

trolled Subsidiary (which term shall mean a corporation more than 80% (by number of votes) of the Voting Stock of which is owned directly or indirectly by the Company and or its wholly-owned Subsidiaries) which remains a Controlled Subsidiary or the merger or consolidation of a Controlled Subsidiary into or with another corporation so long as the surviving or resulting corporation, as the case may be, is a Controlled Subsidiary after such merger or consolidation, if:

(a) the corporation (the "*surviving corporation*") which results from such merger or consolidation is organized under the laws of the United States or a jurisdiction thereof;

(b) the transaction is in substantial economic effect an acquisition of such other corporation by the Company or a Controlled Subsidiary;

(c) in the case of a merger or consolidation to which Cork 'N Cleaver is a party, the due and punctual performance and observance of all the covenants in the Indenture to be performed or observed by Cork 'N Cleaver are expressly assumed in writing by the surviving corporation (if other than Cork 'N Cleaver) pursuant to a document executed and delivered in recordable form; and

(d) immediately after consummation of the transaction, and after giving effect thereto, no Event of Default or event which with notice or lapse of time or both would become an Event of Default, would exist; and

*provided, further*, that the foregoing restriction shall not apply to the merger or consolidation or liquidation of any Controlled Subsidiary with or into the Company or another Controlled Subsidiary.

§ 4.12. **TRANSACTIONS WITH AFFILIATES.** Neither the Company nor any Subsidiary will enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate except in the ordinary course of, and pursuant to the reasonable requirements of, the business of the Company or such Subsidiary and upon fair and reasonable terms no less favorable to the Company or such Subsidiary than would obtain in a comparable arm's-length transaction with a person not an Affiliate.

§ 4.13. **ADVANCES BY MORTGAGEE.** If the Company or Cork 'N Cleaver, as the case may be, shall fail to perform any of the covenants contained in § 4.02 to § 4.08, inclusive, the Mortgagee may make

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