND the Clearfield County Industrial Development Authroity, above named Mortgagor, doth hereby constitute and appoint its Chairman or Vice Chairman to be its attorney for it, and in its name and as for its corporate act and deed to acknowledge this Second Mortgage before any person having authority by they laws of the Commonwealth of Pennsylvania to take such acknowledgement, to the intent that the same may be duly recorded.

AND, the said Mortgagor, through its officers executing this Second Mortgage, does certify that the same has been duly authorized and directed to be executed and delivered to the Mortgagee on behalf of the Bond Purchasers herein named by the Debt Resolution of the said Clearfield County Industrial Development Authority, a non-profit corporation, the Mortgagor herein, duly passed by the Board of Directors thereof at a special meeting, legally called, whereat a legal quorum was present, and voted in favor of said Debt Resolution, and that the same is duly spread upon the minutes of said Authority.

IN WITNESS WHEREOF, the said Clearfield County Industrial Development Authority, the Mortgagor herein, has caused this Second Mortgage to be signed in its corporate name, by its Chairman or Vice Chairman, and has caused to be affixed hereunto the common and corporate seal of said corporation, attested by its Secretary or Assistant Secretary, the day and year first above written.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

Attest:

By _____
Chairman

_____
Secretary

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF CLEARFIELD)

I hereby certify that on this 7th day of May, 1985, before me, the undersigned subscriber, personally appeared STANLEY E. CRUM, the Chairman named in the foregoing Second Mortgage and by virtue and in pursuance of the authority therein conferred upon him acknowledged said Second Mortgage to be the act of the said Clearfield County Industrial Development Authority.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

RHONDA J. BASH, Notary Public
Clearfield, Clearfield County, Pa.
My commission expires Sept. 1, 1986

(NOTARY SEAL)

Rhonda J. Bash
Notary Public

My Commission Expires:

* * * * * *

CERTIFICATE OF RESIDENCE OF MORTGAGEE

We do hereby certify that the precise residence and complete post office address of the within named Mortgagee, The Savings & Trust Company of Pennsylvania, is 256 Main Street, Brockway, Pennsylvania 15825.

BLAKLEY & JONES

By
David E. Blakley, Esquire
Attorney for Mortgagor

* * * * * * *

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF CLEARFIELD)

RECORDED in the office of the Recorder of Deeds in and for said County on the ____ day of _____, 1985, in Mortgage Book Volume ____, at Page ____.

WITNESS my hand and seal of said office the day and year aforesaid.

Recorder

B WAREHOUSE COMPANY

JOINT VENTURE AGREEMENT

Dated: April 25, 1985

6(a)

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B WAREHOUSE COMPANY

JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT made and executed in triplicate this 15th day of April, 1985, by and among CALVIN BEAN, an individual; THE RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC.; GEORGE V. COHEN, P.C. PENSION PLAN; CREEKSIDE FARMS, a Partnership; BERTRAM B. LEOPOLD, an individual; and THE PROFIT SHARING PLAN FOR LEOPOLD, EBERHARDT & GOLDSTEIN, (hereinafter individually called "Joint Venturer" and collectively called "Joint Venturers").

WITNESSETH:

WHEREAS, the parties hereto desire to join together in a Joint Venture for the purposes of (i) acquiring and owning certain real property (hereinafter sometimes referred to as the "land" or "property") situate in Sandy Township, Clearfield County, Pennsylvania, containing approximately 9.1 acres and more particularly described in Exhibit "A" which is attached hereto and made a part hereof; (ii) developing and constructing on the land certain improvements including a warehouse having approximately 135,000 square feet and related facilities; (iii) operating and leasing the warehouse to be constructed on the land; and (iv) carrying on any and all activities related thereto; and

WHEREAS, the parties hereto desire to set forth in full the terms and provisions of their agreements and understandings in this Joint Venture Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Formation and Name of Joint Venture. The parties hereto do hereby

form and confirm the existence of a Joint Venture for the purposes and subject to the terms and conditions as are contained herein. The Joint Venture shall be known as the B Warehouse Company.

2. Principal Office of the Joint Venture. The principal office and place of business of the Joint Venture shall be c/o The Savings and Trust Company of Pennsylvania, P.O. Box 499, 256 Main Street, Brookville, Pennsylvania 15825. The Joint Venture may have such other or additional offices as the Joint Venturers shall deem advisable.

3. Purpose of the Joint Venture. The purpose of the Joint Venture shall consist of (i) acquiring and owning the land; (ii) developing and constructing a warehouse of approximately 135,000 square feet and any additional improvements determined by the Joint Venturers to be feasible and desirable; (iii) operating the improvements as investments and for the production of income by initially leasing said warehouse for a term of three (3) years at a rental of Two and Fifty One Hundredth ($2.50) Dollars per square foot to Brockway, Inc. (NY), a New York Corporation; and (iv) carrying on any and all activities related thereto.

The foregoing powers and purposes of the Joint Venture shall also apply to personal or mixed property relating to the land and improvements. In furtherance of the business and purposes of the Joint Venture this Joint Venture may enter into such contracts, agreements, ventures or arrangements with such other joint venturers, partnerships, corporations, trusts, associations, individuals or other entities as may be deemed necessary by the Joint Venture to accomplish any of its purposes.

4. Interests of Joint Venturers. The percentage ownership interests of each Joint Venturer is as follows:

Calvin Bean	16.666667
The Retirement Plan for the Employees of Ideal Products, Inc.	16.666666
George V. Cohen, P.C. Pension Plan	16.666666
Creekside Farms	16.666667
Bertram B. Leopold	22.000000
The Profit Sharing Plan for Leopold, Eberhardt & Goldstein	11.333334

5. Capital Contributions and Capital Accounts.

A. On the date of the purchase of the land, each Joint Venturer shall contribute to the capital of the Joint Venture, in cash, the amount set forth after his name below, and shall receive a credit to his capital account therefore:

Joint Venturer	Amount
Calvin Bean	$ 83,333.34
The Retirement Plan for the Employees of Ideal Products, Inc.	83,333.33
George V. Cohen, P.C. Pension Plan	83,333.33
Creekside Farms	83,333.34
Bertram B. Leopold	110,000.00
The Profit Sharing Plan for Leopold, Eberhardt & Goldstein	56,666.67
TOTAL	$500,000.01

The aforesaid initial capital contribution together with the proceeds of the initial Joint Venture borrowing through Clearfield County Industrial Development Authority in the amount of $2,000,000.00 as follows: $1,700,000.00 in tax free

bonds payable in equal monthly installments over a period of ten (10) years with interest at a fixed rate of nine (9%) percent per annum for a period of three (3) years on a seven (7) year amortization schedule and at a variable rate for the remaining seven (7) years based upon eighty-five (85%) percent of the prime interest rate quoted by Mellon Bank of Pittsburgh, Pennsylvania, with a floor of eight (8%) percent and a ceiling of eleven (11%) percent on a seven (7) year amortization schedule and $300,000.00 in tax free Shared Appreciation Bonds with interest at the rate of fifteen (15%) percent per annum plus an additional variable interest equal to fifty (50%) percent of the gross rents received by the Joint Venture in excess of $337,500.00 in any calendar year during the first fifteen (15) years and in excess of $200,000.00 in any calendar year during the last twenty (20) years or the prorated portion of such gross rents for any year which is less than a calendar year, payable over a period of thirty-five (35) years in semi-annual payments of interest only and the principal plus fifty (50%) percent of the then fair market value of the land and improvements in excess of $2,300,000.00 plus the actual cost of any additional capital improvements made by the Joint Venture over and above the construction of the proposed 135,000 square foot warehouse which shall be due and payable thirty-five (35) years from date of issue with no prepayment permitted;

shall be used by the Joint Venture for the following purposes:

(i) To purchase the land and all closing costs and expenses, including legal fees, in connection therewith.

(ii) To pay all of the closing costs and expenses, including legal fees, in connection with the Clearfield County Industrial Development Authority loan.

(iii) To pay for the construction of the improvements upon the land and all costs and expenses in connection therewith.

(iv) To provide and fund the Reserve Fund of $250,000.00.

B. The Joint Venture shall initially fund a Reserve Fund in the amount of $250,000.00. To the extent that sufficient cash flow is not available from the operation of the warehouse, said Reserve Fund shall be used exclusively for the payment of proper expenses of the Joint Venture in connection with the operation of the warehouse, including but not limited to the payment of real estate taxes, principal and interest due on the outstanding bonds, and repairs. It is understood that the said Reserve Fund may from time to time be reduced to a balance of less than $250,000.00 in order to make timely payments of such expenses; however, it will be promptly restored and maintained in an amount of not less than $300,000.00 as and when the cash flow from the operation of the warehouse will permit.

C. It is anticipated that the Joint Venture may have additional cash requirements to carry out its obligations and meet its costs and expenses, and therefore each Joint Venturer shall be required to contribute to the capital of the Joint Venture a sum equal to his pro-rata share of his capital account to the total capital which contributions shall be due within thirty (30) days of written notice. The Joint Venture shall retain the services of a Certified Public Accountant to maintain the books and records of the Joint Venture so as to make recommendations of cash requirements to the Joint Venture from time to time.

D. In the event that a Joint Venturer fails to contribute to the capital of the Joint Venture the entire amount which such Joint Venturer may be required from time to time to contribute to the Joint Venture pursuant to this

Paragraph, then and in such event the Joint Venture and the Joint Venturers shall have either of the following remedies:

(i) The non-defaulting Joint Venturers may, but shall not be required to, contribute to the Joint Venture, on behalf of the Defaulting Joint Venturer, the amount remaining due from the Defaulting Joint Venturer. The Defaulting Joint Venturer shall be liable to the contributing Joint Venturer(s) for any contributions so made on behalf of the Defaulting Joint Venturer, together with interest at the prime rate of interest as quoted by Mellon Bank of Pittsburgh, Pennsylvania plus three (3%) percent; provided, however, that any such liability of the Defaulting Joint Venturer shall be exclusively limited to the interest of such Defaulting Joint Venturer in this Joint Venture. In the event that the option referred to in paragraph (ii) below is exercised, any contributions made by a Joint Venturer on behalf of the Defaulting Joint Venturer under this paragraph (i), shall be deemed to be contributions made by such Joint Venturer on his own behalf rather than on behalf of the Defaulting Joint Venturer; or

(ii) Within ninety (90) days after the contribution date, the other Joint Venturers, in proportion to their percentages of interest in the Joint Venture, one to the other, or in such other proportions as they may agree to, shall have the option to purchase the entire interest of the Defaulting Joint Venturer. The purchase price shall be equal to the Defaulting Joint Venturer's capital account as of the last day of the month preceding the month in which the default occurred.

Settlement shall take place at the principal office of the Joint Venture at 10:00 a.m. on the tenth business day following the date of the exercise of the option. In the event that the Defaulting Joint Venturer fails to appear at settlement, the remaining Joint Venturers shall have the power to

execute, as attorneys-in-fact of the Defaulting Joint Venturer, any assignments or other settlement documents requiring the signatures of the Defaulting Joint Venturer. The purchase price shall be paid in cash at settlement.

E. For all purposes of this Agreement, the "capital account" of the Joint Venturer as of any date is hereby defined to mean the amount of cash contributed by such Joint Venturer to the capital of the Joint Venture pursuant to Paragraph 5, properly adjusted to reflect (i) such Joint Venturer's distributive share of profits and losses (including, if such date is not the close of a Joint Venture accounting year, his distributive share of profits and losses of the Joint Venture for the period from the close of the last such Joint Venture accounting year to such date), and (ii) distributions by the Joint Venture to such Joint Venturer (including, if such date is not the close of a Joint Venture accounting year, distributions by the Joint Venture to him during the period from the close of the last such Joint Venture accounting year to such date).

6. Profits and Losses.

A. The profits of the Joint Venture shall be shared, and the losses of the Joint Venture shall be borne, by the Joint Venturers pro rata, in proportion to their respective percentages of interest in the Joint Venture.

B. To the extent that Section 702 and 704 of the Internal Revenue Code of 1954, or the corresponding sections of any future Federal internal revenue law, or any similar tax law or any state or jurisdiction, shall apply to the Joint Venture and the Joint Venturers, the determination of each Joint Venturer's distributive share of any Joint Venture item of income, gain, loss, deduction, credit or allowance for any accounting year or other period shall be made in accordance with and in proportion to such Joint Venturer's percentage of interest in the Joint Venture.

In the event of the transfer of all or any part of a Joint Venture interest (in accordance with the provisions of this Agreement) at any time other than the end of a Joint Venture accounting year, the distributive share of the aforesaid Joint Venture terms (in respect of the Joint Venture interest so transferred), as computed for income tax purposes, shall be allocated between the transferor and the transferee in the same ratio as the number of days in such Joint Venture accounting year before and after such transfer; provided, however, that the provisions of this sentence shall not be applicable to a gain or loss on the sale or other disposition of all or substantially all of the property of the Joint Venture or to other extraordinary nonrecurring items.

7. Term of Joint Venture. The term of the Joint Venture shall commence on the date of the execution of this Agreement by the Joint Venture and shall continue until terminated by written agreement of all of the Joint Venturers, provided, however, that the Joint Venture shall be terminated prior to such date upon:

A. The failure of the Joint Venture to acquire the land and financing;

B. Disposition by the Joint Venture of its entire interest in the land and improvements;

C. The sale of all the assets of the Joint Venture, including the disposition of any mortgage or leasehold interests which may be acquired by the Joint Venture;

D. The happening of any of the eventualities described elsewhere in this Agreement.

8. Legal Title to Joint Venture Property. Legal title to the Joint

Venture property shall be held in the name of the Joint Venture, the Clearfield County Industrial Development Authority or in whatever other manner the Joint Venturers shall determine to be in the best interests of the Joint Venture. The Joint Venturers acting together in their capacity as Joint Venturers, shall have the right, power and authority acting for and on behalf of the Joint Venture, to lease, sell, mortgage, convey, refinance, grant easements on or dedicate the property (or any part thereof) of the Joint Venture, to borrow money and execute promissory notes, to secure the same by mortgage (the term "mortgage" being hereby defined for all purposes of this Agreement to include a deed of trust, financing statement, chattel mortgage, pledge, conditional sales contract and similar security instruments) upon such Joint Venture property, to renew or extend any and all such loans or notes, to convey such Joint Venture property in fee simple by deed, mortgage or otherwise, and to create straw corporations to act as straw parties and nominees solely for and on behalf of the Joint Venture. In no event shall any party dealing with such Joint Venturers with respect to any property of the Joint Venture, or to whom any such property (or any part thereof) shall be conveyed, contracted to be sold, leased, mortgaged or refinanced by such Joint Venturers, be obligated to see to the application of any purchase money, rent or money borrowed or advanced thereon, or be obligated to see that the terms of this Agreement have been compiled with, or be obligated to inquire into the necessity or expediency of any act or action of such Joint Venturers, or be obligated to inquire into any of the terms of this Agreement. Every contract, agreement, deed, mortgage, lease, promissory note or other instrument or document executed by all such Joint Venturers with respect to any property of the Joint Venture shall be conclusive evidence in favor of any and every person relying thereon or claiming thereunder that (i) at the time or

times of the execution and/or delivery thereof, the Joint Venture was in full force and effect, (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Joint Venture and all of the Joint Venturers hereof, and (iii) such Joint Venturers were duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Joint Venture. In the event that title to any Joint Venture property shall be held in a manner other than in the name of the Joint Venture or the Clearfield County Industrial Development Authority, it is expressly understood and agreed that the manner of holding title to the property (or any part thereof) of the Joint Venture is solely for the convenience of the Joint Venture. Accordingly, the spouse, heirs, executors or administrators, beneficiaries, distributees, successors or assigns of any Joint Venturer shall have no right, title or interest in or to any such Joint Venture property by reason of the manner in which title is held, but all such property shall be treated as Joint Venture property held subject to the terms of this Agreement.

9. Management of Joint Venture.

A. Management and control of the Joint Venture and all its affairs shall be in the Joint Venturers. The Joint Venturers shall have the responsibility of the day-to-day operation of the Joint Venture and are hereby authorized, directed and empowered, upon the agreement of any of the Joint Venturers holding not less than sixty-five (65%) percent of the interest in the Joint Venture to do the following:

(1) To establish and maintain one or more bank accounts in the name of the Joint Venture, in a bank or banks chosen by them, and deposit in

said accounts all the monies received by or on behalf of the Joint Venture;

(2) To pay all expenses and obligations of the Joint Venture, which shall be paid and discharged only by checks drawn on said accounts and signed by any one of the Joint Venturers;

(3) To collect, receive and deposit all sums due or to become due to the Joint Venture;

(4) To employ Certified Public Accountants, attorneys, real estate brokers and a general manager for the Joint Venture.

(5) To pay any and all taxes, charges and assessments that may be levied, assessed or imposed upon any of the property of the Joint Venture;

(6) To manage, repair, rebuild or reconstruct any building, property or improvements belonging to the Joint Venture;

(7) To demand, sue for, collect, recover and receive all goods, claims, debts, monies, interest and demands whatsoever now due or that may hereafter become due or belong to the Joint Venture, including the right to institute any action, suit, or other legal proceedings for the recovery of any land, building, other property, or any part or parts thereof, to the possession of which the Joint Venture may be entitled, and to make, execute, and deliver receipts, releases and other discharges thereafter under seal or otherwise;

(8) To make, execute, endorse, accept, collect and deliver any and all bills of exchange, checks, drafts and notes of the Joint Venture;

(9) To defend, settle, adjust, compound, submit to arbitration and compromise all actions, suits, accounts, reckonings, claims and demands whatsoever that now are or hereafter shall be pending between the Joint Venture and any person, firm, association or corporation, in such manner and in all respects as they shall deem fit;

(10) To apply for zoning, rezoning variances, permits for construction, other permits, licenses and the like; and

(11) To determine the cash requirements of the Joint Venture as required by Paragraph 5B and the reserve accounts of the Joint Venture as required by Paragraph 5C.

(12) Without limiting the foregoing, generally to do, execute and perform any other act, deed, matter, or thing whatsoever that ought to be done, executed and performed or that in their opinion ought to be done, executed or performed, of every nature and kind whatsoever to effectuate the business of the Joint Venture, or as may be contemplated by this Agreement.

B. Notwithstanding the provisions of Paragraph 9(A) hereof, the prior written approval of all of the Joint Venturers shall be required for:

(1) The construction of any improvements upon the real property of the Joint Venture in excess of $10,000.00.

(2) The sale or other disposition of any of the real property or improvements thereon erected;

(3) The financing or refinancing of any obligation on the property; or

(4) Any amendment to this Agreement.

10. Management Services. The Joint Venturers shall not be paid any salaries nor receive any fees, commission or other compensation for serving as Joint Venturers; however, each Joint Venturer shall be fully and entirely reimbursed by the Joint Venture for any and all out-of-pocket costs and expenses incurred by such Joint Venture in connection with the management of the Joint Venture business. Subject to the provisions of Paragraph 9 hereof, the Joint

Venturers may, in their sole discretion, contract with any person, firm or corporation, including themselves and any firm or corporation in which they (or any of them) may have an interest, at reasonable and competitive rates of compensation, commission or remuneration, for (i) the development and construction (including engineering, architectural services and the like), and repair and maintenance of the land and/or improvements, (ii) the placement or refinancing of mortgage on the land and/or improvements, (iii) the lease, sale, assignment or transfer of the Joint Venturer's interest in the land and/or improvements (or any part thereof), as well as any other property or assets of the Joint Venture, (iv) the management of assets of the Joint Venture and (v) the performance of any other services which may at any time be necessary, proper, convenient or advisable to carry on the business of the Joint Venture.

11. Books of Account. There shall be kept at the principal office of the Joint Venture (or at such other office as the Joint Venturers may designate), books of account, in which shall be entered fully and accurately each and every transaction of the Joint Venture. Each Joint Venturer shall have access thereto at all reasonable times. The books shall be kept on the cash receipts and disbursements method or an accural method, and for such accounting year (calendar or fiscal) as the Joint Venturers may determine. An audit (which need not be certified) shall be made as of the end of each accounting year by such public accountants or certified public accountants as the Joint Venturers may agree upon, and each Joint Venturer shall be entitled to a copy of the audit report or a summary thereof. Any Joint Venturer shall further have the right to a private audit of the books and records of the Joint Venture, provided such audit is made at the expense of the Joint Venturer requesting such audit and is made at reasonable times after due notice.

12. Distribution of Operating Cash Flow.

A. So far as practicable, and provided that a Reserve Fund of $300,000.00 is maintained at all times, the operating cash flow of the Joint Venture shall first be applied to the paying the principal debt of the ten (10) year bonds and thereafter shall be distributed semi-annually among the Joint Venturers as provided in Paragraph 12C hereof, but such distribution may be made more or less frequently if the Joint Venturers shall unanimously agree to do so.

B. (1) For all purposes of this Agreement, the term "operating cash flow" shall mean:

(a) The taxable income for Federal income tax purposes as shown on the books of the Joint Venture, increased by (i) the amount of depreciation or amortization deductions taken in computing such taxable income, and (ii) any nontaxable income or receipt of the Joint Venture (excluding capital contributions and the proceeds of any mortgages or of any other Joint Venture obligations or loans to the extent used to finance capital improvements and/or replacements and reduced by (i) payments upon the principal of any mortgages upon Joint Venture property or of any other Joint Venture obligations or loans, (ii), expenditures for the acquisition of Joint Venture property and for capital improvements and/or replacements (except to the extent financed through capital contributions, mortgages on Joint Venture property or any other Joint Venture obligations or loans, or reserves previously set aside by the Joint Venture for such purposes), and (iii) such reserves (in addition to the aforesaid reserve account) for capital improvements and/or replacements and for repairs and to meet anticipated expenses as all the Joint Venturers shall deem to be reasonable necessary in the efficient conduct of the Joint Venture business; plus

(b) To the extent not included in taxable income under Paragraph 12B(1)(a), the net proceeds from the sale or other disposition of any part (but not all or substantially all) of the property owned by the Joint Venture; plus

(c) Any other funds (including amounts previously set aside as reserves by the Joint Venturers, where and to the extent the Joint Venturers unanimously agree that such reserves are no longer reasonably necessary in the efficient conduct of the Joint Venture business) deemed available for distribution and designated as operating cash flow by all of the Joint Venturers.

(2) All distributions made within the Joint Venture accounting year shall be subject to adjustment by reference to the audit report for such Joint Venture accounting year. If any additional amount is to be distributed by reason of such audit report, such additional amount shall be deemed a distribution for such Joint Venture accounting year; and if any excess amount was distributed during such Joint Venture accounting year, as reflected by such audit report, the excess amount shall be taken into account in reducing subsequent distributions.

C. In determining operating cash flow, any negative balance in any category described in Paragraph 12B hereof shall be netted against the positive balance in the other such categories.

D. The operating cash flow of the Joint Venture shall be distributed among the Joint Venturers hereof pro rata, in proportion to their respective interest in Joint Venture interest.

E. Notwithstanding any other provisions of this Agreement:

(1) In the event of the sale or other disposition (including, but not limited to, condemnation (or voluntary sale in lieu thereof) of all

or substantially all of the property owned by the Joint Venture, the net proceeds therefrom shall, after payment or provision for all liabilities to creditors of the Joint Venture (including the repayment of loans made by Joint Venturers to the Joint Venture), be distributed to the Joint Venturers in the manner set forth in Paragrah 12D hereof; and

(2) In the event of the refinancing (which term "refinancing" is hereby defined for all purposes of this Agreement to include the recasting, modifying, increasing or extending) of any mortgage on any of the property of the Joint Venture, such proceeds therefrom as are not used to finance capital improvements or replacements (hereinafter in this Agreement sometimes referred to as "excess refinancing proceeds"), if any, shall, after payment of or provision for (to the extent the Joint Venturers may determine such payment or provision to be appropriate) all liabilities to creditors of the Joint Venture, including the repayment of any loans made to the Joint Venture, be distributed to the Joint Venturers in the manner set forth in Paragraph 15D hereof.

13. Assignability of Joint Venture Interest.

A. Subject to the provisions of Paragraph 15 hereof and subparagraphs B and C hereof, the Joint Venture interest of each Joint Venturer (including such Joint Venturer's right to receive a share of the profits and a return of his capital account) shall be assignable; provided, however, that the assignee shall not become a substituted Joint Venturer of the Joint Venture unless (i) the assigning Joint Venturer so provides in the instrument of assignment, (ii) the assignee agrees in writing to be bound by the provisions of this Agreement, and (iii) the remaining Joint Venturers unanimously so consent in writing. If the assigning Joint Venturer so provides in the instrument of

assignment and the remaining Joint Venturers unanimously so consent in writing, the assignee shall have the right to become a substituted Joint Venturer. Unless named in this Agreement, or unless admitted to the Joint Venture as above provided, or unless admitted to the Joint Venture by unanimous written consent of all Joint Venturers, no person shall be considered a Joint Venturer hereof. The Joint Venture, each Joint Venturer and any other person having business with the Joint Venture need deal only with the Joint Venturers so named or so admitted; they shall not be required to deal with any other person by reason of an assignment by a Joint Venturer or by reason of death of a Joint Venturer, except as otherwise provided in this Agreement. In the absence of the substitution, as provided herein, of a Joint Venturer for an assigning or deceased Joint Venturer, any payment to a Joint Venturer or to his executors or administrators shall acquit the Joint Venture of all liability to any other persons who may be interested in such payment by reason of an assignment by, or the death of, such Joint Venturer.

B. (1) In the event that a Joint Venturer shall receive a Bona Fide Offer from an outside offeror to purchase his interest in the Joint Venture, which Bona Fide Offer such Joint Venturer is willing to accept, such Joint Venturer (hereinafter called the "Offeror") shall promptly give notice thereof to all the other Joint Venturers. The other Joint Venturers shall then have thirty (30) days from the date of such notice in which to elect, and to give notice to the Offeror and all of the other Joint Venturers of such election, to purchase, pro rata, in proportion to their respective percentages of Joint Venture interest, the Offeror's interest in the Joint Venture at a price proportionately equal to, and on the same terms as contained in the Bona Fide Offer. If one or more of the Joint Venturers, but less than all, shall elect to

purchase the Offeror's Joint Venture interest, than the Offeror shall give notice to those Joint Venturers who have elected to purchase their proportionate shares of the Joint Venture interest so offered of the failure by the other Joint Venturer(s) to elect to purchase his or their proportionate share(s) of such Joint Venture interest. Thereupon, the Joint Venturers who have elected to purchase their proportionate shares of such Joint Venture interest shall have ten (10) additional days from the date of their receipt of such last notice in which to elect, and to give notice to the Offeror and all of the other Joint Venturers of such election, to purchase, pro rata, in proportion to their respective percentages of Joint Venture interest, or in such other proportion as they may otherwise agree upon, the proportion of such Offeror's Joint Venture interest which the Joint Venturer(s) did not elect to purchase. If the Offeror does not receive elections to purchase his entire Joint Venture interest so offered for sale within the aforesaid periods of time, then the Offeror may, within a period of ninety (90) days of the last date upon which the Joint Venturers could have elected to purchase such Joint Venture interest as above provided, consummate the sale to the outside Offeror in strict accordance with the price and terms stated in the Bona fide Offer and submitted to the other Joint Venturers. If, however, such sale to the outside offeror is not consummated within said period of ninety (90) days then any subsequent sale to any outside offeror may be made only if all of the requirements of this Paragraph 13B are again complied with.

(2) In the event the Joint Venturers, or any of them, shall elect to purchase all of the Offeror's Joint Venturer interest as heretofore provided, then the transfer of such Joint Venture interest and the closing of

the transaction shall occur within thirty (30) days after the exercise of the election to purchase such Joint Venture interest. Such closing shall take place at the principal office of the Joint Venture, and, at such closing, the purchase price shall be paid in accordance with the terms and provisions of the Bona Fide Offer and the necessary instruments of transfer shall be duly executed and delivered by the Offeror with necessary documentary and/or transfer stamps, if any, affixed thereto at the cost of the Offeror.

(3) Each notice given by an Offeror to the Joint Venturers in accordance with this Paragraph 13B shall be in writing and shall be sent by registered or certified mail, return receipt requested and postage prepaid. Such notice shall contain an offer to sell the Offeror's Joint Venture interest at the same price and upon the same terms as the Bona Fide Offer; such notice, which shall be accompanied by a true and correct copy of such Bona Fide Offer, shall set forth the name, home address and business address, and business or occupation of the outside offeror, or, if the outside offeror is a corporation, such information with respect to all shareholders owning ten percent (10%) or more of the capital stock of the corporation.

(4) In order to be deemed a Bona Fide Offer within the meaning of this Paragraph 13B, an offer must be in writing, signed by the outside offeror (who must be a person financially capable of carrying out the terms of the offer), in a form legally enforceable against the outside offeror, and accompanied by a good faith deposit equal to at least ten percent (10%) of the proposed purchase price.

C. Subject to the terms of Paragraph 13A hereof but notwithstanding the provisions of Paragraph 13B hereof, the Joint Venture interest of any Joint Venturer may be transferred or disposed of by inter vivos instrument, by sale,

bequest or devise, or by intestacy, to any of the following:

(1) A parent, or parents, spouse, descendant or descendants, spouse of a descendant, brother or sister;

(2) Any corporation all of the shares of which are owned by one or more of the Joint Venturers herein;

(3) A trust, whether inter vivos or testamentary, of which a Joint Venturer or any person named above in (1) or (2) is the primary income beneficiary.

(4) A Joint Venturer named herein or a duly substituted Joint Venturer.

(5) A partnership owned or controlled by a Joint Venturer.

In the event of the transfer of any Joint Venture interest pursuant to this paragraph, any subsequent transfer of such interest by such transferee shall be subject to all terms and provisions of this paragraph, as well as any and all other provisions of this Agreement, and at or prior to the date of the transfer of any Joint Venture interest as aforesaid, the transferor shall give notice of such transfer to each of the other Joint Venturers hereof, setting forth in such notice the name and address of the transferee.

14. Bankruptcy of a Joint Venturer. If any Joint Venturer shall take advantage of any bankruptcy or insolvency act, or if an insolvency petition shall be filed against any Joint Venturer and a final adjudication of insolvency entered thereon, or if any Joint Venturer shall make an assignment for the benefit of creditors, then the other Joint Venturers shall have the option (exercisable by giving notice thereof to such Joint Venturer or to his assignee, trustee in bankruptcy, receiver or other legal representative) to purchase all,

but not less than all, of such Joint Venturer's interest in the Joint Venture within ninety (90) days after such taking advantage or such adjudication or assignment, as the case may be, at a price equal to such Joint Venturer's capital account at such time. The aforesaid option is granted to the other Joint Venturers hereof pro rata, in proportion to their respective percentages of Joint Venture interest, or in such other proportion as they may otherwise agree upon. The terms of payment shall be all cash or as otherwise agreed upon by the respective parties.

15. Termination of Joint Venture.

A. The Joint Venture shall not terminate upon the occurrence of any of the following events: the retirement, adjudication of insanity or incompetency, adjudication of bankruptcy (unless the option under Paragraph 14 above is exercised), or death of any Joint Venturer, or the occurrence of any other event causing the termination of a Joint Venture under the laws of the State of Pennsylvania, unless the remaining Joint Venturers elect not to continue the Joint Venture and the Joint Venture business. In the event that the remaining Joint Venturers so elect, (i) the Joint Venture shall be terminated, (ii) the Joint Venture and the Joint Venture business shall not be continued, (iii) the Joint Venture interest owned by the Joint Venturer who retires, is adjudged to be insane, incompetent or bankrupt, or dies, shall not be deemed to be a Joint Venture interest, and such Joint Venturer (or his committee, trustee in bankruptcy, executors or administrators, successors or assigns, or other legal representatives) shall not be deemed to be a Joint Venturer.

B. Upon the insanity, incompetency, bankruptcy or death of one of the Joint Venturers, then the remaining Joint Venturers shall determine as speedily as possible whether or not the Joint Venture (as a limited partnership,

general partnership, joint venture or similar organization) shall be terminated.

C. (1) In the event that all of the remaining Joint Venturers agree not to continue the Joint Venture, then the remaining Joint Venturers shall proceed with dispatch and without any unnecessary delay to sell or otherwise liquidate the assets and property of the Joint Venture, and, after paying or duly providing for all liabilities to creditors of the Joint Venture, to distribute the net proceeds and any other liquid assets of the Joint Venture among the Joint Venturers in the manner set forth in Paragraph 15D hereof.

(2) Anything herein contained to the contrary notwithstanding, in the event of termination, before any property of the Joint Venture shall be on the market for sale, the remaining Joint Venturers shall call a meeting of all of the Joint Venturers. In the event that any or all of the remaining Joint Venturers shall determine that he or they wish to purchase all, but not less than all, of such Joint Venture property, than such Joint Venturer(s) (hereinafter referred to as the "Purchasing Joint Venturers") shall have the option to purchase the interests of the other Joint Venturers (hereinafter referred to as the "Selling Joint Venturers") in such property. The amount and terms of the purchase price shall be as mutually agreed upon by the Purchasing Joint Venturers and the Selling Joint Venturers. If the Purchasing Joint Venturers and Selling Joint Venturers are unable to reach such mutual agreement, the Purchasing Joint Venturers' group and the Selling Joint Venturers' group shall each promptly appoint an appraiser to find the value of the equity of such property, for purposes of a cash sale subject to existing encumbrances and liabilities. If the two appraisers agree upon the equity value of such property, they shall jointly render a single written report of their opinion

thereon. If the two appraisers cannot agree then they shall appoint a third appraiser and the joint written report of two of the three appraisers shall be binding upon the parties hereto. All appraisers shall be qualified by experience and ability to appraise the property of the Joint Venture. The fees and other costs of each of the first two appraisers shall be borne by the group appointing each such appraiser, with the fees and other costs of the third appraiser being shared equally by both such groups. The agreed equity value or the equity value contained in the aforesaid joint written report of the appraisers, as the case may be, shall be used to determine the purchase price of the interests of the Selling Joint Venturers, as if such property were sold on the basis of such value and the net proceeds thereof and other liquidated assets of the Joint Venture were distributed among the Joint Venturers in accordance with the provision of Paragraph 15D hereof. Within sixty (60) days after the final written report (as aforesaid) has been rendered, the Purchasing Joint Venturers shall give notice to the Selling Joint Venturers of their decision as to the exercise of the aforesaid option. Such option is granted to all Purchasing Joint Venturers pro rata, in proportion to their respective percentages of Joint Venture interest, or in such other proportion as they may otherwise agree upon. If such option is exercised, settlement shall be held within thirty (30) days from the date of such exercise. Unless otherwise mutually agreed upon by the Purchasing Joint Venturers and the Selling Joint Venturers, the terms of payment of the purchase price shall be: Twenty percent (20%) cash down, with the balance of the principal payable over a period of five (5) years in five (5) equal annual installments, with interest payable annually at the rate of Mellon Bank, Pittsburgh, Pennsylvania prime rate plus two (2%) percent per annum on the unpaid principal balance, and with the right of prepayment in

whole or in part at any time without penalty. The obligation of the Purchasing Joint Venturers to the Selling Joint Venturers shall be evidenced by the several promissory notes of the Purchasing Joint Venturers, secured by the entire Joint Venture interests of the Purchasing Joint Ventures, with financing statements to be executed and recorded in order to evidence the same, if so requested by the Selling Joint Venturers.

D. Any excess refinancing proceeds (as defined in Paragraph 12E(2) hereof) and/or the net proceeds from the sales or other disposition of all or substantially all of the property of the Joint Venture and any other liquid assets of the Joint Venture shall, to the extent thereof after payment of or provision for all liabilities to creditors of the Joint Venture, including the repayment of any loans made to the Joint Venture by a Joint Venturer, be distributed among all the Joint Venturers hereof pro rata, in proportion to their respective percentages of Joint Venturer interest.

E. The Joint Venture shall terminate when all property and assets owned by the Joint Venture shall have been disposed of, and the net proceeds therefrom and any other liquid assets of the Joint Venture, after payment of or provision for all liabilities to creditors of the Joint Venture, shall have been distributed to the Joint Venturers as provided in Paragraph 15D hereof.

16. Miscellaneous Provisions.

A. Unless otherwise so provided in this Agreement, no Joint Venturer shall be liable to any other Joint Venturer or to the Joint Venture by reason of his actions in connection with the Joint Venture, except in the case of actual fraud, gross negligence or dishonest conduct.

B. Except as provided herein, nothing herein contained shall be

construed to constitute any Joint Venturer hereof the agent of any other Joint Venturer hereof or to limit in any manner the Joint Venturers in the carrying on of their own respective businesses or activities.

C. Any Joint Venturer may engage in or possess any interest in other business and real estate venturers of every nature and description, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage and development of real property; and neither the Joint Venture or the Joint Venturers hereof shall have any rights in or to any such independent venture or the income or profits derived therefrom.

D. Any claim or controversy arising out of or relating to this Agreement or a breach hereof shall, upon the request of any party involved, be submitted to and settled by arbitration in accordance with the rules then obtaining in the State of Pennsylvania of the American Arbitration Association (or any other form of arbitration mutually acceptable to the parties so involved). The decision made pursuant to such arbitration shall be binding and conclusive on all parties involved; and judgment upon such decision may be entered in the highest court of any forum, state or Federal, having jurisdiction.

E. All notices provided for herein shall be sent by certified or registered mail, return receipt requested, and first-class postage prepaid to the address of the Joint Venturer as shown on the books of the Joint Venture, unless notice of a change of address is given to the Joint Venture pursuant to the provisions of this paragraph. Time periods shall commence on the date of mailing of a notice. Any notice which is required to be given within a stated period of time shall be considered timely if postmarked before midnight of the

last day of such period.

F. The terms "bankrupcy" and "bankrupt", and derivations thereof, shall be deemed to refer not only to an adjudication of bankruptcy under the Federal Bankruptcy Act, but also to an adjudication of insolvency under any state or local insolvency procedure.

G. The use of any gender herein shall be deemed to be or include the other genders and the use of the singular herein shall be deemed to be or include the plural, and vice versa, wherever appropriate.

H. This agreement sets forth all, and is intended by all parties hereto to be an integration of all of the promises, agreements, conditions, understandings, warranties, and representations among the parties hereto with respect to the Joint Venture the Joint Venture business and the property of the Joint Venture; there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, among them other than as set forth herein.

17. Governing Law. It is the intention of the parties hereto that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State of Pennsylvania.

18. Burden and Benefit. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective spouses, heirs, executors, administrators, personal and legal representatives, successors and assigns.

19. Notices. All notices to be given hereunder to a Joint Venturer or the Joint Venture shall be in writing and sent by certified mail, return receipt

requested, with a copy to the other Joint Venturers at the following addresses:

Calvin Bean - P.O. Box 1006, DuBois, PA 15801

The Retirement Plan for the Employees of Ideal Products, Inc., - P.O. Box 1006, DuBois, PA 15801

George V. Cohen, P.C. Pension Plan - 433 Market Street, P.O. Box 7, Williamsport, PA 17703

Creekside Farms - 433 Market Street, P.O. Box 7, Williamsport, PA 17703

Bertram B. Leopold - 414 N. Logan Boulevard, Altoona, PA 16602

The Profit Sharing Plan for Leopold, Eberhardt & Goldstein - 414 N. Logan Boulevard, Altoona, PA 16602

A Joint Venturer hereto may designate in writing a change of address or the name of another person and address to whom such notices shall be sent.

20. Construction Contract. Notwithstanding anything in this Joint Venture Agreement to the contrary, the Joint Venture and the Joint Venturers do hereby appoint Bertram B. Leopold, one of the Joint Venturers, as the attorney-in-fact for the Joint Venture in its name and each of the Joint Venturers in their own name and on behalf of the Joint Venture and each of the Joint Venturers to take all actions and perform all acts including without limitation the execution of any and all documents with respect to the construction of the 135,000.00 square foot warehouse including the execution of the construction agreement between the Joint Venture and its contractor, Hallstrom Construction, Inc.

IN WITNESS WHEREOF, the undersigned Joint Venturers have hereto affixed their signatures as of the day and year first above written.

Witness:

_____

_____
John Bean, Agent for Calvin Bean

THE RETIREMENT PLAN FOR THE EMPLOYEES OF IDEAL PRODUCTS, INC.

By _____
John Bean, Co-Trustee

GEORGE V. COHEN, P.C. PENSION PLAN

By _____
George V. Cohen, Trustee

CREEKSIDE FARMS

By _____
George V. Cohen, Attorney-in-Fact

_____
Bertram B. Leopold

THE PROFIT SHARING PLAN FOR LEOPOLD, EBERHARDT & GOLDSTEIN

By _____
Bertram B. Leopold, Co-Trustee

ALL that piece or parcel of real estate situate in Sandy Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a point on the west edge of existing concrete road; thence by residue of tract North 74 degrees 10 minutes West 500 feet and North 15 degrees 50 minutes East 700 feet to south side of a 50 foot right-of-way for a road; thence along said right-of-way the following North 83 degrees 10 minutes East 410 feet, by a curve to the right the chord of which is South 72 degrees 50 minutes East 95 feet, by a curve to the right the chord of which is South 7 degrees 30 minutes East 68 feet; thence continuing along said right-of-way and west edge of concrete road South 15 degrees 50 minutes West 795 feet to the place of beginning. Containing 9.1 acres.

Exhibit A

B Warehouse Company

May 8, 85

Altoona, Pa.

Disbursements made on your behalf:

Recording Partial Release of Mortgage	$ 15.50
Recording Amended Partial Release of Mortgage	15.50
Recording First Mortgage	19.50
Recording Second Mortgage	19.50
Recording Mortgage Loan Agreement	60.50
Recording Memorandum of Mortgage Loan Agreement	23.50
Recording Memorandum of Collateral Assignment	21.50
Recording deed	15.50
Recording two UCC1's	31.00
Filing Waiver of Mechanic's Lien	10.00
Filing two UCC1's	17.00
Filing two Ucc1's with Department of State	18.00
	$ 267.00

Exhibit E

MORTGAGE LOAN AGREEMENT

By and Among

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

and

B WAREHOUSE COMPANY

and

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA,
as Noteholder and Bonds Paying Agent

Dated as of April 15, 1985,
for reference purposes only, but actually
effective as of May 7, 1985

(B WAREHOUSE COMPANY PROJECT)

MORTGAGE LOAN AGREEMENT

THIS MORTGAGE LOAN AGREEMENT (the "Mortgage Loan Agreement"), dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985, is between the **CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY** (the "Authority"), a non-profit public corporate and political instrumentality of the Commonwealth of Pennsylvania, and **CALVIN BEAN, RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC., GEORGE V. COHEN, P.C. PENSION PLAN, CREEKSIDE FARMS, A PARTNERSHIP, BERTRAM B. LEOPOLD, AND LEOPOLD, EBERHARDT & GOLDSTEIN PROFIT SHARING PLAN,** Joint Venturers trading and doing business as **B WAREHOUSE COMPANY** (the "Investor Developer"), and **THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA,** as the Noteholder and Bonds Paying Agent (the "Bank").

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and representations hereinafter contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows (provided that in the performance of the agreements of the Authority herein contained any obligation it may incur for the payment of money shall not be a debt of the Commonwealth of Pennsylvania or any political subdivision thereof other than as a special obligation of the Authority, and neither the Commonwealth of Pennsylvania nor any political subdivision other than the Authority shall be liable on any obligation so incurred, but the Authority shall be obligated to pay the Note and Bonds solely out of the income and revenues to be derived by the Authority under this Mortgage Loan Agreement).

ARTICLE I

BACKGROUND, REPRESENTATIONS, FINDINGS, WARRANTIES

1.1 BACKGROUND. The Authority is a public instrumentality of the Commonwealth of Pennsylvania, and a public body politic and corporate, organized under the Industrial and Commercial Development Authority Law, Act of August 23, 1967, P.L. 251, as amended (the "Act"). Under the Act, the Authority is authorized to enter into agreements providing for the mortgaging of commercial development projects for commercial occupants by an investor developer for the public purpose of alleviating unemployment, maintaing employment as a high level, creating and developing business opportunities and improving the economy of the Commonwealth of Pennsylvania and Clearfield County, by the acquisition, construction, improvement, rehabilitation, revitalization and financing of commercial development enterprises.

The Investor Developer has requested the Authority to undertake a project (the "Project") consisting of the financing of the acquisition of the site (the "Premises"), described in Exhibit "A", together with the construction of a certain warehouse facility thereon (the "Project Facilities"), described in Exhibit "B", with the understanding that the Investor Developer may also in the near future construct certain improvements to said Project Facilities.

Fee simple title to the Premises has heretofore been conveyed by a proper Deed to the Authority and, after recording of this instrument and certain related documents, will be reconveyed to the Investor Developer for due and appropriate considerations, and said fee simple title to said Premises will thereafter remain and will continue to remain and be vested in the Investor Developer. In conjunction with the mortgage of the Premises as hereinafter provided, the Investor Developer (the "Landlord") has concurrently herewith entered into a commercial lease of the Premises, the Agreement of Lease (referred to herein as the "Lease"), with Brockway, Inc. (NY) (the initial "Tenant"). Concurrently with the execution of this Mortgage Loan Agreement and the documents related hereto, the Investor Developer has executed a Collateral Assignment of the Lease, dated as of April 15, 1985, for reference purposes only, but actually effective as of May 7, 1985 (the "Collateral Assignment"), to the Bank as the Noteholder and Bonds Paying Agent under the Debt Resolution hereinafter identified, as collateral security for the Note and Bonds to be issued by the Authority for purposes of financing the acquisition of the Premises and construction of the Project Facilities.

1.2 INVESTOR DEVELOPER'S REPRESENTATIONS AND WARRANTIES. The Investor Developer represents and warrants to the Authority that:

(a) The Investor Developer is a Joint Venture consisting of Calvin Bean, Retirement Plan for Employees of Ideal Products, Inc., George V. Cohen, P.C. Pension Plan, Creekside Farms, a Partnership, Bertram B. Leopold, and Leopold, Eberhardt & Goldstein Profit Sharing Plan, collectively trading and doing business as B Warehouse Company, and is in the business of general real estate development and investment. The Investor Developer is properly doing business in the Commonwealth of Pennsylvania and has full power and authority to enter into this Agreement and perform its obligations hereunder. The making and performance of this Agreement by the Investor Developer will not violate any governmental rule or regulation, or agreement, instrument or other document by which the Investor Developer or its property is bound.

(b) The acquisition and financing of the Premises and construction thereon of the Project Facilities, as provided under this Agreement, is intended to promote employment opportunities and diversification of industry in order to improve the prosperity, economic stability and general welfare of the Commonwealth of Pennsylvania, by promoting and retaining substantial employment opportunities for residents thereof.

(c) The Investor Developer intends to cause the Premises and Project Facilities to be operated as a revenue producing enterprise and "Commercial Development Project", as defined in the Act.

(d) The Investor Developer is engaged in commercial activities in Clearfield County, Pennsylvania, requiring substantial capital and creating substantial employment opportunities. The Investor Developer is financially responsible to assume all obligations prescribed by the Authority in this Agreement and by the Act.

(e) The Project will promote the purposes of the Act by promoting a commercial and business enterprise, and developing, creating and retaining employment opportunities and business opportunities in Clearfield County, Pennsylvania.

(f) The Premises and Project Facilities are land and property of a character subject to allowance for depreciation under Section 167 of the Internal Revenue Code of 1954, as amended, and not less than ninety (90%) per cent of the proceeds of the Note and Bonds shall be applied to the acquisition and construction of the Project.

1.3 AUTHORITY'S REPRESENTATIONS AND FINDINGS. The Authority represents, finds and warrants that:

(a) The Authority is duly organized under the provisions of the Act. The Authority has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Project constitutes and will constitute a "Commercial Development Project" within the meaning of the Act. By proper corporate action, the Authority has been duly authorized to execute and deliver this Agreement.

(b) To permanently finance the cost of the Project, the Authority proposes initially to issue a $1,700,000 Commercial Development First Mortgage Loan Note (B Warehouse Company Project) (the "First Mortgage Loan Note" and "Note") and up

to but not exceeding $300,000, principal amount, of its Commercial Development Second Mortgage Revenue Bonds, Series of 1985, (B Warehouse Company Project) (the "Second Mortgage Revenue Bonds" and "Series of 1985 Bonds" and "Bonds"). Additional Bonds of the Authority may be issued as provided for under its Debt Resolution, hereinafter identified.

(c) Both the First Mortgage Loan Note and the Second Mortgage Revenue Bonds will be issued under a Debt Resolution (the "Debt Resolution"), adopted on April 18, 1985, by the Authority with The Savings & Trust Company of Pennsylvania, as the Noteholder and the Bonds Paying Agent thereunder, having its principal office and its corporate trust office in the Borough of Brookville, Pennsylvania (the "Bank"), and will be in such form, mature, bear interest, be redeemable and have such other terms and provisions as are set forth in said Debt Resolution, pursuant to which the Authority's interests in this Agreement and the revenues and receipts derived by the Authority from the Project will be pledged, and the Premises and Project Facilities will be mortgaged by the Authority to the Bank under a First Mortgage (the "First Mortgage"), and a Second Mortgage (the "Second Mortgage"), both dated as of April 15, 1985, for reference purposes only, but actually both effective as of May 7, 1985, both of which in turn will be assigned to the Bank as security for the payment of the principal and interest on both the Note and the Bonds.

(d) Within the meaning of Section 103(b)(6) of the Internal Revenue Code of 1954, as amended (the "Code"), the Note and the Bonds to be issued by the Authority are the only debt obligation of the Authority or any other governmental unit which have been issued on behalf of the Principal Users with respect to the Project or any other facilities located in the Township of Sandy, Clearfield County, Pennsylvania, an incorporated municipality, of which the Principal Users are the Investor Developer and the initial Tenant or any persons or corporations related to any of them.

ARTICLE II

ACQUISITION, MORTGAGING AND CONSTRUCTION OF THE PROJECT

2.1 ACQUISITION OF PROJECT. The Authority acknowledges and covenants that it has good and marketable fee simple title to the Premises free and clear of any lien or encumbrance (subject to easements, restrictions and title objections with respect thereto shown on any title report submitted by the Investor Developer herewith and which are acceptable to the Authority), and further agrees to cause the execution and delivery of the First Mortgage, the Second Mortgage, the First Mortgage Loan Note, the Second Mortgage Revenue Bonds, this Agreement, and the Assignment thereof, and of the Collateral Assignment of the Lease to the Bank, all at or before the settlement which will occur simultaneously with the execution hereof.

2.2 MORTGAGE LOAN. The Authority agrees, upon the terms and subject to the conditions hereinafter set forth, to make a loan to the Investor Developer in the principal amount of TWO MILLION DOLLARS ($2,000,000) (the "Mortgage Loan") for the purposes set forth hereinabove.

2.3 FIRST MORTGAGE LOAN NOTE AND SECOND MORTGAGE REVENUE BONDS. The Mortgage Loan shall be evidenced by a promissory note in substantially the form of the $1,700,000 First Mortgage Loan Note executed and delivered sinultaneously herewith and by reference thereto made a part hereof (the "First Mortgage Loan Note"), and the $300,000 Second Mortgage Revenue Bonds, Series

of 1985, in substantially the form set forth in the Debt Resolution (the "Second Mortgage Revenue Bonds"), said Note and said Bonds both to be dated as of April 15, 1985, for reference purposes only, and to actually be effective as of May 7, 1985, after the actual execution and delivery thereof. The Mortgage Loan shall be repaid as provided in the First Mortgage Loan Note and the Second Mortgage Revenue Bonds and shall bear the interest rates on the unpaid principal amount from the effective date of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds until payment in full of the entire principal amount outstanding from time to time as set forth and pursuant to the terms of the Mortgage Loan Note and the Second Mortgage Revenue Bonds. In the event that interest on the First Mortgage Loan Note and the Second Mortgage Revenue Bonds issued by the Authority in connection with the Project ever becomes includable for purposes of Federal income taxation in the gross income of the recipients thereof (except that the reason for such inclusion is because the recipient is determined to be a "substantial user" or "related person" as provided for in Section 103(b) of the Internal Revenue Code of 1954, as amended, or as provided in the First Mortgage Loan Note and the Second Mortgage Revenue Bonds issued by the Authority), then the First Mortgage Loan Note and the Second Mortgage Revenue Bonds shall be increased immediately in the rate of interest payable thereon to an adjusted taxable rate at all times thereafter equal to a rate which will render an equivalent return to the Noteholder and Bondholders.

2.4 SECURITY FOR THE FIRST MORTGAGE LOAN NOTE AND SECOND MORTGAGE REVENUE BONDS. The First Mortgage Loan Note shall be secured by a First Mortgage, in the form of the First Mortgage executed and delivered concurrently herewith, and by reference thereto made a part hereof (the "First Mortgage"), on the Premises, and the Second Mortgage Revenue Bonds shall be secured by a Second Mortgage, in the form of the Second Mortgage also executed and delivered concurrently herewith, and by reference thereto made a part hereof (the "Second Mortgage"), on the Premises both as more fully described in the Debt Resolution of the Authority, which Mortgages when filed in the appropriate recording office, shall constitute a first lien and a second lien, respectively on the Premises. Said Mortgages shall both be dated as of April 15, 1985, for reference purposes only, but both to be actually effective as of May 7, 1985, after the actual execution and delivery thereof. As further security for the payments due hereunder and under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, the Investor Developer shall also execute and deliver to the Bank the Collateral Assignment of the Lease concurrently with the execution and delivery of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds. Also as further security for the payments due hereunder and under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, the Investor Developer hereby grants to the Authority a security interest in all personal property and fixtures of the Investor Developer located on the Premises as set forth in the Financing Statement which is to be filed simultaneously with the execution and delivery hereof, and the Investor Developer will join in filing such other Financing Statements from time to time in connection herewith as the Authority may request.

2.5 EXPENSES AND FEES. The Investor Developer, at the time of execution of this Agreement or, at the option of the Authority, at any time or times hereafter specified by the Authority, shall pay all attorneys' fees, other fees and charges, including the Authority's initial fee of $1,975.00 (and thereafter shall also pay the Authority's yearly fee of $625.00 annually) and the charges for the examination of the title to the Premises, surveys, continuations of surveys and title reports, inspections and drawing of papers, and shall also pay the recording and filing fees, and transfer and mortgage recording taxes, if any, with respect to the Premises and Project.

2.6 TITLE INSURANCE. If requested in writing by the Authority, the Investor Developer shall procure and deliver to the Authority a certificate of title insurance issued by a firm of recognized attorneys, naming the Authority as insured, and insuring the same to be first and second liens, respectively, on the Premises.

2.7 INCORPORATION OF TERMS. The First Mortgage Loan Note and the First Mortgage and the Second Mortgage Revenue Bonds and the Second Mortgage to be executed, acknowledged and delivered pursuant to this Agreement shall be made subject to all the terms and conditions contained in this Agreement, to the

same extent and effect as they would be if fully set forth in and made a part of said First Mortgage Loan Note and Second Mortgage Revenue Bonds and First and Second Mortgages. This Agreement is made subject to all the conditions, stipulations, agreements and covenants contained in said First Mortgage Loan Note and Second Mortgage Revenue Bonds and First and Second Mortgages to the same extent and effect as they would be if fully set forth herein and made a part hereof. Notwithstanding any of the foregoing, if any provisions of said First Mortgage Loan Note and Second Mortgage Revenue Bonds and First and Second Morgages are inconsistent with this Agreement, this Agreement shall control.

2.8 PREPAYMENT OF THE FIRST MORTGAGE LOAN NOTE AND SECOND MORTGAGE REVENUE BONDS. The First Mortgage Loan Note and Second Mortgage Revenue Bonds are subject to optional prepayment by the Investor Developer under certain circumstances as more specifically set forth therein and in the Debt Resolution of the Authority. The First Mortgage Loan Note and Second Mortgage Revenue Bonds shall also be subject to acceleration and mandatory prepayment upon the occurrence of certain events, as more specifically set forth therein and in the Debt Resolution of the Authority.

2.9 CONSTRUCTION OF PROJECT. The Investor Developer agrees to construct the Project Facilities in accordance with the Debt Resolution of the Authority and this Agreement.

2.10 CHANGES IN PROJECT FACILITIES. The Investor Developer will revise Exhibit "B" to reflect additions, deletions and changes in the Project Facilities from time to time made, and will notify the Authority and the Bonds of such modifications so that the Authority and the Bonds will at all times be able to ascertain the nature, location and cost of the facilities covered by this Agreement.

2.11 ADMINISTRATION OF CONSTRUCTION CONTRACTS, CHANGES WITH RESPECT TO ANY FUTURE IMPROVEMENTS. The Investor Developer, in conjunction with the construction of the Project Facilities and any improvements that are made in the future to the Project, and subject to the provisions of this Agreement, will have full responsibility for preparing, administering, amending and enforcing any construction contracts and litigating or settling all claims thereunder, and will be entitled to all warranties, guarantees and indemnities provided under any such construction contracts and by law. The Authority agrees to execute and deliver to the Investor Developer any and all documents necessary to evidence the Investor Developer's rights to such warranties, guarantees and indemnities, and agrees to cooperate with the Investor Developer in amending, enforcing and litigating any such construction contracts.

ARTICLE III

FINANCING THE PROJECT

3.1 ISSUANCE OF AUTHORITY'S NOTE AND BONDS. In order to finance the Project, the Authority will issue to the Bank the First Mortgage Loan Note in the principal amount of $1,700,000, and will issue and sell the Second Mortgage Revenue Bonds to the Bond Purchasers in an initial principal amount of $300,000, for an initial total amount of $2,000,000.

The First Mortgage Loan Note and the Second Mortgage Revenue Bonds will be issued under the Debt Resolution of the Authority and will be sold at such times, in such amounts, and for such prices as have been approved by the Investor Developer. The liability of the Authority under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds shall be enforceable only to the extent of its rights and duties hereunder and under the Debt Resolution of the Authority, or any amendment or supplement hereto or thereto. The First Mortgage Loan Note and the Second Mortgage Revenue Bonds shall be payable solely from the payments made by the Investor Developer hereunder to the Authority, as assigned to the Bank, as Noteholder and Bond Paying Agent, of principal, premium, if any, and interest as therein and hereinafter provided, provided that payments on the First Mortgage Loan and the Second Mortgage Revenue Bonds may be made from other moneys, if any, accruing to

the Bank or to the Authority in respect of the Premises or Project Facilities, including insurance moneys and all payments of moneys under the Collateral Assignment, but in any event there shall be no other recourse against the Authority or any property now or hereafter owned by it.

3.2 ACQUISITION AND CONSTRUCTION FUND. The net proceeds of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds under and pursuant to the Mortgage Loan shall be loaned to the Investor Developer and shall be deposited with the Bank as provided for hereunder and under the Debt Resolution of the Authority to be held in an acquisition and construction fund (the "Acquisition and Construction Fund") for payment of the Costs of the Project. The Bank will make payments from the Acquisition and Construction Fund, subject to and in accordance with the provisions of this Agreement as hereinafter provided, and as provided under the terms of the Debt Resolution of the Authority, upon receipt of a requisition from the Investor Developer, signed by any one of the Authorized Investor Developer Representatives, in accordance with this Agreement, stating:

(a) the cost to which the payment relates and the nature of the payment;

(b) the payee;

(c) the amount; and

(d) that the payment is a proper charge against the Acquisition and Construction Fund.

For purposes of this Acquisition and Construction Fund, Project Costs may include any cost in respect of the Premises and/or Project Facilities, and shall include, specifically, mortgage loan installments (including principal and interest on the First Mortgage Loan Note and the Second Mortgage Revenue Bonds) that cannot be paid for any reason from moneys not received or that are not otherwise adequately provided for from any other source.

3.3 NOTE AND BONDS NOT TO BECOME ARBITRAGE BONDS. The Investor Developer hereby covenants to the Authority for the benefit of the Holders of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds that, notwithstanding any other provision of this Agreement or any other instrument, it will neither make nor instruct the Bank to make any investment or other use of the Acquisition and Construction Fund or other proceeds of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds which, if such investment or use had been reasonably expected on the date of issuance of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, would have caused the First Mortgage Loan Note and the Second Mortgage Revenue Bonds to be "arbitrage bonds", under Section 103(c) of the Internal Revenue Code of 1954, as amended, and the regulations thereunder, and that it will comply with the requirements of such Section and regulations throughout the term of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds.

3.4 COMPLETION OF THE ACQUISITION AND CONSTRUCTION OF THE PROJECT. When the Investor Developer certifies to the Bank and the Authority that the acquisition and construction of the Project is complete and the final payment of Project Costs has been made, any amounts thereafter remaining in the Acquisition and Construction Fund will be released to the Bank and deposited in and credited to the Bond Fund under the Debt Resolution of the Authority and applied against the next and succeeding principal payments due on the First Mortgage Loan Note, or as otherwise provided in the Debt Resolution of the Authority. If for any reason the amount in the Acquisition and Construction Fund proves insufficient to pay all Project Costs, the Investor Developer will pay the remainder of said Costs.

3.5 ACQUISITION AND CONSTRUCTION FUND IN EVENT OF DEFAULT. If the Authority should, because of the occurrence of an Event of Default (as hereinafter defined), declare the entire principal amount of the Mortgage Loan due and payable, then any moneys in the Acquisition and Construction Fund shall be taken over by the Authority to complete the Project or satisfy the amount of the Mortgage Loan then due and payable.

3.6 BANK'S RESPONSIBILITIES. The Bank, as the Bonds Paying Agent, shall act as such for the Authority and the Investor Developer hereunder as specifically provided herein and in the Debt Resolution of the Authority and may exercise such additional powers as are reasonably incidental thereto. Neither the Bank nor any of its officers, directors, agents, attorneys or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct. The Bank shall not be under a duty to examine into or pass upon the validity, effectiveness, genuineness or value of this Agreement, the First Mortgage Loan Note, the Second Mortgage Revenue Bonds, or any requisition, affidavit, certificate or other instrument, document or agreement related hereto, and shall be entitled to assume that the same are valid, effective and genuine and what they purport to be. The Bank shall incur no liability under or in respect of this Agreement, the First Mortgage Loan Note, the Second Mortgage Revenue Bonds, or any such requisition, affidavit, certificate or other instrument, document or agreement, reasonably believed by it to be genuine or authentic or to be signed by the proper party or parties, or with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment, or which may seem to it to be necessary or desirable. The Bank may consult with legal counsel selected by it and any action taken or suffered by it in accordance with the opinion of such counsel shall be full justification and protection to it.

ARTICLE IV

REPAYMENT OF THE MORTGAGE LOAN

4.1 MORTGAGES BY AUTHORITY OF THE PREMISES AND PROJECT FACILITIES AND ESTABLISHMENT AND MAINTENANCE OF THE RESERVE FUND. As hereinbefore provided, the Authority shall mortgage to the Bank the Premises and the Project Facilities as security for the Mortgage Loan, which shall be represented by the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, and the repayment of said Mortgage Loan shall be made in the installment payments, including principal, interest and premium, if any, as set forth under the provisions of Section 4.2 below.

RESERVE FUND. There shall be and hereby is established by the Investor Developer a Reserve Fund in an amount to be deposited at Closing of not less than $250,000.00 in cash and acceptable securities which Reserve Fund shall be maintained by the Investor Developer in the Trust Department of the Bank. To the extent that sufficient cash flow from the Project's gross revenues is not available from the operation of the Project, said Reserve Fund shall be used exclusively for the payment of proper expenses of the Investor Developer in connection with the operation of the Project, including and limited to the payment of real estate taxes, principal and interest due on the outstanding First Mortgage Loan Note, legal, accounting, Paying Agent's fees, Authority's fees, management fees paid to other than the Investor Developer, insurance and repairs. There shall be deposited into this Reserve Fund from time to time the balance of the cash flow from the Project's gross revenues after payment of all Project operating, maintenance and debt service costs on the First Mortgage Loan Note and Second Mortgage Revenue Bonds. The aforementioned balance of the cash flow and all earnings in the Reserve Fund shall accumulate in said Reserve Fund during the first seven (7) years up to a maximum of $500,000. The moneys in this Reserve Fund shall be invested from time to time by the Bank in prudent investments as directed by the Investor Developer. During the first seven (7) years, the Investor Developer will not draw any moneys from the Project if the reserves in the Reserve Fund are less than $500,000. After the seventh year, the Investor Developer will not draw any moneys from the Project if the reserves in the Reserve Fund are less than $300,000. This provision shall be binding upon the Investor Developer, individually and collectively, their heirs, legal representatives, successors and assigns.

4.2 PAYMENT OF THE MORTGAGE LOAN INSTALLMENTS. The repayment of the Mortgage Loan through the Mortgage Loan installment payments, including principal, interest and premium, if any, shall be payable by the Investor Developer to the Bank, as the Noteholder and the Bonds Paying Agent, the Authority's assignee hereof, in Clearing House Funds of the city in which is located the principal corporate trust office of the Bank in installments in the combined total amounts and on the dates as follows:

(a) On or before the business day next preceding June 1, 1985, and on the first day of each month thereafter as to the First Mortgage Loan Note, and on or before the business day next preceding June 1, 1985, and on the first day of each month thereafter, as to and so long as any of the Second

Mortgage Revenue Bonds are Outstanding, the sum which, together with other moneys available therefor in the Bond Fund (as created under the Debt Resolution of the Authority), will equal the sum of (i) the interest on the First Mortgage Loan Note and the Second Mortgage Revenue Bonds (or the appropriate pro rata shares thereof for the initial and final periods) which will become due on the succeeding monthly interest payment date, and (ii) the principal amount, if any, of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds (or the appropriate pro rata share thereof for the initial and final periods) which will become due under the Debt Resolution of the Authority on the monthly principal payment date next succeeding such payment.

(b) On or before the business day next preceding the yearly anniversary date of the Note and Bonds Closing, a sum equal to the Authority's yearly fee of $625.00 payable annually pursuant to and in compliance with Section 2.5 hereof.

(c) On or before the business day next preceding June 1, 1985, and on the first day of each month thereafter, so long as the First Mortgage Loan Note or any of the Second Mortgage Revenue Bonds are Outstanding, a sum equal to the monthly proportion of the total premiums for all insurance required hereunder and under the Lease, if any, unless the Investor Developer has elected to and does make or has made provisions under the Lease for the payment of any or all of these payments directly and the Bank has been so notified to such effect.

(d) On the dates specified in any supplemental debt resolution relating to additional bonds, the amounts required to be deposited on said dates to the credit of the Bond Fund pursuant to the provisions of such supplemental debt resolution for the purpose of paying the interest on and the principal of such additional bonds.

(e) On the date specified in any supplemental debt resolution relating to additional bonds, the amounts required to be deposited on said dates to the credit of the sinking fund, if any, established for such additional bonds.

(f) So long as any Second Mortgage Revenue Bonds are Outstanding on each of the mortgage loan installment payment dates referred to in paragraphs (a) and (b) above, a sum equal to the Bank's compensation and expenses as Paying Agent for said Bonds, not theretofore provided for, which have accrued and are estimated to accrue prior to the next mortgage loan installment payment date, including all premiums, costs and expenses for redemption of any Second Mortgage Revenue Bonds that are to be redeemed on or before the next interest payment date.

(g) Promptly upon receipt of a notice to the Investor Developer from the Authority or the Bank requesting payment thereof, all other amounts required to be paid hereunder or by the Investor Developer or the Authority under the Debt Resolution to the Authority or the Bank or otherwise.

4.3 **NO DEFENSE OR SET-OFF.** The obligations of the Investor Developer to make the payments required under this Article IV shall be absolute and unconditional and without defense or set-off by reason of any default by the Authority under this Agreement or under any other agreement between the Investor Developer and the Authority or for any other reason, including, without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Premises or Project Facilities, commercial frustration of purpose, or failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement, it

being the intention of the parties that the payments required by this Agreement will be paid in full when due without any delay or diminution whatsoever. Nothing contained hereinabove shall relieve the Authority from any covenant, obligation or duty imposed on the Authority pursuant to this Agreement, nor shall any provision hereof limit the Investor Developer's right to sue the Authority to enforce the Authority's obligations hereunder.

4.4 ASSIGNMENT OF AUTHORITY'S RIGHTS. The Authority intends to and will grant and convey to the Bank its interests in the First and Second Mortgages on the Premises and Project Facilities and assign to the Bank the Authority's rights under this Agreement (except reserving to the Authority the right to receive payments under Sections 6.2 (a) and 9.1 hereof). The Investor Developer hereby acknowledges such assignment and agrees to make or cause to be made all payments so assigned directly to the Bank without defense or set-off by reason of any dispute between the Investor Developer and the Authority or the Bank.

4.5 ASSIGNMENT OF LEASE AND OTHER INTERESTS AS COLLATERAL SECURITY. The Investor Developer, in order to secure all of its obligations to the Authority as set forth herein, will assign, transfer, set over and grant to the Bank, as collateral security for the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, a security interest in all of its rights and benefits, but none of its duties or obligations, in the Lease and all future Leases entered into with the initial Tenant and all future Tenants and in any renewals, extensions or modifications thereof, and all such rentals and other moneys payable thereunder shall be pledged to and, to the extent necessary to meet the Investor Developer's obligations under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds and hereunder, shall be paid over by the Investor Developer at the appropriate times hereunder to the Bank. Promptly upon receipt of said rentals and other moneys, the Bank shall deposit the same in the Clearing Fund under the Debt Resolution of the Authority, shall immediately set aside the amount of the note installment payments on the Mortgage Loan which are hereinabove provided for in Section 4.2, including the appropriate proportions of the Bank's Paying Agent fees and expenses and the insurance premiums, if any, if the same have not previously been paid directly by the Investor Developer or initial Tenant or Tenants, and thereafter promptly return any balance thereof to the Investor Developer as provided in the Debt Resolution of the Authority. The Investor Developer hereby acknowledges, understands and agrees that the Authority will pledge and assign to the Bank all of said rentals and other moneys to be received in connection with the Lease and subsequent Leases, and the Investor Developer agrees that if the Investor Developer does not fulfill its obligations to make payments under Section 4.2 hereunder in a timely manner then the Authority shall after the written notice to such effect have the absolute right to have the initial Tenant or Tenants under the Lease and subsequent Leases make such payments of rental and other moneys directly to the Bank.

ARTICLE V

COVENANTS OF THE INVESTOR DEVELOPER

5.1 INTERESTS OF THE INVESTOR DEVELOPER. The Investor Developer may at any time hereafter sell, assign, encumber or otherwise convey, either in whole or in part, or sub-lease under and pursuant to the Lease and subsequent Leases, any of its interests hereunder.

5.2 COMPLIANCE WITH PENNSYLVANIA LAWS. With respect to the Premises and Project Facilities, the Investor Developer will at all times comply with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter, and in particular will comply with all applicable requirements of the laws of the Commonwealth of Pennsylvania and with all applicable lawful requirements of any agency, board or commission, created under the laws of the Commonwealth of Pennsylvania or of any other duly constituted public authority, and to the extent possible, will use the Premises

and the Project Facilities only for such purposes as are lawful under the Act; provided, however, that the Investor Developer shall be deemed in compliance with Subsection 1.2(f) and Section 10.1 hereof so long as it is contesting in good faith any such requirements by appropriate legal proceedings. Any such contest may be made in the name of the Authority or the Investor Developer or both. The Authority agrees to cooperate with the Investor Developer in any such contest at the expense of the Investor Developer.

5.3 COVENANTS WITH RESPECT TO CAPITAL EXPENDITURES. Neither the Investor Developer, nor any person or corporation related to it, shall within three (3) years of the date of issuance of the First Mortgage Loan Note and the Second Mortgage Revenue Bonds, without prior notice to the Authority and/or Bank, make or permit to be made on its behalf by others, any capital expenditures, within the meaning of Section 103 (b) (6) of the Internal Revenue Code of 1954, as amended (the "Code"), with respect to the Project Facilities, which would bring the total amount of such expenditures for the six (6) year period, beginning three (3) years prior to such date, above the applicable limitation (currently $10,000,000) set forth in said Section 103 (b) (6) (D) of the Code, nor shall the Investor Developer take any other action which would result in rendering interest payable under this Agreement or on the First Mortgage Loan Note and the Second Mortgage Revenue Bonds subject to Federal income tax under the provisions of said 103 (b) (6). The Investor Developer and the initial Tenant or subsequent Tenants (if required by the Code) shall file each year during said period in the offices of the Internal Revenue Service where the Investor Developer and the initial Tenant or subsequent Tenant, respectively, are required to file their income tax returns, a supplemental statement listing by date and amount any capital expenditures made by the Investor Developer or the initial Tenant or subsequent Tenant in the Township of Sandy, Clearfield County, Pennsylvania, an incorporated municipality, in the preceding year, and, if requested in writing, shall furnish a copy of such statement to the Authority and the Bank. Additionally, the Investor Developer and the initial Tenant or subsequent Tenants (if required by the Code) shall file supplemental returns and statements as, from time to time, are required by the Internal Revenue Service, pursuant to present or future regulations.

5.4 FINANCING STATEMENTS. The Investor Developer shall, at the Investor Developer's expense, file financing statements in respect of the Premises and Project Facilities or any portion thereof, and shall take any other action which may be deemed necessary by the Bank from time to time to perfect the security interest and lien created therein under this Agreement.

5.5 REPORTS AND CERTIFICATES TO BE RENDERED. Until the Mortgage Loan has been repaid in full, upon a written request, the Investor Developer shall deliver to the Authority and the Bank, and to each Bondholder requesting the same, within ninety (90) days after the end of each fiscal year:

(a) its annual report with respect to the Project, which shall include a balance sheet and income statement in reasonable detail, and its annual budget for the next fiscal year; and

(b) a certificate that no Event of Default hereunder has occurred and is continuing.

5.6 PAYMENT OF BANK'S PAYING AGENT COMPENSATION AND EXPENSES. The Investor Developer will pay, as provided for in Section 4.2(c) above, the Bank's Paying Agent compensation and expenses, including all registration and other similar fees, under the Debt Resolution of the Authority securing the Second Mortgage Revenue Bonds.

5.7 INCREASE TO TAXABLE INTEREST RATE WITH RESPECT TO THE FIRST MORTGAGE LOAN NOTE AND THE SECOND MORTGAGE REVENUE BONDS. The First Mortgage Loan Note, as provided for under the Debt Resolution of the Authority, is subject to an immediate increase in the rate of interest payable thereon to an adjusted taxable rate at all times thereafter equal to the taxable Prime Rate as announced from time to time of Mellon Bank, N.A., and the Second Mortgage Revenue Bonds, as provided for under the Debt Resolution of the Authority, are subject to an immediate change in the rate of interest payable thereon to the taxable rate at all times thereafter of 15% per annum, in the event that the interest on the First

Mortgage Loan Note and/or the Second Mortgage Revenue Bonds shall be determined by the Internal Revenue Service or by the Federal courts (in each case, after allowable appeals, in which appeals the Investor Developer has participated or has had the opportunity to participate) to have become subject to Federal income taxes by virtue of the applicable limitation imposed by Section 103 (b) (6) (D) of the Internal Revenue Code of 1954, as amended (the "Code"), on bond issuance and/or capital expenditures having been exceeded, or in the event the interest on the First Mortgage Loan Note and/or the Second Mortgage Revenue Bonds shall become subject to taxation as the result of any other provision of Section 103 or the rules and regulations thereunder (except for interest on the First Mortgage Loan Note and/or any Second Mortgage Revenue Bond during the period it is held by a "substantial user" of the Project or a "related person" within the meaning of the Code), and in either such event the Investor Developer shall be obligated under this Agreement to pay this adjusted taxable rate on the First Mortgage Loan Note and/or the Second Mortgage Revenue Bonds from the date that the interest on the First Mortgage Loan Note and/or the Second Mortgage Revenue Bonds is determined to be taxable by the Internal Revenue Service or by the Federal courts (in each case, after allowable appeals as provided above).

5.8 MAINTENANCE, REPAIRS AND ALTERATIONS. The Investor Developer covenants that, during the term of this Agreement, it will pay or cause to be paid by the initial Tenant or subsequent Tenants in accordance with the terms of the Lease or subsequent Leases all costs and expenses in maintaining and operating the Premises and Project Facilities and will keep the same or will cause the same to be kept by the initial Tenant or subsequent Tenants in accordance with the terms of the Lease or subsequent Leases in good repair and in good operating condition at its own cost. Except as permitted in the Lease or subsequent Leases, the Investor Developer will not undertake or permit any demolition or structural alterations or additions to the Project Facilities without first giving written notice of its intentions to do so to the Bank. All structural alterations and additions to the Project Facilities undertaken by the Investor Developer shall become a part of the Project Facilities.

In the event of a default of any contractor or subcontractor under any contract made by it in connection with any repair or improvement or in the event of a breach of warranty with respect to any materials, workmanship or performance guaranty, the Investor Developer will promptly proceed, either separately or in conjunction with others, to exhaust the remedies against the contractor or subcontractor so in default and against each such surety for the performance of such contract. The Investor Developer agrees to advise the Bank of the steps it intends to take in connection with any such default. If the Investor Developer shall so notify the Authority and Bank, the Investor Developer may, in its own name or in the name of the Investor Developer and Authority, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor or surety which the Investor Developer deems reasonably necessary, and in such event the Authority and Bank hereby agree to cooperate fully with the Investor Developer at the Investor Developer's expense.

5.9 ENFORCEMENT OF AND COMPLIANCE WITH THE LEASE AND SUBSEQUENT LEASES. The Investor Developer shall enforce the terms and conditions of the Lease and all subsequent Leases and shall require the initial Tenant and all subsequent Tenants to perform their obligations thereunder. So long as no Event of Default shall have occurred and be continuing hereunder or under the Debt Resolution of the Authority, the Investor Developer may exercise all its rights under the Lease and all subsequent Leases, except that it shall not, without prior written notice to the Bank, amend the Lease or any subsequent Leases so as to diminish the gross rentals, receipts, revenues and income to be derived from the Project Facilities. Likewise, the Investor Developer shall promptly and faithfully discharge all of its obligations under the Lease and all subsequent Leases.

5.10 COVENANT TO NOTIFY AUTHORITY IF NOTE AND/OR BONDS ARE PAID OFF PRIOR TO MATURITY. The Investor Developer covenants that if the First Mortgage Loan Note and/or the Second Mortgage Revenue Bonds are paid in full prior to their stated maturity, the Investor Developer will promptly notify the Authority in writing of such occurrence.

ARTICLE VI

DEFAULT PROVISIONS

6.1 EVENTS OF DEFAULT. Each of the following events is hereby defined hereunder as, and is declared to be and to constitute, an "Event of Default":

(a) Failure by the Investor Developer to make the payments as required under Article IV hereof within a thirty (30) day period following written notice by registered or certified mail being given by the Authority or the Bank to the Investor Developer.

(b) Upon the passage of thirty (30) days following the giving of written notice by registered or certified mail to the Investor Developer by the Authority or the Bank, the failure by the Investor Developer to observe and perform any other covenant, condition or agreement on its part to be observed or performed hereunder within said period after said written notice, specifying such failure and requesting that it be remedied, is given to the Investor Developer by the Authority or the Bank; provided, however, that so long as the Investor Developer has commenced appropriate action to cure such failure and is proceeding diligently and expeditiously, such time period shall be tolled.

(c) The filing by the Investor Developer of a voluntary petition in bankruptcy, or failure by the Investor Developer promptly to lift any execution, garnishment or attachment of such consequences as will impair its ability to carry out its obligations under this Agreement, or the commission by the Investor Developer of any act of bankruptcy, or adjudication of the Investor Developer as a bankrupt, or assignment by the Investor Developer for the benefit of its creditors, or the entry by the Investor Developer into an agreement or composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Investor Developer in any proceeding for its reorganization instituted under the provisions of the general bankruptcy law, as amended, or under any similar act which may hereafter be enacted.

(d) The occurrence of any Event of Default under the Debt Resolution of the Authority.

The above definitions of "Events of Default" are subject to the qualifications that if by reason of force majeure the Investor Developer is unable in whole or in part to carry out its obligations under subparagraph (b) of this Section of this Agreement, the Investor Developer shall not be deemed in default during the continuance of such inability. The term "force majeure" as used in this Agreement shall mean, without limitation, the following: acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind (not including condemnation proceedings) of the government of the United States or of the Commonwealth of Pennsylvania or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; or any other cause or event not reasonably within the control of the Investor Developer. The Investor Developer agrees, however, to remedy, with all reasonable dispatch, all such cause or causes preventing the Investor Developer from carrying out its agreements hereunder.

6.2 REMEDIES ON DEFAULT. Whenever any Event of Default referred to in Section 6.1 hereof shall have happened and be subsisting for a period of thirty (30) days after written notice to the Investor Developer from the Authority or the Bank, subject to the provisions of the Lease and all subsequent Leases, any one or more of the following remedial steps at the written direction of the Noteholder or Holders of not less than 65% in aggregate principal amount of the Bonds then Outstanding may be taken:

(a) The Authority and/or the Bank may perform for the account of the Investor Developer any covenant or obligation in the performance of which the Investor Developer is in default, in which event the Investor Developer shall immediately pay to the Authority and/or the Bank any amount paid by the Authority and/or the Bank, together with reasonable counsel fees as well as with interest at the rate of fifteen percent (15%) per annum, or at such lower maximum legal rate of interest as is then permissible, from the date of payment by the Authority and/or the Bank.

(b) The Authority and/or the Bank may declare all sums which the Investor Developer is obligated to pay to the Authority and/or the Bank pursuant to this Agreement, together with interest accrued thereon, immediately due and payable.

(c) The Authority through the Bank may terminate this Agreement and resell the Premises and Project Facilities at a private or public sale and the moneys collected under such resale will be applied in such order of priority as determined by the Bank. If such proceeds are in excess of the amount required to satisfy the total due from the Investor Developer to the Authority and/or the Bank under the terms of this Agreement, then such excess shall be paid to the Investor Developer.

(d) After ten (10) days written notice, the Authority through the Bank may take possession of the Premises and Project Facilities, or any appropriate portion thereof, without terminating this Agreement, and the Authority through the Bank may collect rentals and enforce all other remedies of the Investor Developer under the Lease and all subsequent Leases for any part of the Premises and Project Facilities, and the Authority through the Bank may enter into such new leases on such terms as the Authority and/or the Bank may deem fit for any portion or portions of the Premises or Project Facilities, and such leases shall not be terminated or affected if the Investor Developer cures the Event of Default. Rentals under said leases may be applied by the Authority through the Bank to any repair or maintenance of the Premises and Project Facilities or any appropriate portions thereof as the Authority and/or the Bank may reasonably deem useful, and the remaining balance shall be applied to the Investor Developer's obligations hereunder in the order of priority to be determined by the Authority and/or the Bank. Any balance of rentals remaining thereafter shall be promptly paid over to the Investor Developer by the Authority and/or the Bank.

(e) The Investor Developer herewith consents to service of process upon the appropriate Officer of the Commonwealth of Pennsylvania as its agent for such purpose should it no longer be subject to such service of process within the Commonwealth of Pennsylvania in conjunction with all remedies as provided for hereunder.

(f) The Investor Developer hereby waives and releases all errors, defects and imperfections whatsoever of a procedural nature in the entering of any judgment or any process or proceedings arising out of this Agreement. The Investor Developer also waives the benefit of any laws which now or hereafter might authorize the stay of any execution to be issued or any judgment recovered hereunder or the exemption of any property from levy or sale thereunder.

(g) The Authority through the Bank may exercise its rights to enforce the performance and observance of any obligation, agreement or covenant of the Investor Developer under this Agreement.

6.3 ADDITIONAL REMEDY. In addition to the above remedies, if the Investor Developer commits a breach, or threatens to commit a breach, of any of the provisions of Sections 3.2, 3.3, 5.2, 5.3, 5.4 and 5.5 hereof, the Authority and/or the Bank shall have the right and remedy, without posting bond or other security, to have the above provisions of this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Authority and/or the Bank and that money damages will not provide an adequate remedy thereto.

6.4 DEFAULT BY AUTHORITY AND INVESTOR DEVELOPER'S AND ALL OTHER'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Authority hereunder and under the Debt Resolution and all documents executed in connection therewith and related thereto shall be limited to its interests in the Premises and Project Facilities, the rents, rentals, mortgage loan installment payments, issues and profits therefrom, and the lien of any judgment shall be restricted thereto, and any judgement entered on any warrant of attorney or any other document filed for the purpose of entering judgement shall contain specific language expressly limiting the lien of any such judgement to the Authority's interest as restricted hereinabove.

6.5 DEFAULT BY INVESTOR DEVELOPER AND AUTHORITY'S AND BANK'S REMEDIES. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, the liability of the Investor Developer (which shall be deemed to include, under this paragraph, all Joint Venturers and any successors and assigns of any of them) to any person or entity, including, but not limited to, the Authority, the Bank, the Noteholder, the Bondholders, and/or their successors and assigns, shall be limited (i) severally, and not jointly, to a total maximum of $400,000 (more specifically: Calvin Bean - $66,666.67; Retirement Plan for Employees of Ideal Products, Inc. - $66,666.66; George V. Cohen, P.C. Pension Plan - $66,666.66; Creekside Farms, a Partnership - $66,666.67; Bertram B. Leopold - $88,000.00; and Leopold, Eberhardt & Goldstein Profit Sharing Plan - $45,333.34), but (ii) if Brockway, Inc. (NY) shall renew its Lease after the first three (3) year lease period for a subsequent three (3) year lease period, then this liability shall thereafter be limited to its interests in the Premises and Project Facilities and the Lease and all subsequent Leases pledged by it under the lien of this Agreement and the First and Second Mortgages, and such persons and/or entity(s) shall look exclusively thereto, or to such other security as may from time to time be given for payment, breach and/or performance of all obligations arising out of this Agreement or all other agreements securing the same, and any judgment rendered against the Investor Developer under this Agreement and/or under said security or agreements securing the same or any other instrument executed in connection therewith, shall be limited to the aforesaid amount or aforesaid interest in the Premises, the Project Facilities, the Lease and all subsequent Leases, and any other security so given for satisfaction thereof; and that no deficiency or other personal judgment, nor any order or decree of specific performance other than in conformity with the foregoing shall be rendered against the Investor Developer, the assets of the Joint Venturers, their heirs, personal representatives, successors, transferees or assigns, as the case may be, in any action or proceedings arising out of this Agreement, or any other security or agreements securing the same or any other instrument executed in connection therewith, or any judgment, order or decree rendered pursuant to any such action or proceeding.

ARTICLE VII

INSURANCE

7.1 PROPERTY AND BUSINESS INTERRUPTION INSURANCE. At the option of the Investor Developer, the Investor Developer may itself keep or may cause to be kept by the initial Tenant and all subsequent Tenants under and subject to the provisions (if any) of the Leases business interruption insurance (if applicable) in accordance with the terms of the Lease and all subsequent Leases. The Investor Developer shall also keep, through others, the entire Premises and Project Facilities insured against loss or damage by fire, with extended coverage, and against loss from such other hazards as may be stipulated by the applicable provisions (if any) of the Lease and all subsequent Leases, and said insurance shall name the Noteholder and the Bondholders as additional insureds and shall provide that in the event of a partial loss or a total loss caused by fire or other casualty insured against, then the Investor

Developers shall use the insurance proceeds exclusively for the construction of improvements, renovations and capital additions to the Project, and to the extent that any such insurance proceeds are not so used, the Investor Developer shall pay such insurance proceeds to the Bank for payment and redemption of the First Mortgage Loan Note and any balance remaining after said First Mortgage Loan Note is paid in full shall be returned to the Investor Developer. All such policies and any additional fire insurance carried by the Investor Developer or initial Tenant and all subsequent Tenants on the Premises and Project Facilities shall contain the standard mortgage clause, and the originals thereof will be maintained with the Investor Developer with copies upon written request to be deposited with the Bank.

7.2 **LIABILITY INSURANCE.** The Investor Developer will provide or cause to be provided comprehensive general liability insurance covering at least the hazards of "Premises Operation", "Elevators" (if applicable) and "Independent Contractors", in which the Authority and the Bank shall be named as insureds with minimum limits of liability with respect to bodily injury of $1,000,000 for each person and $1,000,000 for each occurrence and $500,000 with respect to property damage for each occurrence, or such lesser minimum limits as shall be required by the Lease and all subsequent Leases.

In addition, the Investor Developer shall also provide, or cause to be provided, during the construction of the Project Facilities and whenever construction of major alterations to the Premises or Project Facilities is being performed, policies of contingent public liability insurance protecting the Authority, the Bank and the Investor Developer, in addition to providing certificates of public liability insurance and workmen's compensation insurance, insuring any contractor engaged by the Investor Developer. The above-mentioned contingent liability policy shall be in the form of a comprehensive general liability policy, if obtainable, and, if not obtainable, shall be a public liability policy covering at least the hazard of all phases of the construction being performed by the Investor Developer or any contractors, the hazard arising from the ownership and possession of the Premises and Project Facilities, and the hazard of any operations other than construction being carried on by the Investor Developer on any part of the Premises or Project Facilities during said construction period.

The Investor Developer, for the entire term of this Agreement, shall provide comprehensive general liability insurance policies in the stated amounts above or as set forth in the Lease and all subsequent Leases and/or shall provide that the initial Tenant and all subsequent Tenants under the Lease and all subsequent Leases shall provide for its own coverage against liability with respect to the Premises and/or the Project Facilites, either through self-insurance or, at the request of the Authority, in compliance with the terms (if any) of the Lease and all subsequent Leases, then in conjunction with comprehensive general liability insurance through others, and may also provide under the provisions of the Lease and all subsequent Leases that the initial Tenant and all subsequent Tenants will indemnify and save harmless the Investor Developer, who in turn hereunder will indemnify and save harmless the Authority and the Bank, as to all such liability with respect to the Premises and/or the Project Facilities for the entire term of this Agreement.

7.3 **GENERAL INSURANCE PROVISIONS.**

Subject to the aforementioned Sections 7.1 and 7.2, all insurance policies that are required to be provided by the Investor Developer or through others hereunder shall comply with the following general insurance provisions:

(a) All insurance as to form, amount and insurance company shall be reasonably satisfactory to the Authority and to the Bank (if deemed necessary by the Bank, to be upon advise of a qualified Insurance Consultant to be engaged by the Bank at the sole expense of the Investor Developer) and shall be at all times in full compliance with the applicable provisions (if any) of the Lease and all subsequent Leases.

(b) All policies will require that no less than ten (10) days written notice of cancellation or material change will be given to the Authority and to the Bank.

(c) All cost of insurance shall be borne by the Investor Developer or the initial Tenant and all subsequent Tenants.

(d) Renewal policies marked "premium paid" by the agent or issuing company shall be deposited at least thirty (30) days before the expiration of the prior existing policies.

(e) All insurance, other than insurance required only during major alterations, is required commencing from the date hereof and is to be continued throughout the term of this Agreement, and the Investor Developer will provide evidence thereof satisfactory to the Authority and the Bank; provided, however, that property damage insurance need not be maintained so long as builder's risk insurance shall be in full force and effect.

(f) All insurance shall name the Authority, the Bank, the Bondholders, the Investor Developer and, where required by the Lease and all subsequent Leases, the initial Tenant and all subsequent Tenants thereunder, as insureds to the extent of their respective interests and shall cover the entire Premises and Project Facilities.

ARTICLE VIII

DAMAGE AND CONDEMNATION

8.1 DAMAGE AND CONDEMNATION. Damage to, destruction of or condemnation of all or a substantial portion of the Premises and/or Project Facilities which gives the right of termination of the Lease and all subsequent Leases to the initial Tenant or a substantial number of the subsequent Tenants pursuant to the terms thereof shall give to the Investor Developer hereunder with prior written consent of the Noteholder and the Holders of not less than 65% in aggregate principal amount of the Second Mortgage Revenue Bonds then Outstanding the option to accelerate the payments hereunder and to redeem and pay at par the First Mortgage Loan Note and all of the Second Mortgage Revenue Bonds pursuant to the provisions of the Debt Resolution of the Authority (any and all insurance proceeds and condemnation award moneys shall be applied by the Investor Developer to said redemptions) and terminate this Agreement, but damage to, destruction of or condemnation of all or any portion of the buildings or improvements constituting the Premises and the Project Facilities which does not result in the termination of the Lease or a substantial number of the subsequent Leases by the respective Tenants pursuant to the terms thereof shall not terminate this Agreement or cause any abatement of or reduction in the payments to be made hereunder by the Investor Developer or otherwise affect the respective obligations of the Authority and the Investor Developer hereunder. However, if the amounts owing on payments under the First Mortgage Loan Note and the Second Mortgage Revenue Bonds are reduced, then the mortgage loan installments or other payments hereunder shall be reduced to the same extent. The proceeds of any insurance policies shall be paid to the Investor Developer and shall be applied to the cost of repair and/or restoration of the Project Facilities, if required by the terms of the Lease and all subsequent Leases and, if not required by the terms of the Lease and all subsequent Leases to be used for repair or restoration of the Project Facilities, shall be deposited into and held by the Bank in the Clearing Fund under the Debt Resolution of the Authority and used for such purposes as may be permitted thereunder. The Investor Developer, in the event of any damage or destruction, shall, or shall cause the initial Tenant and all subsequent Tenants under the terms of the Lease and all subsequent Leases to, promptly restore the buildings and improvements to at least as good condition as existed prior to the said damage or destruction, if required by the terms of the Lease and all subsequent

Leases, and shall be entitled to the use of any proceeds held by the Bank in accomplishing such purposes. To the extent any such proceeds are held by the Bank after completion of such restoration, such amounts shall be remitted by the Bank to the Investor Developer after subtracting therefrom any expenses of the Bank and the Authority, including reasonable counsel fees.

In the event that title to or the use of the Premises or Project Facilities, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, there shall be no diminution or postponement of the payments payable hereunder by the Investor Developer; and any net proceeds received from any award made in, or resulting from the settlement of, such eminent domain proceedings shall be paid to the Investor Developer to be applied to the cost of repair or restoration which the Investor Developer may be required to undertake pursuant to the Lease and all subsequent Leases. If the Investor Developer is not required to undertake any repair or restoration under the Lease and all subsequent Leases, then such net proceeds shall be paid to the Bank and applied first against the First Mortgage Loan Note and then to the Second Mortgage Revenue Bonds or utilized in the manner agreed upon by the Bank and the Authority, with the approval of the Investor Developer, to replace any building or other facility taken or to improve any remaining portion of the Premises and Project Facilities still mortgaged by the Authority to the Bank. Any net proceeds not paid to or claimed by the Bank or utilized to replace or improve any building or other facility shall belong to and be distributed to the Investor Developer. The Authority agrees to cooperate with the Investor Developer in the conduct and defense of any condemnation proceeding at the expense of the Investor Developer, but this Agreement shall not be construed as limiting the right of the County of Clearfield to condemn all or a part of the Project in accordance with law. The Authority covenants not to settle any condemnation proceeding without the prior written consent of the Investor Developer and the Bank.

ARTICLE IX

INDEMNIFICATION OF AUTHORITY AND BANK AND WAIVER OF CLAIMS

9.1 INDEMNIFICATION OF AUTHORITY AND BANK AND WAIVER OF CLAIMS. The Investor Developer covenants and agrees to protect, exonerate, defend, indemnify and save harmless the Authority and the Bank from and against any and all costs or liabilities which may arise or have arisen out of the Authority's interests in the Premises, and from and against any and all loss, damage, cost, expense or liability based on personal injury or death or loss or damage to property suffered or incurred by any person, firm or corporation (including the parties hereto) and arising out of or attributable to the acquisition, construction, presence, condition, use, operation or maintenance of the Premises or Project Facilities, except when due to the willful misconduct of the Authority or the Bank, and from and against any and all loss, damage, cost, expense or liability arising out of or relating to any action taken in good faith by the Authority, its board members, officers, agents, attorneys or employees, to carry out the terms of this Agreement and the other documents referred to herein. The Investor Developer agrees, additionally, that it will not join, unless necessary, the Authority or the Bank as a third party defendent in any legal action alleging costs or liabilities due to the aforesaid which may at any time be instituted by any party against the Investor Developer. The Authority or the Bank shall give prompt notice to the Investor Developer of any claim asserted against the Authority or the Bank which, if sustained, may result in liability on the Investor Developer hereunder; provided, however, that the failure on the part of the Authority or the Bank to give such notice promptly shall not relieve the Investor Developer from its obligation to protect, exonerate, defend, indemnify and save the Authority or the Bank harmless as aforesaid, except to the extent that the failure to give such notice results in a failure of coverage of any of the Investor Developer's liability insurance or causes actual loss or damage to the Investor Developer. In case any action or proceeding be brought against the Authority or the Bank by reason of any such claim, the Investor Developer, upon notice from the Authority or the Bank, covenants and agrees to resist or defend such action or proceeding by counsel satisfactory to the Authority or the Bank; provided, however, that the Authority or the Bank will cooperate and assist in the defense of such action

or proceeding, if reasonably requested to do so by the Investor Developer, and at the expense of the Investor Developer. The Investor Developer will not make any claim against the Authority or the Bank, nor shall the Authority or the Bank be liable for any damage or injury to any property of the Investor Developer or any other person on the Premises or to any part of the Project Facilities due to any cause whatsoever, other than the willful misconduct of the Authority or the Bank, nor will the Investor Developer resist the Authority's or the Bank's claim to indemnification on the ground that the right to such claim is not set forth herein with sufficient particularity.

ARTICLE X

TAXES, OTHER GOVERNMENTAL CHARGES AND UTILITY CHARGES, AND PAYMENTS IN LIEU OF TAXES

10.1 TAXES, OTHER GOVERNMENTAL CHARGES AND UTILITY CHARGES, AND PAYMENTS IN LIEU OF TAXES. The Investor Developer will pay, or cause to be paid by the initial Tenant and all subsequent Tenants under the provisions of the Lease and all subsequent Leases, prior to the time the same becomes delinquent, all real estate taxes and all other taxes and payments in lieu of taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Premises and Project Facilities, the improvements, or any machinery, equipment or related property installed or brought by the Investor Developer therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the receipts, income or profits of the Authority from the Premises and Project Facilities), and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Premises and Project Facilities; provided, that with respect to special assessments or other governmental charges that lawfully may be paid in installments over a period of years, the Investor Developer or initial Tenant and all subsequent Tenants shall be obligated to pay only such installments as are required to be paid during the term hereof.

The Investor Developer (or initial Tenant and all subsequent Tenants) may, at its expense, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Authority or the Bank shall notify the Investor Developer that, in the opinion of its counsel, by non-payment of any such items the liens of the Bank as to any part of the revenues pledged hereunder or the interests of the Authority in the Premises or Project Facilities will be materially endangered or the Premises or Project Facilities or any part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly. The Authority will cooperate fully with the Investor Developer (or initial Tenant and all subsequent Tenants) in any such contest. If the Investor Developer (or initial Tenant and all subsequent Tenants) shall fail to pay any of the foregoing required items, the Authority or the Bank may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the Authority or the Bank shall become an additional obligation of the Investor Developer to the one making the advancement, which amounts, together with interest thereon at the rate of fifteen percent (15%) per annum, or at such lower maximum legal rate of interest as is then permissible, from the date thereof, the Investor Developer agrees to pay. The Investor Developer also agrees to comply at its own cost and expense with all notices received from public authorities from and after the date hereof.

ARTICLE XI

MISCELLANEOUS

11.1 ADJUSTMENTS. The Investor Developer will pay all charges, transfer taxes (if any) and costs which are required and whenever required in connection with the Authority's acquisition of its interests in the Premises and in connection with the mortgaging of the Premises and Project Facilities by the Authority.

11.2 ZONING. The Authority makes no representations as to the zoning of the Premises.

11.3 EXPENSES OF THE AUTHORITY AND BANK. The Investor Developer will pay all out-of-pocket expenses incurred by the Authority and the Bank in connection with the preparation of this Agreement (whether or not the transactions hereby contemplated shall be consummated), the making of the loan hereunder, and the enforcement of the rights of the Authority and the Bank in connection with this Agreement and the First and Second Mortgages or with the loan made hereunder, including, but not limited to, the fees and disbursements of the Bank and its counsel, as well as the Bond Counsel.

11.4 FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS. The Authority and the Investor Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project for the purpose of carrying out the intention of or facilitating the performance of this Agreement.

11.5 QUIET ENJOYMENT. The Authority covenants that the Investor Developer, on performing the covenants and conditions on its part to be performed hereunder, shall and may peaceably and quietly have, hold and enjoy the Premises and Project Facilities as the owner in possession, free from molestation, eviction or disturbance by the Authority or by any other person or persons lawfully claiming the same, by, through, or under the Authority.

11.6 NET PAYMENTS. This Agreement shall be deemed and construed to be "net", and the Investor Developer shall pay absolutely net, during the term hereof, the payments required hereunder, free of any deductions, without abatement, deduction or set-off other than those herein expressly provided.

11.7 CUMULATIVE RIGHTS. No right or remedy herein conferred upon or reserved to the Authority and/or the Bank is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy herein given or now or hereafter existing at law or in equity or by statute and may be pursued singularly, successively or together at the sole discretion of the Authority and may be exercised as often as the occasion therefor shall occur.

11.8 EFFECT OF WAIVER OF FORBEARANCE. No waiver by the Authority and/or the Bank of any breach by the Investor Developer of any of its obligations, agreements or covenants hereunder shall be a waiver of any subsequent breach of any obligation, agreement or covenant, nor shall any forbearance by the Authority and/or the Bank to seek a remedy for any breach by the Investor Developer be a waiver by the Authority and/or the Bank of its rights and remedies with respect to that or any other breach.

11.9 NOTICES. All notices are required to be in writing and sent by registered or certified mail. Subject to change by a notice from the party to be charged with such notice, notices to the Authority shall be addressed as follows:

Clearfield County Industrial
Development Authority
650 Leonard Street
P.O. Box 868
Clearfield, Pennsylvania 16830

and notices to the Investor Developer shall be addressed as follows:

B Warehouse Company
c/o Leopold, Eberhardt & Goldstein
414 North Logan Boulevard
Altoona, Pennsylvania 16602

and notices to the Bank shall be addressed as follows:

The Savings & Trust Company of Pennsylvania
256 Main Street
P.O. Box 499
Brookville, Pennsylvania 15825

11.10 SURVIVAL OF COVENANTS, CONDITIONS AND REPRESENTATIONS. All covenants, conditions and representations of the Investor Developer contained herein which, by their nature, impliedly or expressly involve performance in any particular manner after the delivery by the Authority of the First Mortgage Loan Note, the Second Mortgage Revenue Bonds and the First and Second Mortgages or which cannot be ascertained to have been performed until after the said delivery, shall survive said delivery.

11.11 ILLEGAL, ETC. PROVISIONS DISREGARDED. In case any provision of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, this Agreement shall be construed as if such provisions had never been contained herein.

11.12 HEADINGS. The captions or headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provision hereof.

11.13 NO RECOURSE. No recourse under or upon any covenant, obligation or agreement contained in this Agreement, or under any judgment obtained against the Authority or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Agreement, shall be had against any board member, officer, agent, attorney or employee, as such, past, present or future, of the Authority, either directly or through the Authority or otherwise, for the payment for or to the Authority or any receiver thereof, of any sum that may be due and unpaid by the Authority under this Agreement. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such board member, officer, agent, attorney or employee, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for, or to the Authority or any receiver thereof, of any sum that may remain due and unpaid under this Agreement, is hereby expressly waived and released as a condition of and a consideration for the execution of this Agreement.

11.14 CONTROLLING LAW. This Agreement shall be deemed to be a contract made in the Commonwealth of Pennsylvania and governed by Pennsylvania law.

11.15 AMENDMENTS. This Agreement may not be amended except by an instrument in writing signed by the parties hereto and, if such amendment adversely affects the interests of the Noteholders and/or the Bondholders, shall be concurred in by the Noteholder and the Holders of not less than 65% in aggregate principal amount of the Second Mortgage Revenue Bonds then Outstanding and by the Bank for and on behalf of the balance of the Bondholders; provided, however, that without the required Noteholder's and Bondholders' consents no amendment shall be consented to by the Bank (including in conjunction with a refunding bond issue) which would (1) decrease any amount payable under this Agreement, (2) change any date of payment or any prepayment provisions of this Agreement, or (3) change these amendment provisions of this Agreement.

11.16 DEFINITIONS. The terms used in this Agreement, for all purposes of this Agreement, shall have the meanings and definitions as set forth in the Debt Resolution of the Authority, unless the context herein clearly otherwise requires.

11.17 CONVEYANCES. Nothwithstanding anything herein to the contrary, the Investor Developer may dedicate or convey, with or without consideration, to the appropriate governmental agency, all easements and necessary land or interests therein for utilities, for ingress and egress, and for the improvement of the streets and roads which provide access to the Premises, and may also sell and convey to others, for such consideration as shall be appropriate in the absolute discretion of the Investor Developer, any land which is the subject of this Agreement and is subject to the liens of the First and Second Mortgages, but which is not encumbered by the Leases and is not occupied by a building and not required for access to a public street

or highway or for a parking area, upon filing with the Bank a certificate that such land has been transferred to the appropriate agency or properly dedicated for said above purpose, or sold to others for the aforementioned consideration. Upon the filing of such certificate, the Bank shall execute and deliver such releases and documents as the Authority and/or the Investor Developer may reasonably request to effectuate said transactions. Nevertheless, no dedication, conveyance or sale by the Investor Developer or release by the Bank as hereinabove provided shall result in any abatement as to any installment payments payable under this Agreement. All moneys received by the Investor Developer pursuant to such conveyances shall be deposited immediately with the Bank in the Clearing Fund under the Debt Resolution of the Authority and applied as therein provided.

11.18 COUNTERPARTS. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

11.19 EFFECTIVE DATE AND TERM. This Agreement shall become effective as of May 7, 1985, upon its execution and delivery by the parties hereto, shall remain in full force from said effective date, and, subject to the provisions hereof, shall expire on such date as the First Mortgage Loan Note and the interest thereon and the Second Mortgage Revenue Bonds and the interest thereon, and all other expenses or sums to which the Authority and the Bank are entitled hereunder, have been fully paid and retired or provision has been made therefor.

11.20 SUBORDINATION. Anything contained herein to the contrary notwithstanding, the Investor Developer, the Bank and the Authority expressly acknowledge and agree that all interests, rights, privileges, duties and obligations granted to or imposed upon any of the parties to this Agreement are hereby subordinated to the provisions of the First Mortgage and the Second Mortgage.

IN WITNESS WHEREOF, the parties hereto, for proper and sufficient consideration and intending to be legally bound hereby, by their respective officers thereunto duly authorized, have executed this Agreement as of April 15, 1985, for reference purposes only, with this Agreement being actually effective as of May 7, 1985, but they have actually executed this Agreement on the date of their respective acknowledgements attached hereto and made a part hereof, and have delivered this Agreement on this May 7, 1985.

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

(AUTHORITY SEAL)

By _____
Chairman

Attest:

_____
Secretary

B WAREHOU COMPANY, a Joint Venture

WITNESS:

CALVIN BEAN

By _____
Calvin Bean, as a Joint Venturer and in his individual capacity, by John Bean, Agent, under a Power of Attorney

WITNESS:

RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC.

By _____
John Bean, Co-Trustee

WITNESS:

GEORGE V. COHEN, P.C. PENSION PLAN

By _____
George V. Cohen, Trustee

WITNESS:

CREEKSIDE FARMS, A PARTNERSHIP

By _____
George V. Cohen, Attorney in Fact

WITNESS:

BERTRAM B. LEOPOLD

By _____
Bertram B. Leopold, as a Joint Venturer and in his individual capacity

WITNESS:

LEOPOLD, EBERHARDT & GOLDSTEIN PROFIT SHARING PLAN

By _____
Bertram B. Leopold, Co-Trustee

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA, as the Noteholder and Bonds Paying Agent

(CORPORATE SEAL)

By _____
Sr Vice President

Attest:

_____
Authorized Officer

EXHIBIT "A"

to

MORTGAGE LOAN AGREEMENT

Dated as of April 15, 1985,
for reference purposes only, but actually
effective as of May 7, 1985

between

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
("Authority")

and

B WAREHOUSE COMPANY
("Investor Developer")

and

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA
("Noteholder" and "Bonds Paying Agent")

PREMISES

ALL that certain piece, parcel or tract of land situate in the Township of Sandy, County of Clearfield, State of Pennsylvania, more particularly bounded and described as follows:

PARCEL ONE: BEGINNING at the Southeast corner of herein described 9.13 Acres on the West side of a 50 foot right of way for a road; thence by land of General Warehousing of DuBois, Inc., North 66 degrees 50 minutes West a distance of 500.0 feet and North 23 degrees 10 minutes East a distance of 700.0 feet; thence along said right of way for a road the following courses and distances: North 89 degrees 45 minutes East a distance of 386.0 feet, South 71 degrees 55 minutes East a distance of 80.0 feet, South 31 degrees 55 minutes East a distance of 80.0 feet, and South 23 degrees 10 minutes West a distance of 814.0 feet to the place of beginning. CONTAINING 9.13 Acres.

EXCEPTING AND RESERVING from the above described Parcel One the right of ingress and egress to, along, over and from the same, together with the right to make installations, repairs, and replacements of a railroad track and utility lines.

PARCEL TWO: BEGINNING at the center line of LR 402 (Shaffer Road) 55 feet Southwest of the intersection with the center of the Chessie System track right of way; thence along the Chessie System right of way the following courses and distances: South 48 degrees 22 minutes East 100.0 feet, South 62 degrees 45 minutes East 228.7 feet, and by a curve to the left with a radius of 816 feet, the chord of which is South 76 degrees 27 minutes East, 388.7 feet; thence continuing along the Chessie System right of way North 89 degrees 45 minutes East a distance of 641.0 feet; thence by land of General Warehousing of DuBois, Inc., the following courses and distances: South 40 degrees 20 minutes East 90.0

feet, South 23 degrees 10 minutes West 917.0 feet, and North 66 degrees 50 minutes West 50.0 feet; thence along land of B Warehouse Company, a Joint Venture, the following courses and distances: North 23 degrees 10 minutes East 814.0 feet, North 31 degrees 55 minutes West 80.0 feet, North 71 degrees 55 minutes West 80.0 feet; thence still along land of B Warehouse Company, a Joint Venture, and General Warehousing of DuBois, Inc., South 89 degrees 45 minutes West a distance of 495.0 feet; thence still by land of General Warehousing of DuBois, Inc., by a curve to the right with a radius of 866.0 feet, the chord of which is North 76 degrees 27 minutes West, 412.3 feet; thence North 62 degrees 45 minutes West a distance of 225.3 feet; and thence North 77 degrees 12 minutes West a distance of 100.0 feet; thence along the center line of LR 402 North 25 degrees 35 minutes East a distance of 100.0 feet to the place of beginning.

EXCEPTING AND RESERVING from the above described Parcel Two the right of ingress and egress to, along, over and from the same, together with the right to make installations, repairs, and replacements of roads, sidewalks, utility lines, railroad tracks, signs, guardrails, and landscaping.

ALSO EXCEPTING AND RESERVING from the above described Parcels One and Two the right to construct, reconstruct and perpetually maintain any and all utility services, including water, sewage, and gas or any other necessary utilities, together with all necessary laterals in, upon and accross the said premises, the said utility lines to follow any feasible course through the said premises, together with the right and privilege at any and all times to enter the said premises or any part thereof for the purpose of constructing, reconstructing and maintaining any and all of the aforesaid utility lines and also for making connections with any such utility lines as are now or hereafter constructed on the said premises or which may serve the same; all upon the condition that the Clearfield County Industrial Development Authority, its successors or assigns, will, after doing any work in connection with the foregoing, restore the premises to the condition in which the same were found before such work was undertaken. The foregoing reservations shall be perpetual and inure to the benefit of the Clearfield County Industrial Development Authority, its successors and assigns.

BEING parts of the same premises which became vested in the Clearfield County Industrial Development Authority by Deed dated July 11, 1977, of the DuBois Area Chamber of Commerce, fictitious registered name for the DuBois Area Board of Trade.

This deed is not intended to convey Parcel Two in fee, but rather is a conveyance of a permanent easement for roadway purposes over and across said Parcel Two for ingress and egress to and from Parcel One.

EXHIBIT "B"

to

MORTGAGE LOAN AGREEMENT

Dated as of April 15, 1985,
for reference purposes only, but actually
effective as of May 7, 1985

between

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
("Authority")

and

B WAREHOUSE COMPANY
("Investor Developer")

and

THE SAVINGS & TRUST COMPANY OF PENNSYLVANIA
("Noteholder" and "Bonds Paying Agent")

PROJECT FACILITIES

A one-story warehouse building containing a floor area totalling approximately 135,000 square feet, which is fully heated and air-conditioned. A paved parking lot is provided, together with locally approved storm water and sanitary sewer collection systems and reciprocal ingress and egress ways in conjunction with adjacent properties, streets and highways.

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared STANLEY E. CRUM and ROBERT E. WATSON, Chairman and Secretary, respectively, of the CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, with whom I am personally acquainted, and who, upon oath, acknowledged that they are the Chairman and Secretary of said Authority, respectively, and who further acknowledged that they did execute and seal the foregoing instrument as the Chairman and Secretary of said Authority, in behalf of said Authority and by the authority of an appropriate Resolution of the Board of Directors of said Authority; and that said instrument is the free and voluntary act and deed of the said Chairman and Secretary as such officers, and the free and voluntary act and deed of said Authority, for the uses and purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this May 6, 1985.

Rhonda J. Bash
Notary Public

(N.P. SEAL)

My Commission Expires:

RHONDA J. BASH, Notary Public
Clearfield, Clearfield County, Pa.
My commission expires Sept. 1, 1986

* * * * * *

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF JEFFERSON)

Before me, the undersigned officer, personally appeared JOHN BEAN, with whom I am personally acquainted, who, upon oath, acknowledged that he did execute the foregoing instrument as Agent, under a Power of Attorney, for and on behalf of CALVIN BEAN, as one of six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY and in his individual capacity, and as Co-Trustee of RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC., another of the six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY; and that said instrument is the free and voluntary act and deed of each said person, said Retirement Plan, said Agent and said Co-Trustee, for the uses and purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this May 7, 1985.

MARGARET E. STOVER, NOTARY PUBLIC
BROOKVILLE BORO., JEFFERSON COUNTY
MY COMMISSION EXPIRES MARCH 14, 1987
Member, Pennsylvania Association of Notaries

Margaret E. Stover
Notary Public

(N.P. SEAL)

My Commission Expires:

* * * * *

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF LYCOMING)

Before me, the undersigned officer, personally appeared GEORGE V. COHEN, with whom I am personally acquainted, who, upon oath, acknowledged that he did execute the foregoing instrument as Trustee of GEORGE V. COHEN, P.C. PENSION PLAN, one of six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY, and as Attorney in Fact for CREEKSIDE FARMS, A PARTNERSHIP, another of the six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY; and that said instrument is the free and voluntary act and deed of each said Pension Plan, said Partnership, said Trustee and said Attorney in Fact, for the uses and purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this May 2, 1985.

Mrs. Jane M. Buhl
Notary Public
MRS. JANE M. BUHL, Notary Public
Williamsport, Lycoming Co., Pa.
My Commission Expires June 22, 1987

(N.P. SEAL)

My Commission Expires:

* * * * *

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF JEFFERSON)

Before me, the undersigned officer, personally appeared BERTRAM B. LEOPOLD, with whom I am personally acquainted, who, upon oath, acknowledged that he did execute the foregoing instrument on behalf of himself as one of six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY and in his individual capacity, and as Co-Trustee of LEOPOLD, EBERHARDT & GOLDSTEIN PROFIT SHARING PLAN, another of the six (6) Joint Venturers trading and doing business as B WAREHOUSE COMPANY; and that said instrument is the free and voluntary act and deed of said person as a Joint Venturer and in his individual capacity and as said Co-Trustee, for the uses and purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this May 7, 1985.

MARGARET E. STONER, NOTARY PUBLIC
BROOKVILLE BOR., JEFFERSON COUNTY
MY COMMISSION EXPIRES MARCH 14, 1987
Member, Pennsylvania Association of Notaries

Margaret E. Stoner
Notary Public

(N.P. SEAL)

My Commission Expires:

* * * * *

DURABLE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That JOHN W. BEAN, THE RETIREMENT PLAN FOR EMPLOYEES OF IDEAL PRODUCTS, INC., CREEKSIDE FARMS, WILLIAMSPORT NATIONAL BANK, CUSTODIAN OF THE GEORGE V. COHEN ROLLOVER IRA, SUSAN LEOPOLD ANSIN, TRUSTEE OF THE BERTRAM LEOPOLD TRUST and SUSAN LEOPOLD ANSIN, being all the partners of B WAREHOUSE COMPANY a/k/a B WAREHOUSE, a Pennsylvania General Partnership, appoint **JOHN W. BEAN** the true and lawful attorney for B Warehouse Company with full power of substitution for it and in its name and on its behalf generally to transact all business and sign, acknowledge and deliver all contracts, deeds, and other instruments needed to effectuate any matter or transaction pertaining to its affairs, all as effectually, in all respects, as all of the general partners of B Warehouse Company could do directly.

Without intending to limit or restrict the foregoing general powers the said attorney shall have full authority:

1. To sign checks or otherwise make withdrawals from any account in the name of B Warehouse Company in any bank (including bank trust departments), financial institution or brokerage firm.

2. To buy and sell securities, commodities and any other real or personal property, and to execute on behalf of B Warehouse Company any powers of attorney or other instruments needed for that purpose.

3. To hold property unregistered or in the name of a nominee.

4. To endorse notes, checks, drafts, bills of exchange and other negotiable instruments and to deposit any funds to which B Warehouse Company is entitled in any of its accounts.

5. To demand and take possession of all real or personal property to which B Warehouse Company is now or hereafter entitled, including any interest, dividends, rentals or other income therefrom and to enter into any agreement or covenant relating thereto which the attorney thinks reasonable and to its interest.

6. To borrow money for B Warehouse Company and on its behalf on whatever terms and conditions the attorney deems advisable; to sign all notes or other documents necessary to effect such loans; and to mortgage or pledge any of B Warehouse Company's property as collateral security therefor.

7. To lend money or assets belonging to B Warehouse Company with or without security therefor and upon such terms and conditions as the attorney sees fit.

8. To represent B Warehouse Company and to vote and act in person or by proxy at all meetings and on all matters connected with any business or corporation in which B Warehouse Company may have an interest.

9. To prosecute and compromise claims on behalf of B Warehouse Company and to defend and compromise claims against it.

10. To lease or sell, in fee simple or for any less estate, any real property or interest therein, publicly or privately, for such price and upon such terms as the attorney sees fit and to make good conveyance thereof to the purchaser, without any obligation on the latter to see to or be responsible for the purchase price.

11. To enter, deposit property in, and withdraw property from, any safe deposit box in the name of B Warehouse Company.

12. To perform any and all acts that B Warehouse Company can perform with respect to any tax due to or claimed by the United States, any state or foreign country or political subdivision or any of them; to prepare, execute and file on its behalf tax returns of all kinds, waivers, agreements, refund claims, petitions and other pertinent documents; to pay, contest and compromise such taxes as the attorney decides is in the best interest of B Warehouse Company; to receive refund checks; and to substitute representatives or to delegate any authority conveyed by this power of attorney to other representatives.

13. To contract for such services, including but not limited to, accounting, legal and investment advisory (including giving discretionary trading authority to third persons) as may be required in the conduct of the affairs of B Warehouse Company and to terminate any such services.

14. To make distributions on an equal basis to the Partners of B Warehouse Company.

15. To disclaim any interest in property.

And to do all lawful acts requisite or proper to effect the above premises or any matter related to or connected therewith, and B Warehouse Company hereby ratifies and confirms all that the attorney shall do by virtue of these presents.

All authority herein contained is intended to extend to any interest in property which B Warehouse Company holds jointly as well as to property in the name of B Warehouse Company.

Any individual or corporation may rely on this power of attorney unless notified in writing that it has been revoked or that B Warehouse Company has terminated and shall indemnified and held harmless by B Warehouse Company against any resulting liability or loss.

THIS POWER OF ATTORNEY shall not be affected by the subsequent disability or incapacity of any Partner of B Warehouse Company.

IN WITNESS WHEREOF and intending to be legally bound and to so bind our respective heirs, personal representatives and assigns, we have hereunto set our hands and seals this 23rd day of March, 1992.

_____(SEAL)
John W. Bean

_____(SEAL)
The Retirement Plan For Employees
of Ideal Products, Inc.

_____(SEAL)
Creekside Farms

_____(SEAL)
Williamsport National Bank,
Custodian of the George V. Cohen
IRA Rollover IRA

_____(SEAL)
Susan Leopold Ansin, Trustee
of the Bertram B. Leopold Trust

_____(SEAL)
Susan Leopold Ansin

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF CLEARFIELD :

On the 16th day of April, 1992, before me, a Notary Public in and for the above State and County, personally appeared **JOHN W. BEAN**, who in due form of law acknowledged the foregoing Power of Attorney to be his act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Francene G. Thomas
NOTARY PUBLIC

MY COMMISSION EXPIRES:

[illegible] Notary Public
[illegible] County
My Commission Expires [illegible] 17, 1996
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF CLEARFIELD :

On the 14th day of April, 1992, before me, a Notary Public in and for the above State and County, personally appeared JOHN W. BEAN, Trustee of The Retirement Plan For The Employees of Ideal Products, Inc., who in due form of law acknowledged the foregoing Power of Attorney to be his act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Francene G. Thomas
NOTARY PUBLIC

MY COMMISSION EXPIRES:

Notarial Seal
Francene G. Thomas, Notary Public
DuBois, Clearfield County
My Commission Expires Feb. 17, 1996
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF LYCOMING :

On the 23rd day of March, 1992, before me, a Notary Public in and for the above State and County, personally appeared **GEORGE V. COHEN**, a partner of Creekside Farms, who in due form of law acknowledged the foregoing Power of Attorney to be his act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Maxine C Newman
NOTARY PUBLIC

MY COMMISSION EXPIRES:

NOTARIAL SEAL
MAXINE C NEWMAN, Notary Public
Williamsport, Lycoming County, Pa.
My Commission Expires Aug. 30, 1993

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF LYCOMING :

On the 23 day of March, 19 92 before me, a Notary Public in and for the above State and County, personally appeared Fred Foulkrod, Trust Officer of Williamsport National Bank, Custodian of the George V. Cohen Rollover IRA, who in due form of law acknowledged the foregoing Power of Attorney to be his act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Barbara A. Davis
NOTARY PUBLIC

MY COMMISSION EXPIRES:

NOTARIAL SEAL
BARBARA A. DAVIS, Notary Public
Williamsport, Lycoming County, Pa.
My Commission Expires July 15, 1995

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF CLEARFIELD :

On the 6th day of April, 1992, before me; a Notary Public in and for the above State and County, personally appeared **SUSAN LEOPOLD ANSIN**, Trustee of the Bertram Leopold Trust, who in due form of law acknowledged the foregoing Power of Attorney to be her act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Francene G. Thomas
NOTARY PUBLIC

MY COMMISSION EXPIRES:

Notarial Seal
Francene G. Thomas, Notary Public
DuBois, Clearfield County
My Commission Expires Feb. 17, 1996
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
:S.S.
COUNTY OF CLEARFIELD :

On the 16th day of April, 1992, before me, a Notary Public in and for the above State and County, personally appeared **SUSAN LEOPOLD ANSIN**, who in due form of law acknowledged the foregoing Power of Attorney to be her act and deed and desired that the same might be recorded as such.

WITNESS my hand and notarial seal the day and year aforesaid.

Francene H. Thomas
NOTARY PUBLIC

MY COMMISSION EXPIRES:

Notarial Seal
Francene H. Thomas, Notary Public
Pittsburg, Clearfield County
My Commission Expires Feb. 17, 1996
Member, Pennsylvania Association of Notaries

Exhibit G

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
(Clearfield County, Pennsylvania)
$1,700,000
COMMERCIAL DEVELOPMENT FIRST MORTGAGE LOAN NOTE
(B WAREHOUSE COMPANY PROJECT)
AND
$300,000
COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS,
SERIES OF 1985
(B WAREHOUSE COMPANY PROJECT)

PURCHASERS' RECEIPT

The undersigned hereby certify that, in pursuance of purchase made according to law, the undersigned received delivery of the designated amount of the $300,000, total principal amount, of Clearfield County Industrial Development Authority, Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project).

The Second Mortgage Revenue Bonds are dated and effective as of April 15, 1985, are in the form and denominations, and bear interest and mature as set forth and more particularly described in the "Schedule A" attached hereto.

IN WITNESS WHEREOF, each of the undersigned has caused this Purchaser's Receipt to be executed by himself or his authorized representative as of April 15, 1985, but actually on May 7, 1985.

Purchaser	Amount	Bond Numbers	Form of Bonds
MARC KATZEN By _____ Marc Katzen	$135,000	IR-1	Fully Registered
RICHARD GORDON By _____ ~~Marc Katzen,~~ Authorized Agent	60,000	IR-2	Fully Registered
MARSHALL KATZEN By _____ Marc Katzen, Authorized Agent	30,000	IR-3	Fully Registered
HARRY KELLER, TRUSTEE FOR HARRY KATZEN By _____ Marc Katzen, Authorized Agent	15,000	IR-4	Fully Registered

transferred later to Marshall Katzen

Purchaser	Amount	Bond Numbers	Form of Bonds
HARRY KELLER, TRUSTEE FOR HAROLD KATZEN By _____ Marc Katzen, Authorized Agent	$15,000	IR-5	Fully Registered
HARRY KELLER, TRUSTEE FOR HIRSH KATZEN By _____ Marc Katzen, Authorized Agent	15,000	IR-6	Fully Registered
HARRY KELLER, TRUSTEE FOR BRIT KATZEN By _____ Marc Katzen, Authorized Agent	15,000	IR-7	Fully Registered
HARRY KELLER, TRUSTEE FOR BROOK KATZEN By _____ Marc Katzen, Authorized Agent	15,000	IR-8	Fully Registered

SCHEDULE A

MATURITY SCHEDULE

CLEARFIELD COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
(Clearfield County, Pennsylvania)
$300,000
COMMERCIAL DEVELOPMENT SECOND MORTGAGE REVENUE BONDS,
SERIES OF 1985
(B WAREHOUSE COMPANY PROJECT)

DEFINITIVE FULLY REGISTERED BONDS - $300,000

SERIES OF 1985 BONDS

Form	Denominations	Numbers	Amount	Interest Rate	Maturity
Fully Registered	$135,000	IR-1	$135,000	15%+	February 1, 2020
Fully Registered	60,000	IR-2	60,000	15%+	February 1, 2020
Fully Registered	30,000	IR-3	30,000	15%+	February 1, 2020
Fully Registered	15,000	IR-4	15,000	15%+	February 1, 2020
Fully Registered	15,000	IR-5	15,000	15%+	February 1, 2020
Fully Registered	15,000	IR-6	15,000	15%+	February 1, 2020
Fully Registered	15,000	IR-7	15,000	15%+	February 1, 2020
Fully Registered	15,000	IR-8	15,000	15%+	February 1, 2020

+ plus additional contingent interest.

THORP REED & ARMSTRONG

James K. Goldberg
Direct Dial 412 394 7739
Email: jgoldberg@thorpreed.com

ATTORNEYS AT LAW SINCE 1895

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Marc Katzen
P.O. Box 470607
Celebration, Florida 34747-0607

July 8, 2004

Re: Clearfield County Industrial Development Authority Commercial Development Second Mortgage Revenue Bonds, Series of 1985 (B Warehouse Company Project) ("Bonds")

Dear Mr. Katzen:

We have been engaged by B Warehouse Company (the "Investor Developer") in connection with certain matters related to the above referenced Bonds. The purpose of this letter is to open a discussion intended to resolve issues the owners of the Investor Developer have with respect to the Bonds. They have requested that all discussions be conducted between your counsel and me.

As you are aware, the Bonds were issued to finance a portion of the costs of construction of a commercial warehouse development project in Clearfield County (the "Project"). From January 1, 1986 through June 30, 2002 the warehouse was continuously occupied, always by a single tenant, under a "triple net" lease, i.e., the tenant paid a market rental rate, plus all costs for utilities, insurance, maintenance and repairs and taxes. The triple net lease arrangement was very successful and the Investor Developer and the holders of the Bonds received significant financial returns from the Project during that time period.

On June 30, 2002, the triple net lease with Owens-Illinois, Inc. expired. Since that time, the Investor Developer has struggled to find tenants for the warehouse, notwithstanding the fact that the Investor Developer has employed a real estate broker to assist in leasing the space. Utilization of the warehouse has sharply declined, and the revenues from the Project have also declined significantly, compared to the period prior to July 1, 2002. As of today, leasing revenues are not sufficient to cover the operating costs of the warehouse. Based upon the market analysis provided to the Investor Developer by its real estate broker, the prospects for locating future tenants of the warehouse are not promising. According to the broker, the current abundance of unoccupied warehouse in the Clearfield County area is unprecedented in the past fifteen years.

Because we understand that the joint venturers of the Investor Developer and some or all of the holders of the Bonds have had long and mutually beneficial personal and business relationships, we have recommended to our client that all of the parties should review together the current situation and attempt to arrive at a satisfactory solution to the challenges presented by the current inability to generate positive cash flow from the Project.

Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425
412 394 7711
412 394 2555 Fax

THORP REED & ARMSTRONG

One possibility which we have recommended exploring is a negotiated modification to the payment terms for the Bonds, whereby the holders of the Bonds would agree to (i) a change in the interest rate for the Bonds, e.g. Prime Rate plus two percent (2%) per annum and (ii) an arrangement whereby scheduled payments of interest at the revised rate would be made only to the extent of available positive cash flow, after payment of operating expenses. In such an event, it was our thought that any unpaid amounts of interest would accrue and be paid in future years following a favorable change in the cash flow situation for the warehouse.

A second alternative which we have proposed is a negotiated agreement that the Bonds may be immediately prepaid in full. In consideration for the agreement of the holders of the Bonds to permit such prepayment, the Investor Developer would agree that upon any sale of the warehouse, the holders of the Bonds would be entitled to share in any net sale proceeds which exceed $1,500,000. Although we recognize that this alternative requires the holders of the Bonds to forgo future payments which were anticipated at the time the Bonds were issued, based upon the information provided by the real estate broker attempting to market the warehouse space, the prospects for those future payments do not appear to be realistic, especially in light of another possibility which we have raised for review.

If the parties are unable to promptly agree upon either (i) a change in interest rate and payment terms or (ii) a prepayment of the Bonds, another solution which we have reviewed with the Investor Developer is a default in payment of any amounts payable in respect of the Project or the Bonds. Obviously, given the relationship among the parties, the Investor Developer does not regard this alternative with enthusiasm. Nonetheless, the economic analysis of the current status of the Project and the legal (not personal) consequences of a default compel consideration of this possibility if the parties cannot agree on a revised interest rate and payment terms or prepayment of the Bonds. In the event of a default, the remedy of the holders of the Bonds would be foreclosure under the Second Mortgage made as of April 15, 1985, but actually dated, signed and notarized on May 7, 1985, between Clearfield County Industrial Development Authority, as Mortgagor, and The Savings & Trust Company of Pennsylvania, as Mortgagee (the "Mortgage"). If a foreclosure proceeding were initiated, the Investor Developer would have no personal liability inasmuch as the liability of the Investor Developer, pursuant to Section 6.5 of the Mortgage Loan Agreement dated as of April 15, 1985, but actually dated, signed and effective on May 7, 1985, is limited to the interest of the Investor Developer in the Premises, the Project Facilities, the Lease and all subsequent Leases (all as defined in such Mortgage Loan Agreement). The practical effect of a default would be to cause a prepayment of the Bonds, without any prospect for an additional return in the event of a future sale of the warehouse. Not only are the economic consequences of this

THORP REED ARMSTRONG

scenario less favorable to the holders of the Bonds but also, this scenario risks injury to the personal relationships among the parties.

One other matter should be mentioned in connection with the default/mortgage foreclosure alternative discussed above. From our review of the financing documents, we note that the Deed pursuant to which Clearfield County Industrial Development Authority conveyed the Project premises to the Investor Developer was dated, signed and notarized on May 6, 1985. The Mortgage, as mentioned above, was signed by the Clearfield County Industrial Development Authority and notarized on May 7, 1985. Although we have not explored the ramifications of this inconsistency, it could become an issue in any mortgage foreclosure proceeding.

A final issue which we have raised regarding the Bonds is whether the contingent interest payments with respect to the Bonds, since they are calculated by reference to the economic returns on the Project, might be deemed to constitute an equity participation in the Project. At this point, we have not been asked to research this question thoroughly, but if the Internal Revenue Service were to make such a determination, the tax free status of interest on the Bonds could be called into question.

We have discussed at length with our client the obvious advantages of arriving at a negotiated solution to the current problem which preserves the personal relationships among the parties. Our client has no desire to jeopardize those relationships. The economic realities of the situation, however, compel a dispassionate review of all possible alternatives. In the absence of a negotiated solution, we have advised our client that default under the Bonds may present the least undesirable economic consequences to the Investor Developer.

To the extent that you or your counsel may have other suggestions which avoid damage to the personal relationships of the parties, while not adverse to the economic interests of the Investor Developer, we would be pleased to discuss them. If we are unable to promptly address and resolve the problem mutually, however, we are prepared to recommend that the Investor Developer cease any further payments in connection with the Project.

THORP REED & ARMSTRONG

Please have your counsel contact me as soon as possible to discuss.

Very truly yours,

James K. Goldberg

JKG/rsm

ALL-STATE® LEGAL 800-222-0510 E0811 RECYCLED

MARC KATZEN

147 S. Interlachen #400
Winter Park, Florida 32789
Ph 407 686 8835
Fax 407 5686 8836
Cell 407 492 2554
Email marckatzen@aol.com

September 9, 2004

John W. Bean
4957 Peregrine Point Way
Sarasota, Florida 34231

Re: B Warehouse

Dear John:

As they say when playing bridge—let's review the bidding. The Joint Venturers invested $500,000. Of that, 50% from day one was invested in safe assets called a reserve. The Joint Venturers, prior to January 1, 2004, have drawn over $2,265,859, and they had a book value of assets remaining of $1,688,003. With earnings to date, the original investment at book was worth over $4,000,000. Just the way Bert planned it.

You have had the power of attorney to manage B Warehouse. I have no knowledge of you ever revoking that document, nor was George ever given those powers. The bank could not default without your approval.

You have been in a lot of deals with me over the last twenty years. We worked together to protect minority owners' and lenders' rights so everyone wins when they deal with us. For example, on Reynoldsville Casket, you invested $50,000 and wanted to sell some or all of your shares. No buyer was available to buy the company. Those who showed interest were offering less than book and attaching conditions.

By working with me, not against me, we took steps to get you cash. First, we made tax-free distributions to all shareholders in which you received $315,481. Next, other shareholders, Rusty and Judy, used their distributions and borrowed funds to pay you $108,619. Next, the company borrowed money to buy some of your shares for treasury and paid $241,958. In addition you got a note for $137,500, payable over ten years.

John, you paid very little in capital gains. You retained 750 shares at my urging and sold 25% of those this year to RCC for cash. The company agreed to buy the remainder of your shares when you reach 65, 70 and 75.

This is a case where there was no market for your shares, but we created one so you could get close to $1,000,000 out over two years without hurting any employees or destroying the company. You were treated fairly by all shareholders and you were fair to them. No one got greedy, and everyone was happy.

John, at Symmco we worked together to permit minority shareholders to get their money out at fair prices. You, George and I also sold shares at a fair price, and the company did not have to be sold. No employees or management suffered by the buyouts. You pocketed probably over $1,000,000. Each time, I believe, 10 to 25 shareholders sold all their shares, many large shareholders sold 20% of their holdings. No one hurt other investors in Symmco or defaulted on any agreements.

I have helped others besides John Bean get out of closely held companies. Bert's mother wanted to sell her interest in a deal, and we worked out a good plan that other minority investors purchase her interest pro-rata at five times face. Everyone remained friends, and no one got adversarial. My sons borrowed money to buy Susie out of a single tenant building partnership.

I realize that a fair price is subjective. But having someone working with you to make a market in closely-held assets is something I think you should value as being in your interest over the long-run.

John, transferring a 1/6 interest in B Warehouse, owned by Ideal, and transferring 1/6 interest in George's IRA to the Joint Venture this year by a combination of the tools we used in RCC is smart. If less than 50% is retired while the building is empty, you will maximize your long run earnings.

My request is that you instruct the Bank to pay July, August and September interest payments of $3750 each. Fax me the financial report to August first. Meet with me following the Delaware Board meeting for a couple of hours.

Very truly yours,

ALL-STATE LEGAL 800-222-0510 EDR11 RECYCLED

-----Original Message-----
From: Hank Katzen [mailto:hankkatzen@pobox.com]
Sent: Thursday, October 07, 2004 3:09 PM
To: Brobson, P. Kevin
Cc: Malpezzi, Daniel
Subject: PA: John Bean's Acknowledgment (BW)

From: "John Bean" <jwb735@verizon.net>

Date: September 10, 2004 3:16:56 PM EDT

To: "Marc Katzen" <marckatzen@AOL.COM>

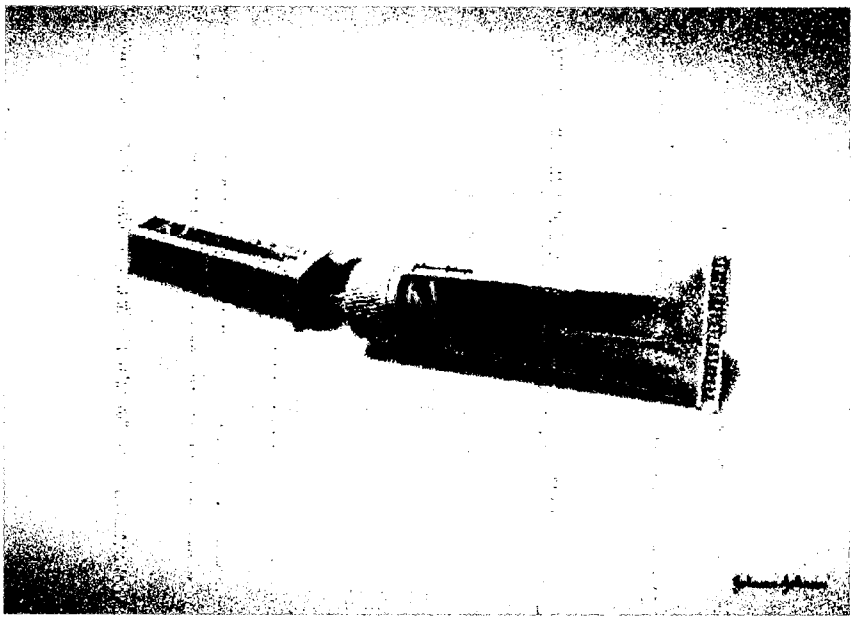
Subject: Acknowledgement

Marc,

Received two page letter – also received a copy by FAX.

See attached.

John



B WAREHOUSE COMPANY

DuBois, Pennsylvania

FINANCIAL STATEMENTS

December 31, 2003

MAUTHE, YUTZEY & GABLER

Certified Public Accountants

TELEPHONE: (814) 371-1760
FAX: (814) 375-1003

liam L. Mauthe, CPA
gory L. Yutzey, CPA
y A. Gabler, CPA

R.D. #3
Oklahoma-Salem Road
P.O. Box 1029
DuBois, PA 15801

B Warehouse Company
PO Box 1066
DuBois, PA 15801

Gentlemen:

We have compiled the accompanying balance sheet of B Warehouse Company (a partnership) as of December 31, 2003, and the related statements of income and expense and cash flows for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Mauthe, Yutzey & Gabler
Certified Public Accountants
February 24, 2004

B WAREHOUSE COMPANY

STATEMENT OF INCOME AND EXPENSE

For The Year Ended December 31, 2003

B WAREHOUSE COMPANY

STATEMENT OF CASH FLOWS

INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS

For The Year Ended December 31, 2003

Cash Flows from Operating Activities:		
Net income		$ 8,044
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	77,060	
Amortization	529	
		77,589
Net Cash Provided by Operating Activities		85,633
Cash Flows from Investing Activities:		
Increase in partnership interest		(6,233)
Cash Flows from Financing Activities:		
Partners' withdrawals		(30,000)
Net Increase (Decrease) in Cash and Cash Equivalents		49,400
Cash and Cash Equivalents - beginning of year		53,629
Cash and Cash Equivalents - end of year		$ 103,029
Supplemental Disclosures of Cash Flow Information:		
Interest paid during the year		$ 45,000

See Accompanying Notes and Accountant's Report

B WAREHOUSE COMPANY

STATEMENT OF INCOME AND EXPENSE

For The Year Ended December 31, 2003

Rental income - B Warehouse	$ 190,974	
Net rental income - D Warehouse	6,771	
Total Rental Income		197,745
Rental Expense		
Repairs and maintenance	6,592	
Real estate taxes	54,031	
Depreciation	77,060	
Insurance	6,406	
Professional fees	985	
Administrative expense	2,000	
Commissions	11,459	
Total Rental Expense		158,533
		39,212
Other Income and (Expense)		
Interest income	912	
Dividend income	14,048	
Loss on sale of investments	(599)	
Interest expense	(45,000)	
Amortization	(529)	
Total Other Income and (Expense)		(31,168)
Net Profit for the year ended December 31, 2003		$ 8,044

See Accompanying Notes and Accountant's Report

BALANCE SHEET

LIABILITIES AND CAPITAL

Long-Term Debt		
Bonds payable (Note 5)		$ 300,000
Capital		
Capital - January 1, 2003	1,409,959	
Add: Net Profit	8,044	
	1,418,003	
Less: Withdrawals	30,000	
Capital - December 31, 2003		1,388,003
Total Liabilities and Capital		$ 1,688,003

B WAREHOUSE COMPANY

BALANCE SHEET

December 31, 2003

ASSETS

Current Assets		
Cash		$ 103,029
Investments		
Securities (Note 2)	521,045	
Partnership - D Warehouse	482,437	
Total Investments		1,003,482
Land, Building and Equipment (Note 3)		
Land	500,000	
Building	1,428,039	
Equipment	76,000	
Paving	150,000	
	2,154,039	
Less: Accumulated Depreciation	1,581,260	
Total Land, Building and Equipment		572,779
Intangible Assets (Note 4)		
Bond fees	18,500	
Less: Accumulated Amortization	9,787	
Total Intangible Assets		8,713
Total Assets		$ 1,688,003

...ing Notes and Accountant's Report

B WAREHOUSE COMPANY

BALANCE SHEET

December 31, 2003

ASSETS

Current Assets		
Cash		$ 103,029
Investments		
Securities (Note 2)	521,045	
Partnership - D Warehouse	482,437	
Total Investments		1,003,482
Land, Building and Equipment (Note 3)		
Land	500,000	
Building	1,428,039	
Equipment	76,000	
Paving	150,000	
	2,154,039	
Less: Accumulated Depreciation	1,581,260	
Total Land, Building and Equipment		572,779
Intangible Assets (Note 4)		
Bond fees	18,500	
Less: Accumulated Amortization	9,787	
Total Intangible Assets		8,713
Total Assets		$ 1,688,003

See Accompanying Notes and Accountant's Report

B WAREHOUSE COMPANY

NOTES TO FINANCIAL STATEMENTS

December 31, 2003

Note 1 Summary of Significant Accounting Policies

The accounts are maintained on the accrual basis of accounting.

Note 2 Investments

Following is a summary of investment securities classified as available for sale.

	Cost	Market
Brandywine Fund	$ 50,000	$ 42,429
Third Ave. Small Cap Value Fund	35,000	56,506
Fidelity High Income Fund	41,045	29,994
Oakmark Fund	75,000	89,191
Loomis Sayles Bond Fund	75,000	81,312
Third Avenue Value Fund	35,000	46,072
Oppenheimer Convertible Sec. Fund	60,000	54,564
Federated Ultrashort Bond Fund #838	150,000	146,891
Total	$ 521,045	$ 546,959

The unrealized gain of $25,913 on securities available for sale has not been included in the partners' capital accounts at December 31, 2003.

Note 3 The cost of buildings, equipment and paving is depreciated over the estimated useful lives of the related assets. Depreciation is computed on the straight-line method for financial reporting purposes and income tax purposes.

The useful lives of buildings, equipment and paving of computing depreciation are:

Buildings	19 years
Equipment	10 to 12 years
Paving	12 years

Note 4 The useful life of bond fees for the purpose of computing amortization is 35 years.

Note 5 Bonds are payable to individuals in connection with the purchase of land. The bonds mature February 1, 2020, and bear interest at the rate of 15%, plus additional contingent interest computed to be equal to a total of 50% of the rental income paid in each calendar year to the investor developer in excess of $337,500.00 during the first ten years, and in excess of $227,500.00 during the next five years and in excess of $157,500.00 during the last twenty years.

FILED

JAN 19 2005

Prothonotary/Clerk of Courts