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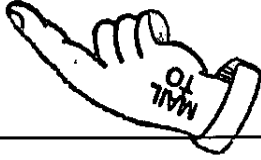
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Cook County Recorder

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Return To: 01LT1373(?)

Ellie Campbell
LAW TITLE - NATIONAL DIVISION
402 Countryside Center, Ste. B
Yorkville, IL 60560



AMENDED AND RESTATED DEED OF TRUST, MORTGAGE AND
SECURITY AGREEMENT

FROM

BB PROPERTY COMPANY,
as Grantor,

COOK COUNTY
RECORDER

EUGENE "GENE" MOORE
SKOKIE OFFICE

TO

Frank E. Stevenson, II, Esq.,
Charles D. Calvin, Esq.,
Michael D. Miselman, Esq.;
Keleher & McLeod, F.A.
David C. Canfield

as Trustee,

AND

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA,
as Beneficiary

Dated as of September 26, 2001

This instrument prepared by

~~and after recording return to:~~

Michele E. Williams
Fried, Frank, Harris, Shriver & Jacobson
1001 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20004

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Appendix 1 Power of Receiver
 Appendix 2 Usury Savings Clause

Property of Cook County Clerk's Office

THIS AMENDED AND RESTATED DEED OF TRUST, MORTGAGE AND SECURITY AGREEMENT, dated as of September 26, 2001 (herein, together with all amendments and supplements thereto, this "Deed of Trust"), from BB PROPERTY COMPANY, a Nebraska general partnership (herein, together with its successors and assigns, "Grantor"), having an address at c/o W.P. Carey & Co. LLC, 50 Rockefeller Plaza, 2nd Floor, New York, New York 10020, to Frank E. Stevenson, II, Esq., as trustee for the Texas Properties, Charles D. Calvin, Esq., as trustee for the Colorado Property, Michael D. Miselman, Esq., as trustee for the Illinois Properties, David C. Canfield, a resident of the city of Alexandria, Virginia, as Trustee for the Virginia Property, and Keleher & McLeod, P.A., a New Mexico professional association, as trustee for the New Mexico Property (herein individually and collectively, together with their successors and assigns, referred to as "Trustee") for the benefit of TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York life insurance company ("Beneficiary"), having an address at 730 Third Avenue, New York, New York 10017 and to Beneficiary as Mortgagee for the Massachusetts Property and the New Hampshire Property. As used herein, the terms "Texas Properties," "Colorado Property," "Illinois Properties," "New Mexico Property," "Massachusetts Property," "New Hampshire Property" and "Virginia Property" shall mean that portion of the Premises (as defined herein) located in the States of Texas, Colorado, Illinois, New Mexico, Massachusetts, New Hampshire and Virginia, respectively.

WITNESSETH:

TO SECURE THE FULL AND PUNCTUAL PAYMENT of: (1) the principal and interest and any premium and all other amounts payable under the Grantor's 9.01% Secured Notes due May 1, 2008, (the form of which is attached hereto as Exhibit A), in the original aggregate principal amount of \$32,800,000 (such Notes and any notes issued in substitution or replacement therefore, in accordance with the terms of such notes, being collectively referred to hereinafter as the "Notes"), and all extensions, modifications and renewals (if any) thereof; (2) all amounts payable under this Deed of Trust, or under any of the Note Purchase Documents (such term and all other terms used herein without definition to have the respective meanings set forth in Article 2 below); (3) all amounts hereafter borrowed, disbursed or advanced from time to time under and permitted by any of the Note Purchase Documents (including advances made to protect or preserve any of the Collateral or any Lien, assignment or security interest in connection with this Deed of Trust or to pay Taxes, insurance premiums or any other amount, whether or not at the time of such advance the original Grantor is the owner of the Collateral); and (4) all amounts hereafter borrowed from Beneficiary, its successors or assigns by any of the persons then holding record title to all or any portion of the Premises, upon the execution and delivery of a note or notes evidencing such indebtedness and stating that such indebtedness is secured by this Deed of Trust; and TO SECURE THE FULL AND PUNCTUAL PERFORMANCE of all of the covenants, agreements, terms, conditions and other obligations of Grantor under each of the Note Purchase Documents;

NOW, THEREFORE, in consideration of ten dollars, the premises, the acceptance by Trustee of the trusts created hereby, the purchase and acceptance of the Notes by Beneficiary and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

ARTICLE 1

GRANTING CLAUSES

Grantor hereby grants, bargains, sells, warrants, aliens, conveys, remises, releases, assigns, transfers mortgages, hypothecates, pledges, sets over, creates a security interest in, delivers and confirms, WITH MORTGAGE COVENANTS, AND UPON THE STATUTORY CONDITION, AND UPON THE FURTHER CONDITION OF STATUTORY POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, to Trustee, in trust or to Beneficiary, as the case may be, forever (but only to the extent it may lawfully accept such grant in any particular jurisdiction), all of the estate, interest, right and title of Grantor of every kind and nature (legal or equitable, whether as nominee, trustee, beneficial owner or otherwise), now owned or hereafter acquired, in and to and under, or derived from, the following, all and singular (collectively, the "Collateral"):

Granting Clause First

All of the twelve (12) lots, pieces, parcels and tracts of land described in Schedule A hereto (individually, a "Land Parcel," and, collectively, the "Land");

Granting Clause Second

All buildings, structures, facilities, other improvements and work in progress (including all demolition, excavation, sheeting and shoring, foundation, structural, mechanical, electrical and plumbing systems and work, all construction and installations in connection with tenant work or occupancy agreements, all utility installations (including telephone, cable TV, computer, public address, security and fire/public safety systems equipment and cabling), and all exterior improvements and landscaping), now or hereafter located in, on, under or above the Land, and all fixtures, machinery, apparatus, equipment, fittings, finishes and coverings of every kind and nature, now or hereafter affixed to or installed in or made an integral part of such buildings, structures, facilities or other improvements, now or hereafter located in or used or procured for use in connection with any such buildings, structures, facilities and improvements (all of the foregoing being collectively referred to hereinafter as the "Improvements") but excluding therefrom Lessee's Equipment;

Granting Clause Third

All of the fixtures and other personal property described in Schedule B annexed hereto and made a part hereof, together with any additions thereto as provided in Article 10(b) of the Lease (the "Fixtures");

Granting Clause Fourth

All streets, alleys, vaults, gores, strips and watercourses adjoining any Land Parcel, together with all tenements, hereditaments, reversions, rights of reverter, rights of re-entry, remainders, development rights, air rights, easements (including, without limitation, all of Grantor's rights under all Restrictive Agreements), rights of way, ingress, egress or use, licenses, franchises, permits, grants, consents, rights (including drainage, sewer, mineral, water, oil and gas rights), privileges, royalties, agreements and appurtenances now or hereafter belonging or pertaining to any of the foregoing, and all claims, demands, rights and remedies to which Grantor now is or may hereafter be entitled at law or in equity, in possession or expectancy of, any of the foregoing (each Land Parcel, together with the Improvements and Fixtures thereon and all of the foregoing with respect to such Land Parcel, shall be hereinafter referred to as a "Property," and all of the Properties shall be hereinafter collectively referred to as the "Premises");

Granting Clause Fifth

The Lease, the Schaumburg Leases and all other leases (including real and personal property leases), agreements, indemnities, guarantees, warranties, options (including rights of first refusal or first offer and termination rights), contracts, subcontracts, purchase orders, licenses, franchises, permits, grants, certificates, estoppels, waivers and releases of every kind and nature, whether involving governmental or private parties, wherever located, now or hereafter in effect and relating in any way to any item or matter included in any of the other Granting Clauses contained herein, together with all documents, certificates, instruments, samples, models and renderings of every kind and nature (including documents, certificates and instruments relating to financing, construction, architecture, engineering, consulting, marketing, occupancy, management, maintenance or operation, plans, drawings, specifications, studies, investigations and reports) in connection therewith, wherever located, now or hereafter in or under Grantor's possession, custody or control, or to which Grantor is now or may hereafter be entitled at law or in equity, and together with claims, demands, rights and remedies to which Grantor is now or may hereafter be entitled at law or in equity in connection therewith;

Granting Clause Sixth

All books, records and other information, and all computer and other equipment and devices used to record, store, manage, manipulate or access any such information (including financial and operating records, evidence of revenues and expenditures, rent rolls, files and computer tapes, disks, drives, software, databases and files) of every kind and nature relating to the Land or other Collateral (but excluding any of the foregoing relating primarily to Grantor's general partnership administration or to the administration of Grantor's general partners), wherever located, now or hereafter in or under Grantor's possession, custody or control, or to which Grantor is now or may hereafter be entitled at law or in equity, and relating in any way to any item or matter included in any of the other Granting Clauses contained herein;

Granting Clause Seventh

All rents, income, receipts, revenues, issues, proceeds, awards, profits and monies of every kind and nature (including all sales proceeds, accounts receivable, insurance proceeds and proceeds in connection with any action, proceeding, judgment, award, condemnation or taking, or any settlement in connection therewith, subject to the provisions of the Lease), all rights to collect and receive any of the foregoing or any other payment, all guarantees (including the Guaranty), letters of credit, security deposits, escrow accounts, mortgages and security interests securing the performance of any obligation in connection with any of the foregoing, and all proceeds of any conversion, whether voluntary or involuntary, into cash or a liquidated claim of any of the foregoing, wherever located, now or hereafter in or under Grantor's possession, custody or control, or to which Grantor is now or may hereafter be entitled at law or in equity, whether or not relating in any way to any item or matter included in any of the other Granting Clauses contained herein, together with all documents, certificates and instruments (including agreements, invoices, receipts, notes, securities and accounts receivable), in connection therewith, wherever located, now or hereafter in or under Grantor's possession, custody or control, or to which Grantor is now or may hereafter be entitled at law or in equity, and together with all claims, demands, rights and remedies to which Grantor is now or may hereafter be entitled at law or in equity in connection therewith provided that nothing contained herein shall prohibit or restrict Grantor from receiving Excepted Payments, but only to the extent expressly provided in Article 9.11;

Granting Clause Eighth

All cash, notes, letters of credit, certificates of deposit, guaranteed investment contracts, stocks, bonds and other securities, joint venture interests, partnership interests, investments, unearned insurance premiums, accounts, deposits and real estate of every kind and nature, wherever located, now or hereafter in or under Grantor's possession, custody or control, or to which Grantor is now or may hereafter be entitled at law or in equity, whether or not relating in any way to any item or matter included in any of the other Granting Clauses contained herein, together with all claims, demands, rights and remedies to which Grantor is now or may hereafter be entitled in connection therewith provided that nothing contained herein shall prohibit or restrict Grantor from receiving Excepted Payments, but only to the extent expressly provided in Article 9.11;

Granting Clause Ninth

All choses in action, claims, demands, rights and remedies, whether in tort or contract, at law or in equity, or arising under or in connection with any law, rule, regulation, ordinance, judgment, order, decree or judicial, administrative or other action or proceeding, whether involving governmental or private parties, wherever located, to which Grantor is now or may hereafter be entitled at law or in equity, whether or not relating in any way to any item or matter included in any of the other Granting Clauses contained herein provided that nothing contained herein shall prohibit or restrict Grantor from exercising Excepted Rights, but only to the extent expressly provided in Article 14.3.5;

Granting Clause Tenth

All property, real and personal, of every kind and nature, wherever located, hereafter owned or acquired by Grantor, or hereafter in or under Grantor's possession, custody or control, or to which Grantor may hereafter be entitled at law or in equity, relating to any item or matter included in any of the other Granting Clauses contained herein, all and singular of which shall, upon such ownership, acquisition, possession, custody, control or entitlement, be automatically subject to this Deed of Trust, as if such property were now owned by Grantor and specifically described herein, together with all claims, demands, rights and remedies to which Grantor is now or may hereafter be entitled at law or in equity in connection therewith provided that nothing contained herein shall prohibit Grantor from exercising Excepted Rights, but only to the extent expressly provided in Article 14.3.5;

Granting Clause Eleventh

All cash, notes, letters of credit, certificates of deposit and other amounts and instruments now or hereafter deposited with Trustee or Beneficiary or under Trustee's or Beneficiary's possession, custody or control, or required to be deposited with Trustee or Beneficiary or held under Trustee's or Beneficiary's possession, custody or control, as provided for in any of the Note Purchase Documents, and all accounts, safe deposit boxes and other places in which any such amount or instrument now is or may hereafter be deposited or held; and

Granting Clause Twelfth

All property of every kind and nature, wherever located, assigned, transferred, mortgaged, hypothecated, pledged or granted to Trustee or Beneficiary, whether by delivery, a writing or other means, to be held as part of the Collateral, which property, all and singular, Trustee or Beneficiary, as the case may be, is hereby authorized to accept and receive as additional security hereunder and to hold and apply in accordance with the terms and conditions upon which such conveyance, assignment, transfer, mortgage, hypothecation, pledge or grant is made;

TO HAVE AND TO HOLD the Collateral unto Trustee and Trustee's successors and assigns or to Beneficiary and Beneficiary's successors and assigns, as the case may be, forever, for the benefit and security of Beneficiary, and Grantor hereby warrants generally Trustee's or Beneficiary's, as the case may be, estate and interest in, and right and title to, and under the Collateral, all and singular, and covenants that Grantor and Grantor's successors and assigns shall warrant and forever defend the same, unto Trustee and Trustee's successors and assigns or to Beneficiary and Beneficiary's successors and assigns, as the case may be, against all claims and demands of all persons whatsoever, subject only to the provisions of this Deed of Trust, the Assignment, the Memorandum of Lease, the Non-Disturbance Agreement; and to the matters identified on Exhibit B hereto (the "Permitted Exceptions").

IT IS HEREBY COVENANTED by each of the parties hereto that the Collateral is to be held and applied in accordance with the following terms and conditions of this Deed of Trust.

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“Capitalized Lease” shall mean, with respect to any person, any lease or any other agreement with respect to the use of property that, in accordance with GAAP, must be

“business day” is defined in the Lease.

to Grantor, as purchaser.

“Bill of Sale” shall mean either (i) the Bill of Sale, dated as of April 15, 1993 or (ii) the Bill of Sale, dated as of the date hereof, from Lessee or Original Lessee, as applicable, as Seller,

“Beneficiary” is defined in the first paragraph of this Deed of Trust.

“Basic Rent Prepayment” is defined in the Lease.

“Basic Rent” is defined in the Lease.

“Assignment” shall mean the Amended and Restated Assignment of Lease, Rents and Profits with respect to the Lease and the Guaranty, of even date herewith, from Grantor, as assignor, to Beneficiary, as assignee, and consented to therein by Lessee and Guarantor, as amended or supplemented from time to time as permitted hereby or thereby.

“Alterations” shall mean all changes, additions, improvements or repairs to, all alterations, reconstructions, renewals, betterments, replacements or removals of and all substitutions or replacements for any of the Improvements or Fixtures, both interior and exterior, structural and non-structural, and ordinary and extraordinary.

“Allocable Portion of the Notes” shall mean, with respect to any Property, at any date, the then outstanding principal balance of the portion of the Notes allocable with respect to such Property as determined in accordance with Schedule C hereto, after giving effect to the Installment Payments to be made on the Note on such date.

“Affiliate” shall mean with respect to any person (the “Subject Person”), any other person which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Subject Person. The term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

“Acceleration Date” is defined in Article 14.2.2.

Unless the context otherwise specifies or requires, the following terms have the meanings specified below which shall apply to the singular as well as the plural:

DEFINITIONS

ARTICLE 2

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"Environmental Indemnity" shall mean the Environmental Indemnity, dated as of April 15, 1993, and as amended by that certain Amendment to Environmental Indemnity of even date herewith, from Guarantor, as indemnitor, to Beneficiary and Grantor, as indemnitees, with

described as Permitted Exceptions or as may hereafter affect any Property. benefit of other real property or burdening other real property for the benefit of a Property and agreement, document, certificate or instrument) burdening any portion of a Property for the rights, agreement, party wall agreement, subsurface or adjacent support agreement or any other (whether contained in any easement, reciprocal easement, declaration of covenants, development "Easement Agreement" shall mean any agreement, covenant, condition or restriction

"Default Termination Amount" is defined in the Lease.

"Default Rate" shall mean a rate per annum equal to 10.01%, but in no event greater than the maximum rate permitted by applicable law.

"Default Interest" is defined in Article 14.2.1.

"Default" shall mean any Event of Default and any act or omission or occurrence or any other event or the existence of any condition that, with notice or lapse of time, would constitute an Event of Default.

"CPA12" shall mean Corporate Property Associates 12 Incorporated.

"CPA11" shall mean Carey Institutional Properties Incorporated.

"Controlled Group" shall mean and include all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with Grantor or Lessee, as the case may be, are treated as a single employer under Section 414(b), 414(c) or 414(m) of the Code.

"Collateral" is defined in Article 1.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and including any and all regulations promulgated in connection therewith.

"Casualty" shall mean any act or occurrence of any kind or nature which results in damage, loss or destruction to all or any part of any Property.

"Capitalized Lease Obligation" of any person shall mean, as of any date as of which the amount thereof is to be determined, the amount of the liability capitalized or disclosed (or which should be disclosed), in accordance with GAAP on a balance sheet (or in a note to such balance sheet) of such person in respect of a Capitalized Lease of such person.

capitalized on the lessee's balance sheet or the amount of the liability under which, as if so capitalized, must be disclosed in a note to such balance sheet.

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“ERISA Termination Event” shall mean (i) a “Reportable Event” described in Section 4043 of ERISA and the regulations issued thereunder (other than a “Reportable Event” not subject to the provision for 30-day notice to the PBGC under such regulations), (ii) the withdrawal of Grantor or any ERISA Affiliate from a Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA, (iii) the complete or partial withdrawal (under Section 4201 of ERISA) of Grantor or an ERISA Affiliate from a

“ERISA Affiliate” shall mean and include all members of a Controlled Group.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Environmental Requirements” shall mean all present and future laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, approvals, plans, authorizations, concessions, franchises, and similar forms of any Governmental Authority and all applicable judicial, administrative and regulatory decrees, judgments and orders pertaining to Hazardous Substances or the environment, including: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 et seq., and as may be further amended (collectively “CERCLA”); (2) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended and as may be further amended (“RCRA”); (3) all requirements (including those pertaining to reporting, licensing, permitting, investigation and remediation) in connection with the presence, emission, discharge, release or threatened release of any Hazardous Substances into the air, surface water, groundwater or land or the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Substances; and (4) all requirements of the federal Occupational Safety and Health Administration or any states in which any portion of the Premises is located regarding asbestos or other hazardous, toxic or dangerous substances in the workplace.

“Environmental Reports” is defined in the Note Purchase Agreement.

“Environmental Problem” shall mean any of the following: (1) the presence or alleged presence of any Hazardous Substances, on, in, under, above or migrating or alleged migration to or from all or any portion of any Property or any surrounding areas; (2) the release or alleged release of any Hazardous Substances from or onto any Property; (3) the violation or alleged violation of any Environmental Requirement with respect to any Property; (4) the failure or alleged failure to obtain or to abide by the terms or conditions of any permit or approval required under any Environmental Requirement with respect to any Property; and (5) any activity, occurrence or condition which could result in any liability, cost or expense to Beneficiary or any other owner or occupier of the Premises or any portion thereof. Any of the foregoing conditions shall be deemed to be an Environmental Problem regardless of whether or not any Governmental Authority has taken any action in connection with the condition and regardless of when such Environmental Problem arose.

respect to the Premises and the Original Properties (as defined in the Lease), as further amended from time to time.

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"Guarantee" shall mean any obligation, contingent or otherwise, of any person guaranteeing or having the economic effect of guaranteeing in any manner, whether directly or indirectly, any Indebtedness of any other person, any obligation (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (ii) to purchase or lease (or advance or supply funds for the purchase or lease of) any property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness, or (iii) to maintain working capital, equity capital or compliance with any other financial statement condition of the primary obligor so as to enable the primary obligor to

"Grantor" is defined in the first paragraph of this Deed of Trust.

"Grant" shall mean mortgage, grant, convey, assign, create a security interest in, bargain, sell, pledge, give, transfer and set over.

"Governmental Authority" shall mean, singly or collectively, the United States of America, the State of Texas, the State of New Mexico, the State of Illinois, the State of Colorado, the Commonwealth of Massachusetts, the State of New Hampshire and the Commonwealth of Virginia, and any political subdivision thereof in which any portion of the Premises is located, the State of Minnesota, the State of Nebraska, the State of New York and any other state, to which the laws thereof Grantor or Lessee may be subject, and any agency, department, bureau, board, commission, court or other instrumentality of any of the foregoing.

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

"Foreclosure" shall mean any foreclosure of the Lien of this Deed of Trust, exercise of power of sale under this Deed of Trust or the conveyance of all or any portion of the Premises in lieu thereof.

"Fixtures" is defined in Article 1.

"Final Payment" is defined in the Notes.

"Excepted Rights" is defined in Article 14.3.5.

"Excepted Payments" is defined in Article 9.11.

"Event of Default" is defined in Article 14.

termination of, or the appointment of a trustee to administer, any Plan.
event or condition which might constitute grounds under Section 4042 of ERISA for the termination of a Plan or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, (v) the institution of proceedings to terminate a Plan by the PBGC, or (vi) any other terminate a Plan or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, (iv) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, (v) the institution of proceedings to terminate a Plan by the PBGC, or (vi) any other event or condition which might constitute grounds under Section 4042 of ERISA for the

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contingent or otherwise, to be secured by) any Lien or security interest on property owned or the extent secured by (or for which the holder of such Indebtedness has an existing right, in the ordinary course of business and paid when due), (vi) all Indebtedness of other persons to deferred purchase price of property or services (other than accounts payable to suppliers incurred by such person, (v) all obligations of such person issued or assumed as the obligations of such person under conditional sale or other title retention agreements relating to all obligations of such person upon which interest charges are customarily paid, (iv) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (iii) must be included in determining total liabilities as shown on a balance sheet of such person, (ii) deferred to the future and other deferred credits and reserves) that, in accordance with GAAP, capital stock, surplus and retained earnings, as well as reserves for taxes in respect of income to be determined, whether secured or unsecured, (i) all items (other than capital items such as "Indebtedness" of any person shall mean, as of any date as of which the amount thereof is

"Improvements" is defined in Article 1.

determination is being made and is used in compliance with Environmental Requirements. substance is used in the normal and ordinary course of business on the Property for which a substance that would otherwise constitute a Hazardous Substance to the extent that such urea formaldehyde foam insulation. The term "Hazardous Substance" shall not include any adjacent properties would constitute a trespass by Grantor or (g) containing PCBs, asbestos or hazard to the health or safety of persons on or about such Property; (f) the presence of which on threatens to cause a nuisance thereon or to any adjacent property or poses or threatens to pose a regulated by any Governmental Authority; (e) the presence of which on any Property causes or infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is at any time remediation under any Legal Requirement; (d) that is toxic, explosive, corrosive, flammable, gas or synthetic gas usable for fuel; (c) the presence of which requires investigation or petroleum hydrocarbons, gasoline, diesel fuel, natural gas, natural gas liquids, liquefied natural under CERCLA or (2) constituting a "hazardous waste" under RCRA; (b) containing petroleum, Environmental Requirement, including any substance: (1) constituting a "hazardous substance" defined, listed, regulated or prohibited as hazardous, toxic or dangerous under any "Hazardous Substance" shall mean any substance, whether solid, liquid or gaseous (a)

to time. hereof, from Grantor to Grantor, as amended, supplemented or otherwise modified from time "Guaranty" shall mean the Guaranty and Suretyship Agreement, dated as of the date

delivered by Grantor to Grantor and Beneficiary. "Guarantor's Certificate" shall mean the Guarantor's Certificate of even date herewith

and assigns.

"Guarantor" shall mean Best Buy Co., Inc., a Minnesota corporation, and its successors

pay such Indebtedness or satisfy such condition; provided, however, that the term "Guarantee" does not include endorsements for collection or deposit in the ordinary course of business.

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"Land Parcel" is defined in Article 1.

"Land" is defined in Article 1.

"Insurance Requirements" shall mean Grantor's obligation to maintain the Required Insurance in accordance with Article 8.12.

"Installment Payments" is defined in the Notes.

"Installment Payment Dates" is defined in the Notes.

"Independent Event of Default" shall mean an Event of Default which has not arisen out of and does not exist by virtue of a termination of or Event of Default under this Lease.

"Indemnified Party" is defined in Article 8.17.

"Indemnified Expenses" shall mean all damages, losses (foreseen and unforeseen), liabilities (tort and contract, strict and otherwise), obligations, penalties, claims (matured and contingent), sums paid in settlement of claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements and expenses (including all costs of defense and settlement and the fees and disbursements of attorneys, consultants and experts) of any kind or of any nature whatsoever asserted against or incurred by any Indemnified Party and arising directly or indirectly out of or in connection with any Hazardous Substances, Environmental Requirements or Environmental Problems involving Grantor or the Premises. Indemnified Expenses shall include (to the extent permitted by law), without limitation, all of the following: (1) costs incurred in the removal of Hazardous Substances, costs incurred in investigation, monitoring and clean-up, and containment of Hazardous Substances, and costs incurred for remediation and restoration; (2) costs incurred to cure any violations of Environmental Requirements; (3) damages for personal injury or death, property loss, or other loss; (4) civil and criminal fines and penalties; (5) costs incurred to remove any Liens imposed by law in favor of the federal or any state or local government or governmental agency or authority in connection with an Environmental Problem; (6) reasonable attorneys', accountants', consultants', and experts' fees and disbursements, administrative costs, and experts' fees and disbursements, administrative costs, and other out-of-pocket expenses; (7) damages or injury to, destruction of, or loss of, natural resources; (8) sums paid to tenants and other third parties (or offset against rents or other sums payable by such tenants and other third parties) pursuant to leases or other agreements wherein such tenants or other third parties are entitled to indemnification or payment on account of Environmental Problems; (9) consequential damages; (10) sums paid to any Governmental Authority or any other person or entity for any costs described above; and (11) all other costs and expenses of any kind or nature.

"Indebtedness under the Notes" is defined in Article 6.1.

acquired by such person, whether or not the obligations secured thereby have been assumed, (vii) all Capitalized Lease Obligations of such person, and (viii) all Guarantees of such person.

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"Lien" shall mean: (i) any interest in property (whether real, personal or mixed and whether tangible or intangible) securing an obligation owed to, or a claim by, a person other than the owner of such property, whether such interest is based on the common law, statute or contract, including any such interest arising from a mortgage, pledge, security agreement, conditional sale, title retention agreement, trust receipt or deposit in trust, assignment or bailment given for security purposes (other than a trust receipt or deposit given in the ordinary course of business not securing any obligation for borrowed money), (ii) any encumbrance upon such property which does not secure such an obligation, and (iii) any other exception to or defect in the title to or ownership interest in such property, including, without limitation, reservations, rights of entry, possibilities of reverter, encroachments, easements, rights of way, restrictive covenants, licenses and profits a prendre. A person shall be deemed to be the

"Lessee's Equipment" shall mean all signs, machinery, apparatus, furniture, furnishings and other equipment and all moveable or demountable partitions, trade fixtures and temporary auxiliary structures, and all renewals and replacements thereof, in each case, installed at the Premises by Lessee or any sublessee or assignee of Lessee that are removable without damage to the Premises or any portion thereof (other than (a) the Fixtures, and (b) any other item of property the removal of which would (i) result in the Premises or any portion thereof failing to comply with all Legal Requirements and all Insurance Requirements or (ii) prevent the Premises or any portion thereof from being usable for its intended purpose (it being understood that all items in this clause (b) which are excluded from the definition of "Lessee's Equipment" shall be deemed to be Fixtures)).

"Lessee" shall mean Best Buy Stores, L.P., together with any person succeeding thereto by merger, consolidation or acquisition of its assets substantially as an entirety.

"Legal Requirements" shall mean all federal, state and local laws, rules, regulations, codes, ordinances (including all codes and ordinances relating to zoning, building, water, sewer, fire, health or handicapped accessibility), judgments, orders, decrees, writs, injunctions and administrative pronouncements (including Environmental Requirements) and all obligations imposed thereunder or under any common law, all obligations imposed by any Governmental Authority under any grant, permit, approval or consent, all obligations under any covenant, condition or restriction of record (including those imposed under any Restrictive Agreement), and all obligations under any agreement or contract involving any Governmental Authority (including arbitration awards and settlement agreements), under which Grantor now is or may hereafter be bound or to which any portion of the Premises, or the ownership of Grantor or the operation of Grantor's business, or the ownership, use or operation of the Premises, is now or may hereafter be subject. The term "Legal Requirement" shall not mean or include any law, rule, regulation, ordinance, judgment, order, decree, writ, injunction or administrative pronouncement whose applicability to Grantor or the Premises is "grandfathered" or stayed by reason of the timing of its enactment or otherwise.

"Lease" shall mean the Amended and Restated Lease with respect to the Premises, of even date herewith, between Grantor, as lessor, and Best Buy Stores, L.P., as lessee, as such lease may be amended or supplemented from time to time as permitted hereby or thereby, together with any short form or memorandum thereof for purposes of recording.

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owner of any property that it has acquired or holds subject to a Capitalized Lease or conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other person for security purposes.

“Lien of this Deed of Trust” and terms of like import shall mean the lien or security interest or other interest or charge Granted hereby (including the after-acquired property clauses hereof) or subsequently Granted hereunder or pursuant hereto.

“Lock-Box Agreement” shall mean the Custody Agreement dated as of April 15, 1993 by Beneficiary, the Lock-Box Custodian and Grantor, as amended, supplemented or otherwise modified from time to time.

“Lock-Box Custodian” shall mean Citibank, N.A.

“Major Alterations” shall mean an Alteration or a series of related Alterations to any Property which are not readily removable without causing material damage to such Property and which will cost in excess of \$500,000, subject to adjustment.

“Make Whole Premium” is defined in Section 3.2 of the Notes.

“Mandatory Prepayment Amount” is defined in Section 3.3 of the Notes.

“Mandatory Prepayment Date” is defined in Section 3.3 of the Notes.

“Maturity Date” is defined in the Notes.

“Memoranda of Lease” shall mean, collectively, the nine (9) Amended and Restated Memoranda of Lease and the three (3) Memoranda of Lease dated as of the date hereof, by Grantor and Lessee, each with respect to a Property.

“Net Award” is defined in the Lease.

“Non-Disturbance Agreement” shall mean the Non-Disturbance and Attornment Agreement dated as of the date hereof among Beneficiary, Grantor and Lessee.

“Note Purchase Agreement” shall mean the Note Purchase Agreement, dated as of April 15, 1993, among Grantor, Original Lessee and Beneficiary, together with all amendments and supplements thereto.

“Note Purchase Documents” shall mean this Deed of Trust, the Note Purchase Agreement, the Guaranty, the Seller/Lessee’s Certificate, the Guarantor’s Certificate, the Notes, the Lease, the Bill of Sale, the Assignment, the Environmental Indemnity, the Owner’s Lien Agreement, the Lock-Box Agreement, the Non-Disturbance Agreement and any other agreement, deed, document, certificate or instrument executed or delivered in connection with any of the foregoing, and all extensions, modifications and renewals (if any) or any of the foregoing.

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force and effect and no Event of Default exists thereunder.
gross assets of at least \$100,000,000, or (iii) Lessee but only to the extent the Lease is in full
institutionally managed fund which, on the date of the applicable purchase of the Collateral, has
Collateral, has a net worth of at least \$50,000,000, (ii) a public or private pension plan or
or wholly-owned subsidiary of such which, on the date of the applicable purchase of the
"Qualified Institutional Investor" shall mean (i) any bank, insurance company or affiliate

"Property" is defined in Article 1.

"Primary Term" is defined in the Lease.

"Premises" is defined in Article 1.

"Plan" shall mean a multiemployer plan or single employer plan, as defined in Section
4001 of ERISA, that is subject to Title IV of ERISA.

"person" shall mean an individual (natural person), partnership, corporation, trust, estate,
unincorporated association, syndicate, joint venture or other organization, or any government or
any department or agency thereof or any other entity.

"Permitted Transferee" is defined in Article 1) 4.

"Permitted Exceptions" is defined in Article 1, Habendum and in Exhibit B hereto.

"Pearle Lease" shall mean the Lease dated as of July 9, 2001 between Best Buy Stores,
L.P., as landlord, and Pearle Vision Inc., as tenant, with respect to a portion of the Property
located in Schaumburg, Illinois.

"PBG" shall mean the Pension Benefit Guaranty Corporation.

with their successors and assigns.

"Partner" shall mean any person or entity that is a general partner of Grantor, together

their successors and assigns.

"Parents" shall mean CPA11 and CPA12, individually and collectively, together with

Carey & Co. LLC, and the ownership interests in which are sold through a public offering.
"Parent Affiliate" shall mean any real estate investment trust which is sponsored by W.P.

hereof, by CPA11 and CPA12, for the benefit of Beneficiary.
"Owner's Lien Agreement" shall mean the Owner's Lien Agreement, dated as of the date

"Original Lessee" shall mean Best Buy Co., Inc., a Minnesota corporation.

"Notes" is defined in the Preamble.

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“Termination Date” shall mean, (a) with respect to any Property, the date, following a Casualty or Taking described in Article 11(d) or 11(e) of the Lease, upon which the Lease shall

“Termination Amount” is defined in Schedule D to the Lease.

“Taxes” is defined in Article 8.11(a).

“Taking” shall mean, singly or collectively, the condemnation, expropriation, eminent domain, taking, change in the grade of any street, down-zoning or special zoning district overly, or any other action by any Governmental Authority affecting all or any part of, or the use, occupancy or value of any Property.

“subject to adjustment” is defined in the Lease.

“Semi-Annual Component of Basic Rent” is defined in the Lease.

“Seller/Lessee’s Certificate” shall mean, collectively, (a) the Seller/Lessee’s Certificate of even date herewith delivered by Lessee to Grantor and Beneficiary and (b) the Seller/Lessee’s Certificate dated as of April 15, 1993, delivered by Original Lessee to Grantor and Beneficiary.

“Schaumburg Leases” shall mean the Fearé Lease.

“Schaumburg, Illinois Property” is defined in Schedule A.

“Restrictive Agreement” shall mean any agreement, covenant, condition or restriction (whether contained in any easement, reciprocal easement, declaration of covenants, development rights agreement, party wall agreement, subsurface or adjacent support agreement or any other agreement, document, certificate or instrument), including, without limitation, any Easement Agreement, burdening any portion of the Premises for the benefit of other real property or burdening other real property for the benefit of any portion of the Premises.

“Required Insurance” shall mean the insurance required pursuant to Article 12 of the Lease.

“Rents” shall mean all rents, income, receipts, revenues, issues, profits, proceeds, awards and other sums payable to or receivable by Grantor under the Lease, or pursuant to any provisions thereof, now or hereafter due, whether as rent or as the purchase price for any interest in any Property or otherwise (except sums payable directly to any person other than the lessor under the Lease), including, without limitation, the right to receive all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to any Property, and all amounts payable by any lessee under the Lease in connection with any alterations, improvements or other work performed on any Property, together with all claims, demands, rights and remedies to which Grantor is now or may hereafter be entitled at law or in equity in connection therewith.

and receipt for all Rents, (b) the right to accept any offer pursuant to Article 11, Article 20(i) or Article 37 of the Lease to purchase the interest of Grantor in any Property or the Premises, as the case may be (provided that such acceptance or rejection shall be permitted to be made by Grantor pursuant to the terms of Article 10 of this Deed of Trust), (c) subject to the provisions of Article 10 of this Deed of Trust, the right and power (which right and power are coupled with an interest) upon the offer to purchase by Lessee of the interest of Grantor in any Property pursuant to the Lease (but only in the event Grantor fails to respond to such offer within the time frame provided in Article 10), to execute and deliver as irrevocable agent and attorney-in-fact of Grantor an acceptance of such offer and an appropriate special warranty deed or other instrument necessary to convey the interest of Grantor therein, or to pay over or assign to such purchaser those sums to which it is entitled if such purchaser becomes obligated to purchase the interest of Grantor in the related Property and to perform all other necessary or appropriate acts as said agent and attorney-in-fact with respect to any such purchase and conveyance, (d) subject to the provisions of Article 10 of this Deed of Trust, the right to perform all other necessary or appropriate acts as said agent and attorney-in-fact with respect to any purchase and conveyance referred to in clause (c) above. (e) the right to make all waivers and agreements, except that as long as no Independent Event of Default has occurred and is continuing, Beneficiary may not, without the consent of Grantor, waive Lessee's obligation to (i) pay Rent or comply with Legal Requirements or (ii) amend the Lease, (f) the right to give all notices, consents, releases and other instruments, (g) subject to the provisions of Article 14.3.5 with respect to the Excepted Rights, the right to give all notices of default and to take all action upon the happening of a default under the Lease, including the commencement, conduct and consummation of proceedings as shall be permitted under any provision of the Lease, or by law or in equity, and (h) the right to do any and all other things whatsoever which Grantor or any lessor is or may be entitled to do under the Lease, provided, however, that nothing contained in the foregoing shall limit or diminish any right, title or interest conveyed by the Assignment.

ARTICLE 4

SECURITY AGREEMENT

4.1. Security Agreement and Financing Statement.

(a) Grantor hereby grants to Beneficiary a security interest in all Collateral mentioned in this Deed of Trust, including the Collateral described in Schedule B hereto, which may be subject to a security interest under Article 9 of the Uniform Commercial Code, as enacted in each jurisdiction in which any portion of the Premises is located, and in all additions thereto, substitutions therefore and proceeds thereof, for the purpose of securing all Indebtedness now or hereafter secured by this Deed of Trust. Grantor agrees to execute and deliver UCC-1 Financing Statements substantially in the form of Exhibit C hereto and financing and continuation statements covering such Collateral from time to time and in such form as Beneficiary may require to perfect and continue the perfection of Beneficiary's lien or security interest with respect to such Collateral. Upon the occurrence of any Event of Default hereunder, Beneficiary shall have the rights and remedies of a secured party under the Uniform Commercial Code, as enacted in each jurisdiction in which any portion of the Premises is located, as well as all other rights and remedies available at law or in equity, and, at Beneficiary's option,

Beneficiary may also invoke the remedies provided elsewhere in this Deed of Trust as to such Collateral.

(b) From the date of its recording, this Deed of Trust shall be effective as a security agreement and financing statement filed as a fixture filing under the Uniform Commercial Code as enacted in each jurisdiction in which any portion of the Premises is located and filed in the real estate records of each county in which any portion of the Premises is located, with respect to any and all fixtures included within the term "Premises" and with respect to any goods or other personal property that may now be or hereafter become such a fixture, including, without limitation, the Fixtures. For this purpose, the "Debtor" is Grantor and the "Secured Party" is Beneficiary; the identity or corporate structure and jurisdiction of formation of "Debtor" is set forth in the Preliminary Statement, *supra*; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor" are as set forth in Article 16.1; and a statement indicating the types, or describing the terms, of Collateral is set forth in the Granting Clauses above. The maturity date of the Notes is set forth in the Notes.

(c) Grantor and Beneficiary agree that the filing of any such financing statement or statements in the records normally having to do with personal property shall not in any way affect the agreement of Grantor and Beneficiary that everything used by Grantor, its agents, employees, and contractors and owned by Grantor in connection with the production of income from the Premises or adapted for use herein or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the Improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Deed of Trust, or (c) any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for a Taking or for loss of value, or (iii) Grantor's interest as lessor in any present or future lease or the rights of Grantor to income growing out of the use and/or occupancy of the Premises, whether pursuant to the Lease or otherwise, shall not in any way alter any of the rights of Beneficiary as determined by this Deed of Trust or affect the priority of Beneficiary's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Beneficiary in the event any court shall at any time hold with respect to the foregoing clauses (i), (ii) or (iii) of this sentence, that notice of Beneficiary's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

ARTICLE 5

INTENTIONALLY DELETED

ARTICLE 6

PAYMENT OF THE NOTES

6.1. Payment of Indebtedness; Performance of Obligations. At the times and places and in the manner specified in the Notes, Grantor shall pay all Indebtedness evidenced by the Notes, including all principal, interest, late payment charges and premiums specified therein, all amounts payable under this Deed of Trust and all amounts payable under any and all of the other Note Purchase Documents (collectively, the "Indebtedness under the Notes"). Grantor shall perform all of the other obligations to be performed by Grantor and satisfy all of the conditions to be satisfied by Grantor under any or all of the Note Purchase Documents, at the times and places and in the manner specified therein.

6.2. Prepayment of the Indebtedness; Make Whole Premium. No person may prepay any principal under the Notes, and Beneficiary may refuse the tender of any such prepayment, except in accordance with the Notes. The Notes provide, among other things, for the payment by Grantor of a Make Whole Premium with respect to certain prepayments.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES, ETC.

Grantor hereby represents and warrants, as of the date hereof, and covenants and agrees as follows:

7.1. Organization and Authority. Grantor is a general partnership validly existing under the laws of the State of Nebraska. Grantor has full partnership power, authority, legal right, and all necessary licenses and permits to own the Premises, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and carry out the terms and provisions of the Note Purchase Documents to which Grantor is, or will be, a party. The Note Purchase Documents to which Grantor is a party have been duly authorized by all necessary partnership action, validly executed and delivered by Grantor and, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitute the legal, valid and binding obligations of Grantor enforceable against Grantor in accordance with their respective terms, subject to bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally.

7.2. Indebtedness. Grantor has no outstanding Indebtedness other than the Indebtedness under the Notes.

7.3. Liens.

7.3.1. Grantor's Assets. Each Property is free and clear of any Liens, other than the Permitted Exceptions.

7.3.2. No Other Security Agreement. No security agreement, financing statement or other public notice with respect to any part of the Fixtures is on file or of record in any public office, except such as may have been filed in favor of Beneficiary to perfect the Lien

of this Deed of Trust, and further except such as may have been filed to perfect any Lien included in the Permitted Exceptions.

7.4. Lease.

7.4.1. Enforceability. The Lease is in full force and effect and constitutes the valid and legally enforceable obligation of Grantor, except as enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally.

7.4.2. No Defaults.

(a) To the best of Grantor's knowledge, information and belief, no default or Event of Default has occurred and is continuing under the Lease, and no event has occurred which with notice or lapse of time might constitute a default or Event of Default under the Lease. Grantor has not, at any time, given or received any notice of any default or Event of Default under the Lease. Grantor has performed in full all of its obligations under the Lease which are to be performed on or prior to the date hereof.

(b) To the best of Grantor's knowledge, information and belief, no default or Event of Default (as defined in the Guaranty) has occurred and is continuing under the Guaranty and no event has occurred which with notice or lapse of time might constitute a default or Event of Default under the Guaranty. Grantor has not, at any time, given or received any notice of any default or Event of Default under the Guaranty.

7.4.3. True Copies. Grantor has furnished to Beneficiary a true, complete and correct copy of the Lease (as modified through the date hereof) and the Guaranty, as certified by Grantor and Guarantor, respectively.

7.4.4. No Defenses, Set-offs or Counterclaims. Lessee has not given Grantor any notice of any intention to assert any defense, set-off or counterclaim to the payment of rent or to exercise any option to terminate all or any portion of the Lease and, to the best of Grantor's knowledge, information and belief, there is no basis for any such defense, set-off or counterclaim or for the exercise any such option.

7.4.5. No Percentage Rent. During the Primary Term the Lease does not provide for rental or other payment for such use, occupancy or utilization based in whole or in part upon the net income or profits derived by any person from the portion of the Premises leased, used, occupied or utilized.

7.5. Consents and Approvals. Other than the recordation of this Deed of Trust, the Assignment, the Non-Disturbance Agreement and the filing of the UCC-1 Financing Statements as aforesaid, no approval, consent, notification, filing or withholding of any objection of any Governmental Authority is necessary in connection with the execution, delivery and performance by Grantor of any of the Note Purchase Documents. Grantor has obtained or to the best of its knowledge, information and belief caused Lessee to obtain all consents, waivers and approvals

of all appropriate persons that are not Governmental Authorities so that it may, without violating any other agreement to which it is a party or by which it or any Property is bound, execute and deliver the Note Purchase Documents, and perform in accordance with the terms thereof the transactions contemplated thereby, and all such consents, waivers and approvals are in full force and effect.

7.6. Restrictive Agreements. Except for Restrictive Agreements included in the Permitted Exceptions, to Grantor's knowledge, information and belief, there is no Restrictive Agreement affecting any portion of the Premises.

7.6.1. No Impairment. The Lien of this Deed of Trust cannot be divested, subordinated or extinguished or its validity, priority or enforceability impaired by the exercise or enforcement of any right or remedy under any Restrictive Agreement except as expressly provided in Article 9.14. Except as specifically identified in the Permitted Exceptions, no Restrictive Agreement provides for: (1) an easement on the Land; (2) a Lien for liquidated damages; (3) a private charge or assessment; or (4) an option to purchase or a right of first refusal or the prior approval of any future purchaser or occupant.

7.6.2. No Defaults. To the best of Grantor's knowledge, information and belief, there exists under the Restrictive Agreements no default or event of default by Grantor. Grantor has not, at any time, given or to the best of our knowledge received any notice of any default or event of default under any Restrictive Agreement. Grantor has performed in full all of its obligations under each Restrictive Agreement which are to be performed prior to the date hereof.

7.7. Condition of the Premises.

7.7.1. Public Access. To the best of Grantor's knowledge, information and belief, there is unimpaired access to each Property from a public right of way.

7.7.2. Utilities. To the best of Grantor's knowledge, information and belief, all utilities (including water, storm and sanitary sewer, electrical, telephone, cable TV, and, if necessary for the operation of such Property, gas and steam) necessary for the full economic utilization, maintenance and operation of each Property are available and furnished to such Property either from a public right of way or via unimpaired, record easements benefiting such Property.

7.7.3. Flood Zone. Except for the Property located in Beaumont, Texas, to the best of Grantor's knowledge, information and belief, no portion of any Property appears in any "Flood Hazard Area" on any Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map.

7.7.4. Historic Landmark; Historic Preservation. To the best of Grantor's knowledge, information and belief after due inquiry, no portion of any Property has been designated or registered as a historic landmark or is subject to any historic preservation requirement. To the best of Grantor's knowledge, information and belief, there is no action, suit

or proceeding pending in connection with the designation or registration of any portion of any Property as a historic landmark.

7.7.5. Legal Requirements. To the best of Grantor's knowledge, information and belief, each Property (including all structural components, building systems and fire protection measures), every use of each Property and the operation of each Property comply with the Legal Requirements (including those relating to floor square footage, height, setback and bulk factors) in all material respects. To the best of Grantor's knowledge, information and belief, there is no action, suit or proceeding pending or threatened in connection with any violation of any Legal Requirement or any change in the zoning for any Property.

7.7.6. Condemnation. To the best of Grantor's knowledge, information and belief, there is no action, suit or proceeding pending or threatened in connection with any condemnation, expropriation, eminent domain, taking, change in the grade of any street, down-zoning or special zoning district overlay, or any other action by any Governmental Authority affecting any portion of, or the use, occupancy or value of, any Property.

7.8. Insurance. To the best of Grantor's knowledge, information and belief, each of the insurance coverages that Grantor is required to maintain under this Deed of Trust is in full force and effect, and all premiums due therefore have been paid. Grantor has received no notice from any insurance company (or its agent) providing any such coverage, stating, in effect, that (1) such coverage will not be renewed, or (2) will be renewed only with a lower limit of liability of lesser scope of coverage than currently provided.

7.9. Transfer Taxes; Filings. To the extent required by law, Grantor has received from each person transferring any portion of the Premises to Grantor a Certification of Non-Foreign Status pursuant to Section 1445 of the Code. Grantor has no reason to believe that any statement contained in such Certification is not true, complete and correct. To the extent the laws of the State in which any Property is located require a transferee of real property to withhold from the transferor and remit to the taxing authorities of such State any portion of the consideration paid for such real property, or to demonstrate entitlement to any exemption from such withholding, Grantor has complied fully with such requirements.

7.10. Solvency. Grantor has received reasonably equivalent value in exchange for granting this Deed of Trust and the Assignment. The net cash flow and the fair saleable value of the business and assets of Grantor, upon giving effect to the transactions contemplated hereby, shall be not less than the amount that shall be required to pay the probable liabilities of Grantor (including the Indebtedness under the Notes and all contingent, fixed, subordinated, unsubordinated, matured, unmatured, liquidated and unliquidated liabilities, but excluding taxes, repairs to each Property, insurance and other Impositions, as defined in the Lease, which Lessee is required to pay directly) on existing debts as they may become absolute and matured. Grantor is not and, upon giving effect to the transactions contemplated hereby, shall not be "insolvent" (as defined in Title 11 of the United States Code or under any applicable state fraudulent conveyance or transfer statute, in each case as in effect from time to time), and shall not be engaged in any business or transaction, or about to engage in any business or transaction, for which Grantor has an unreasonably small capital, and Grantor has no intent (1) to hinder, delay or defraud any person to which Grantor is, or anticipates it shall become, indebted, or (2) to incur debts that would be beyond its ability to pay as they mature.

7.11. Note Purchase Documents. All of the representations and warranties made by Grantor in each of the other Note Purchase Documents are hereby incorporated herein by reference thereto and affirmed by Grantor. To the extent that any representation or warranty by Grantor contained in the Note Purchase Agreement or any other Note Purchase Document is inconsistent with any representation or warranty contained herein, the more inclusive representation or warranty shall govern. Grantor has performed and is in compliance with all of the covenants agreed to by Grantor in the Note Purchase Agreement and the other Note Purchase Documents to the extent such performance or compliance is required on or before the date hereof.

7.12. Survival. Subject to the provisions of Article 14.3.6, each of Grantor's representations and warranties under this Article 7 shall survive any transfer of the Collateral, any transfer of the Notes, the release of any or all of the Collateral from the Lien of this Deed of Trust, the release of any person from liability under any of the Note Purchase Documents, any modification, extensions or renewal of any of the Note Purchase Documents, any foreclosure or private sale or the exercise of any of Beneficiary's other rights or remedies under the Note Purchase Documents (unless such foreclosure, private sale or other remedy results in the payment in full of the Indebtedness under the Notes), and any other event whatsoever (unless such event results in the payment in full of the Indebtedness under the Notes); provided, however, that Grantor's representations and warranties under this Article 7 with respect to any individual Property shall terminate with respect to such Property upon the payment in full for the Allocable Portion of the Notes with respect to such Property and all other Indebtedness under the Notes then due and payable.

Article 8AFFIRMATIVE COVENANTS

Grantor hereby covenants with Beneficiary to comply with each of the following:

8.1. Payment of Notes. Grantor shall punctually pay the principal, interest, premium, if any, and all other sums due or to become due in respect of the Notes in accordance with this Deed of Trust and the Notes, all without relief from valuation and appraisal laws.

8.2. The Lease; the Assignment; the Note Purchase Agreement; the Lock-Box Agreement. At all times the Premises shall be leased to Lessee under the Lease, except (a) as provided in Article 10, and (b) to the extent subletting is permitted under the Lease as provided in Article 9.5. Grantor shall punctually perform all obligations, covenants and agreements by it to be performed as lessor under the Lease in accordance therewith, and shall, to the extent permitted by the Assignment, at all times do all things necessary to compel performance by Lessee of all of Lessee's obligations, covenants and agreements under the Lease. Grantor shall give to Beneficiary notice of (i) all defaults (whether by Grantor or Lessee) under the Lease and (ii) all defaults by Guarantor under the Guaranty promptly after obtaining knowledge thereof. Grantor shall not amend the Lease without the prior written consent of Beneficiary. The Lease shall be subordinate and inferior to the Lien of this Deed of Trust and to all modifications, extensions, renewals, and refinancings thereof, except that from time to time, Beneficiary may execute and record among the land records in any or all states in which all or any portion of the Premises is located subordination statements with respect to the Lease whereby the Lease shall be made superior to this Deed of Trust. From and after the recordation of such subordination statements, the Lease shall be superior to the Lien of this Deed of Trust and shall not be affected by any foreclosure thereof. Grantor shall maintain the validity and effectiveness of the assignment to Beneficiary of the Lease made by this Deed of Trust and the Assignment, all as specified in such documents, and (except as expressly permitted by the Lease, this Deed of Trust or the Assignment) shall take no action, and shall not omit to take any action, which action or omission would release Lessee from its obligations or liabilities under the Lease or the Assignment, or would result in the termination, amendment or modification or impair the validity of the Lease or the Assignment. Grantor shall punctually perform all obligations, covenants and agreements to be performed by it under the Note Purchase Agreement, the provisions of which are, by this reference, incorporated herein. If for any reason the Lock-Box Agreement is not in full force and effect at any time, Grantor will enter into a replacement Lock-Box Agreement executed by Beneficiary substantially in the form of the existing Lock-Box Agreement.

8.3. Further Assurances. Grantor shall, at Grantor's expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, instruments and assurances reasonably required by Trustee or Beneficiary for the better granting to Trustee of Grantor's interest in the Collateral hereby granted or for carrying out the intention of, or facilitating the performance of, this Deed of Trust as it relates to Grantor and Grantor's interest in the Collateral.

8.4. Recording. Grantor shall, upon the execution and delivery hereof and thereafter from time to time, cause this Deed of Trust, the Lease (or a memorandum thereof), the Non-Disturbance Agreement, the Assignment, each supplement and amendment to each of said instruments and financing statements with respect thereto (collectively, the "Recordable Documents"), to be filed, registered and recorded as may be required by law to publish notice of and maintain the Lien hereof upon the Collateral as a perfected first Lien on each Property (a) subject to no Liens other than the Permitted Exceptions, and (b) enforceable as such against all creditors of, and purchasers, assigns and transferees from, Grantor and protect the validity of the Lease, the Non-Disturbance Agreement and the Assignment. Grantor shall, from time to time, perform or cause to be performed any other act as required by law, and shall execute or cause to be executed any and all further instruments (including, without limitation, financing statements, continuation statements and similar statements with respect to any of said documents) reasonably requested by Trustee or Beneficiary to publish, preserve and protect the Lien hereof as a perfected first Lien on each Property (a) subject to no Liens other than the Permitted Exceptions, and (b) enforceable as such against all creditors of, and purchasers, assigns and transferees from, Grantor and the validity of the Lease, the Assignment and the Non-Disturbance Agreement. If Grantor shall fail within fifteen (15) days after written notice from Beneficiary to comply with the provisions of this Article 8.4, Beneficiary shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Grantor to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), but this sentence shall not prevent any Default in the observance of this Article 8.4 from becoming (after the notice and grace period provided in Article 14.1(e)) an Event of Default. To the extent permitted by law, Grantor shall pay all recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgement of the Recordable Documents; any instruments of further assurance and the Notes.

8.5. INTENTIONALLY DELETED

8.6. Compliance; Performance.

8.6.1. Existence; Compliance with Laws, etc.

(a) Grantor shall keep in full force and effect its existence, rights and privileges as a general partnership in the State of Nebraska, and shall do or cause to be done all things necessary to preserve and keep in full force and effect its right to own, lease, mortgage and grant a security interest in property and to enforce contracts in the states in which any portion of the Premises is located. Grantor shall comply with or cause to be complied with (i) all Legal Requirements, Insurance Requirements and Environmental Requirements, and (ii) all obligations under every contract, agreement or other instrument applicable to Grantor insofar as such obligations relate to the Premises or executed by Grantor insofar as such obligations relate to the ownership, occupancy or use thereof.

(b) Grantor shall perform and observe all of the terms, covenants and conditions of all Restrictive Agreements which are to be performed by Grantor and shall cause Lessee to perform and observe all of the terms, covenants and conditions all Restrictive

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(i) The Partnership Agreement of Grantor shall provide for not less than two general partners and shall provide that the bankruptcy of one such general partner shall not result in the dissolution of Grantor. Grantor shall not admit any new general partners other

(a) So long as BB Property Company or a Parent Affiliate shall be Grantor hereunder, Grantor shall at all times comply with the following requirements:

8.7. Organization and Operation of Grantor.

8.6.2. Lien Taxes. If any Legal Requirement at any time provides for any deduction from the value of the Premises in connection with the imposition of any Tax on the Lien of this Deed of Trust or changes in any way the laws for the taxation of any indebtedness secured hereby or the manner of collection of any such Taxes so as to impose any Taxes upon or otherwise affecting this Deed of Trust, and if such Taxes are payable by Beneficiary, Grantor shall pay or cause to be paid to Beneficiary the amount of all such Taxes before such Taxes are due.

(c) Grantor may, at its expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, such compliance with any Legal Requirement, Environmental Requirement, Restrictive Agreement, Insurance Requirement or any contract, agreement or other instrument, so long as adequate reserves (determined in accordance with GAAP) have been set up with respect to any such contested amount; provided that (i) such proceedings shall preclude during the pendency thereof the collection of, or other realization upon, any contested amount from the Premises or the Collateral or any interest in the Collateral, the Basic Rent or other sums payable under the Lease or part thereof or interest therein, or the Basic Rent or any other sums payable under the Lease or any portion of any thereof which constitutes a part of the Collateral, would be in any danger of being sold, forfeited or lost by reason of such proceedings (assuming payment of any amounts due and performance of any requirements are made upon final conclusion of such proceedings), (iii) such proceedings shall not affect the ownership, use or occupancy of the Premises or any part thereof, (iv) such proceedings shall not subject Trustee or Beneficiary to the risk of any criminal liability, (v) Grantor has given Trustee and Beneficiary reasonable notice of any such proceeding and (vi) in the event that (x) any such contested amount shall exceed \$100,000, or (y) any Event of Default shall have occurred and be continuing, Grantor shall deliver to Beneficiary cash, a bond or other security acceptable to Beneficiary equal to 125% of the contested amount.

Agreements which are to be performed by Lessee. Grantor shall not take any action or knowingly omit to take any action, nor give any notice or knowingly omit to give any notice, the taking, giving or omission of which would have the effect of terminating or surrendering any rights of Lessee or such owner under any Restrictive Agreement. Grantor shall not enter into any agreement modifying or amending any Restrictive Agreement unless contemporaneously with the entering of such agreement Grantor shall deliver to Beneficiary certificates of Grantor and Lessee, each signed by the President, Executive Director or a Vice President of a general partner thereof, to the effect that such agreement does not adversely affect the value or utility of any Property or Beneficiary's interest therein.

than a corporation which is a wholly-owned subsidiary of a Parent Affiliate, provided that such Parent Affiliate enters into an amendment of the Owner's Lien Agreement, in form and substance satisfactory to Beneficiary, pursuant to which such Parent Affiliate makes the same undertakings with respect to such new general partner and otherwise as CPA 11 and CPA 12 have made with respect to the Partners and otherwise.

(ii) The Partnership Agreement of Grantor shall provide that a unanimous vote of the general partners of Grantor shall be necessary to authorize (i) the filing of a petition commencing a voluntary case under any federal or state bankruptcy or similar law, (ii) the making of a general assignment for the benefit of creditors or (iii) the consent to the appointment of a receiver of the property of Grantor or any part thereof.

(iii) Grantor shall act only through the actions of its general partners. The general partners shall meet regularly to carry on the business of Grantor.

(iv) The registered offices of each general partner of Grantor shall at all times be separate from the registered offices of the parent corporation of such general partner.

(v) Grantor shall maintain bank accounts and books of account which are separate from the bank accounts and books of account of Grantor's general partners. All funds and other assets of Grantor shall be separately identified as assets of Grantor and shall be segregated from the funds or assets of Grantor's general partners. Grantor shall not commingle funds or assets with Grantor's general partners.

(vi) Grantor shall at all times hold itself out to the public as a legal entity that is separate and distinct from Grantor's general partners.

(vii) Grantor shall either file its own tax returns or, if part of a consolidated group, shall join in such consolidated tax return as a separate member of such group.

(viii) Grantor shall provide such evidence of its compliance with the provisions of this Article 8.7 as Beneficiary may reasonably request from time to time.

(b) If Grantor shall transfer its interest in the Collateral to any Permitted Transferee, such Permitted Transferee shall at all times comply with the following requirements:

(i) If the Permitted Transferee is a corporation, the Certificate of Incorporation and/or the By-Laws of the Permitted Transferee will provide for a board of directors consisting of three directors, of whom there will be not less than one director who is not a director, officer or employee of, and who is otherwise independent of, the Permitted Transferee's parent; if the Permitted Transferee is a partnership, the Partnership Agreement of the Permitted Transferee will provide for not less than two general partners and will provide that the bankruptcy of one such general partner will not result in the dissolution of the Permitted Transferee.

(ii) If the Permitted Transferee is a corporation, the Certificate of Incorporation and/or By-Laws of the Permitted Transferee will provide that a unanimous vote of the directors of the Permitted Transferee will be necessary, and if the Permitted Transferee is a partnership, the Partnership Agreement of the Permitted Transferee will provide that a unanimous vote of the general partners of the Permitted Transferee will be necessary, to authorize (i) the filing of a petition commencing a voluntary case under any federal or state bankruptcy or similar law, (ii) the making of a general assignment for the benefit of creditors or (iii) the consent to the appointment of a receiver of the property of the Permitted Transferee or any part thereof.

(iii) If the Permitted Transferee is a corporation, at least one officer of the Permitted Transferee, who will be either the president or a vice president, will not be a director, officer or employee of, and will otherwise be independent of, the Permitted Transferee's parent corporation or general partners, as the case may be.

(iv) The Permitted Transferee will act only through the actions of its authorized officers and directors, or general partners, as the case may be, and not through the actions of the officers or directors of the Permitted Transferee's parent. The officers and directors, or general partners, as the case may be, of the Permitted Transferee will meet regularly to carry on the business of the Permitted Transferee.

(v) The principal and registered offices of the Permitted Transferee will at all times be separate from the principal and registered offices of the Permitted Transferee's parent corporation or general partners, as the case may be.

(vi) The Permitted Transferee will maintain bank accounts, payroll records and books of account which are separate from the bank accounts, payroll records and books of account of the Permitted Transferee's parent or general partners, as the case may be. All funds and other assets of the Permitted Transferee will be separately identified as assets of the Permitted Transferee and will be segregated from the funds or assets of the Permitted Transferee's parent corporation or general partners, as the case may be. The Permitted Transferee will not commingle funds or assets with the Permitted Transferee's parent corporation or general partners, as the case may be. In furtherance thereof, all obligations of the Permitted Transferee, including, without limitation, the fees and salaries of the Permitted Transferee's directors, officers and staff, will be paid out of the funds of the Permitted Transferee.

(vii) The Permitted Transferee will at all times hold itself out to the public as a legal entity that is separate and distinct from the Permitted Transferee's parent corporation or general partners, as the case may be.

(viii) The Permitted Transferee will either file its own tax returns or, if part of a consolidated group, will join in such consolidated tax return as a separate member of such group.

(ix) The Permitted Transferee will provide such evidence of its compliance with the provisions of this Article 8.7(b) as Beneficiary may reasonably request from time to time.

8.8. Existence; Positive Net Worth. Grantor shall maintain its existence as a corporation or general partnership, as the case may be, and shall maintain a positive net worth as determined in accordance with GAAP. Grantor shall maintain in full force and effect all permits, licenses, patents, patent rights, trademarks, trademark rights, trade names, trade name rights and copyrights and other authority as are necessary to enable Grantor to conduct its businesses as presently being conducted.

8.9. Business. Grantor shall engage solely in the business of owning, managing and operating the Premises, and Grantor shall not own, manage, operate or lease any other real property, other than the office space in which Grantor's chief executive office is located.

8.10. After-acquired Property. Grantor shall execute and deliver to Trustee any document which Trustee or Beneficiary may reasonably require to perfect the Lien of this Deed of Trust with respect to all right, title and interest of Grantor in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to the Premises, hereafter acquired by or released to Grantor immediately upon such acquisition or release.

8.11. Taxes.

(a) Grantor shall pay and discharge or cause to be paid and discharged, whether or not payable directly by Grantor or subject to withholding at the source, (i) all taxes of every kind and description, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general, special, ordinary or extraordinary, and all charges for utility or communications services, which may at any time be assessed, levied or imposed upon Grantor, the Collateral, this Deed of Trust, the Indebtedness secured hereby or the revenues, rents, issues, income, awards, proceeds and profits of the Collateral or which may arise in respect of the occupancy, use, possession or operation thereof, (ii) all income, excess profits, sales, gross receipts and other taxes, duties or imposts, whether similar or not in nature, assessed, levied or imposed by any Governmental Authority on Grantor, the Collateral or the revenues, rents, issues, income, awards, proceeds and profits of the Collateral and (iii) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a Lien on the Collateral, or on the revenues, rents, issues, income, awards, proceeds and profits of the Collateral, unless, in each case, Lessee, in good faith and at its own expense, shall contest the amount or validity thereof in accordance with the Lease or Grantor shall contest the amount or validity thereof in accordance with Article 8.11(b) (all of the foregoing being referred to collectively herein as "Taxes"). Notwithstanding the foregoing or any other provision of this Deed of Trust, Grantor shall not be required to pay any income, profits or revenue tax upon the income of any of Trustee or Beneficiary, or any franchise, excise, corporate, estate, inheritance, succession, capital levy or transfer tax of either Trustee or Beneficiary, nor any interest, additions to tax or penalties in respect thereof, unless, and only to the extent, such is imposed,

levied or assessed in substitution for any Taxes that Grantor is required to pay pursuant to this Article 8.11(a).

(b) Grantor may, at its expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified herein, so long as adequate reserves (determined in accordance with GAAP) have been set up with respect to any such amount; provided that (i) such proceedings shall preclude during the pendency thereof the collection of, or other realization upon, any contested amount from the Collateral or any interest in the Collateral, the Basic Rent or other sums payable under the Lease or any portion of any thereof which constitutes a part of the Collateral, (ii) neither the Collateral nor any part thereof or interest therein, or the Basic Rent or any other sums payable under the Lease or any portion of any thereof which constitutes a part of the Collateral, would be in any danger of being sold, forfeited or lost by reason of such proceedings (assuming payment of any amounts due and performance of any requirements are made upon final conclusion of such proceedings), (iii) such proceedings shall not affect the ownership, use or occupancy of the Premises, (iv) such proceedings shall not subject Trustee or Beneficiary to the risk of any criminal liability, (v) Grantor has given Trustee and Beneficiary reasonable notice of any such proceeding and (vi) in the event that (x) any such contested amount shall exceed \$100,000, subject to adjustment, or (y) any Event of Default shall have occurred and be continuing, Grantor shall deliver to Beneficiary cash, a bond or other security acceptable to Beneficiary equal to 125% of the contested amount.

8.12. Insurance.

(a) Grantor shall maintain or cause to be maintained with respect to each Property the Required Insurance, whether or not the Lease shall be in effect.

(b) The Required Insurance shall be issued by insurers of recognized financial standing meeting the standards set forth in the Lease, whether or not the Lease shall be in effect.

(c) Every policy of Required Insurance insuring against loss or damage to any Property or any portion thereof shall name Beneficiary as an insured under a first mortgagee endorsement; and any loss under any such policy shall be payable to Beneficiary to be held and applied pursuant to Article 11(f) or 13(d) of the Lease. Every policy of Required Insurance insuring against claims for bodily injury, death or property damage shall name Beneficiary as an insured under a first mortgagee endorsement. Every policy of Required Insurance shall contain an agreement that the insurer shall not cancel, fail to renew or materially modify such policy except after thirty (30) days' written notice to Grantor and Beneficiary and that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Grantor, Lessee or Beneficiary which might, absent such agreement, result in a forfeiture of all or part of such insurance payment and notwithstanding (i) the occupation or use of such Property for purposes more hazardous than permitted by the terms of such policy, (ii) any foreclosure or other action taken by Beneficiary pursuant to any provision of this Deed of Trust upon the happening of a Default or Event of Default, or (iii) any change in ownership of such Property.

(d) Grantor shall not take out any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Article 8.12 nor permit Lessee to take out any such insurance unless Beneficiary is included therein as named insured, with loss payable to Beneficiary as provided herein. Grantor shall immediately notify Beneficiary whenever any such separate insurance is taken out, specifying the insurer and full particulars as to the policies evidencing the same, and shall deliver to Beneficiary certificates of insurers evidencing such insurance.

(e) Grantor, simultaneously with the date of the delivery hereof, shall deliver or cause to be delivered to Beneficiary duplicate originals of all policies of insurance or original certificates of insurance with copies of policies as may be required pursuant hereto to be maintained or to be caused to be maintained by Grantor, and thereafter, at least thirty (30) days prior to the expiration of such insurance and within (10) days after the issuance of any additional policies or amendments or supplements to any of such policies, Grantor shall deliver or cause to be delivered duplicate originals of the same (or certificates of the insurers under such policies evidencing the same) to Beneficiary.

8.13. Advances by Beneficiary. If Grantor shall fail to perform or cause to be performed any of the covenants contained in this Deed of Trust after thirty (30) days prior notice, Beneficiary may make advances to perform the same in Grantor's behalf, provided, with respect to Articles 8.6, 8.11 and 9.6, that Grantor is not then contesting such payment in compliance with Articles 8.6.1(c), 8.11(b) and 9.6, respectively, and all sums so advanced shall be secured by this Deed of Trust; and Grantor shall repay on demand all sums so advanced on its behalf with interest at the Default Rate, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment.

8.14. Basic Rent; Purchase Price. The amount of the Basic Rent payable under the Lease as of any payment date (plus in the case of the payment date occurring on May 1, 2008 the amount of the Basic Rent Prepayment) therefore shall be sufficient to make payment of the Installment Payments or Final Payment, as the case may be, due on the Notes on or about such date. The purchase price payable by Lessee upon Lessee's purchase of Grantor's interest in any Property pursuant to Article 11 of the Lease or the Premises pursuant to Article 20 (i) or 37 of the Lease, after giving effect to the payment of Basic Rent due on such date, shall equal the then Allocable Portion of the Notes allocable to such Property or the then unpaid principal amount of the Notes, as applicable.

8.15. Maintenance and Repair; Removal of Lessee's Equipment. Except as expressly provided in Article 10, Grantor shall maintain or cause to be maintained the Premises in not less than the repair and condition existing as of the date hereof, subject to normal wear and tear, and shall make or cause to be made, promptly, all structural and non-structural, foreseen and unforeseen, and ordinary and extraordinary replacements, changes and repairs of every kind which may be necessary or appropriate (i) to keep the Premises in such condition, repair and appearance, (ii) to keep the Premises fit for the purposes for which the Premises are currently being used and (iii) to prevent waste of any thereof. Notwithstanding the foregoing, Grantor may, at any time, permit Lessee to remove from any Property all or any portion of Lessee's

Equipment located thereon, provided that Grantor will repair or cause to be repaired any damage to such Property resulting from such removal.

8.16. Performance by Lessee. Compliance by Lessee with any of the terms of the Lease which if performed by Grantor would constitute compliance by Grantor with the provisions of this Deed of Trust shall be deemed compliance by Grantor herewith. Performance by Lessee of any of Grantor's obligations hereunder, whether or not pursuant to the Lease, shall be equivalent of Grantor's performance thereof.

8.17. Indemnification Against Liabilities. Grantor shall protect, indemnify, hold harmless and defend Trustee, Beneficiary and all of their respective partners, directors, trustees, agents, servants, and employees (each, an "Indemnified Party") from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against any Indemnified Party by reason of (a) any injury to or death of persons or loss of or damage to property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (b) any condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (c) any failure on the part of Grantor to perform or comply with any of the terms of this Deed of Trust, (d) any failure on the part of Grantor to comply with any of the provisions of the Lease, (e) performance of any labor or services or the furnishings of any materials or other property in respect of the Premises or any part thereof made or suffered to be made by or on behalf of Grantor, (f) any act or omission on the part of Grantor or any of its agents, contractors, lessees, licensees or invitees with regard to the Premises, or (g) any work in connection with the Premises; provided, however, that this indemnity does not apply to the extent of the gross negligence or willful misconduct of any Indemnified Party. All amounts payable by Grantor under this Article 8.17 shall be payable within ten (10) days after demand therefore is given to Grantor (or immediately upon the completion of the suit or action if Grantor resists and defends same) and shall be secured by this Deed of Trust and any such amounts that are not paid within said period shall bear interest at the Default Rate from the date of such demand. If any action, suit or proceeding is brought against an Indemnified Party by reason of any such occurrence, Grantor shall at Grantor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Grantor and approved by such Indemnified Party, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Grantor's liability to any Indemnified Party hereunder shall be reduced by the amount of any insurance proceeds received by such Indemnified Party by virtue of Grantor's liability hereunder.

8.18. Books and Records. Grantor shall keep accurate records and books of accounts reflecting all of its financial transactions.

8.19. Financial Statements. Grantor shall deliver to Beneficiary, within one hundred twenty (120) days after the end of each fiscal year of Grantor, its balance sheet as of the end of such fiscal year and related statements of income and retained earnings and statements of cash flows for such fiscal year, setting forth, in each case, in comparative form, figures for the preceding fiscal year prepared in accordance with GAAP, consistently applied. All such

financial statements shall be accompanied by the certificate of the President, Chief Financial Officer or a Vice President of one of Grantor's general partners stating that (A) to his knowledge, information and belief, after due inquiry, no Default or Event of Default has occurred and is continuing, (B) no Default or Event of Default has occurred since the delivery of the immediately preceding certificate of Grantor delivered pursuant to this Article 8.19 and (C) if any Default or Event of Default of which he has knowledge, information and belief, after due inquiry, has occurred, specifying the nature and the period of existence thereof and what action Grantor has taken or is taking with respect thereto. Grantor shall with reasonable promptness deliver to Beneficiary such information as Beneficiary may reasonably request from time to time.

8.20. Notice of Certain Events. Promptly, but no later than ten (10) days after Grantor becomes aware of the occurrence of any of the following events, Grantor shall execute and deliver to Beneficiary a certificate, signed by the President, Chief Financial Officer or a Vice President of one of Grantor's general partners, specifying the nature and status of such event; provided, however, that, with respect to any event described in clause (a) or (b) below, Grantor shall, within two (2) business days after Grantor becomes aware of the occurrence of such event, execute and deliver such a certificate to Beneficiary:

- (a) Events of Default. Any Default in the payment of money or Event of Default;
- (b) Other Defaults. Receipt by Grantor of notice of any default, any proposed action with respect to any default or any failure by Grantor to perform any material obligation, maintain any material representation or warranty or satisfy any material condition in connection with any agreement relating to: (1) the payment of any indebtedness; (2) the Lease or any sublease thereunder; (3) the Guaranty; (4) any Restrictive Agreement; or (5) any Legal Requirement;
- (c) Change of Office. Any change in the location of Grantor's principal place of business or chief executive office;
- (d) Change in Fiscal Year. Any change in Grantor's fiscal year;
- (e) Material Litigation. The filing of any action, suit or proceeding against or affecting Grantor or the Premises or any part thereof that, if adversely determined, could, singly or collectively: (1) impair the validity or enforceability of any of the Note Purchase Documents or the ability of Grantor to perform its obligations thereunder or in connection with any of the transactions contemplated thereby; (2) impair the ability of Grantor to conduct its business substantially as now conducted, or materially and adversely affect the business, assets, operations or condition, financial or otherwise, of Grantor; or (3) result in a Lien on any portion of the Collateral;
- (f) ERISA Termination Event. The occurrence of any ERISA Termination Event or a "prohibited transaction" (as such term is defined in Section 4975 of the Code) with respect to any Plan maintained by Grantor or any ERISA Affiliate, or if Grantor becomes aware of PBGC's intention to terminate or to have a trustee appointed to administer any Plan; or

(g) Material Adverse Change. The occurrence of any event that is reasonably likely to result in a material adverse change in the business, assets, operations or condition, financial or otherwise, of Grantor, whether or not covered by insurance or arising from transactions in the ordinary course of business.

8.21. Inspections. During business hours and as often as Beneficiary may reasonably request upon at least three (3) business days' notice (except that in the case of an emergency, no prior notice need be given), Grantor shall permit Beneficiary (or such persons as Beneficiary may designate) to visit and inspect the Premises as permitted in Article 9(d) of the Lease, and to examine the records and books of account of Grantor and to discuss the affairs, finances and accounts of Grantor with its officers and independent accountants; provided, however, that so long as no Event of Default has occurred and is continuing, Grantor shall not be required to permit Beneficiary to examine its records and books of account more than once per calendar year.

8.22. Costs and Expenses of this Financing. Grantor and Beneficiary agree that Grantor shall: (1) at no expense to Beneficiary, perform all of the obligations to be performed by Grantor and satisfy all of the conditions to be satisfied by Grantor and satisfy all of the conditions to be satisfied by Grantor under the Note Purchase Documents or in connection with any of the transactions contemplated thereby; and (2) within ten (10) days after any demand made at any time and from time to time by Beneficiary pay or cause to be paid, in immediately available funds, to Beneficiary as reimbursement for, or at Beneficiary's option, directly to third parties, all out-of-pocket costs and expenses in connection with each exercise by Beneficiary of any or all of Beneficiary's rights and remedies under the Note Purchase Documents or in connection with any of the transactions contemplated thereby. Without limiting the generality of the foregoing, Grantor's obligations, as aforesaid, include the following (including the reasonable fees, expenses and disbursements of attorneys and the fees, expenses and disbursements of accountants, consultants, appraisers, brokers, escrow agents, receivers, title insurance companies, and the Trustee, the costs of laboratory and testing services, and the costs of stenographic, reproduction and printing services):

(a) Note Purchase Documents. All of Beneficiary's out-of-pocket costs and expenses (which with respect to attorneys' fees shall be limited to reasonable fees and expenses) in connection with: (1) the Note Purchase Documents and the consummation of all of the transactions contemplated thereby; (2) all future amendments, supplements, notices, approvals, consents and waivers with respect thereto (or any proposal by Grantor therefore), whether or not consummated; and (3) the enforcement of Grantor's obligations under the Note Purchase Documents.

(b) Inspections, Investigations, Audits and Reports. All of Beneficiary's out-of-pocket costs and expenses in connection with any and all inspections, investigations, studies, audits, reports and appraisals permitted under the terms of this Deed of Trust and relating to: (1) the physical condition of the Premises (including geotechnical, structural and building systems evaluations); (2) the environmental condition of the Premises; (3) the value of the Premises or the costs of any repair or restoration of the Premises; or (4) the business, assets, operations or condition, financial or otherwise, of Grantor, provided that so long as no Event of Default has

occurred and is continuing and no deficiency is identified as the result of such inspection or investigation, Beneficiary shall bear the cost of its own visits to the Premises.

(c) Insurance Proceeds and Taking Awards. All of Beneficiary's out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees, in connection with the adjustment and collection of any and all insurance proceeds with respect to any insurance coverage required hereunder and any and all awards in connection with any Taking.

(d) Beneficiary's Corrective Actions. All of Beneficiary's out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees, in connection with any and all corrective action Beneficiary may take, as permitted by the terms of this Deed of Trust, including the reimbursement of any and all advances by Beneficiary to protect or preserve any of the Collateral or any Lien, assignment or security interest provided for in the Note Purchase Documents or to pay the premiums for any insurance required hereunder or Taxes, or for any other purpose permitted hereunder.

8.23. Survival. Subject to the provisions of Article 14.3.6, each of Grantor's obligations under this Article 8 shall survive any transfer of all or any portion of the Collateral, any transfer of the Notes, the release of all or any portion of the Collateral from the Lien of this Deed of Trust, the release of any person from liability under any of the Note Purchase Documents, any modification, extension or renewal of any of the Note Purchase Documents, any foreclosure or private sale or the exercise of any of Beneficiary's other rights or remedies under the Note Purchase Documents (unless such foreclosure, private sale or other remedy results in the payment in full of the Indebtedness under the Notes), and any other event whatsoever (unless such event results in the payment in full of the Indebtedness under the Notes); provided, however, that Grantor's representations and warranties under Article 7 with respect to any individual Property shall terminate with respect to such Property upon the payment in full of the Allocable Portion of the Notes with respect to such Property and all other Indebtedness under the Notes then due and payable.

ARTICLE 9

NEGATIVE COVENANTS

Grantor hereby covenants with Beneficiary to comply with each of the following:

9.1. Title; Transfer of Collateral. Grantor shall preserve its title to its interests in the Collateral subject only to the Permitted Exceptions and except as permitted by this Deed of Trust; and shall forever warrant and defend the same to Trustee and Beneficiary against the claims of all persons. Grantor shall not sell, lease, transfer, convey, assign or otherwise dispose of its interest in the Collateral or any part thereof, except as provided in Article 10 and under the Lease. Grantor shall not remove from the Premises the Fixtures or any portion thereof, except to replace the same or as otherwise permitted by the Lease.

9.2. No Deduction. Grantor shall not claim any credit on, or make any deduction from interest, principal or premium, if any, payable on the Notes by reason of payment of any Taxes

levied or assessed or to be levied or assessed on the Collateral or any part thereof or on Grantor's interest therein or on Grantor.

9.3. Indebtedness. Grantor shall not incur any Indebtedness other than the Indebtedness under the Notes; provided, however, that for purposes of this Article 9.3 the term "Indebtedness" shall not include Taxes.

9.4. Alterations. Grantor shall not make any Alterations except as permitted by and in accordance with Article 10 and Article 35 of the Lease. If Grantor shall receive from Lessee any Payment Offer as provided in Article 35 of the Lease, Grantor shall promptly deliver such Payment Offer to Beneficiary. Beneficiary shall have absolute discretion, for any reason or for no reason, to accept or reject any Payment Offer. Beneficiary acknowledges that if Beneficiary shall reject any Payment Offer, Lessee shall have the right to construct the Major Alterations at Lessee's sole cost and expense, provided, however, that Beneficiary shall have no obligation to modify this Deed of Trust for the purpose of financing any such Major Alteration.

9.5. Assignment and Subletting. (a) Grantor shall not cause or permit Lessee to assign all or any of its rights and interests under the Lease, whether by operation of law or otherwise without the prior written consent of Beneficiary, which consent may be withheld for any reason or no reason.

(b) Grantor shall not cause or permit Lessee to sublet any portion of any Property (except for the existing sublease to Peale Vision Inc. of a portion of the Schaumburg, Illinois Property) without having obtained the prior written consent of Beneficiary, which consent shall not be unreasonably withheld for any sublease which does not reduce the portion of the Improvements used by Lessee for its operations or adversely affect the value or utility of the Property in question. Consent to any partial sublease which does not meet the criteria described in the foregoing sentence may be withheld for any reason or no reason. Grantor shall not cause or permit Lessee to sublet all of any Property without having obtained the prior written consent of Beneficiary, which consent shall not be unreasonably withheld with respect to a sublease of a Property in its entirety. In determining whether or not to grant or withhold consent to any sublease of a Property in its entirety Beneficiary shall have the right to consider only the following criteria: (1) environmental risk factors associated with the proposed sublessee's business, (2) the costs of demolition of intended sublessee's tenant improvements, (3) the conformity of use with any Easement Agreements affecting the Property in question, and (4) whether the proposed use would constitute a nuisance under applicable law. In no event shall any Property be used for other than retail sales purposes (except for the existing "white goods" warehouse existing on a portion of the Schaumburg, Illinois Property).

(c) Each sublease of any of the Properties shall be subject and subordinate to the provisions of the Lease and the Lien of this Deed of Trust, and shall be for a term expiring no later than one (1) day prior to the expiration of the Primary Term. No sublease shall affect or reduce any of the obligations of Lessee under the Lease, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no sublease had been made. No sublease shall impose any additional obligations on Grantor as

lessor under the Lease. Grantor shall, immediately upon the receipt of a sublease consented to by Beneficiary, deliver a duplicate original copy thereof to Beneficiary.

9.6. Liens. Grantor shall not create, incur, assume or permit to exist any Lien, except as may be provided under local law for Taxes not yet due and payable, (regardless of the reason therefore and whether superior or subordinate to the Lien of this Deed of Trust) upon any of the Collateral or any other property or assets Grantor now owns or hereafter acquires or on any income or rights with respect thereto, except where the amount of such Lien does not exceed \$100,000, subject to adjustment and Grantor is, at its own expense, in good faith and with due diligence, contesting such Lien by appropriate legal proceedings, and adequate reserves (determined in accordance with GAAP) have been set up with respect to any such amount; and provided, moreover, that: (i) within five (5) days after becoming aware of any such Lien, Grantor gives Beneficiary notice thereof; (ii) the contest precludes during the pendency thereof enforcement or collection in satisfaction of such Lien from the Collateral or any interest in the Collateral, the Basic Rent or other sums payable under the Lease or any portion of any thereof which constitutes a part of the Collateral; (iii) neither the Collateral nor any part thereof or interest therein, nor the Basic Rent nor any other sums payable under the Lease or any portion of any thereof which constitutes a part of the Collateral, would be in any danger of being sold, forfeited or lost by reason of such proceedings (assuming payment of any amounts due and performance of any requirements are made upon final conclusion of such proceedings); (iv) such proceedings shall not affect the ownership, use or occupancy of the Premises; (v) such proceedings shall not subject Trustee or Beneficiary to the risk of any criminal liability; and (vi) if, in the event of an unsuccessful contest, any portion of the Collateral would, without further action by the holder of such Lien, become subject to collection, sale or forfeiture to satisfy such Lien, Grantor shall deliver to Beneficiary cash, a bond or other security acceptable to Beneficiary equal to 125% of the amount sufficient to fully satisfy such Lien (including all penalties and other charges that would be payable in connection therewith in the event the contest proves unsuccessful).

9.7. Prohibited Investments. Grantor shall not own or acquire any stock or securities of any person, or guarantee any obligation of any person.

9.8. ERISA. Grantor shall not use moneys from any Plan established by Grantor or for the benefit of Grantor's employees to perform any of Grantor's obligations under this Deed of Trust or transfer its interests in the Collateral to any such Plan. Grantor will not and will not permit any ERISA Affiliate to withdraw from any multiemployer Plan or permit any Plan maintained by it or for the benefit of its employees to be terminated if such withdrawal or termination would result in withdrawal liability (as described in Part I of Subtitle E of Title IV of ERISA) or the imposition of a Lien on any Property pursuant to Section 4068 of ERISA.

9.9. [INTENTIONALLY DELETED]

9.10. Limitation on Fundamental Changes.

9.10.1. No Dissolution or Termination. Grantor shall not dissolve or terminate, or permit the dissolution or termination of, its existence (whether voluntarily or by operation of law).

9.10.2. No Liquidation or Sale. Except as expressly provided in Article 10, Grantor shall not liquidate or wind up, or permit the liquidation or winding up, of its business (whether voluntarily or by operation of law), or convey, sell, lease, assign, transfer, pledge or otherwise dispose of (whether voluntarily or by operation of law) any interest in, or any portion of, the Collateral or, other than in the ordinary course of business, any of Grantor's other assets.

9.10.3. No Merger. Grantor shall not consolidate or merge with any other person.

9.11. Distributions; Excepted Payments. Grantor shall not make or pay, or permit to be made or paid, any distribution with respect to any interest in Grantor or in connection with the redemption, purchase, retirement or other acquisition of any such interest. Notwithstanding the foregoing, Grantor shall be permitted to receive and unequivocally distribute to its Partners the following ("Excepted Payments"):

(a) all amounts paid to indemnify Grantor, as opposed to Trustee or Beneficiary, under the provisions of Article 15 of the Lease; and

(b) so long as no Default which can be cured solely by the payment of money and no Event of Default has occurred and is continuing:

(i) the excess of any monthly payment of Basic Rent (plus, in the case of the payment payable on May 1, 2008, the Basic Rent Prepayment) over the Installment Payment or Final Payment, as applicable, due and payable in such month,

(ii) the excess of any default interest and/or late charges paid with respect to any monthly payment of Basic Rent over the Default Interest due and payable for such month,

(iii) subject to Beneficiary's right to apply any Net Award as provided in Article 11.3, the excess of any Net Award over (x) the actual cost of restoration, and (y) the Installment Payment then due and payable,

(iv) payments received pursuant to Article 40(c)(i) of the Lease, and

(v) any amounts received from Lessee in connection with a Termination Offer in excess of the Mandatory Prepayment Amount, all other Indebtedness under the Notes then due and payable and the Make Whole Premium, if any, required pursuant to Section 3 of the Note.

9.12. Transactions with Affiliates. Grantor shall not sell, transfer or pledge any assets to, or purchase or acquire any assets of, or otherwise engage in any transaction with, any Affiliate of Grantor, except in the ordinary course of business and upon fair and reasonable terms

no less favorable than Grantor would obtain or be entitled to in an arm's-length transaction with a person that is not any such Affiliate. Notwithstanding the foregoing, Grantor shall be permitted to distribute to its Partners the Excepted Payments as provided in Article 9.11. Beneficiary acknowledges and agrees that Beneficiary shall have no recourse against Grantor's Partners with respect to any distribution of any Excepted Payment unless Beneficiary shall within thirty (30) days of such distribution have notified Grantor in writing that such distribution was made in violation of Article 9.11.

9.13. No Percentage Rent. During the Primary Term Grantor shall not enter into any lease, sublease, license or other agreement for the use, occupancy or utilization of space in any Property that provides for rental or other payment for such use, occupancy or utilization based in whole or in part upon the net income or profits derived by any person from the portion of such Property leased, used, occupied or utilized (other than an amount based upon fixed percentages of receipts or sales). Grantor shall include in each lease, sublease, license or other agreement entered into after the date hereof for the use, occupancy or utilization of space in any Property a provision that neither the lessee nor any other person having an interest in the possession, use, occupancy or utilization of such Property shall enter into any lease, sublease, license or other agreement for the use, occupancy or utilization of space in such Property that provides for rental or other payment for such use, occupancy or utilization based in whole or in part upon the net income or profits derived by any person from the portion of such Property leased, used, occupied or utilized (other than an amount based upon fixed percentages of receipts or sales).

9.14. Right to Purchase; Right of First Refusal. Except as provided in Article 38 of the Lease, Grantor shall not grant to Lessee any right to purchase or any right of first refusal with respect to all or any portion of the Premises, provided that it is understood that pursuant to the terms of the Special Warranty Deed dated as of August 21, 1992, between Public Employees Retirement Association of Colorado and Best Buy Co., Inc. Public Employees Retirement Association of Colorado has certain rights to repurchase and rights of first refusal with respect to the Property located in Matteson, Illinois.

9.15. Survival. Subject to the provisions of Article 14.3.6, each of Grantor's obligations under this Article 9 shall survive any transfer of all or any portion of the Collateral, any transfer of the Notes, the release of all or any portion of the Collateral from the Lien of this Deed of Trust, the release of any person from liability under any of the Note Purchase Documents, any modification, extension or renewal of any of the Note Purchase Documents, any foreclosure or private sale or the exercise of any of Beneficiary's other rights or remedies under the Note Purchase Documents (unless such foreclosure, private sale or other remedy results in the payment in full of the Indebtedness under the Notes) and any other event whatsoever (unless such event results in the payment in full of the Indebtedness under the Notes); provided, however, that Grantor's representations and warranties under Article 7 with respect to any individual Property shall terminate with respect to such Property upon the payment in full of the Allocable Portion of the Notes with respect to such Property.

ARTICLE 10

POSSESSION, USE AND RELEASE OF THE PREMISES

10.1. Taking and Casualty.

10.1.1. Notice; Proceedings. Within five (5) business days after obtaining notice of the occurrence of any Casualty or the commencement or threatened commencement of any action, suit or proceeding in connection with any Taking, Grantor shall notify Beneficiary thereof, and, thereafter, shall promptly deliver to Beneficiary all notices, filings, reports, documents, certificates and instruments provided by or delivered to Grantor in connection therewith. If a Casualty or Taking occurs with respect to all or a part of any Property, Grantor shall with reasonable promptness and diligence, cause Lessee to comply with or shall assume Lessee's obligations to comply with the requirements of Articles 11 and 12 of the Lease provided, however, that so long as no Event of Default has occurred and is continuing, in the event of a Termination Offer Grantor shall in no event be required to pay an amount in excess of the Allocable Portion of the Notes with respect to such Property, together with the Installment Payments due and payable as of the Mandatory Prepayment Date and all other Indebtedness under the Notes then due and payable. Subject to Lessee's rights under the Lease, Beneficiary may participate in any proceedings relating to any Casualty or Taking, and Grantor shall deliver all instruments reasonably requested by Beneficiary to permit such participation. Any insurance proceeds, awards or compensation payable to Grantor or assigned (directly or indirectly) to Grantor by Lessee are hereby assigned to and shall be paid to Beneficiary, subject to the rights thereto of Lessee pursuant to the Lease with respect thereto and the rights thereto of Grantor hereunder. In any such proceeding Beneficiary may be represented by counsel satisfactory to Beneficiary, and Grantor shall pay or cause to be paid the reasonable fees and expenses thereof.

10.1.2. Right to Collect Proceeds and Awards. Upon Beneficiary's request, Grantor shall execute and deliver to Beneficiary such assignments, free of Liens, and other documents, certificates and instruments as may be necessary or appropriate to confirm Beneficiary's right to collect and receive all such proceeds and awards. If Grantor fails, subject to delays reasonably beyond its control, to take any action (including any litigation) for the purpose of collection or receipt of any Net Award, Beneficiary, at Beneficiary's sole option, may, but shall have no obligation hereunder to, take any such actions on behalf of Grantor. Grantor's expenses in connection with any action (including reasonable counsel fees and expenses) taken by Beneficiary with respect to any Casualty or Taking shall be paid by Grantor. Notwithstanding the foregoing, provided no Event of Default shall have occurred and be continuing, Beneficiary shall take no action hereunder unless Grantor shall fail to act with reasonable promptness and diligence to cause Lessee to comply with or assume Lessee's obligations to comply with the requirements of Articles 11 and 12 of the Lease.

10.2. Lease Termination

10.2.1. Notice to Beneficiary. Immediately upon the actual or deemed receipt by Grantor of a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease with respect to any Property or pursuant to Article 20(i) or 37 of the Lease with respect to the Premises, Grantor shall, in accordance with the terms of Section 3.3 of the Notes, deliver to Beneficiary a copy of such Termination Offer and any certificate, opinion or other communications delivered in connection therewith, together with a notice of prepayment, together with a certificate of

Grantor, fixing the Mandatory Prepayment Date as provided in Section 3.4 of the Notes. If Grantor fails to deliver to Beneficiary such notice of prepayment fixing the Mandatory Prepayment Date, the Mandatory Prepayment Date shall be the Installment Payment Date (or, in the case of a Termination Offer pursuant to Article 37 of the Lease, the Maturity Date) occurring immediately after the occurrence of the event which would require the giving of such notice of prepayment. If Grantor rejects a Termination Offer made or deemed to have been made pursuant to Article 11(d), or 11(e), 20(i), or 37 of the Lease, the Mandatory Prepayment Amount together with all Installment Payments due and payable, all Indebtedness under the Notes then due and payable and, in the case of a Termination Offer made pursuant to Article 20(i) of the Lease, the Make Whole Premium shall be due and payable immediately. If any Termination Offer shall be received by Beneficiary from Lessee, Beneficiary promptly shall furnish a copy thereof to Grantor, and the provisions of this Article 10.2.1 shall be applicable to the same extent as if such notice or Termination Offer had been received by Grantor from Lessee.

10.2.2. Responses to Lessee. Not later than the thirty-fifth (35th) day prior to the Termination Date set forth in a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease in the case of a Termination Offer made pursuant thereto, and not later than one (1) business day prior to the date a Termination Offer must be accepted or rejected in the case of a Termination Offer made pursuant to Article 20(i) or 37 of the Lease, Grantor shall either, (a) notify Lessee of the acceptance of such Termination Offer, or (b) pay to Beneficiary by electronic funds transfer of immediately available funds, the amount sufficient to prepay the Allocable Portion of the Notes with respect to such Property, in the case of a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease, or the entire principal amount outstanding under the Notes, in the case of a Termination Offer made pursuant to Article 20(i) or 37 of the Lease, as of the Mandatory Prepayment Date, together with all Installment Payments then due and payable and all other Indebtedness under the Notes that is then due and payable and, in the case of a Termination Offer made pursuant to Article 20(i) of the Lease, the Make Whole Premium. Grantor shall not reject any such Termination Offer or terminate the Lease with respect to any such Property, in the case of a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease, or with respect to the Premises, in the case of a Termination Offer made pursuant to Article 20(i) or 37 of the Lease, as the case may be, unless Grantor shall have delivered to Beneficiary the payment referred to in clause (b) above. If Grantor accepts any Termination Offer properly tendered in accordance with the provisions of Article 11(d), 11(e), 20(i) or 37 of the Lease and Section 3 of the Notes, Grantor shall deliver or cause to be delivered to Beneficiary on the Mandatory Prepayment Date, by electronic funds transfer of immediately available funds, the Mandatory Prepayment Amount, together with the Installment Payment due and payable on such date and all other Indebtedness under the Notes then due and payable and, in the case of a Termination Offer made pursuant to Article 20(i) of the Lease, the Make Whole Premium.

10.2.3. Release of the Collateral. Upon Beneficiary's receipt of the payment referred to in clause (b) of Article 10.2.2, Beneficiary shall promptly execute and deliver to Lessee its consent to the rejection by Grantor of such Termination Offer. Provided no Independent Event of Default shall have occurred and be continuing, upon Beneficiary's receipt of the Mandatory Prepayment Amount, together with all Installment Payments then due and payable and all other Indebtedness under the Notes that is then due and payable and, in the case

of a Termination Offer made pursuant to Article 20(i) of the Lease, the Make Whole Premium (in the case of Grantor's acceptance of a Termination Offer), or the payment referred to in clause (b) of Article 10.2.2 (in the case of Grantor's rejection of a Termination Offer), (a) Beneficiary shall apply the Mandatory Prepayment Amount as provided in Article 11.2, (b) Trustee and Beneficiary shall execute and deliver to Grantor such instruments as Grantor shall reasonably request, including, without limitation, UCC-3 releases, releasing such Property in the case of a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease, or the Premises in the case of a Termination Offer made pursuant to Article 20(i) or 37 of the Lease, from the Lien of this Deed of Trust, (c) Beneficiary shall execute and deliver such instruments releasing such Property in the case of a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease, or the Premises in the case of a Termination Offer made pursuant to Article 20(i) or 37 of the Lease, from the Assignment, and (d) Beneficiary shall transfer to Lessee all of Beneficiary's right, title and interest in and to any Net Award with respect to such Property in the case of a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease.

10.2.4. Adjustment of Obligations. Upon such a prepayment and release in the case of a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease, the Basic Rent shall be adjusted in accordance with the terms of Article 13(e) of the Lease, the Installment Payments shall be adjusted in accordance with the terms of Section 3.5 of the Notes, and the Lease and this Deed of Trust shall continue in full force and effect with respect to the remaining Properties.

10.2.5. Beneficiary's Right to Act. If Grantor fails to satisfy its obligations under this Article 10.2 or under the corresponding provisions of the Lease and the Notes, Beneficiary shall have the right and power (which right and power are coupled with an interest) to, and is hereby irrevocably appointed the agent and attorney-in-fact of Grantor and of any and every future assignee or owner of any interest in the relevant Property or Premises, as the case may be, to (a) accept any Termination Offer, whether made or deemed to have been made, (b) notify Lessee of the acceptance of any such Termination Offer and (c) take all actions necessary to comply with the applicable provisions of the Lease, including, without limitation, (i) the execution and delivery, in the name and on behalf of Grantor or other assignee or owner of any interest in the relevant Property or Premises, as the case may be, of special warranty deeds or other instruments of conveyance or assignment conveying and assigning Grantor's interests in the relevant Property or Premises, as the case may be, to Lessee or a designee thereof, and (ii) the receipt of the Mandatory Prepayment Amount, the Installment Payments then due and payable, all other Indebtedness under the Notes then due and payable, and, in the case of a Termination Offer made pursuant to Article 20(i) of the Lease, the Make Whole Premium payable in connection with such purchase.

10.2.6. Binding Effect. Each deed or other instrument of conveyance or assignment executed and delivered by Beneficiary pursuant to this Article 10.2 shall be binding upon Grantor and every future owner of any interest in such Property or the Premises, as the case may be, with the same effect as if Grantor and every such owner had personally executed and delivered the same, and every such owner by receipt or acquisition of any right, title or interest in any interest of Grantor in such Property or the Premises, as the case may be, hereby irrevocably appoints Beneficiary its agent and attorney-in-fact with power and authority (which power and

authority are coupled with an interest) to execute and deliver such deeds or other instruments of conveyance or assignment in its behalf and name.

10.3. Conveyance in Anticipation of Taking, Granting of Easements, Etc. If no Event of Default shall have occurred and be continuing, Grantor may, from time to time, in connection with the transactions contemplated by the Lease or otherwise, (a) sell, assign, convey or otherwise transfer any interest in any Property to any person legally empowered to take such interest under the power of eminent domain, (b) grant easements and other rights in the nature of easements with respect to any Property, (c) release existing easements or other rights in the nature of easements which are for the benefit of any Property, (d) dedicate or transfer unimproved portions of any Property for road, highway or other public purposes, (e) execute petitions to have any Property annexed to any municipal corporation or utility district, (f) execute amendments to any Restrictive Agreements and to any covenants and restrictions affecting any Property and (g) execute and deliver to any person any instrument appropriate to confirm or effect such sales, assignments, conveyances, grants, releases, dedications, transfers, petitions or amendments and Trustee and Beneficiary shall execute and deliver any instrument necessary or appropriate to consent to said action and/or to release said interest, right or portion from the Lien hereof upon receipt by Trustee and Beneficiary of:

(i) such instrument,

(ii) a certificate of Lessee stating (A) that such sale, assignment, conveyance, grant, release, dedication, transfer, petition or amendment is not detrimental to the proper conduct of Lessee's business on such Property, (B) the consideration, if any, being paid for such sale, assignment, conveyance, grant, release, dedication, transfer, petition or amendment, (C) that such sale, assignment, conveyance, grant, release, dedication, transfer, petition or amendment does not materially impair the use of such Property or materially reduce its value, (D) that Lessee shall perform all obligations, if any, of Grantor under such instrument and (E) that, if applicable, said action is being taken in anticipation that the interest in question would otherwise be taken under the power of eminent domain,

(iii) duly authorized and binding undertakings of each of (A) Lessee stating that Lessee shall remain obligated under the Lease and the Assignment in accordance with their terms except as the same may be amended pursuant to such instrument and (B) Grantor stating that Grantor shall remain obligated under this Deed of Trust and the Assignment in accordance with their terms; and

(iv) such other instruments, certificates, surveys, title insurance policy endorsements and opinions of counsel as Beneficiary may reasonably request.

All proceeds (after deducting reasonable expenses of collecting the same and reconstructing the affected Property) received by Grantor (and not required to be paid to Lessee in accordance with the Lease) by virtue of said action and/or release of said interest shall be paid to Beneficiary within ten (10) days of receipt by Grantor and applied pursuant to Article 11.3.

10.4. Transfer of Grantor's Interests. Notwithstanding any other provision contained herein, so long as no Default shall have occurred and be continuing, Grantor may sell, assign or

otherwise transfer its entire interest (but not less than its entire interest except for the admission of a new general partner to the extent expressly permitted by the Note Purchase Documents) in the Premises subject to the Lien hereof, the Lease and the Assignment; provided that: (a) such sale, assignment or transfer is made to a transferee (a "Permitted Transferee") that is (i) a wholly-owned subsidiary of a Qualified Institutional Investor or a general partnership whose general partners are wholly-owned single purpose subsidiaries of Qualified Institutional Investors, and (ii) a corporation or general partnership that is a single purpose entity which does not engage directly or indirectly in any business other than the ownership of an interest in and the leasing of the Premises and which is able to comply with all provisions of this Deed of Trust, including, without limitation, Article 8.7; (b) upon any such sale, assignment or transfer the Permitted Transferee shall execute and deliver to Trustee an instrument, in form and substance satisfactory to Beneficiary (i) irrevocably appointing Trustee as agent and attorney-in-fact with the right and power (which right and power are coupled with an interest) to take all actions and to do all things in the name and on behalf of such purchaser, assignee or transferee of the character which Trustee is authorized hereby to do as agent and attorney-in-fact of Grantor and to execute and deliver in the name and on behalf of such purchaser, assignee or transferee any deed or other instrument which, pursuant to the terms hereof, Trustee is authorized to execute and deliver in the name and on behalf of Grantor, and (ii) expressly (x) acknowledging that the interest or estate so acquired is subject and subordinate to this Deed of Trust, the Lease and the Assignment and (y) assuming and agreeing to be bound by all of the obligations and undertakings of Grantor contained in this Deed of Trust and the other Note Purchase Documents applicable to the Premises and/or Grantor; (c) the parent of such Permitted Transferee is a Qualified Institutional Investor, or, in the case of a general partnership, the parent of each general partner thereof, which Qualified Institutional Investor assumes in writing all of the obligations of the Parents under the Owner's Lien Agreement pursuant to an assumption agreement in form and substance satisfactory to Beneficiary; and (d) upon such sale, assignment or transfer, Lessee shall execute and deliver, in form satisfactory to Beneficiary, a duly authorized and binding undertaking that Lessee shall remain obligated under the Lease in accordance with its terms to the same extent as if such sale, assignment or transfer had not occurred. Upon any such sale, assignment or transfer, the purchaser, assignee or transferee shall become "Grantor" hereunder for all purposes hereof but only to the extent of and with respect to the interest in the Premises so acquired and the transferor shall be released with respect to the Premises so transferred. Grantor acknowledges and agrees that no transfer of any Property shall be made to Lessee pursuant to Article 38 of the Lease unless and until Lessee complies with the requirements of this Article 10.4 and Article 8.7.

10.5. Proceeds of Repurchase. Immediately upon the receipt by Grantor of the purchase price paid with respect to an exercise of the repurchase rights affecting the Property located in Matteson, Illinois, Grantor shall pay such purchase price to Beneficiary. Upon such payment, Beneficiary shall, and hereby acknowledges its obligation to, release such Property from the Lien of this Deed of Trust. Any moneys received by Beneficiary in respect of such payment shall be applied as provided in Article 14.2.6.

ARTICLE 11

APPLICATION OF MONEYS

11.1. Moneys Under the Lease. Unless and until a Default which can be cured solely by the payment of money or an Event of Default shall have occurred and be continuing (a) moneys received as Basic Rent or Basic Rent Prepayment under the Lease and interest on any overdue installment thereof shall be applied (i) first, to the Installment Payments or Final Payment, as the case may be, then due on the Notes (and interest on any overdue amount thereof) allocated among the Notes (if more than one have been issued and are outstanding) in direct relation to their outstanding principal balances; and (ii) the excess, if any, of any such Basic Rent and Basic Rent Prepayment after the application thereof pursuant to clause (i) above shall be paid to Grantor, or upon its written order, in each case free of the Lien hereof; and (b) moneys received as Additional Rent (as defined in the Lease) under the Lease shall be applied to the purposes for which such moneys were paid.

11.2. Termination Amounts. If no Independent Event of Default has occurred and is continuing, moneys received (i) as the purchase price paid for any Property pursuant to Article 11(d) or 11(e) of the Lease or (ii) from Grantor pursuant to Article 10.2.2(b) following a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease, shall be applied on the Mandatory Prepayment Date, but after payment of the Installment Payment due on such date, to the prepayment of the Allocable Portion of the Notes allocable with respect to such Property, without premium, and to the repayment of all other Indebtedness under the Notes then due and payable, allocated among the Notes (if more than one have been issued and are outstanding). Without regard as to whether or not an Independent Event of Default has occurred and is continuing, moneys received (i) as the purchase price paid for the Premises pursuant to Article 20(i) or 37 of the Lease or (ii) from Grantor pursuant to Article 10.2.2(b) following a Termination Offer made pursuant to Article 20(i) or 37 of the Lease, shall be applied on the Mandatory Prepayment Date to the Indebtedness under the Notes and, in the case of a Termination Offer made pursuant to Article 20(i) to the Make Whole Premium. In the case of a Termination Offer made pursuant to Article 11(d) or 11(e) of the Lease, so long as no Default which can be cured solely by the payment of money and no Event of Default has occurred and is continuing, to the extent that the Termination Amount exceeds the sum of Installment Payments due on such date, the Allocable Portion of the Notes allocable with respect to the Property sold and all other Indebtedness under the Notes then due and payable, Beneficiary shall pay over to Grantor any excess. In the case of a Termination Offer made pursuant to Article 20(i) or 37 of the Lease, to the extent that the Termination Amount exceeds the entire Indebtedness under the Notes, plus the Make Whole Premium in the case of a Termination Offer made pursuant to Article 20(i) of the Lease, Beneficiary shall pay over to Grantor any excess.

11.3. Proceeds of Insurance, Condemnation Awards, Minor Releases. Moneys received by Beneficiary as payment for loss under any policy of insurance (other than mortgage title insurance) or as an award or compensation for a Taking of any Property or any part thereof or interest therein or a conveyance to a condemning authority on a negotiated basis in lieu of condemnation, shall be paid to Lessee thereof when and to the extent Lessee is entitled to receive the same under the Lease. Any such moneys not so paid over or required to be paid over to Lessee pursuant to the preceding sentence and any moneys received in consideration of any grant, release, dedication, transfer, petition or amendment in accordance with Article 10.3 shall be applied on the next Installment Payment Date, but after the payment of the regular Installment

Payments due on such date, to the prepayment in whole or in part, as provided in Section 3 of the Notes, of the Allocable Portion of Notes allocable to such Property without premium, allocated among the Notes (if more than one have been issued and are outstanding) and the balance, if any, after payment in full of the Allocable Portion of the Notes allocable with respect to such Property and all other amounts then payable hereunder shall be paid to Grantor or upon its written order.

ARTICLE 12

ENVIRONMENTAL MATTERS

12.1. Representations, Warranties and Covenants. Grantor represents, warrants and covenants, based solely upon the Environmental Reports, as follows:

(a) Grantor, the Premises and the current uses thereof and activities thereon comply, and, to the best of Grantor's knowledge, information and belief, after due inquiry, prior owners, tenants, occupants and users of the Premises and the previous uses thereof and activities thereon complied, with the Environmental Requirements, except as disclosed in the Environmental Reports.

(b) Grantor is not aware of any violation of any Environmental Requirement, any Indemnified Expense or any Environmental Problem in connection with any Property, whether actual or potential and whether or not cured. There exists no writ, injunction, decree, order or judgment outstanding and no lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, and no basis therefor, relating to any of the foregoing.

(c) To the best of Grantor's knowledge, information and belief after due inquiry, all permits and licenses required under the Environmental Requirements in connection with any uses of or activities on the Premises are in full force and effect, and Grantor (or Lessee to the extent Lessee is responsible therefor under the Lease) is in full compliance therewith.

(d) Grantor shall not permit: (1) any Hazardous Substance to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath, or taken from, any Property; or (2) any violation of any Environmental Requirement in connection with any Property; or (3) any Lien with respect to any Property to be imposed pursuant to Section 107(f) of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9607(1), or any similar statute.

12.2. Indemnification. Grantor shall, at its sole cost and expense, indemnify, defend, protect, and hold harmless Beneficiary and Beneficiary's officers, trustees, directors, shareholders, employees, partners, agents, subsidiaries and affiliates from any and all Indemnified Expenses and the breach of any representation, warranty or obligation contained in this Article 12 regardless of: (1) the date, whether before or after the payment in full of the Indebtedness under the Notes, termination or expiration of the Lease, release of the Lien of this Deed of Trust or Foreclosure, upon which the Indemnified Expenses are incurred; (2) except as provided for in Article 12.2.2, whether any Environmental Problem relating to such Indemnified Expenses has arisen before or arises after the date hereof or before or after payment in full of the

Indebtedness under the Notes, termination or expiration of the Lease, release of the Lien of this Deed of Trust or Foreclosure; (3) whether or not such Environmental Problem is the fault of Grantor; or (4) whether or not Beneficiary, as of the date hereof or any other date, has actual or constructive knowledge of such Environmental Problem; or (5) whether any representation or warranty made by Grantor is subject to a knowledge standard; provided that this indemnity shall not apply to Indemnified Expenses to the extent that they are caused by (x) the gross negligence or willful misconduct of any Indemnified Party and (y) an Environmental Problem the cause or source of which was not in existence on the date of the termination or expiration of the Lien of this Deed of Trust with respect to a given Property.

12.2.1. Indemnitee; Waiver. Grantor's indemnification obligations hereunder are for the benefit of Beneficiary and its successors and assigns (including all officers, trustees, directors, shareholders, employees, partners, agents, subsidiaries and affiliates of Beneficiary or any of its successors or assigns). Grantor hereby waives, as a defense to, or limitation, on any of its indemnification obligations hereunder, any immunity under any industrial or worker's compensation laws in connection with any claim brought by, or liability to, any of its employees. Notwithstanding the foregoing, as long as the Lease remains in effect, Grantor will proceed first against Guarantor under the Environmental Indemnity with respect to any Indemnified Expenses and any breach of any representation, warranty or obligation contained in the Lease.

12.2.2. Liability for Environmental Problems. Grantor's obligations hereunder include Indemnified Expenses incurred after the date of Foreclosure arising out of or in connection with any Environmental Problem in existence on or before such date. A condition in existence on or before such date shall be deemed to be an Environmental Problem on or before such date, even if the condition becomes an Environmental Problem as a result of a change in the Environmental Requirements first effective after such date. However, Grantor shall not be obligated to indemnify Beneficiary with respect to any Environmental Problem that arises after the date of Foreclosure, if Grantor proves that no act, omission, event, condition or circumstance occurring on or before such date contributed in any way to such Environmental Problem. If Grantor fails to carry such burden of proof, Grantor's indemnification obligations hereunder shall cover all of the Indemnified Expenses Beneficiary incurs in connection therewith; provided, however, that if Grantor proves that any negligent act or omission of Beneficiary before or after Foreclosure worsened any Environmental Problem, there shall be a reduction in Grantor's indemnification obligations to the extent such act or omission increases the Indemnified Expenses.

12.2.3. Defense. Grantor's indemnification obligations hereunder include the burden and expense of defending all claims, suits and proceedings (judicial, administrative or otherwise), even if groundless, false or fraudulent, conducting all negotiations, and paying and discharging, when due, all judgments, penalties and other amounts for which Beneficiary may be liable. Any such defense by Grantor shall be conducted by attorneys satisfactory to Beneficiary. If Beneficiary determines that its interests in any action or proceeding conflict with Grantor's in such a manner or to such an extent as to require, consistent with applicable standards of professional responsibility, the retention of separate counsel, Beneficiary may retain separate counsel at Grantor's expense.

12.2.4. Subrogation. If Grantor fails to indemnify Beneficiary as provided herein, Beneficiary shall be subrogated to all rights Grantor may have against third parties relating to any matter covered by this Article 12.

12.2.5. Settlement. Without Beneficiary's consent, Grantor may settle no action, suit or proceeding in connection with any Environmental Problem or any matter relating to Grantor's indemnification obligations hereunder.

12.3. Corrective Action.

12.3.1. By Grantor. In the event of any Environmental Problem, Grantor shall promptly initiate and diligently perform or cause Lessee to initiate or diligently perform all necessary and appropriate action (including providing for investigations, studies, reports and remediation plans and the performance of remediation, containment, restoration, operations, maintenance and monitoring work, whether on or off of the affected Property) to remediate, correct or mitigate such Environmental Problem and to complete the repair and restoration of such Property to a condition similar, as nearly as possible, to the condition of such Property immediately prior to the occurrence of such Environmental Problem. All such work shall be performed diligently in a good and workmanlike manner such that (1) the market value or utility of such Property shall not thereby be lessened or diminished; (2) the structure and appearance of such Property or the operation of the building systems shall not thereby be lessened, diminished or impaired; (3) such work shall comply with all Legal Requirements, Insurance Requirements and all other applicable provisions of this Deed of Trust; and (4) such work shall not result in any claim or demand upon Beneficiary, except to the extent of Beneficiary's own internal review or approvals. Grantor shall promptly provide Beneficiary with copies of all documents in connection with the foregoing (including all submissions to any Governmental Authority). Upon the completion of the foregoing, Grantor shall permanently seal or cap all monitoring wells and test holes in compliance with industrial standards and Legal Requirements, and remove all surplus materials and equipment.

12.3.2. By Beneficiary. Upon three (3) business days' notice to Grantor (except that in the case of an emergency or in the case of an order or directive from a Governmental Authority, no prior notice need be given), Beneficiary may enter upon any Property and perform any of Grantor's obligations hereunder, without limiting Grantor's obligation to indemnify Beneficiary with respect thereto or any of Grantor's other obligations hereunder; provided, however, that, so long as no Event of Default has occurred and is continuing, Beneficiary may act as aforesaid only if Beneficiary notifies Grantor of Beneficiary's intent to act and, thereafter, Grantor fails to initiate the necessary or appropriate action within thirty (30) days and diligently prosecute such action to completion.

12.4. Inspections and Investigations. At any time Beneficiary has any reason to believe an Environmental Problem exists, Beneficiary and its consultants, upon three (3) business days' notice (except that in the case of an emergency no prior notice need be given), may enter upon any Property and investigate the compliance of Grantor and such Property with the requirements of this Article 12. Subject to the notice provision provided herein, the consultants of Beneficiary may carry out invasive testing of any Property, and shall use reasonable efforts to minimize

interference with the operation of such Property and the businesses located thereon, but Beneficiary shall have no liability in connection therewith.

12.5. Notices. Promptly upon becoming aware of the existence of any Environmental Problem, any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ or injunction relating thereto, or any event or condition that might trigger Grantor's indemnification obligations hereunder, Grantor shall notify Beneficiary of the nature and status thereof, and Grantor shall promptly provide Beneficiary with copies of all notices, filings, reports, documents, certificates and instruments provided by or delivered to Grantor in connection therewith.

12.6. Survival. Except to the extent limited by Article 12.2.2 and subject to the provisions of Article 14.3.6, each of Grantor's obligations under this Article 12 shall survive any transfer of all or any portion of the Collateral, any transfer of the Notes, the release of all or any portion of the Collateral from the Lien of this Deed of Trust, the release of any person from liability under any of the Note Purchase Documents, any modification, extension or renewal of any of the Note Purchase Documents, the payment in full or the discharge of the Indebtedness under the Notes, any foreclosure or private sale or the exercise of any of Beneficiary's other rights or remedies under the Note Purchase Documents, and any other event whatsoever.

ARTICLE 13

BENEFICIARY'S RIGHT TO ACT

13.1. Beneficiary's Right to Act; Advances. In addition to any other right or remedy Beneficiary may have under the Note Purchase Documents and whether or not Beneficiary has exercised any such right or remedy (including the acceleration of the maturity of the Notes) and without waiving or limiting any of Grantor's obligations thereunder, Beneficiary may, without notice to or consent by Grantor, enter upon the Premises, take the following actions and make advances to fund expenditures (including attorneys' fees and disbursements) in connection therewith:

(a) At any time during which any Default of which Beneficiary has given Grantor notice or any Event of Default has occurred and is continuing, any action (including the making of any payment) to cure such Default or Event of Default (as the case may be) in such a manner and to such extent as Beneficiary may deem necessary or appropriate; and

(b) Whether or not any Default or Event of Default has occurred and is continuing: (1) to appear in and defend against any action or proceeding that might affect, in any material and adverse manner whatsoever, any of Grantor's obligations or Beneficiary's rights under the Note Purchase Documents or the value of the Collateral; and (2) to pay, purchase or compromise any Lien on the Collateral that is not a Permitted Exception and that, in Beneficiary's judgment, is superior to the Lien of this Deed of Trust, except as may be imposed under local law for Taxes not yet due and payable.

13.1.1. Reliance; Beneficiary's Judgment. In taking any action or making any payment under this Article 13.1 with respect to any Taxes or any Lien on the Collateral, Beneficiary may rely, without further inquiry into the accuracy or validity thereof, on any document, certificate or instrument obtained from, or provided by, any Governmental Authority. With respect to any other action or payment hereunder, Beneficiary may do whatever in Beneficiary's reasonable judgment seems necessary or appropriate to protect and preserve the Collateral and the Lien of this Deed of Trust.

13.1.2. Interest; Reimbursement. Interest shall immediately accrue at the Default Rate on all amounts Beneficiary advances under Article 13.1(a), and all such amounts shall be due and payable to Beneficiary upon demand therefor. All amounts Beneficiary advances under Article 13.1(b) shall be due and payable to Beneficiary ten (10) days after demand therefor, and interest at the Default Rate shall accrue on all such amounts due and unpaid. All amounts Beneficiary advances under this Article 13.1, together with interest thereon, shall be secured by this Deed of Trust and a Lien upon the Collateral superior to all other Liens accruing or attaching to the Collateral after the date hereof, except to the extent prohibited by applicable law.

13.2. No Duty on Beneficiary's Part. The rights and remedies of Beneficiary under the Note Purchase Documents are solely for the benefit of Beneficiary and to protect and preserve the Collateral and the Lien of this Deed of Trust, and no provision of the Note Purchase Documents shall be deemed to impose upon Beneficiary any duty to exercise any such right or remedy. In exercising any such right or remedy, Beneficiary shall be accountable only for amounts it actually receives as a result thereof, and for any of its acts or omissions in connection with the exercise of any such right or remedy, Beneficiary shall have no liability to Grantor, except for gross negligence or willful misconduct.

13.3. Beneficiary's Discretion. Except as otherwise specified in the Note Purchase Documents, whenever Beneficiary is entitled to take any action or make any determination or to give or withhold any consent or approval with respect to the performance of any of Grantor's obligations or the satisfaction of any condition under the Note Purchase Documents, Beneficiary may elect whether or not, when and in what manner to take such action, make such determination and give such consent or approval, in each case in Beneficiary's sole discretion. Except where expressly required under the Note Purchase Documents, Beneficiary shall not, before exercising any right or remedy or taking any other action, be obligated to give any notice to or obtain any consent from Grantor, and Beneficiary shall not be obligated to disclose to Grantor any information regarding the Premises or any other matter.

ARTICLE 14

EVENTS OF DEFAULT; REMEDIES

14.1. Events of Default. "Event of Default" shall mean the occurrence of any of the following:

(a) if default shall be made in payment of the principal, interest, or premium, if any, on the Notes, on the date the same becomes due and payable, either on an Installment

Payment Date, at maturity, or as part of any prepayment, as provided in the Notes and this Deed of Trust and such default shall continue for five (5) business days;

(b) if the Lease shall be terminated before the expiration of the term thereof with respect to any Property or with respect to all or any portion of the Premises for any reason (other than in accordance with the express terms of Article 11 of the Lease) or if the Lease shall in any way be amended or modified or shall be encumbered by or through Grantor without the prior consent of Beneficiary (except as expressly provided for herein or therein);

(c) if any representation or warranty of Grantor or Lessee set forth in this Deed of Trust or any other Note Purchase Document or if any representation or warranty of either Parent set forth in the Owner's Lien Agreement shall be inaccurate in any material respect, as of the time when the same shall have been made or as to continuing warranties as of any time when the same shall be in effect;

(d) if default shall be made by Grantor in the due observance or performance of any covenant or agreement contained in the first or the fourth sentence of Article 8.2, in Article 8.7, in Article 8.9, or in Article 9 (other than Article 9.4 or 9.6 which are governed by clause (g) of this Article 14.1);

(e) if default shall be made by Grantor in the due observance or performance of Grantor's obligation to maintain the Required Insurance pursuant to Article 8.12, or to maintain the Lien of this Deed of Trust as a perfected first priority Lien subject only to the Permitted Exceptions;

(f) if default shall be made in payment of any amount when due under the Assignment and such default shall continue for five (5) business days after notice thereof has been given by Beneficiary or Trustee;

(g) if default shall be made in the due observance or performance of any other covenant, condition, or agreement of Grantor contained in this Deed of Trust, the Notes, the Note Purchase Agreement or the Assignment and any such default shall have continued for thirty (30) days after notice thereof has been given; provided, however, such thirty day period shall be extended to a period of up to one hundred eighty (180) days if such default is not curable solely by the payment of money and during such thirty day period Grantor commences to cure such default and thereafter diligently pursues same;

(h) if an Event of Default (as defined in the Lease) under the Lease shall have occurred and be continuing, except to the extent that Grantor is curing such Event of Default pursuant to and in accordance with the express terms of Article 14.3.5(a) hereof;

(i) if default shall be made in the due observance or performance of any covenant, condition or agreement of any Parent contained in the Owner's Lien Agreement;

(j) if a receiver or conservator, United States Trustee, trustee or liquidator (or other similar official) of the Collateral, of Grantor, of any general partner of Grantor, or any then owner of Grantor's interest in the Collateral shall be appointed in any proceeding or by any federal or state officer or agency and shall not be discharged within sixty (60) days after such

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14.2.1. Default Interest. Beneficiary shall have no obligation to provide Grantor with notice of any amounts due and payable hereunder or under any other Note Purchase Document, whether on an Installment Payment Date, on the Maturity Date or otherwise. However, Grantor shall have no obligation to pay interest at the Default Rate ("Default Interest") on any amount (whether principal, interest, late payment charge, prepayment premium,

14.2. Remedies.

other than Beneficiary. created or intended to be created thereby is subordinate to any Lien for the benefit of any person Note Purchase Documents is invalid or unenforceable in any material respect or that any Lien created or intended thereby, or if there shall have been any judicial determination that any of the enforceability of any provision of the Note Purchase Documents or the priority of any Lien creditor of Grantor) shall initiate any action or proceeding challenging the validity or (n) if Grantor or any person claiming by or through Grantor (including any

pending such appeal, or if such judgment shall not be subject to further appeal; or pursuant to which said judgment was granted, based or entered, and secure a stay of execution thereof, or shall not appeal therefrom or from the order, decree, or process upon which or shall not discharge the same or cause it to be discharged within sixty (60) days from the entry against Grantor, any general partner of Grantor, or any then owner of Grantor's interest in the Collateral and Grantor, any general partner of Grantor, or any such owner, as the case may be, \$100,000 with respect to any individual controversy or \$300,000 in aggregate shall be rendered (m) if final judgment for the payment of money in an amount greater than

discharged or denied within sixty (60) days after the date on which such petition was filed; the Federal Bankruptcy Code or any similar law, federal or state, and if such petition shall not be reorganize or liquidate Grantor, an / general partner of Grantor, or any such owner pursuant to any then owner of Grantor's interest in the Collateral shall commence an involuntary case to (l) if any of the creditors of Grantor, or any general partner of Grantor, or of

Code or any similar law, federal or state, shall be filed in, and approved by, any court; then owner of Grantor's interest in the Collateral, as debtor, pursuant to the Federal Bankruptcy proposing the reorganization or liquidation of Grantor, any general partner of Grantor, or any to the appointment of a receiver of the Collateral or any part thereof, or if a petition or an answer shall admit in writing its inability to pay its debts generally as they become due or shall consent bankruptcy or similar law or shall make a general assignment for the benefit of its creditors or interest in the Collateral shall file a petition commencing a voluntary case under any federal (k) if Grantor, any general partner of Grantor, or any other owner of Grantor's

law or if an order for relief shall be entered in any bankruptcy proceeding; shall be adjudicated a bankrupt or be declared insolvent under any federal or state bankruptcy days, or if by decree of such court Grantor, any general partner of Grantor, or any such owner appointed or otherwise takes possession thereof and shall not be discharged within sixty (60) such appointment, or if a custodian for purposes of any federal bankruptcy statute of appointment, or if Grantor, any general partner of Grantor, or any such owner shall consent to

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14.2. Acceleration of Maturity of the Notes. At any time during which any Event of Default has occurred and is continuing, Beneficiary may (without prior notice of its intention to accelerate) declare the entire Indebtedness under the Notes to be immediately due and payable, and upon any such declaration the entire Indebtedness under the Notes shall be immediately due and payable, without demand, protest or dishonor, notice of nonpayment or dishonor, that protest or other notice whatsoever (all of which Grantor hereby waives); provided, however, that upon any Event of Default under Article 14.1(l), (k) or (j), the entire Indebtedness under the Notes shall be immediately due and payable, without demand, protest or dishonor, notice of nonpayment or dishonor, protest or other notice whatsoever (all of which Grantor hereby waives). As provided for in the Notes, the occurrence of any Event of Default in connection with any such acceleration of maturity shall constitute an irrevocable election by Grantor to make a voluntary prepayment of the Notes, to fix the date of such acceleration (the "Acceleration Date") as the Voluntary Prepayment Date, and to pay Beneficiary the Voluntary Prepayment Amount as of (and due and payable on) such Voluntary Prepayment Date. The Voluntary Prepayment Amount shall include the Make Whole Premium, as provided for in the Notes. Notwithstanding the foregoing, Beneficiary may, by notice to Grantor, rescind any acceleration of maturity of the Notes.

14.3. Appointment of a Receiver. At any time during which any Event of Default has occurred and is continuing, Beneficiary may, with or without any acceleration of maturity of the Notes, without waiving or limiting any of Grantor's obligations under the Note Purchase Documents, without notice (except as required by law) to or consent by Grantor, and regardless of the adequacy of the Collateral, the solvency of Grantor or whether Beneficiary has an adequate remedy at law, apply to any court having jurisdiction to appoint a receiver to take possession of all or any portion of the Premises and enforce the collection of the Rent. Grantor hereby irrevocably consents to such appointment and waives notice (except as required by law) of any application therefor. Any such receiver shall have all of the usual powers and duties of receivers in similar cases and all of Beneficiary's powers and duties upon entry and possession of all or any portion of the Premises, as provided for in Article 14.2.4, and shall continue as receiver and exercise all such powers until the confirmation of the sale of the Premises, or such portion as applicable, or unless such receivership is sooner terminated. Without limiting the foregoing, it is understood and agreed that the receiver shall have the powers and duties set forth in Appendix I hereto.

reimbursement of advances or expenses or payment into escrow or for reserve funds) not paid when due hereunder or under any other Note Purchase Documents. From and including the third (3rd) business day after Beneficiary provides notice of such nonpayment. From and including the date of payment thereof, Grantor shall pay to Beneficiary Default Interest on any amount not paid when due hereunder or under any other Note Purchase Document.

nonpayment within a twelve (12) month period, Grantor shall pay to Beneficiary, without notice, from and including the date of any subsequent nonpayment but not including the date of payment thereof, Default Interest on any amount not paid when due hereunder or under any other Note Purchase Document. Notwithstanding the foregoing, if Beneficiary shall have already provided to Grantor two (2) such notices of nonpayment within a twelve (12) month period, Grantor shall pay to Beneficiary, without notice, from and including the date of any subsequent nonpayment but not including the date of payment thereof, Default Interest on any amount not paid when due hereunder or under any other Note Purchase Document. Notwithstanding the foregoing, if Beneficiary shall have already provided to Grantor two (2) such notices of nonpayment within a twelve (12) month period, Grantor shall pay to Beneficiary, without notice, from and including the date of any subsequent nonpayment but not including the date of payment thereof, Default Interest on any amount not paid when due hereunder or under any other Note Purchase Document.

14.2.4. Entry and Possession. At any time during which any Event of Default has occurred and is continuing, Beneficiary may, with or without any acceleration of maturity of the Notes, without waiving or limiting any of Grantor's obligations under the Note Purchase Documents, and without consent by Grantor: (i) with or without bringing any action or proceeding, enter upon and take possession of all or any portion of the Premises, in its own name or Trustee's name, and take any necessary or appropriate actions to protect and preserve the Collateral and the Lien of this Deed of Trust (including the making of payments to preserve or enhance the value, marketability or rentability of the Premises and the leasing of space in the Premises); or (ii) with or without taking possession of the Premises, sue for or otherwise collect the Rents (including those due and unpaid), and apply the same, less the costs of collection and operation of the Premises, to the Indebtedness under the Notes; provided, however, that if the Event of Default is occasioned by an Event of Default under the Lease, Beneficiary shall not be permitted to collect Excepted Payments for longer than one hundred eighty (180) consecutive days if all Indebtedness under the Notes then due and payable has been paid and shall not be permitted to retain any such Excepted Payments after the expiration of such period if such Indebtedness then due and payable has been so paid without exercising one of the remedies set forth in Articles 20(b), 20(g), 20(h) or 20(i) of the Lease. If Beneficiary enters upon and takes possession of any portion of the Premises, thereupon Grantor shall pay, in advance, market rent for any portion of the Premises Grantor occupies and, upon demand by Beneficiary, shall vacate and surrender such space to Beneficiary. If Grantor fails to pay such rent or surrender such possession, Trustee or Beneficiary may evict Grantor by any summary action or proceeding for recovery of possession of premises for nonpayment of rent or upon termination of tenancy. No amounts Beneficiary may collect or receive under this Article shall operate to cure any Event of Default or reinstate any Indebtedness under the Notes.

14.2.5. Sale of Collateral. Beneficiary may elect to commence an action to foreclose under this Deed of Trust, as a mortgage, or to foreclose hereunder by exercise of the power of sale, in which later case, the following applies:

(a) Beneficiary may proceed in accordance with paragraph (c) below, as if all of the Collateral were real property, or may elect to treat as personal property any of the Collateral that consists of a right in action or can be severed from the Premises and, in accordance with paragraph (b) below, dispose of such property separate and apart from the sale of real property.

(b) Beneficiary may direct Trustee to cause any sale or other disposition of personal property to be conducted immediately following the expiration of any grace period (if any) herein provided, or Beneficiary or Trustee may delay any such sale or other disposition for such period of time as Beneficiary deems to be appropriate. To the extent required by local law, any such sale shall be conducted in a commercially reasonable manner and Grantor acknowledges and agrees that ten (10) days prior notice of such sale shall be deemed reasonable notice. If Beneficiary or Trustee desires that more than one such sale or other disposition be conducted, Beneficiary or Trustee may cause the same to be conducted simultaneously or successively on the same day or on different days and at such times and in such order as Beneficiary and Trustee may deem to be appropriate.

(c) Beneficiary may direct Trustee to sell the Collateral or any part thereof that is real property or that Beneficiary has elected to treat as real property, and, upon such election, Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law and upon advertising the sale as required by law, and without any demand on Grantor, Trustee, at the time and place specified in the notice of sale, shall sell the Collateral or any portion thereof, as specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States, except as payment is otherwise permitted under paragraph (f) below. Trustee may, and upon Beneficiary's request shall, from time to time postpone the sale by public announcement thereof at the time and place noticed therefor. If the Collateral to be sold includes several lots or parcels, Trustee may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Beneficiary, may purchase at the sale. The purchaser at any private or foreclosure sale hereunder may disaffirm any easement or lease not consented to by Beneficiary and with respect to which Beneficiary has not granted a right of non-disturbance or which is not a Permitted Exception, and may take immediate possession of such property free therefrom except as otherwise required under applicable local law.

(d) Upon the completion of any sale hereunder, Trustee or any officer of any court empowered to do so shall execute, acknowledge and deliver to the purchaser good and sufficient instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Grantor hereby unconditionally, absolutely and irrevocably constitutes and appoints Trustee and Trustee's successors and assigns forever as Grantor's true and lawful attorneys-in-fact, coupled with an interest, with full power of substitution, in Grantor's name, place and stead, to make all necessary or appropriate conveyances, assignments, transfers and deliveries of the Collateral or any part thereof, and for that purpose Trustee may execute all necessary or appropriate instruments of conveyance, assignment and transfer. The execution and delivery of any document, certificate or instrument by Trustee, as attorney-in-fact for Grantor pursuant to this power-of-attorney, shall constitute conclusive proof of Trustee's power and authority, on Grantor's behalf, to execute and deliver the same and take any action contemplated thereby. Nevertheless, Grantor, if so required by Trustee or Beneficiary, shall ratify and confirm any such sale by executing, acknowledging and delivering to Trustee or to such purchaser all such instruments as may be necessary or appropriate, in the judgment of Trustee or Beneficiary. Any sale made hereunder, whether under the power of sale or by virtue of judicial proceedings or a judgment or decree of foreclosure and sale, shall operate to divest all of the estate, right, title, interest, at law or in equity, of Grantor in and to the portion of the Collateral sold, and shall be a perpetual bar, at law and in equity, against Grantor and all persons claiming, or that may claim, by, through or under Grantor.

(e) In the event of a sale or other disposition of any portion of the Collateral, the recitals in the deed of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall, upon execution of the deed, be conclusive proof of the truth of such facts against all persons. The acknowledgment by Trustee or Beneficiary of the receipt of the purchase money stated in any such deed shall be sufficient to discharge Beneficiary and Trustee from all obligations to see to the proper use or application of the portion of the Collateral sold.

(f) Notwithstanding the foregoing, as long as no Independent Event of Default has occurred and is continuing, Beneficiary shall not exercise any of the remedies contained in this Article 14.2.5 without exercising one of the other remedies set forth in Articles 20(b), 20(g), 20(h) or 20(i) of the Lease, subject to the right of a court of competent jurisdiction to limit or stay the exercise of any such remedies.

(g) In addition to, and not in derogation or limitation of any other right or remedy of Beneficiary, this Deed of Trust is upon the statutory conditions, for any breach of which, or on account of any breach of any term or condition thereof, the Beneficiary shall have the statutory power of sale.

(h) Notwithstanding any reference herein to this instrument as a "mortgage," and to conveyance hereunder of the Premises or any Property to Beneficiary as "mortgagee," this instrument shall constitute a deed of trust with respect to the Virginia Property, which is conveyed to the Trustee upon the trusts and with the powers set forth herein, including without limitation, the powers of sale set forth in this Article 14.2.5.

14.2.6. Application of Sales Proceeds. The purchase money and other proceeds of any sale hereunder, together with all other funds which then may be held by Trustee or Beneficiary under this Deed of Trust, shall be applied to pay, in the following order of priority (except as otherwise required under applicable law): (1) all out-of-pocket charges and expenses (including court costs, advertising expenses, auctioneer's allowance, expenses required to correct any title irregularity, Trustee's fee, disbursements and bond premium, auditor's fee and attorneys' fees and disbursements) in connection with such sale; (2) all amounts advanced and costs incurred by Beneficiary for any purpose permitted under the Note Purchase Documents, together with interest thereon, as provided for in the Note Purchase Documents; (3) all accrued and unpaid interest on the Indebtedness under the Notes; (4) all unpaid principal under the Notes; (5) all other amounts due and payable to Beneficiary under the Note Purchase Documents; and (6) to Grantor or such persons legally entitled thereto.

14.2.7. Purchase by Trustee. Upon any sale made due to the occurrence of an Event of Default under this Article 14 (whether made under any power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Trustee, on behalf of Beneficiary, may bid for and acquire the Collateral or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness of Grantor secured by this Deed of Trust the net proceeds of sale after deduction of all costs, expenses, compensation and other charges to be paid therefrom as herein provided. Trustee, upon so acquiring the Collateral or any part thereof, shall be entitled to hold, deal with and sell the same in any manner permitted by applicable law.

14.2.8. Subordination of the Lease. Except as provided in Article 8.2, upon any foreclosure sale hereunder, the Lease shall continue in full force and effect and the Lessee thereunder shall, upon request, attorn to and acknowledge the foreclosure purchaser as lessor; provided, however, that the Lessee shall not be credited as against such purchaser with any rent allocable to the period after such foreclosure sale and paid more than thirty (30) days in advance.

14.2.9. Other Security. Beneficiary may exercise all of its rights and remedies under this Deed of Trust and the other Note Purchase Documents, notwithstanding that some or all of Grantor's obligations hereunder and thereunder may now or hereafter be otherwise secured, and Beneficiary's acceptance and enforcement of this Deed of Trust shall not operate as a waiver of, or to limit, Beneficiary's rights and remedies with respect to any other security for the performance of any of Grantor's obligations under the Note Purchase Documents. Beneficiary may enforce this Deed of Trust and any such other security in any order or manner that Beneficiary determines, and Beneficiary's rights hereunder and thereunder shall be cumulative.

14.3. General Provisions Concerning Remedies.

14.3.1. Subrogation. If any portion of the principal under the Notes or any amount advanced or expended by Beneficiary is used, directly or indirectly, to pay, discharge or satisfy, in whole or in part, any prior Lien with respect to the Collateral, Beneficiary shall be subrogated to such Lien and any security therefor.

14.3.2. Accounting. Except as otherwise required under applicable local law, neither Beneficiary nor any receiver appointed for Beneficiary's benefit with respect to the Collateral shall be liable to account for any earnings, revenues, rents, issues, profits, income or other amounts, except for amounts actually received by Beneficiary or such receiver (as the case may be).

14.3.3. Remedies Cumulative. No remedy herein or in any of the other Note Purchase Documents shall be exclusive of any other remedy or remedies herein or in any of the other Note Purchase Documents, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or under any of the other Note Purchase Documents or now or hereafter existing at law or in equity; and every power and remedy of Trustee and Beneficiary hereunder and under the other Note Purchase Documents may be exercised from time to time and as often as may be deemed expedient by Trustee and Beneficiary. No forbearance, delay or omission of Trustee or Beneficiary to exercise any right or power accruing upon a Default or an Event of Default hereunder or upon a default under any other Note Purchase Documents shall impair any such right or power or shall be construed to be a waiver of any such Default, Event of Default or default or an acquiescence therein. No acceptance by Beneficiary of any partial payments hereunder or under any of the other Note Purchase Documents shall operate as a waiver of any right or remedy or excuse any Default or Event of Default hereunder or any default under any of the other Note Purchase Documents. Except as expressly provided in Article 14.3.5, without waiving or limiting any of Grantor's obligations under the Note Purchase Documents or affecting the priority of the Lien of this Deed of Trust, Beneficiary may, at any time and from time to time, with or without consideration and regardless of the existence of any Liens inferior to the Lien of this Deed of Trust, provide for or consent to: (1) the modification, extension or renewal of the Note Purchase Documents by agreement with Grantor; (2) extensions of time for payment and performance of Grantor's obligations under the Note Purchase Documents; (3) releases of persons from obligations under the Note Purchase Documents; (4) releases of all or any portion of the Collateral from the Lien of this Deed of Trust; and (5) any forbearance in connection with any of the foregoing. Each and every remedy herein conferred

upon or reserved to Trustee and Beneficiary shall exist with respect to each Property and the exercise of any remedy with respect to one Property shall not impair the exercise of such remedy or any other remedy or remedies with respect to any of the other Properties, which, together, constitute the Premises. In the event of a sale of a portion of the Collateral, as provided for in Article 14.2.5, the provisions of this Deed of Trust, the Lease, the Assignment and the other Note Purchase Documents shall remain in full force and effect with respect to the remaining Properties constituting the Premises. This Deed of Trust constitutes a blanket deed of trust with respect to each and every item of Collateral, and all of the terms and conditions hereof shall govern the rights and obligations of Grantor and Beneficiary with respect thereto. Any Default hereunder in connection with any Property shall be deemed to be a Default with respect to the entire Premises (wherever located).

14.3.4. Grantor's Waivers. Except as expressly provided in Article 14.3.5, to the extent that it lawfully may, and except as otherwise set forth in this Deed of Trust or the other Note Purchase Documents, Grantor hereby agrees, to the extent permitted by law, not to plead, claim or take advantage of any law, now or hereafter in effect, providing for any appraisal, valuation, stay, extension, redemption, moratorium or homestead exemption, and Grantor hereby waives and releases (a) any right to require Trustee or Beneficiary to proceed against any other person, to proceed against or exhaust any security held by either of them at any time or to pursue any other remedy in its power, before proceeding against Grantor or the Collateral, except regarding the Environmental Indemnity so long as the Lease is in effect; (b) presentment to, demand for payment or performance from or protest to itself, including, without limitation, prior notice of Beneficiary's intention to accelerate the maturity of the Indebtedness under the Notes; (c) notice of protest or nonperformance, notice of dishonor or acceptance or any other notice to which Grantor might otherwise be entitled under applicable law; (d) any defense to its obligations hereunder by reason of the modification by Trustee or Beneficiary of the manner or terms of payment of any Indebtedness or of any other obligation secured hereunder, or any other forbearance by Trustee or Beneficiary; (e) any defense of any action hereunder that might arise by reason of the incapacity, lack of authority or termination of existence of, or the revocation hereof by, any person or the failure of Trustee or Beneficiary to file or enforce a claim (either in administration, bankruptcy or any other proceeding) against any person; (f) any defense based upon any taking, modification, impairment or release of any collateral or guarantees for any Indebtedness of any person to Trustee or Beneficiary, or any failure to perfect or enforce any security interest in, or the taking of or failure to take any other action with respect to any collateral securing such Indebtedness; (g) any defense based upon any right to offset or claimed offset by Grantor of any obligation now or hereafter owed to Grantor by any other person, except with respect to payments of Rent made directly to Beneficiary by Lessee as expressly provided in the Assignment; (h) any defense based upon election or enforcement of any remedies by Trustee or Beneficiary (including a non-judicial foreclosure as to any Collateral) which destroys or otherwise impairs any subrogation right of Grantor or the right of Grantor to proceed against any person for reimbursement, or both; (i) any right to claim or take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement or a foreclosure of this Deed of Trust or the absolute sale of any Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Grantor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully do so, the benefit of all such

laws, and any and all right to have the assets comprising any Property marshaled upon any foreclosure of the Lien of this Deed of Trust and agrees that the Trustee or any court having jurisdiction to foreclose such Lien may sell the Property in part or as an entirety; (j) any rights or defenses created by any applicable anti-deficiency laws; or (k) any equitable, statutory or other right which Grantor may have to require marshalling of assets or foreclosure in the inverse order of alienation. If any law providing for any of the foregoing is now or hereafter in force, of which Grantor might take advantage, notwithstanding the foregoing agreement and waiver, and such law is hereafter or thereafter repealed or otherwise ceases to be in force, thereafter such law shall not then or thereafter be deemed to preclude or limit the enforceability of the foregoing agreement and waiver.

14 3.5. Excepted Rights. Notwithstanding any other provision contained herein, so long as no Independent Event of Default has occurred and is continuing, Grantor shall be entitled to exercise the following rights as lessor under the Lease ("Excepted Rights"):

(a) the right to cure all monetary defaults under the Lease and the right to take any action necessary to cause Lessee to reimburse Grantor for same; provided that Grantor shall not be permitted to cure monetary defaults for a period longer than six (6) consecutive months or for more than a total of eighteen (18) months during the Primary Term;

(b) until Grantor accelerates the maturity of the Notes as provided in Article 14.2.2, the right to:

(1) sue Lessee and collect any and all Excepted Payments that are due and payable,

(2) waive any default in Lessee's payment of Excepted Payments to Grantor,

(3) negotiate and approve the adjustment of insurance proceeds and condemnation awards, subject to the provisions of Article 11 of the Lease, and

(4) provide to Lessee written notification of a Designated Property as provided in Article 40(b) of the Lease;

(c) after acceleration of the Notes but prior to foreclosure, the right, together with Beneficiary (but at Grantor's sole expense) to:

(1) receive notices and other communications from Lessee,

(2) request estoppels from Lessee, and

(3) request environmental assessments and other inspections of the Properties and the books and records of Lessee; and

(d) to exercise Grantor's indemnification rights against Lessee.

The rights of Grantor to exercise any and all Excepted Rights shall not in any way permit Grantor to (i) take any action which could result in any Lien on any Property, (ii) declare any Default or Event of Default under the Lease, or (iii) terminate the Lease.

14.3.6. Nonrecourse Liability. (a) Notwithstanding any provisions in the Note Purchase Documents to the contrary (except as provided in paragraphs (b) and (c) of this Section), it is expressly understood and agreed that if Beneficiary at any time takes action to enforce the collection of the Indebtedness under the Notes, Beneficiary will proceed to foreclose this Deed of Trust and/or institute suit on the Notes against Grantor. If a lesser sum is realized from the foreclosure of this Deed of Trust and sale of the Premises and/or the suit on the Notes against Grantor, Beneficiary will never institute any action, suit, claim or demand in law or equity (1) against any officer, director or, except as provided in the Owner's Lien Agreement, any shareholder of any of the Grantor's general partners (unless such shareholder is Lessee or an affiliate thereof), or (2) except as provided in paragraphs (b) and (c) below, against Grantor for or on account of the deficiency.

(b) Nothing contained in paragraph (a) above will in any way affect or impair: (i) the Lien of this Deed of Trust or any representation or warranty of title made in this Deed of Trust which will remain in full force and inure to Beneficiary's benefit and to the benefit of any insurer of title to the Premises; (ii) Beneficiary's rights under any master lease, indemnity or guarantee given in connection with the Indebtedness under the Notes; or (iii) Beneficiary's right to present and collect on any letter of credit given in connection with the Indebtedness under the Notes.

(c) Further, the following are excluded and excepted from the provisions of paragraph (a) and Beneficiary may recover personally against the Grantor's general partners (but not against any officer, director or shareholder hereof) for the following:

(1) all actual losses, damages or liabilities that Beneficiary suffers arising out of any fraud or willful or intentional misrepresentation by Grantor or any of Grantor's general partners in connection: (i) with Grantor's performance or fulfillment of any of Beneficiary's conditions to or requirements in advancing the Indebtedness under the Notes or otherwise with Grantor's inducements to Beneficiary to advance the Indebtedness under the Notes; (ii) with the execution and delivery of any of the documents evidencing or securing the Indebtedness under the Notes; (iii) with the making of any representations or warranties (which are in addition to the representations and warranties of title in this Deed of Trust covered under paragraph (b) above) contained in such documents; or (iv) with Grantor's performance of any of its obligations under the Note Purchase Documents;

(2) all rents and other revenues, payments or reimbursements of any kind whatsoever (including all payments and contributions from tenants for taxes, insurance, operating expenses and common area maintenance charges) derived from the Premises after Grantor receives notice of any Event of Default (unless waived by Beneficiary) under any of the documents evidencing or securing the Indebtedness under the Notes or on deposit on the date Grantor receives notice of such Event of Default in one or more accounts used by Grantor or Grantor's agents, representatives or property manager in connection with the operation of the Premises, except to the extent properly applied (as documented by evidence

reasonably satisfactory to Beneficiary) to the normal and customary expenses and operations of the Premises; provided, however, that Beneficiary shall have no recourse against Grantor's general partners with respect to any distribution received by Grantor of any Excepted Payment unless Beneficiary shall within thirty (30) days of such distribution have notified Grantor in writing that such distribution was made in violation of Article 9.11 of this Deed of Trust;

(3) all security deposits collected by Grantor (or any of Grantor's predecessors) and not properly refunded to tenants and all advance rents collected by Grantor (or any of Grantor's predecessors) and not properly applied in due course; proper refunding or application must be documented by evidence reasonably satisfactory to Beneficiary;

(4) the replacement cost of any items of personalty or any fixtures, excluding fixtures and personal property owned by any tenant, removed from the Premises after Grantor becomes aware of any default under any of the documents evidencing and securing the Indebtedness under the Notes;

(5) all actual losses, damages and liabilities that Beneficiary suffers arising from any acts of commission or omission by Grantor that result in waste upon the Premises; and

(6) any Net Award attributable to the Premises that is not applied in accordance with the terms of this Deed of Trust and any Net Award attributable to the Premises that was not paid to Beneficiary in circumstances where such payment was required under the terms of this Deed of Trust.

ARTICLE 15

TRUSTEE

15.1. Concerning Trustee. Trustee, by acceptance of this Deed of Trust, covenants faithfully to perform and fulfill the trusts herein created. Trustee shall have no liability whatsoever under this Deed of Trust, except for negligence or willful misconduct. Upon thirty (30) days prior notice to Grantor and Beneficiary, Trustee may, at any time, resign as Trustee hereunder. If Trustee consists of two or more individuals, any single individual acting alone, may bind all of the individuals, as Trustee. Beneficiary hereby reserves, and Grantor hereby grants to Beneficiary with warranty of further assurances, the irrevocable power to remove Trustee at any time or from time to time and, in the event of the death, resignation, refusal to act, inability to act or absence of Trustee from any state in which a Property is located, or in Beneficiary's sole discretion for any other reason whatsoever, to select and appoint a successor Trustee, upon notice to Grantor, without specifying any reason therefor or applying to any court; provided, however, that at any time during which any Event of Default has occurred and is continuing, Beneficiary may remove Trustee and select and appoint a successor Trustee as aforesaid, without any notice to Grantor. Such appointment shall be effective upon recordation of such instruments as shall be required under local law, executed by any authorized agent of Beneficiary, whereupon such appointment shall be conclusively presumed to have been executed with authority, and shall be valid and binding without further proof. Upon such selection and appointment, all powers, rights, duties and authority of the former Trustee, as provided for

hereunder, shall be vested in the successor Trustee, and such successor Trustee shall not be required to give bond for the faithful performance of its duties unless required by Beneficiary. Grantor hereby ratifies and confirms all whatsoever that the herein named Trustee, or its successor, as Trustee, lawfully does by virtue hereof. Grantor hereby agrees that the recitals contained in any deed executed by Trustee (including any successor Trustee), acting under the provisions of this Deed of Trust, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, other than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed and the transfer of title thereby. Trustee shall not be required to see that this Deed of Trust is recorded, shall not be liable for the validity or priority of this Deed of Trust, and shall not be responsible for performance of any of the obligations of Grantor or Beneficiary under the Note Purchase Documents. Trustee and Beneficiary, and each of them, in its sole discretion, may employ agents and attorneys in the execution of this Deed of Trust and to protect the interest of Beneficiary hereunder, and, to the extent permitted by law, Trustee and Beneficiary shall each be compensated and all reasonable expenses relating to the employment of such agents and attorneys (including expenses of litigation) shall be paid out of the proceeds of the sale of the Collateral, in the event of such a sale, and, if there is no such sale, shall be recoverable through the exercise by Trustee and Beneficiary, or either of them, of all of the rights and remedies available under the Note Purchase Documents or otherwise available at law or in equity. At Grantor's and Beneficiary's request and without affecting the Lien of this Deed of Trust with respect to the remainder of the Collateral, Trustee may (1) reconvey any part of the Collateral, (2) consent in writing to the making of any map or plat thereof, (3) join in granting any easement thereon, or (4) join in any agreement to modify, extend, renew or subordinate the Indebtedness under the Notes; provided, however, that at any time during which any Event of Default has occurred and is continuing, Trustee, at Beneficiary's request, without any notice to or consent by Grantor, may take any of the foregoing actions.

ARTICLE 16

MISCELLANEOUS

16.1. Notices. All notices, offers, acceptances, rejections, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given (i) when delivered by hand, or by Federal Express or other reliable 24-hour delivery service, (ii) on the earlier of receipt or five (5) days after being sent by first class registered or certified mail, postage prepaid, return receipt requested, or (iii) when sent by telecopier, after acknowledgment of receipt has been received by sender, in each case addressed as follows:

If to Grantor:

BB Property Company
 c/o W.P. Carey & Co. LLC
 50 Rockefeller Plaza, 2nd Floor
 New York, NY 10020
 Attention: Property Management

cc: Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
Attention: Chairman, Real Estate Department

If to Trustee:

Frank E. Stevenson, II, Esq.
c/o Locke Liddell & Sapp LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-3989

Charles D. Calvin, Esq.
c/o Faegre & Benson LLP
370 17th Street, Suite 2500
Denver, Colorado 80202

Michael D. Miselman, Esq.
c/o D'Ancona & Pflaum
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601

Keleher & McLeod, P.A.
Albuquerque Plaza
201 Third NW, 12th Floor
Albuquerque, New Mexico 87102
Attention: William B. Keleher, Esq.

David C. Canfield
Bean, Kinney & Korman, P.C.
2000 North 14th Street
Suite 100
Arlington, VA 22201

If to Beneficiary:

Teachers Insurance and Annuity Association of America
730 Third Avenue
New York, NY 10017
Attention: Securities Division

Or, to such other person or address in the United States as any such party shall furnish to the other parties in writing.

16.2. Modification. No Note Purchase Documents may be modified, waived or terminated, except in accordance with a written instrument explicitly stating that purpose and executed by the party against which such modification, waiver or termination is asserted.

16.3. Illegal Provision. If any provision herein or in the Notes shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16.4. Maximum Interest Payable. Neither this Deed of Trust nor the Notes nor any other document shall require the payment or permit the collection of interest in excess of the maximum not prohibited by law. If herein or in the Notes any excess of interest in such respect is provided for or shall be adjudicated to be so provided for, neither Grantor nor its successors or assigns shall be obligated to pay such interest in excess of the maximum amount not prohibited by law, and the right to demand the payment of any such excess shall be and hereby is waived and any excess shall be promptly refunded; and this provision shall control any other provision of this Deed of Trust or the Notes. Without limiting the foregoing, it is acknowledged and agreed that the provisions set forth in Appendix 2 hereto shall apply to the extent that Texas law is applicable to any interpretation of this Article 16.4.

16.5. Satisfaction. If and when the Notes shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Grantor shall have paid or caused to be paid the full amount of the aggregate principal, interest and premium, if any, on the Notes and shall also pay or cause to be paid all other sums payable hereunder by Grantor under this Deed of Trust, then and in that case this Deed of Trust shall become null and void, except as expressly set forth herein, and shall be released of record, all at the cost of Grantor.

16.6. Covenants Running with the Land; Successors and Assigns. All covenants and other obligations of Grantor contained in this Deed of Trust and the other Note Purchase Documents shall run with the land and, until the Indebtedness under the Notes is paid in full, bind Grantor and its successors and assigns and all subsequent owners, encumbrancers and tenants of the Premises. All representations, warranties, covenants (whether or not running with the land) and other obligations of Grantor contained in the Note Purchase Documents shall inure to the exclusive benefit of Beneficiary and its successors and assigns, and no other person may require compliance therewith or claim the benefits thereof. Whenever used, the singular shall include the plural, the plural include the singular and the use of any gender shall include all genders.

16.7. Table of Contents; Headings. The table of contents contained herein and the headings of the various Articles and Exhibits, Appendices and Schedules herein have been inserted for reference only and shall not to any extent have the effect of modifying or amending the express terms and provisions hereof.

16.8. Governing Law. This Deed of Trust was negotiated in the State of New York, and made by Grantor in the State of New York, and the proceeds of the Notes were disbursed in

the State of New York, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limitation, matters of construction, validity and performance, this Deed of Trust shall be governed by and construed in accordance with the internal laws of the State of New York applicable with respect to contracts made and performed in such state (without regard to principles of conflicts of laws applicable under New York law) and any applicable laws of the United States of America; provided, however, that with respect to the provisions hereof which relate to title or the creation, perfection, priority or enforcement of liens on real property, this Deed of Trust, with respect to any Property, shall be governed by the laws of the state in which such Property is located, it being understood that, to the fullest extent permitted by the law of such state, the laws of the State of New York shall govern the validity and enforceability of this Deed of Trust. If any action or proceeding shall be brought by Trustee or Beneficiary in order to enforce any right or remedy under this Deed of Trust, Grantor and Beneficiary hereby consent, and shall submit to, the jurisdiction of any state or federal court of competent jurisdiction sitting in the State of New York or in the state in which any Property is located.

16.9. Principal Use. No Property is to be used principally for agricultural or farming purposes.

16.10. Calendar Days; Business Days. Except as otherwise specified under the Note Purchase Documents, "day," "month" and "year" refer to calendar days, months and years. If any action (including the making of any payment) under any of the Note Purchase Documents must be taken on a particular day or if the failure to take any action on any particular day would operate thereunder as an election among alternatives or result in the lapse or waiver of any right and if such day is not a day upon which commercial banks are open in New York, New York (a "business day"), the time within which any such action may be taken shall be extended to the next business day.

16.11. Incorporation; Exhibits. All of the exhibits, schedules and appendices attached hereto are an integral part hereof and are hereby incorporated herein.

16.12. Counterparts. This Deed of Trust and the other Note Purchase Documents may be executed in one or more counterparts, each of which shall be an original, with respect to such Note Purchase Document, and all of which, together, shall constitute one and the same instrument, with respect to such Note Purchase Document.

(Signature page follows.)

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be duly executed under seal and delivered, as of the day and year first above written.

GRANTOR:

BB PROPERTY COMPANY

By: BBC (NE) QRS 11-18, Inc.
General Partner

By: *James E. Russell*
Its: *Vice President*

By: *Ent Hamilton*
Its: *Asst. Treasurer*

By: BBC (NE) QRS 12-2, Inc.
General Partner

By: *James E. Russell*
Its: *Vice President*

By: *Ent Hamilton*
Its: *Asst. Treasurer*

BENEFICIARY:

TEACHERS INSURANCE AND ANNUITY
ASSOCIATION OF AMERICA

By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be duly executed under seal and delivered, as of the day and year first above written.

GRANTOR:

BB PROPERTY COMPANY

By: BBC (NE) QRS 11-18, Inc.
General Partner

By: _____
Its: _____

By: _____
Its: _____

By: BBC (NE) QRS 12-2, Inc.
General Partner

By: _____
Its: _____

By: _____
Its: _____

BENEFICIARY:

TEACHERS INSURANCE AND ANNUITY
ASSOCIATION OF AMERICA

By: Nancy J Heller
Its: NANCY FREUND HELLER
GROUP MANAGING DIRECTOR

By: David G Persky
Its: DAVID G. PERSKY
DIRECTOR

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

CHIEF CLERK
COOK COUNTY CLERK'S OFFICE
JAN 1 2011

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 25th day of September, 2001 by Kimberly Nussel, as V.P. of BBC (NE) QRS 11-18, Inc., as a partner of BB Property Company, a Nebraska partnership, on behalf of the Partnership, to be the free act and deed of said partnership.

Jessica B. Simon
Notary Public

My Commission Expires December 27, 2001
[Seal] JESSICA B. SIMON
Notary Public, State of New York
No. 01SI6035321
Qualified in New York County

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

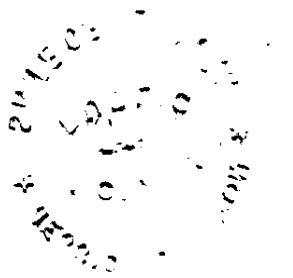
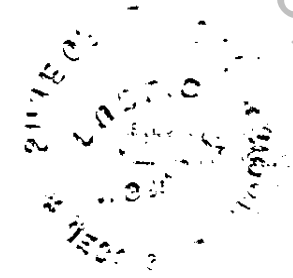
The foregoing instrument was acknowledged before me this 25th day of September, 2001 by Edward Hamilton, as Asst. Manager of BBC (NE) QRS 11-18, Inc., as a partner of BB Property Company, a Nebraska partnership, on behalf of the Partnership, to be the free act and deed of said partnership.

Jessica B. Simon
Notary Public

My Commission Expires December 27, 2001
[Seal] JESSICA B. SIMON
Notary Public, State of New York
No. 01SI6035321
Qualified in New York County
Commission Expires December 27, 2001

UNOFFICIAL COPY

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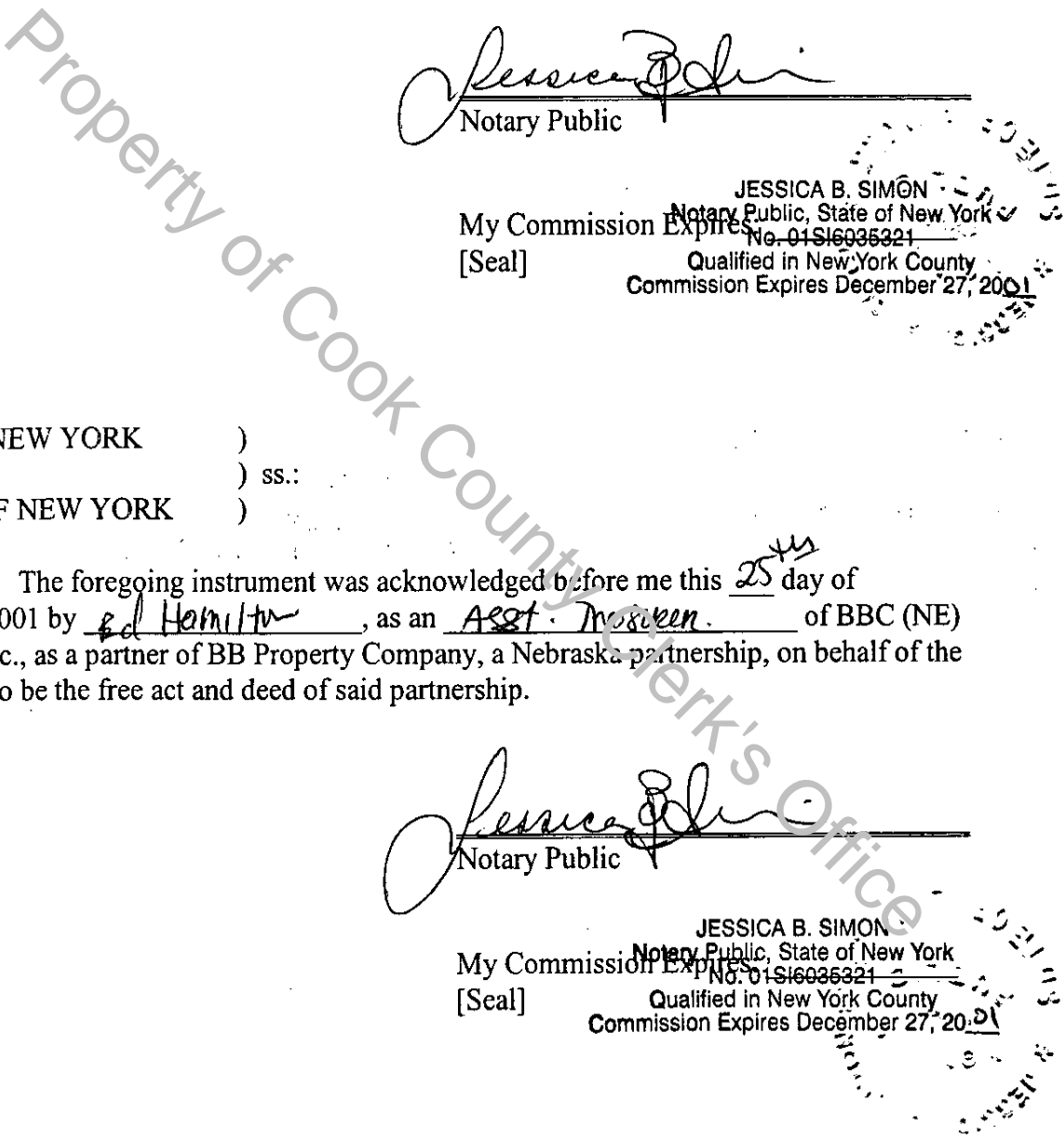


STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 25th day of September, 2001 by Kimberly Nussol, as an V.P. of BBC (NE) QRS 12-2, Inc., as a partner of BB Property Company, a Nebraska partnership, on behalf of the Partnership, to be the free act and deed of said partnership.

Jessica B. Simon
Notary Public

JESSICA B. SIMON
Notary Public, State of New York
My Commission Expires No. 01S16035321
[Seal] Qualified in New York County
Commission Expires December 27, 2001



STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

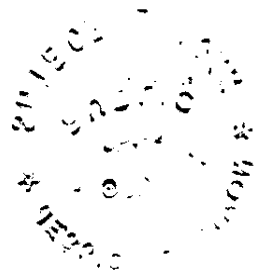
The foregoing instrument was acknowledged before me this 25th day of September, 2001 by Ed Hamilton, as an Asst. Treasurer of BBC (NE) QRS 12-2, Inc., as a partner of BB Property Company, a Nebraska partnership, on behalf of the Partnership, to be the free act and deed of said partnership.

Jessica B. Simon
Notary Public

JESSICA B. SIMON
Notary Public, State of New York
My Commission Expires No. 01S16035321
[Seal] Qualified in New York County
Commission Expires December 27, 2001

UNOFFICIAL COPY

Property of Cook County Clerk's Office



STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 17th day of September, 2001 by Nancy F. Heller, as Group Managing Director of Teachers Insurance and Annuity Association of America, a New York life insurance corporation, on behalf of the corporation, to be the free act and deed of said corporation.

Elliot A Stultz
Notary Public
My Commission Expires: 4/8/02
[Affix Notary Seal]

Elliot A. Stultz
Notary Public, State of New York
No. 02ST5058287
Qualified in New York County
Commission Expires 4/8/02

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 17th day of September, 2001 by David G. Persky, as Director of Teachers Insurance and Annuity Association of America, a New York life insurance corporation, on behalf of the corporation, to be the free act and deed of said corporation.

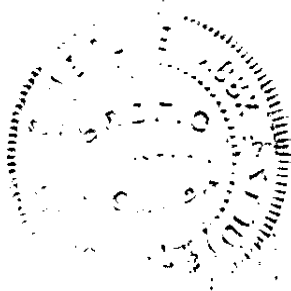
Elliot A Stultz
Notary Public
My Commission Expires: 4/8/02
[Affix Notary Seal]

Elliot A. Stultz
Notary Public, State of New York
No. 02ST5058287
Qualified in New York County
Commission Expires 4/8/02

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Property of Cook County Clerk's Office



TRUSTEE:



David C. Canfield

TRUSTEE:

By: Frank Stevenson

TRUSTEE:

By: Charles Calvin

TRUSTEE:

By: Michael J. Miselman

TRUSTEE:

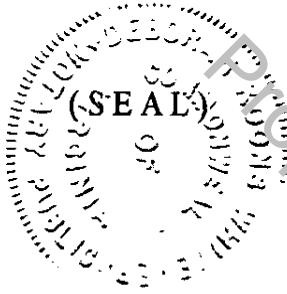
By: Keleher & McLeod, P.A.

By: _____

Property of Cook County Clerk's Office

COMMONWEALTH OF VIRGINIA)
)
COUNTY OF ARLINGTON)

This Deed of Trust and Security Agreement ("Deed of Trust") dated September 26, 2001, from BB Property Company, as grantor, for the benefit of Teachers Insurance and Annuity Association of America, as beneficiary, was acknowledged before me on September 27, 2001, by David C. Canfield, Trustee, solely in his capacity as trustee under the Deed of Trust to be the free act and deed of said trustee.



Deborah Koras Whitener

Notary Public

Print Name of Notary:

Deborah Koras Whitener

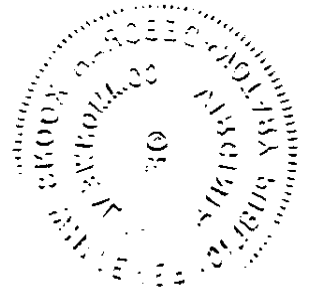
My Commission Expires:

7/31/04

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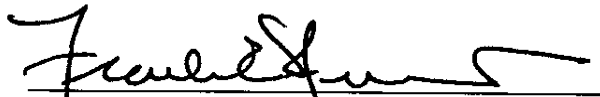
Property of Cook County Clerk's Office



TRUSTEE:

David C. Canfield

TRUSTEE:



By: Frank E. Stevenson, II

TRUSTEE:

By: Charles Calvin

TRUSTEE:

By: Michael D. Miselman

TRUSTEE:

By: Keleher & McLeod, P.A.


By: _____

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on September 19, 2001, by Frank E. Stevenson, II.





Notary Public in and for the State of Texas

My Commission Expires: _____

Printed Name of Notary

TRUSTEE:

David C. Canfield

TRUSTEE:

By: Frank Stevenson

TRUSTEE:



By: Charles D. Calvin

TRUSTEE:

By: Michael D. Miselman

TRUSTEE:

By: Keleher & McLeod, P.A.

By: _____

Property of Cook County Clerk's Office

STATE OF COLORADO)
CITY AND)
COUNTY OF DENVER)

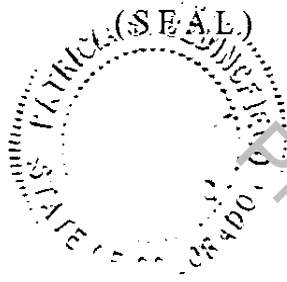
The foregoing instrument was acknowledged before me this 18th day of September, 2001, by Charles D. Calvin, Trustee, solely in his capacity as trustee under the foregoing instrument, to be the free act and deed of said trust.

Patricia S. Bedingfield
Notary Public

Print Name of Notary:
PATRICIA S. BEDINGFIELD

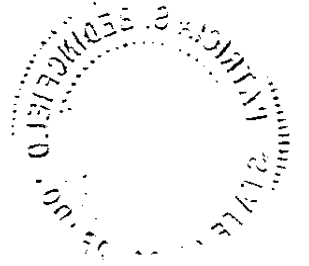
My Commission Expires:

10-16-02



Property of Cook County Clerk's Office

UNOFFICIAL COPY



Property of Cook County Clerk's Office

TRUSTEE:

David C. Canfield

TRUSTEE:

By: Frank Stevenson

TRUSTEE:

By: Charles Calvin

TRUSTEE:

Michael D. Miselman
By: Michael D. Miselman

TRUSTEE:

By: Keeler & McLeod, P.A.

By: _____

Property of Cook County Clerk's Office

THE STATE OF ILLINOIS)
)
COUNTY OF COOK)

This Deed of Trust and Security Agreement ("Deed of Trust") dated September __, 2001, from BB Property Company, as grantor, for the benefit of Teachers Insurance and Annuity Association of America, as beneficiary, was acknowledged before me on September 17, 2001, by Michael D. Miselman, Trustee, solely in his capacity as trustee under the Deed of Trust to be the free act and deed of said trust.

(SEAL)



Sela L. Brown

Notary Public

Print Name of Notary:

Sela L. Brown

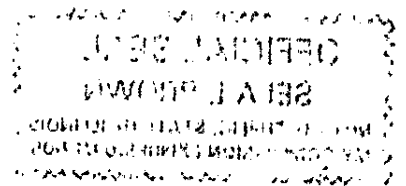
My Commission Expires:

9-17-05

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office



TRUSTEE:

David C. Canfield

TRUSTEE:

By: Frank Stevenson

TRUSTEE:

By: Charles Calvin

TRUSTEE:

By: Michael D. Miselman

TRUSTEE:

KELEHER & McLEOD, P.A.

By: *William B. Keleher*

William B. Keleher

Property of Cook County Clerk's Office

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This Amended and Restated Deed of Trust and Security Agreement ("Deed of Trust") dated September __, 2001, from BB Property Company, as grantor, for the benefit of Teachers Insurance and Annuity Association of America, as beneficiary, was acknowledged before me this 17th day of September, 2001 by William B. Keleher on behalf of Keleher & McLeod, P.A., as Trustee, solely in his capacity as Trustee under the Deed of Trust to be the free act and deed of said trust.



OFFICIAL SEAL
DONNA S. NICHOLAS
NOTARY PUBLIC - NEW MEXICO
Notary Bond Filed with Secretary of State
My Commission Expires _____

Donna S. Nicholas
Notary Public

Print Name of Notary:

DONNA S. NICHOLAS

My Commission Expires:

6-2-05

COOK County Clerk's Office

EXHIBIT A

FORM OF NOTE

BB PROPERTY COMPANY

9.01% SECURED NOTE DUE MAY 1, 2008

\$32,800,000

Private Placement No. 05528* AA 0

FOR VALUE RECEIVED, the undersigned, BB PROPERTY COMPANY, a Nebraska general partnership ("Maker"), hereby promises to pay to TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York life insurance company ("Holder"), or assigns, at the place for payment specified herein, in accordance with the payment schedule specified herein, the principal amount of THIRTY TWO MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$32,800,000), together with interest (computed, in arrears, on the basis of a 360-day year of twelve 30-day months) on: (1) the unpaid balance of such principal amount, at the rate of NINE AND 1/100 PERCENT (9.01%) per annum, from the date hereof until such principal amount shall become due and payable (whether upon maturity, a date fixed for prepayment, acceleration or otherwise); and (2) to the extent not prohibited by applicable law, all principal (including any prepayment of principal), prepayment premiums, late payment charges, interest and other amounts under the Note Purchase Documents (as defined below), due and unpaid, at the rate of TEN AND 01/100 PERCENT (10.01%) per annum (the "Default Rate") from the date due until paid. The entire amount of unpaid principal and accrued and unpaid interest hereunder, all other amounts payable hereunder and all amounts payable under the Note Purchase Documents shall be due and payable on May 1, 2008 (the "Stated Maturity Date") or such earlier date as is provided for herein (in either case, the "Maturity Date"). "Holder" shall mean the Holder named above and each person (if any) to which such named Holder sells or otherwise transfers this Note or any Notes issued in exchange, substitution or replacement herefor in accordance with the terms hereof. This Note is Maker's 9.01% Secured Note due May 1, 2008, issued in an aggregate original principal amount of \$32,800,000 (such Note together with any notes issued in exchange, substitution or replacement therefore, in accordance with the terms thereby and all extensions, modifications and renewals (if any) thereof, being collectively referred to hereinafter as the "Notes") in accordance with the terms of the Note Purchase Agreement among Maker, Best Buy Co., Inc. and Holder (together with all amendments and supplements thereto, the "Note Purchase Agreement").

1. Security. Together herewith, Maker, as Grantor, and Teachers Insurance and Annuity Association of America, as Beneficiary, have entered into an Amended and Restated Deed of Trust, Mortgage and Security Agreement dated as of _____ (the "Deed of Trust") and an Amended and Restated Assignment of Lease, Rents and Profits dated as of _____ (the "Assignment"). The Indebtedness under the Notes is secured by liens, security interests and assignments under the Deed of Trust and the Assignment. Reference is hereby made to the Deed of Trust and the Assignment for a description of the Collateral thereby granted, the nature and extent of the security for the Notes, the nature and extent of the assignment, the rights of Holder and Maker in respect of security or otherwise. Capitalized terms used herein without definition have the meanings provided for in the Deed of Trust, and the provisions of the Deed of Trust and the Assignment relating to the Note Purchase Documents are applicable hereto. "Note Purchase Documents," as defined in the Deed of Trust shall mean, collectively, the Notes, the Deed of Trust, the Note Purchase Agreement, the Seller/Lessee's Certificate, the Guarantor's Certificate, the Guaranty, the Lease, the Bill of Sale, the Assignment, the Environmental Indemnity, the Owner's Lien Agreement, the Lock-Box Agreement, the Non-Disturbance Agreement and any other agreement, document, deed, certificate or instrument executed or delivered in connection with any of the foregoing, and all extensions, modifications and renewals (if any) of any of the foregoing.

2. Payment. All payments on or in respect of the Notes shall be payable in lawful money of the United States of America by electronic funds transfer in immediately available funds at the address specified for such purpose in Schedule 1 attached to the Note Purchase Agreement, or at such other address or in such other manner as Holder shall have designated by notice to Maker, in each case, without presentment and without notations being made hereon. All notices shall be addressed as provided for in Article 12 of the Note Purchase Agreement.

2.1 First Payment; Monthly Installments; Final Payment. On May 1, 1993, Maker shall pay Holder interest from the date hereof to but not including May 1, 1993, calculated at the rate of \$8,209.11 per day (which interest shall be applied to the payment of accrued interest from the date hereof until May 1, 1993, but not to principal). Commencing on June 1, 1993 and continuing, in order, on the first (1st) day of each month thereafter through April 1, 2008, Maker shall make one hundred seventy-nine (179) monthly payments of combined principal and interest in accordance with the payment schedule attached as Schedule 1 hereto (as amended from time to time upon a prepayment as provided herein, the "Payment Schedule"). Each of the monthly payments described in this clause are hereinafter referred to, individually, as an "Installment Payment," and, collectively as the "Installment Payments;" the dates upon which such payments are due are hereinafter referred to, individually, as an "Installment Payment Date," and, collectively as the "Installment Payment Dates". On the Maturity Date, Maker shall make one (1) payment (the "Final Payment") in an amount sufficient to pay the entire Indebtedness under the Notes. No prepayment of any amount hereunder or under any of the Note Purchase Documents shall relieve Maker of the obligation to pay the full amount of each Installment Payment and the Final Payment, except upon a prepayment of the Notes as expressly provided in Section 3. The outstanding principal and interest shown on the Payment Schedule or other books and records of Holder shall constitute prima facie evidence of the principal and interest owing and unpaid under the Notes. However, any failure to record on the Payment Schedule or other books or records of Holder the date or amount of any disbursement or advance

under any of the Note Purchase Documents shall not limit or otherwise affect Maker's obligation to repay the principal amount of such disbursements and advances, together with all interest accruing thereon, as provided for in the Note Purchase Documents.

2.2. Application of Payments. Each amount paid hereunder shall be applied first to accrued and unpaid interest and other amounts payable hereunder or under any of the other Note Purchase Documents and then to unpaid principal. If there is more than one Note outstanding, each amount paid hereunder shall be prorated among the outstanding Notes in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof.

2.3. Surrender upon Payment in Full. Upon full payment of the entire Indebtedness under the Notes, Holder shall mark the Note "Paid in Full" and surrender the Notes to Maker for cancellation.

3. Prepayment. No person may prepay any principal under the Notes, and Holder may refuse the tender of any such prepayment, except as follows:

3.1. Voluntary Prepayment. Prior to May 1, 2003, Maker may not voluntarily prepay or give notice that it intends to voluntarily prepay any portion of the principal under the Notes. Beginning on May 1, 2003, Maker may elect to repay only on any Installment Payment Date occurring thereafter the entire Indebtedness under the Notes (in whole and not in part) and only as follows. Maker shall give Holder a Prepayment Notice (as hereinafter defined). Upon the receipt by Holder of such Prepayment Notice, such Prepayment Notice shall be irrevocable, and the voluntary prepayment date (the "Voluntary Prepayment Date") fixed in such Prepayment Notice shall be the Maturity Date. On the Voluntary Prepayment Date, Maker shall pay Holder the entire Indebtedness under the Notes, including the Make Whole Premium (as hereinafter defined) (collectively, the "Voluntary Prepayment Amount") and deliver to Holder a Prepayment Certificate (as hereinafter defined) dated as of such Voluntary Prepayment Date. The occurrence of any Event of Default specified in the Deed of Trust in connection with which there is any acceleration of the Indebtedness under the Notes shall constitute an irrevocable election by Maker to make a voluntary prepayment of the Notes, to fix the Acceleration Date as the Voluntary Prepayment Date, and to pay Holder the Voluntary Prepayment Amount as of (and due and payable on) such Voluntary Prepayment Date.

3.2. Make Whole Premium. "Make Whole Premium" shall mean, with respect to any Voluntary Prepayment Date, the sum calculated in Step 3 below pursuant to the following procedure:

Step 1: Determine the Make Whole Interest Rate. The "Make Whole Interest Rate" shall mean the Treasury Yield. "Treasury Yield" shall mean the average yield (determined on the business day immediately preceding such Voluntary Prepayment Date by reference to the yield for each of the five (5) business days preceding such business day) of United States Treasury Notes available for purchase and having a maturity equal to the Weighted Average Life to Maturity of the Notes as of such Voluntary Prepayment Date, as such yield is reported in Federal Reserve Statistical Release H.15 (519) or any successor or alternate publication then reporting such yield and acceptable to Holder; provided, however, that if such yield is not so reported, the Treasury Yield shall be determined by a nationally recognized United States

government securities dealer selected by Holder. If the Weighted Average Life to Maturity of the Notes is not equal to the maturity of a United States Treasury Note for which an average yield is given, the average yield to be determined in the preceding sentence shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the average yields of (1) the most actively traded United States Treasury Note with the maturity closest to and greater than the Weighted Average Life to Maturity of the Notes and (2) the most actively traded United States Treasury Note with the maturity closest to and less than the Weighted Average Life to Maturity of the Notes. "Weighted Average Life to Maturity" shall mean, with respect to such Voluntary Prepayment Date, the number of years (calculated to the nearest 1/12) obtained by dividing (1) the then outstanding principal balance of the Notes into (2) the sum of the products of (a) the amount of each then remaining principal payment (including the final such payment) multiplied by (b) the number of years (calculated to the nearest 1/12) elapsing between such Voluntary Prepayment Date and the date upon which such principal payment is due.

Step 2. Determine the unadjusted dollar value ("FV(t)") of the interest differential ("D") resulting from the prepayment of the principal component ("P(t)") of the Final Payment and of each Installment Payment scheduled for payment after the Voluntary Prepayment Date. For the Stated Maturity Date, with respect to the Final Payment, and each scheduled monthly payment date, with respect to each Installment Payment (the payment date, in each case, being "t"): $FV(t) = P(t) \times D/12$, where "L" equals the interest rate specified in the Notes minus the Make Whole Interest Rate.

Step 3: Determine the present value ("PV(t)") of each FV(t) as of the Voluntary Prepayment Date, discounted on a monthly basis at one-twelfth of the Make Whole Interest Rate. Calculate the sum of all PV(t). This sum is the Make Whole Premium. If the Make Whole Premium is negative, neither Maker nor Holder shall be obligated to pay any amount with respect to such Make Whole Premium.

Maker agrees that the Make Whole Premium is not a penalty or interest but constitutes a reasonable estimate of the amount necessary to compensate Holder for the administrative costs of purchasing the Notes and for the lost opportunity to make alternative loans or investments at a yield equivalent to the yield on the Notes that Holder shall suffer upon any prepayment, including any acceleration of the Indebtedness under the Notes. Maker has bargained for the voluntary prepayment of the Notes and the payment of the Make Whole Premium as an alternate method of performance hereunder, and Maker's promise to pay the Make Whole Premium upon any prepayment (except for certain mandatory prepayments pursuant to Section 3.3, with respect to which the Make Whole Premium shall not be required), including any acceleration of the Indebtedness under the Notes, is of the essence of the consideration for Holder's purchase of the Notes. Upon any acceleration of the Notes or any Foreclosure, the Make Whole Premium shall automatically be added and become part of the Indebtedness under the Notes, and at any Foreclosure Holder may include in any bid Holder makes, as part of the Indebtedness under the Notes and as secured by the Deed of Trust, the amount of the Make Whole Premium, subject always to Section 9 hereof.

3.3. Mandatory Prepayment Upon Casualty, Taking, Event of Default or Prepayment Termination Offer under the Lease.

(a) Immediately upon the actual or deemed receipt by Maker of a Termination Offer pursuant to Article 11(d), 11(e), 20(i) or 37 of the Lease, Maker shall deliver to Holder a Prepayment Notice fixing a prepayment date (the "Mandatory Prepayment Date") in accordance with the provisions of Section 3.4. Upon the receipt by Holder of such Prepayment Notice, such Prepayment Notice shall be irrevocable, and the Mandatory Prepayment Date shall be the Maturity Date, as to the portion of the Notes being prepaid only. On the Mandatory Prepayment Date, Maker shall pay Holder the amount of principal to be paid under the following Section 3.3(b) or Section 3.3(c), as the case may be (the "Mandatory Prepayment Amount"), together with the Installment Payment due and payable on such date and all other Indebtedness under the Notes that is then due and payable and, in the case of a Termination Offer pursuant to Article 20(i) of the Lease, the Make Whole Premium. If Maker fails to give Holder such a Prepayment Notice fixing the Mandatory Prepayment Date, the Mandatory Prepayment Amount, together with all Installment Payments then due and payable, all other Indebtedness under the Notes that is then due and payable and, in the case of a Termination Offer pursuant to Article 20(i) of the Lease, the Make Whole Premium, shall be due and payable on the Installment Payment Date occurring immediately after the occurrence of any event which would require the giving of such Prepayment Notice. If Maker rejects a Termination Offer made pursuant to Article 11(d), 11(e), 20(i) or 37 of the Lease, the Mandatory Prepayment Amount, calculated in accordance with Section 3.3(d) or Section 3.3(e) as applicable, together with all Installment Payments due and payable on or prior to the Mandatory Prepayment Date set forth in the Prepayment Notice, all other Indebtedness under the Notes that is then due and payable, and, in the case of a Termination Offer made pursuant to Article 20(i) of the Lease, the Make Whole Premium, shall be due and payable immediately.

(b) Upon the termination of the Lease by Lessee with respect to any Property pursuant to Article 11(d) or 11(e) of the Lease, the Mandatory Prepayment Amount shall equal the Allocable Portion of the Notes with respect to such Property as determined in accordance with Schedule C to the Deed of Trust.

(c) Upon the termination of the Lease by Lessee with respect to the Premises pursuant to Article 20(i) or 37 of the Lease, the Mandatory Prepayment Amount shall equal the entire principal then outstanding under the Notes.

(d) Upon the rejection by Maker of any Termination Offer made or deemed to have been made pursuant to Article 11(d) or 11(e) of the Lease, the Mandatory Prepayment Amount shall equal the Allocable Portion of the Notes with respect to the Property subject to such Termination Offer as determined in accordance with Schedule C to the Deed of Trust.

(e) Upon rejection by Maker of any Termination Offer made or deemed to have been made pursuant to Article 20(i) or 37 of the Lease, the Mandatory Prepayment Amount shall equal the entire principal then outstanding under the Notes.

3.4. Prepayment Notice; Prepayment Certificate. "Prepayment Notice" shall mean any notice by Maker to Holder, together with a certificate executed and acknowledged by an authorized officer of Maker (a "Prepayment Certificate") stating: (a) the Voluntary Prepayment Date or the Mandatory Prepayment Date (as the case may be), provided that (i) in the case of a voluntary prepayment made pursuant to Section 3.1, such date shall be on an Installment Payment Date occurring no earlier than thirty (30) days and no later than sixty (60) days after such Prepayment Notice is given, and (ii) in the case of a mandatory prepayment, such date shall be on the Termination Date established in accordance with Article 11(d), 11(e), 20(i) or 37 of the Lease; (b) the amount of principal to be prepaid on such date; (c) the amount of the Installment Payment to be paid on such date; (d) all other Indebtedness under the Notes (to the extent then known); (e) the estimated amount of the Make Whole Premium, if any, determined as of, and to be paid on, such date, together with the market data and calculations used to determine such estimate; (f) that, other than the amounts specified in such Prepayment Certificate, there are no amounts under any of the Note Purchase Documents that shall be due and unpaid as of such date; and (g) that, other than each Event of Default (if any) of which Holder has given Maker notice in connection with any acceleration of the Indebtedness under the Notes, no Event of Default specified in the Deed of Trust has occurred and is continuing. Holder shall not be bound by any statement or amount contained in any Prepayment Certificate, and any failure by Holder to dispute any such statement or amount shall not operate to limit or as a waiver of any of Holder's rights and remedies under the Notes or the other Note Purchase Documents.

3.5 Application of Partial Prepayments.

(a) Upon any partial prepayment of the Notes, (i) each Installment Payment which shall thereafter be payable on the Notes, and (ii) the Final Payment, shall be reduced by the proportion that the aggregate principal amount being so prepaid bears to the outstanding aggregate principal amount of the Notes immediately prior to such prepayment, but in any event, such that upon the due payment of all remaining Installment Payments and the Final Payment there shall have been paid to Holder the entire unpaid principal amount thereof together with accrued interest thereon.

(b) On or prior to each date of a partial prepayment of any Notes, Maker shall prepare or procure two copies of a revised Payment Schedule, setting forth the amount of (i) the interest portion and the principal portion of each Installment Payment thereafter to be made on the Notes, (ii) the amount of the principal of the Notes that shall remain unpaid after each such Installment Payment is made, and (iii) the principal amount of the Final Payment and interest thereon. Maker shall retain one (1) of such copies and deliver the other copy to Holder.

4. Limitation on Interest. Maker hereby represents and warrants that:

(a) under the Notes, Maker has received the use of an amount in excess of \$1,000; (b) Maker is a general partnership; and (c) Maker has executed the Notes and borrowed all amounts advanced or disbursed at any time hereunder for the purpose of acquiring or carrying the Premises. If, upon the payment of any amount provided for under the Notes or the other Note Purchase Documents, such payment would result in the payment of any interest in excess of the maximum rate permitted by law, such payment shall constitute an involuntary prepayment of principal (to be applied in inverse order and with respect to which no premium shall be charged) as of the date

paid. Upon notice of such payment, Holder shall reapply all subsequent payments of principal and interest hereunder to give effect to the maximum interest rate then permitted by law (but not more than the applicable stated interest rate -- 9.01% or 10.01% (as the case may be) -- provided for hereunder), and shall promptly refund any excess interest to Maker.

5. Transfer and Exchange of Notes.

(a) Any Note may be transferred if such Note is surrendered for cancellation to Maker at the address for notices set forth in Article 12 of the Note Purchase Agreement and is accompanied by an instrument of transfer satisfactory to Maker. A new Note, prepared by Holder and executed by Maker, in a principal amount equal to the original principal amount of such transferred Note, shall be authenticated and delivered by Maker to the transferee simultaneously in exchange for such transferred Note.

(b) Any Note may be exchanged for a new Note if such Note to be so exchanged is surrendered for cancellation to Maker at the address for notices set forth in Article 12 of the Note Purchase Agreement and is accompanied by the request of the Holder thereof specifying the denomination of the new Note to be issued in exchange therefor. A new Note, executed by Maker and payable to such Holder in the denomination so requested, and in an aggregate principal amount equal to the aggregate original principal amount of such Note to be so exchanged, shall be authenticated and delivered by Maker to such Holder simultaneously in exchange for such Note to be so exchanged.

(c) If any Note becomes mutilated or is destroyed, lost or stolen, upon request of the Holder thereof, a new note executed by Maker and payable to such Holder in the same original principal amount as Note so mutilated, destroyed, lost or stolen, shall be authenticated and delivered by Maker to such Holder in exchange for such Note, if mutilated, or in substitution for such Note, if destroyed, lost or stolen, provided that (i) in the case of a mutilated Note, such Note is surrendered for cancellation to Maker at the address for Notices set forth in Article 12 of the Note Purchase Agreement, and (ii) in the case of a destroyed, lost or stolen Note, the Holder thereof furnishes to Maker such security as may be reasonably required by Maker to save Maker harmless and to evidence to its satisfaction the destruction, loss or theft of such Note and the ownership thereof, provided, that, for Teachers Insurance and Annuity Association of America, its unsecured agreement to indemnify Maker with respect to such destroyed, lost or stolen Note shall satisfy the conditions of this clause (ii).

6. New Notes. Each new Note (a "New Note") issued pursuant to Section 5 in exchange for, in substitution for, or in lieu of a Note (an "Old Note") shall be dated the date of such Old Note. Maker shall mark on each New Note (i) the date to which principal and interest have been paid on such Old Note and (ii) all payments and prepayments of principal made on such Old Note which are allocable to such New Note. Interest shall be deemed to have been paid on such New Note to the date to which interest was paid on such Old Note, and all payments and prepayments of principal marked on such New Note, as provided in clause (ii) above, shall be deemed to have been made thereon. Each New Note issued pursuant to Section 5 in exchange for, or in substitution for or in lieu of an Old Note shall be valid obligations of Maker evidencing the same debt as such Old Note and shall be entitled to the benefits and

security of the Deed of Trust to the same extent as such Old Note.

7. Defaults; Remedies. Upon the occurrence of an Event of Default specified in the Deed of Trust, Holder may exercise any and all of the rights and remedies provided for under any and all of the Note Purchase Documents or otherwise available at law or in equity. The Note Purchase Documents provide, among other things, that: (1) except as expressly provided in the Deed of Trust, interest shall immediately accrue at the Default Rate on any amount not paid when due under any of the Note Purchase Documents, until such amount is paid; and (2) at any time during which any Event of Default specified in the Deed of Trust has occurred and is continuing, Holder may declare the Indebtedness under the Notes immediately due and payable, whereupon the Acceleration Date shall be the Maturity Date and the Indebtedness under the Note (including the Make Whole Premium) shall be due and payable. MAKER HEREBY ACKNOWLEDGES AND AGREES THAT HOLDER WOULD NOT LEND TO MAKER THE LOAN EVIDENCED BY THIS NOTE WITHOUT MAKER'S AGREEMENT, AS SET FORTH IN THIS PARAGRAPH, TO PAY HOLDER THE MAKE WHOLE PREMIUM UPON THE SATISFACTION OF ALL OR ANY PORTION OF THE PRINCIPAL INDEBTEDNESS EVIDENCED HEREBY FOLLOWING THE ACCELERATION OF THE MATURITY DATE HEREOF BY REASON OF A DEFAULT HEREUNDER, INCLUDING, WITHOUT LIMITATION, A DEFAULT ARISING FROM THE CONVEYANCE OF ANY RIGHT, TITLE OR INTEREST IN THE PROPERTY ENCUMBERED BY THE DEED OF TRUST, AND MAKER HAS CAUSED THOSE PERSONS SIGNING THIS NOTE ON MAKER'S BEHALF TO SEPARATELY INITIAL THE AGREEMENT CONTAINED IN THIS PARAGRAPH BY PLACING THEIR INITIALS BELOW:

INITIALS: _____

7.1 Personal Jurisdiction. Maker hereby consents and shall submit to the jurisdiction and venue of New York courts and the United States District Court for the Southern District of New York in connection with any action or proceeding arising out of or relating to the Notes or any of the other Note Purchase Documents.

7.2 Collection Costs. Should any indebtedness represented by this Note be collected at law or in equity, or in bankruptcy or other proceedings, or should this Note be placed in the hands of attorneys for collection after default, Maker agrees to pay, in addition to the principal, premium, if any, and interest due and payable hereon, all costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses (including those incurred in connection with any appeal), whether or not any dispute as to the validity or enforceability of any provision of the Notes or any of the Note Purchase Documents results in litigation and whether or not any such litigation is prosecuted to judgment, unless judgment is entered for Maker in any such enforcement or collection effort in which case Holder shall pay the reasonable attorneys' fees and expenses of Maker.

8. Joint and Several Liability; Waiver. Except as limited by the provisions of Section 9 hereof, Maker and each other person that is or becomes liable (whether voluntarily or by operation of law) for any obligation of Maker under this Note hereby: (1) assume joint and several liability for each obligation of Maker under the Note Purchase Documents; and (2)