

Bond No. K08542405

(SPACE BELOW FOR FILING STAMP ONLY)

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9 Attorneys for Defendants

FILED

NOV 4 2011

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

10 UNITED STATES DISTRICT COURT

11 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

12
13 FLAGSHIP WEST, LLC, a California
14 limited liability company, MARVIN G.
REICHE, and KATHLEEN REICHE,

15 Plaintiffs,

16 EXCEL REALTY PARTNERS, L.P., a
17 Delaware limited partnership, NEW PLAN
18 EXCEL REALTY TRUST, INC., a
19 Maryland corporation, *et al.*,

20 Defendants.

Case No. 1:02 CV 05200 LJO DLB

SUPERSEDEAS BOND (SURETY)

Judge Lawrence J. O'Neill

-DLB Flagship West LLC, et al v. Excel Realty Partner, et al
v.

Doc. 574

21
22 **RECITALS**

23 1. A judgment was entered in the above-captioned case on September 28, 2011 in the
24 United States District Court for the Eastern District of California against Appellants, Excel Realty
25 Partners, L.P. ("Excel") and New Plan Excel Realty Trust, Inc. ("New Plan") (collectively
26 "Appellants") and in favor of Appellees, Flagship West LLC, Marvin G. Reiche, and Kathleen
27 Reiche (collectively "Appellees").
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2. Appellants have filed a timely notice of appeal of this judgment to the United States Court of Appeals for the Ninth Circuit and desire to suspend enforcement of the judgment pending determination of the appeal.

PROMISE TO PAY

As a result of the facts just recited:

3. Appellants and Westchester Fire Insurance Company ("Surety"), which has an office and usual place of business at 436 Walnut Street, Philadelphia, PA 19106, each undertakes and promises to pay to Appellees all damages, costs, and interest that may be awarded to Appellees following the appeal of this matter up to the sum of \$4,400,000.00 if:

- a. the judgment so appealed is affirmed;
- b. the appeal is dismissed; or
- c. Appellants fail to pay promptly all sums awarded against them in or following the appeal in this action, including any costs that the Court of Appeals may award if the judgment is modified.

4. If Appellants fulfill the obligations on appeal set forth above, then this obligation will become void. Otherwise, the obligation will remain in full force and effect.

5. This Supersedeas Bond is subject to all applicable state and federal law.

6. Surety is in compliance with the provisions of 31 U.S.C. §§9304-06.

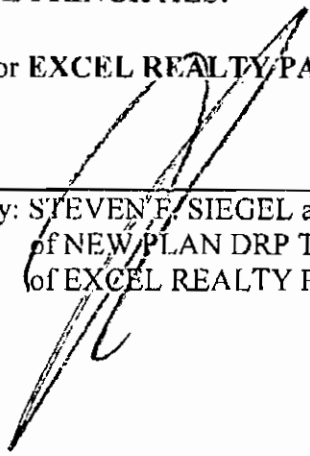
Dated: November 3, 2011

Signature pages to follow:

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FOR THE PRINCIPALS:

For ~~EXCEL REALTY PARTNERS, L.P.:~~

By:  STEVEN F. SIEGEL as Executive Vice President
of NEW PLAN DRP TRUST, the General Partner
of EXCEL REALTY PARTNERS, L.P.

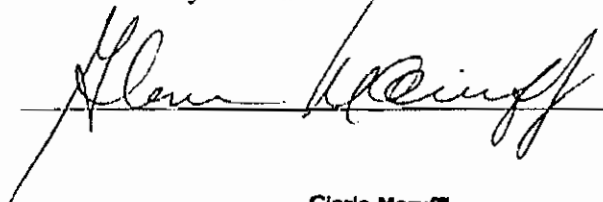
ACKNOWLEDGMENT

State of New York
County of New York

On October 31, 2011 before me, Gloria Maruffi, personally
appeared Steven F. Siegel who proved to me on the basis of satisfactory evidence to be the
person whose name is subscribed to the within instrument and acknowledged to me that
he executed the same in his authorized capacity, and that by his signature on the
instrument the entity upon behalf of which Steven F. Siegel acted, executed this
Supersedeas Bond.

I certify under PENALTY OF PERJURY under the laws of the United States of America
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



scal

Gloria Maruffi
Notary Public, State of New York
No. 01MA4666416
Qualified in New York County
Commission Expires October 31, 2014

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For **NEW PLAN EXCEL REALTY TRUST, INC.**

By: **STEVEN F. SIEGEL** as Executive Vice President
of **BRIXMOR, LLC**, the successor by merger to
NEW PLAN EXCEL REALTY TRUST, INC.

ACKNOWLEDGMENT

State of New York
County of New York

On October 31, 2011 before me, Gloria Maruffi, personally
appeared Steven F. Siegel who proved to me on the basis of satisfactory evidence to be the
person whose name is subscribed to the within instrument and acknowledged to me that
he executed the same in his authorized capacity, and that by his signature on the
instrument the entity upon behalf of which Steven F. Siegel acted, executed this
Supersedeas Bond.

I certify under PENALTY OF PERJURY under the laws of the United States of America
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Gloria Maruffi

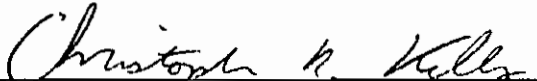
seal

Gloria Maruffi
Notary Public, State of New York
No. 01MA4666416
Qualified in New York County
Commission Expires October 31, 2014

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FOR THE SURETY:

For **WESTCHESTER FIRE INSURANCE COMPANY**


By: Christopher R. Kelly, Attorney-in-Fact

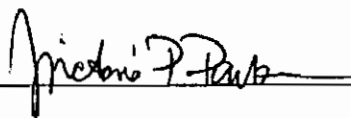
ACKNOWLEDGMENT

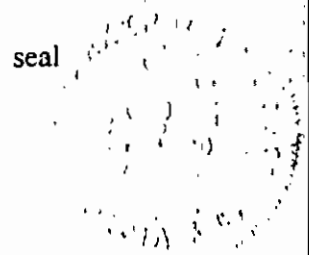
State of Connecticut
County of Hartford

On November 3, 2011 before me, Victoria P. Parkerson [NAME of
ACKNOWLEDGER] personally appeared Christopher R. Kelly [NAME of
SIGNATOR] who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/shc/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed this Supersedeas Bond.

I certify under PENALTY OF PERJURY under the laws of the United States of America
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.





VICTORIA P. PARKERSON
NOTARY PUBLIC
MY COMMISSION EXPIRES FEB. 28, 2013

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APPROVED: *Lawrence J. O'Neill* 4/2011

Lawrence J. O'Neill
Hon. Lawrence J. O'Neill
u.s. District Judge

Power of Attorney

WESTCHESTER FIRE INSURANCE COMPANY

Know all men by these presents: That WESTCHESTER FIRE INSURANCE COMPANY, a corporation of the Commonwealth of Pennsylvania pursuant to the following Resolution, adopted by the Board of Directors of the said Company on December 11, 2006, to wit:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into the ordinary course of business (such a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested.

Does hereby nominate, constitute and appoint Christopher R. Kelly, Cindy Chasse, Joanne Czapinski, John B. O'Keefe, Victoria P. Parkerson, all of the City of HARTFORD, Connecticut, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver, on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof in penalties not exceeding Ten million dollars & zero cents (\$10,000,000.00) and the execution of such writings in pursuance of these presents shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office.

IN WITNESS WHEREOF, the said Stephen M. Haney, Vice-President, has hereunto subscribed his name and affixed the Corporate seal of the said WESTCHESTER FIRE INSURANCE COMPANY, this 19 day of January 2011.

WESTCHESTER FIRE INSURANCE COMPANY



Stephen M. Haney

Stephen M. Haney, Vice President

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

On this 19 day of January, AD. 2011 before me, a Notary Public of the Commonwealth of Pennsylvania in and for the County of Philadelphia came Stephen M. Haney, Vice-President of the WESTCHESTER FIRE INSURANCE COMPANY, to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company, that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
KAREN E. GRANDT, Notary Public
City of Philadelphia, Phila. County
My Commission Expires September 24, 2014

Karen E. Grandt

NOTARY PUBLIC

I, the undersigned Assistant Secretary of the WESTCHESTER FIRE INSURANCE COMPANY, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a substantially true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of the Corporation, this 3rd day of November, 2011.



William L. Kelly

William L. Kelly, Assistant Secretary

THIS POWER OF ATTORNEY MAY NOT BE USED TO EXECUTE ANY BOND WITH AN INCEPTION DATE AFTER January 19, 2013.

Amended
Certificate of Authority

THIS IS TO CERTIFY THAT, Pursuant to the Insurance Code of the State of California,
Westchester Fire Insurance Company

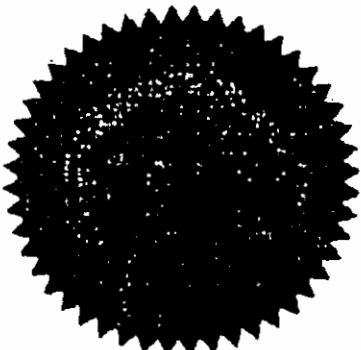
of Pennsylvania, organized under the
laws of Pennsylvania, subject to its Articles of Incorporation or
other fundamental organizational documents, is hereby authorized to transact within the State, subject to
all provisions of this Certificate, the following classes of insurance:

- Fire, Marine, Surety, Plate Glass, Liability, Workers' Compensation,
Common Carrier Liability, Boiler and Machinery, Burglary, Credit, Sprinkler,
Team and Vehicle, Automobiles, Aircraft, and Miscellaneous

as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in
full compliance with all, and not in violation of any, of the applicable laws and lawful requirements made
under authority of the laws of the State of California as long as such laws or requirements are in effect
and applicable, and as such laws and requirements now are, or may hereafter be changed or amended.

IN WITNESS WHEREOF, effective as of the 1st
day of January, 2011, I have hereunto
set my hand and caused my official seal to be affixed this
2nd day of December, 2010.



Steve Poizner
Insurance Commissioner
By *[Signature]*
Susan J. Stapp
for Jesse Huff Deputy
Chief Deputy

NOTICE:
Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly
after issuance of this Certificate of Authority. Failure to do so will be a violation of Insurance Code Section 701 and will be
grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the
conditions contained herein.

WESTCHESTER FIRE INSURANCE COMPANY

FINANCIAL STATEMENT

DECEMBER 31, 2010

ADMITTED ASSETS

BONDS	\$1,938,869,567
SHORT - TERM INVESTMENTS	25,097,524
STOCKS	0
REAL ESTATE	0
CASH ON HAND AND IN BANK	13,073
PREMIUM IN COURSE OF COLLECTION*	40,638,352
INTEREST ACCRUED	17,732,232
OTHER ASSETS	163,640,708
TOTAL ASSETS	\$2,185,991,456

LIABILITIES

RESERVE FOR UNEARNED PREMIUMS	\$171,505,173
RESERVE FOR LOSSES	1,143,301,408
RESERVE FOR TAXES	0
FUNDS HELD UNDER REINSURANCE TREATIES	0
OTHER LIABILITIES	(5,252,361)
TOTAL LIABILITIES	1,309,554,218

CAPITAL: 028,592 SHARES, \$4.85 PAR VALUE	4,503,871
CAPITAL: PAID IN	189,413,813
AGGREGATE WRITE-INS FOR SPECIAL SURPLUS FUNDS	96,216,781
SURPLUS (UNASSIGNED)	586,302,973
SURPLUS TO POLICYHOLDERS	876,437,238
TOTAL	\$2,185,991,456

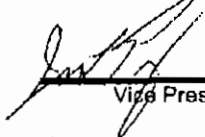
(*EXCLUDES PREMIUM MORE THAN 90 DAYS DUE.)

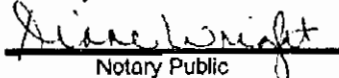
STATE OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

John P. Taylor, being duly sworn, says that he is Vice President of Westchester Fire Insurance Company and that to the best of his knowledge and belief the foregoing is a true and correct statement of the said Company's financial condition as of the 31 st day of December, 2010.

Sworn before me this April 12, 2011


 Vice President


 Notary Public

August 8, 2011
 My commission expires

